



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

Risk & Insurance Education Alliance
August 6-7, 2024

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A Letter from William J. Hold, President/CEO

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

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

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

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

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

Let's take the first step.

A handwritten signature in black ink that reads "William J. Hold". The signature is fluid and cursive, with the first and last names being more prominent.

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



James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 1

Driving The Business Auto Coverage Form



DRIVING THE BUSINESS AUTO COVERAGE FORM

(INCLUDING SOME 2020 CHANGES)



I. INTRODUCTION

II. ELIGIBILITY

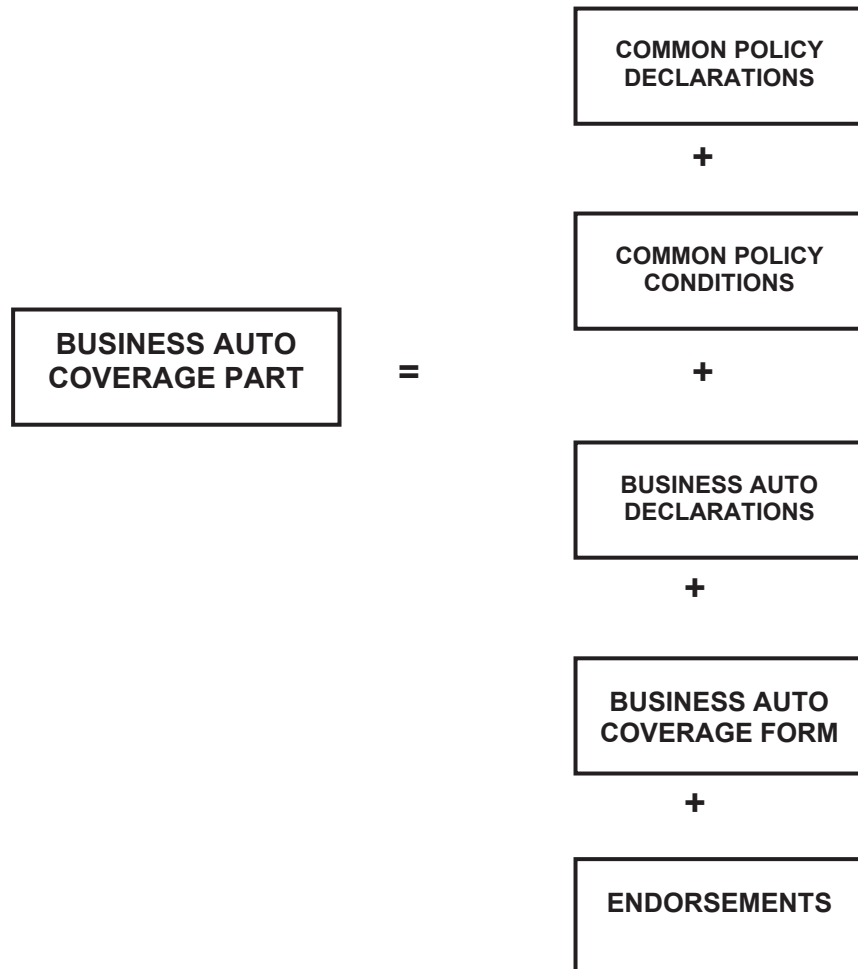
Eligibility for Business Auto Coverage (BAC)

- A. BAC provides coverage for most business risks
- B. Motor Carrier Coverage Form provides coverage for businesses that transport materials, commodities, and goods of others as well as their own
- C. Auto Dealers Coverage Form provides coverage for auto dealers and trailer dealers

III. BUSINESS AUTO COVERAGES

- A. Policy Coverages
 - 1. Liability
 - 2. Physical Damage
- B. Endorsement Coverages
 - 1. Medical Payments or State Specific No-fault Coverage
 - 2. Uninsured/Underinsured Motorists
 - 3. Others

IV. BUSINESS AUTO POLICY STRUCTURE



POLICY NUMBER:

IL DS 00 09 08

COMMON POLICY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE	

BUSINESS DESCRIPTION	
----------------------	--

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.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
	PREMIUM
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART	\$ _____
COMMERCIAL AUTOMOBILE COVERAGE PART	\$ _____
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$ _____
COMMERCIAL INLAND MARINE COVERAGE PART	\$ _____
COMMERCIAL LIABILITY UMBRELLA	\$ _____
COMMERCIAL PROPERTY COVERAGE PART	\$ _____
CRIME AND FIDELITY COVERAGE PART	\$ _____
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART	\$ _____
EQUIPMENT BREAKDOWN COVERAGE PART	\$ _____
FARM COVERAGE PART	\$ _____
LIQUOR LIABILITY COVERAGE PART	\$ _____
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART	\$ _____
POLLUTION LIABILITY COVERAGE PART	\$ _____
	\$ _____
	TOTAL: \$ _____
Premium shown is payable: \$ _____ at inception. \$ _____	

FORMS APPLICABLE TO ALL COVERAGE PARTS (SHOW NUMBERS): _____

NOTE

OFFICERS' FACSIMILE SIGNATURES MAY BE INSERTED HERE, ON THE POLICY COVER OR ELSEWHERE AT THE COMPANY'S OPTION.

IL DS 00

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Page 1 & 2 combined

V. COMMON POLICY DECLARATIONS FORM

- A. Named Insured
- B. Mailing Address
- C. Policy Period
- D. Business Description
- E. Coverage Parts/Premium
- F. Form Applicable

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

VI. COMMON POLICY CONDITIONS

- Establishes part of the “ground rules” for the relationship between the insurer and the insured.

A. Common to all coverage parts

1. Cancellation – 10 days non-pay; 30 days any other reason
 - **STATE SPECIFIC ENDORSEMENTS**
 - **COMPANY SPECIFIC ENDORSEMENTS**
2. Changes
3. Examination of your books and records during policy period/three years
4. Inspection and surveys
5. Premiums
6. Transfer of your rights and duties under this policy

B. (Concept of First Named Insured)

- *
 1. Authorized to cancel policy
 2. Receive notice of cancellation
- *
 3. Authorized to make changes in the terms of policy with insurer’s consent
 4. Responsible for payment of all premiums
 5. Payee for return premiums

(*CAUTION: LETTER OF AUTHORIZATION RECOMMENDED)

POLICY NUMBER:

COMMERCIAL AUTO
CA DS 03 11 20

BUSINESS AUTO DECLARATIONS

ITEM ONE

Company Name:	
Producer Name:	
Named Insured:	
Mailing Address:	
Policy Period	
From:	
To:	At 12:01 AM Standard Time at your mailing address shown above
Previous Policy Number:	

Form Of Business:		
<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company (LLC)	<input type="checkbox"/> Individual
<input type="checkbox"/> Partnership	<input type="checkbox"/> Other:	

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.

Premium Shown Is Payable At Inception:	\$
Audit Period (if applicable):	<input type="checkbox"/> Annually <input type="checkbox"/> Semiannually <input type="checkbox"/> Quarterly <input type="checkbox"/> Monthly

Endorsements Attached To This Policy
IL 00 17 – Common Policy Conditions (IL 01 46 in Washington)
IL 00 21 – Broad Form Nuclear Exclusion (not applicable in New York) (IL 01 98 in Washington)

VII. BUSINESS AUTO DECLARATIONS

A. Item One

1. Named Insured
2. Mailing Address
3. Policy Period
4. Form of Business
5. Premium
6. Endorsements

ITEM TWO**Schedule Of Coverages And Covered Autos**

This Policy provides only those coverages where a charge is shown in the premium column below. Each of these coverages will apply only to those "autos" shown as covered "autos". **"Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the Covered Autos section of the Business Auto Coverage Form next to the name of the coverage.**

Coverages	Covered Autos	Limit Or Deductible	Premium
Covered Autos Liability		\$	\$
Personal Injury Protection (Or Equivalent No-fault Coverage)		Separately Stated In Each Personal Injury Protection Endorsement Minus \$ Deductible	\$
Added Personal Injury Protection (Or Equivalent Added No-fault Coverage)		Separately Stated In Each Added Personal Injury Protection Endorsement	\$
Property Protection Insurance (Michigan Only)		Separately Stated In The Property Protection Insurance Endorsement Minus \$ Deductible For Each Accident	\$
Auto Medical Payments		\$ Each Insured	\$
Medical Expense And Income Loss Benefits (Virginia Only)		Separately Stated In The Medical Expense And Income Loss Benefits Endorsement	\$
Uninsured Motorists		\$	\$
Underinsured Motorists (When Not Included In Uninsured Motorists Coverage)		\$	\$

- B. ITEM TWO of the Business Auto Declarations shows the schedule of autos that are covered autos
 - 1. Coverages
 - 2. Numerical symbols 1-10 and 19 are used to designate covered autos
 - 3. Limits
 - 4. Premium
- C. ITEM THREE of the Business Auto Declarations shows a Schedule Of Owned Covered Autos
 - 1. Place of garaging should be verified periodically
 - 2. Business use should be determined by actual use
- D. ITEM FOUR of the Business Auto Declarations indicates a Schedule of Hired or Borrowed Covered Autos
 - 1. Exposure is greater than rental of autos; also includes borrowed
 - 2. Should be provided for all policies

- E. ITEM FIVE of the Business Auto Declarations indicates the Schedule For Non-ownership Liability
 - 1. Exposure is greater than employees' use of autos
 - 2. Should be provided for all policies

- F. ITEM SIX of the Business Auto Declarations indicates the Schedule For Gross Receipts of Mileage Basis

VIII. BUSINESS AUTO COVERAGE FORM (CA 00 01) – INTRODUCTION

Introduction

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

Throughout this Policy the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we”, “us” and “our” refer to the Company providing this insurance.

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

- A. Restricts broadness
- B. Defines how the named insured and insurer will be identified in the Coverage Form
- C. Indicates how words and phrases with special meaning will be identified

IX. BUSINESS AUTO COVERAGE FORM – SECTION I – COVERED AUTOS

Description of SECTION I – COVERED AUTOS

SECTION I – COVERED AUTOS

Item Two of the Declarations shows the “autos” that are covered “autos” for each of your coverages. The following numerical symbols describe the “autos” that may be covered “autos”. The symbols entered next to a coverage on the Declarations designate the only “autos” that are covered “autos”.

- Numerical symbols describe the autos that are covered autos
- Triggered from entry on BAP Declarations

A. Description of Covered Auto Designation Symbols

1. *Symbol 1 Description*

1 = Any "Auto".

- a. Represents broadest coverage available under the BAP
- b. Reserved for liability coverage only
- c. Symbol of choice for most insureds
- d. BAP issued to individual named insured could be called upon to provide liability insurance for autos insured under PAP
 - 1) Exposure
 - 2) Approach

DESIGNATION

- Liability Coverage does not apply
 - **CA 99 40 – EXCLUSION OR EXCESS COVERAGE
HAZARDS OTHERWISE INSURED**

EXCLUDE – "ALL AUTOS INSURED UNDER PAP"

2. *Symbol 2 Description*

2 = Owned "Autos" Only. Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.

- a. Refers to automobiles the named insured owns
- b. May be used to designate liability insurance, physical damage, medical payments/PIP, uninsured/underinsured motorists
- c. May provide insurance protection for autos not even on the schedule in BAP declarations

3. *Symbol 3 Description*

3 = Owned Private Passenger "Autos" Only. Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.

- a. Refers to private passenger autos the named insured owns
- b. May be used to designate liability insurance, physical damage, medical payments/PIP, uninsured/underinsured motorists
- c. Limits coverage to a specific type of auto

4. *Symbol 4 Description*

4 = Owned "Autos" Other Than Private Passenger "Autos" Only. Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.

- a. Refers to autos other than private passenger autos the named insured owns – trucks/truck tractors/buses/taxis/motorcycle trailers/emergency vehicles
- b. May be used to designate liability insurance, physical damage, medical payments/PIP, uninsured/underinsured motorists
- c. Limits coverage to a specific type of auto

5. *Symbol 5 Description*

5 = Owned "Autos" Subject To No-fault. Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.

- a. Refers to autos the named insured owns for a particular coverage required by the jurisdiction
- b. Not to be used where no-fault coverage is optional or can be rejected

6. *Symbol 6 Description*

6 = Owned "Autos" Subject To A Compulsory Uninsured Motorist Law. Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

- a. Refers to autos the named insured owns for a particular coverage required by the jurisdiction
- b. Not to be used where uninsured motorists/underinsured motorists coverage can be rejected

7. *Symbol 7 Description*

7 = Specifically Described "Autos". Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).

- a. Designates a specific insurance coverage only applies to selected autos
- b. May be used to designate liability insurance, physical damage insurance, medical payments/PIP, uninsured/underinsured motorists
- c. Would not normally be the Symbol of choice for the named insured

8. *Symbol 8 Description*

8 = Hired "Autos" Only. Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

- a. Can be used to activate coverage for leased, hired, rented or borrowed autos.
- b. May be used to designate liability insurance or physical damage

9. *Symbol 9 Description*

9 = Non-owned “Autos” Only. Only those “autos” you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes “autos” owned by your “employees”, partners (if you are in a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

- a. Can be used to activate coverage for autos the named insured does not own, lease, hire, rent or borrow
- b. May be used to designate liability insurance for the named insured
 - 1) Exposure for an employee
 - 2) Approach

- **CA 99 33 – EMPLOYEES AS INSURED**

“IN YOUR BUSINESS OR YOUR PERSONAL AFFAIRS”

NOTE: OTHER INSURANCE CLAUSE WILL MAKE COVERAGE PROVIDED EXCESS

19. *Symbol 19 Description*

19 = Mobile Equipment Subject To Compulsory Financial Responsibility Or Other Motor Vehicle Insurance Law Only. Only those “autos” that are land vehicles and that would qualify under the definition of “mobile equipment” under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

- a. Designed to trigger liability coverage for land vehicles that would ordinarily be classified as mobile equipment EXCEPT for the fact that they are subject to motor vehicle insurance laws where licensed or principally garaged
- b. Makes no reference to ownership of the vehicle
- c. Real need is when Symbol 7 is used for triggering liability coverage
- d. How about jurisdictions where golf carts and other low-speed vehicles that are NOT subject to “financial responsibility” and coverage is desired?

- **CA 04 45 – GOLF CARTS AND LOW-SPEED VEHICLES**

10. Symbol 10 Description

CA 99 54 07 97 Endorsement – partial copy

COVERED AUTO DESIGNATION SYMBOL

Section I – Covered Autos in the Business Auto and Motor Carrier Coverage Forms and **Section I – Covered Autos Coverages** in the Auto Dealers Coverage Form are amended by adding the following:

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

Symbol	Description Of Covered Auto Designation Symbols	
For use with the Business Auto Coverage Form		
10	=	

- a. Not part of Business Auto Coverage Form; added by endorsement
 - **CA 99 54 – COVERED AUTO DESIGNATION SYMBOL**
- b. Symbol 10 allows for negotiated description of covered autos to meet a particular need of the named insured
- c. This Symbol almost always will be used in conjunction with other Symbols and may be used to either limit the insurance coverage being provided or broaden the insurance coverage being provided
- d. Symbol 10 could be used by itself to describe which autos are covered autos

B. Owned Autos The Named Insured Acquires After The Policy Begins

1. *Symbols 1-6 and 19*

B. Owned Autos ~~You Acquire After The Policy Begins~~

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for “autos” that you acquire after the policy begins of the type described for the remainder of the policy period.

- a. Named insured has automatic coverage on newly acquired autos of the same type for the remainder of the policy period
- b. Does not necessitate immediate notice to the insurance company

2. *Symbol 7*

2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an “auto” you acquire after the policy begins will be a covered “auto” for that coverage **only if**:
 - a. We already cover all “autos” that you own for that coverage or it replaces an “auto” you previously owned that had the coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

- a. Any “automatic coverage” is limited to a potential maximum of 30 days **AND**
- b. Additional requirements apply
- c. **Extreme caution must be exercised!!!!!!!!!!**

NEW WORDING:

3. An auto that is leased or rented to you without a driver, under a written agreement for a continuous period of at least six months that requires you to provide primary insurance covering such “auto”, will be considered a covered “auto” you own.

C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos

Extension of Coverage

C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Covered Autos Liability Coverage is provided by this coverage form, the following types of vehicles are also covered “autos” for Covered Autos Liability Coverage.

- ***Liability insurance coverage only***

1. Trailers

Liability Extension

1. “Trailers” with a ~~load capacity of 2,000~~ registered Gross Vehicle Weight Rating of 3,000 pounds or less designed primarily for travel on public roads.

- a. Without this extension, there is a possibility that liability insurance protection would not be available for this particular type of vehicle
- b. Example – If Symbol 7 is used, coverage is only applicable to specifically described autos

2. Mobile Equipment

Liability Extension

2. “Mobile equipment” while being carried or towed by a covered “auto”.

- a. BAP definition of auto specifically excludes mobile equipment
- b. BUT CGL Policy excludes BI/PD arising out of the transportation of mobile equipment by an auto owned or operated by or rented or loaned to any insured

3. Nonowned Temporary Substitute

Liability Extension

3. Any “auto” you do not own while used with the permission of its owner as a temporary substitute for a covered “auto” you own that is out of service because of its:

- a. Breakdown;
- b. Repair;
- c. Servicing;
- d. “Loss”; or
- e. Destruction.

- a. Without this extension there is a possibility that liability insurance protection would not be available for this particular type of vehicle
- b. Example – If Symbol 2 or Symbol 7 is used, the named insured would have to purchase hired auto liability coverage for temporary substitute autos to have liability coverage

X. BUSINESS AUTO COVERAGE FORM – SECTION II – COVERED AUTOS LIABILITY COVERAGE

- **SECTION II** is one of the two sections to address specific coverage provided by the BAP
- Divided into subsections:
 - Insuring Agreement
 - Who Is An Insured
 - Coverage Extensions
 - Exclusions
 - Limit of Insurance

A. Insuring Agreement

Insuring Agreement

SECTION II – LIABILITY COVERAGE

A. Coverage

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”.

We will also pay all sums an “insured” legally must pay as a “covered pollution cost or expense” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of covered “autos”. However, we will only pay for the “covered pollution cost or expense” if there is either “bodily injury” or “property damage” to which this insurance applies that is caused by the same “accident”.

We have the right and duty to defend any “insured” against a “suit” asking for such damages or a “covered pollution cost or expense”. However, we have no duty to defend any “insured” against a “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

- Outlines insurer’s promise to pay in first two paragraphs
- Coverage will be subject to the policy terms and conditions
- Contractual duty to defend
- No coverage, no defense
- Control of defense/settlement with insurer
- Amount of insurer’s payment limited

1. Definition of Insured

Definition

SECTION V – DEFINITIONS

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

- Three types of persons or entities may qualify for protection against liability claims (subject to other policy terms and conditions)
 - Named insured
 - Automatic insured
 - Non-automatic insured
- The insurance coverage applies for a claim brought by one insured against another insured – provides severability of interests – example

1. Who Is An Insured

The following are “insureds”:

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

This exception does not apply if the covered “auto” is a “trailer” connected to a covered “auto” you own.

 - (2) Your employee if the covered “auto” is owned by that employee or a member of his or her household.
 - (3) Someone using a covered “auto” while he or she is working in a business of selling, servicing, repairing, parking or storing “autos” unless that business is yours.
 - (4) Anyone other than your “employees”, partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their “employees”, while moving property to or from a covered “auto”.
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered “auto” owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.

NAMED	Named insured is an insured for any covered auto
AUTOMATIC	Permissive users of covered autos the named insured owns, hires or borrows EXCEPT..... there are five exceptions
AUTOMATIC	Anyone vicariously responsible for the conduct of an insured
NON-AUTOMATIC	Who Is An Insured may be modified by endorsement

- CA 20 01 – LESSOR – ADDITIONAL INSURED AND LOSS PAYEE**
 Adds the lessor's interest to the named insured's policy for the leased auto described in the endorsement, or a substitute or replacement of that auto. The endorsement also provides loss payee status to the lessor as well as notice of cancellation.
- CA 20 48 – DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**
 Provides vicarious liability coverage for an individual or organization named in the endorsement provided the person or organization qualifies as an insured under the Who Is An Insured provision of the Coverage Form – "Seinfeld endorsement"
- CA 20 54 – EMPLOYEE HIRED AUTOS**
 Extends coverage for both liability and physical damage to employees while operating a hired or rented auto with the named insured's permission and performing duties related to the conduct of the named insured's business. Clarifies that any employee is an insured when the contract is written in an employee's name.
- CA 99 10 – DRIVE OTHER CAR COVERAGE – BROADENED COVERAGE FOR NAMED INDIVIDUALS**
 Affords excess liability protection for the individual named in the schedule (and resident spouse) for the personal use of a vehicle the named insured does not own, rent or borrow. All family members need to be named on the endorsement. Coverage can be extended to medical payments, uninsured motorists and physical damage.
- CA 99 16 – HIRED AUTOS SPECIFIED AS COVERED AUTOS YOU OWN**
 Adds the lessor as an additional insured for the auto described in the schedule. The lessor does not have to be named on the endorsement. The described auto is covered as an owned auto. Endorsement does not provide coverage for replacement or substitute autos or notice of cancellation to the lessor.

- **CA 99 17 – INDIVIDUAL NAMED INSURED**

Extends coverage for family members of the named insured for their personal use of rented or borrowed autos. Deletes co-employee exclusion. Endorsement may only be utilized when the Named Insured is an “individual” and coverage is afforded for a private passenger auto.

- **CA 99 33 – EMPLOYEES AS INSUREDS**

Adds all employees of the named insured as insureds for the use of their personal autos in the named insured’s business.

- ~~**CA 99 34 – SOCIAL SERVICE AGENCIES – VOLUNTEERS AS INSUREDS**~~

~~Adds all volunteers of the named insured as insureds for the use of autos for transportation purposes. Furnisher of auto is also an insured.~~

- **NEW – CA 05 24 – NON-OWNERSHIP LIABILITY COVERAGE FOR VOLUNTEERS**

Extends coverage for “volunteers” using their personal auto for liability arising out of the activities described in the schedule on the endorsement.

- **CA 99 47 – EMPLOYEE AS LESSOR**

Extends coverage for the employee who leases his or her auto to the named insured. The scheduled auto is considered an owned auto.

2. Bodily Injury

Definition

C. “Bodily injury” means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

- Physical harm to the body should be a requirement
- May include mental anguish – “zone of danger”

3. Property Damage

Definition

M. “Property damage” means damage to or loss of use of tangible property.

- Direct damage and loss of use are both included
- Verbiage is broad enough to include diminution in value claims

4. Accident

Definition

A. “Accident” includes continuous or repeated exposure to the same conditions resulting in “bodily injury” or “property damage”.

- Fortuitous events
- Important as relates to the application of Limits Of Insurance and application of deductibles

5. Auto

Definition

B. “Auto” means:

1. A land motor vehicle, “trailer” or semitrailer designed for travel on public roads; **or**
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, “auto” does not include “mobile equipment”.

- Verbiage land motor vehicle, trailer or semitrailer eliminates watercraft and aircraft from definition – eliminates certain types of land vehicles as well
- Distinguishes vehicles of this type from mobile equipment – coordinates with coverage provided by CGL Policy

6. Trailer

Definition

P. “Trailer” includes semitrailer.

7. Mobile Equipment

Definition

- K.** “Mobile equipment” means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 2. Vehicles maintained for use solely on or next to premises you own or rent;
 3. Vehicles that travel on crawler treads;
 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers.
 5. Vehicles not described in paragraphs 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers.
 6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not “mobile equipment” **but will be considered “autos”**.
 - a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
 - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

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

- Definition of “mobile equipment” in paragraph 6. excludes certain types of vehicles **that will be considered autos**
- Mobile equipment does not include land vehicles subject to a compulsory or financial responsibility laws or other motor vehicle insurance law – **these are considered autos**
- Locomotion/operations exposure of paragraph 6. a. must be covered under the Business Auto Coverage Form
- Locomotion exposure of 6. b. and 6. c. must be covered under the Business Auto Coverage Form.
- Locomotion exposure of land vehicles subject to a compulsory or financial responsibility law or other vehicle insurance law must be covered under the Business Auto Coverage Form.
- By specific **exclusion, 9. Operations**, “bodily injury” or “property damage” arising out of the operation of any equipment listed in paragraphs 6. b. or 6. c. is not provided by the BAP; operations exposure of any equipment listed in paragraphs 6. b. and 6. c. to be covered by CGL Policy
- By specific **exclusion, 9. Operations**, “bodily injury” or “property damage” arising out of the operations of any land vehicles that would be mobile equipment except for compulsory or financial law or other motor vehicle insurance law is not provided by the BAP; operations exposure of this equipment to be covered by CGL Policy

8. Covered Pollution Cost or Expense

Definition

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

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

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

a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured"; or
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph 6.b. or 6.c. of the definition of "mobile equipment".

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

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

- Outlines what expenses will be covered by the insuring agreement and clarifies what expenses will not be the subject of insurance coverage
- Cleanup is covered if a result of fuel or fluids used by covered auto EXCEPT as a result of the operation of the autos listed in paragraph 6. b. or 6. c. of the definition of mobile equipment
- Cleanup is covered if a result of accidents away from the insured's premises for pollutants not in or upon a covered auto
- Designed for "non-cargo" exposure
- BUT there must be bodily injury or property damage caused by same accident

9. Pollutants

Definition

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

- Definition is very broad
- The materials must be an irritant or contaminant

10. Suit

Definition

N. "Suit" means a civil proceeding in which:

1. Damages because of "bodily injury" or "property damage"; or
2. A "covered pollution cost or expense", to which this insurance applies, are alleged.

"Suit" includes:

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

- Clarifies the term includes alternative dispute resolutions

B. Coverage Extensions

- Provision delineates between two categories of payments the insurer will make in addition to the Limit of Insurance – Supplementary Payments AND Out-of-State Coverage Extensions

Supplementary Payments

2.Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
 - (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
 - (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
 - (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
 - (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
 - (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.
- These payments will not reduce the Limit of Insurance.

- Enumerates the types and amounts of payments the insurer will make in addition to the Limit of Insurance
- Missing from the BAP Supplementary Payments is a provision found in the CGL Coverage Form for the payment of prejudgment interest

b. Out-of-state Coverage Extensions.

While a covered “auto” is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered “auto” is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicle by the jurisdiction where the covered “auto” is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

- Except with respect to limits specified by any law governing motor carriers of passengers or property, the policy will respond to meet limits specified by a compulsory or financial responsibility law
- Speaks to the insurance coverage required of a jurisdiction where the covered auto is being used, e.g., no-fault

C. Exclusions Applicable To Section II

- This insurance does not apply to: (***exclusions narrow and shape the coverage to be provided***)

1. Expected Or Intended Injury

Exclusion

This insurance does not apply to:

1. Expected Or Intended Injury

“Bodily injury” or “property damage” expected or intended from the standpoint of the “insured”.

- Unlike the CGL Coverage Form, there is no exception for bodily injury resulting from the use of reasonable force to protect persons or property

2. Contractual

Exclusion

This insurance does not apply to:

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an “insured contract” provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement; or
- b. That the “insured” would have in the absence of the contract or agreement.

- No “blanket contractual” from insured’s perspective
- **EXCEPTION** – coverage provided for oral, written or implied “insured contracts” by stated exception
 - Bodily injury/property damage must occur after contract or agreement is executed
- **EXCEPTION** – coverage provided for liability damages the insured would have in the absence of the contract or agreement by stated exception
 - Lessee agrees to be responsible (in a contract or agreement) for own negligence arising out of ownership, maintenance or use of owned automobiles – would have that obligation even if a contract did not exist

Insured Contract – Definition

H. “Insured contract” means:

1. A lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for “bodily injury” or “property damage” to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “auto”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your “employees” to pay for “property damage” to any “auto” rented or leased by you or any of your “employees”.

- Key to insurance provided for contractual liability is definition of “insured contract”
- Similar to CGL Policy definition BUT no elevator maintenance agreement and addition of auto rental agreement
 - CGL – **LEASE +**
 - BAP – **REALS +**
- Assumption of responsibility assumed by insured may be broader than insurance coverage provided
- Other exclusions (where no exceptions are made) apply to contractual liability coverage, e.g., pollution, completed operations, etc.

Insured Contract – Definition

An “insured contract” does not include that part of any contract or agreement.

- a. That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
- b. That pertains to the loan, lease or rental of an “auto” to you or any of your “employees”, if the “auto” is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for your use of a covered “auto” over a route or territory that person or organization is authorized to serve by public authority.

- Indemnification involving railroad construction operations excluded
 - **CA 20 70 – COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROAD**
 - May need **Railroad Protective Liability Insurance Coverage Form**
- Named insured has no control over the operation of the auto rented with driver; owner should bear responsibility
- Indemnification of common carrier is excluded

3. Worker’s Compensation

Exclusion

This insurance does not apply to:

3. Workers’ Compensation

Any obligation for which the “insured” or the “insured’s” insurer may be held liable under any workers’ compensation, disability benefits or unemployment compensation law or any similar law.

- Excludes statutory responsibility for certain types of employee benefits
- Exposures must be covered by other types of insurance

4. Employee Indemnification And Employer's Liability

Exclusion

This insurance does not apply to:

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

a. An "employee" of the "insured" arising out of and in the course of:

(1) Employment by the "insured"; or

(2) Performing the duties related to the conduct of the "insured's" business; or

b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

(1) Whether the "insured" may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

- Subject of Workers Compensation And Employers Liability Insurance Policy

- Excludes consequential bodily injury
- Excludes dual capacity suits
- Excludes third party complaints

EXCEPTION – coverage provided by stated exception for liability assumed by the insured under an "insured contract"

- **CA 23 25 – INJURY TO A LEASED WORKER**

5. Fellow Employee

Exclusion

This insurance does not apply to:

5. Fellow Employee

“Bodily injury” to:

- a. Any fellow “employee” of the “insured” arising out of and in the course of the fellow “employee’s” employment, or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow “employee” as a consequence of Paragraph a. above.

- Fellow employee exclusion is intended to prevent an injured employee from circumventing the exclusive remedy doctrine of workers compensation
- But several jurisdictions permit recovery
- Fellow employee is not a defined term
- May be modified by endorsement
 - **CA 99 17 – INDIVIDUAL NAMED INSURED**
“The fellow employee exclusion does not apply to bodily injury to your or any family member’s fellow employees”
 - **CA 20 55 – FELLOW EMPLOYEE COVERAGE**
 - **CA 20 56 – FELLOW EMPLOYEE COVERAGE FOR DESIGNATED EMPLOYEES/POSITIONS**
- May be provided by the individual’s PAP when s/he is provided a company car
 - **PP 03 06 – EXTENDED NON-OWNED COVERAGE VEHICLES FURNISHED OR AVAILABLE FOR REGULAR USE**

6. Care, Custody or Control

Exclusion

This insurance does not apply to:

6. Care, Custody Or Control

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

- Applies to both real and personal property
- Exposure can be insured through commercial property insurance (e.g., Legal Liability Coverage Form CP 00 40) or inland marine insurance

7. Handling of Property

Exclusion

This insurance does not apply to:

7. Handling Of Property

“Bodily injury” or “property damage” resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the “insured” for movement into or onto the covered “auto”; or
- b. After it is moved from the covered “auto” to the place where it is finally delivered by the “insured”.

8. Movement of Property by Mechanical Device

Exclusion

This insurance does not apply to:

8. Movement Of Property By Mechanical Device

“Bodily injury” or “property damage” resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered “auto”.

- Exclusion 7. and Exclusion 8. work in conjunction to indicate whether the CGL Coverage Form or the Business Auto Coverage Form will respond to a particular claim
- While property is being loaded, while property is in transit and/or while property is being unloaded by an insured, the BAP should respond; the only exception is if the property is being loaded or unloaded by a mechanical device (other than a hand truck), and the device is NOT attached to the covered auto; (then CGL Policy)
- Before loading and after unloading (as well as loading or unloading with a mechanical device not attached to the covered auto), the CGL Coverage Form is applicable

9. Operations

Exclusion

This insurance does not apply to:

9. Operations

“Bodily injury” or “property damage” arising out of the operation of:

- a. Any equipment listed in Paragraphs **6.b.** or **6.c.** of the definition of “mobile equipment”; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of “mobile equipment” if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

- Paragraphs 6.b. and 6.c. indicate vehicles which will be considered autos
 - 6.b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - 6.c. Air compressors, pumps and generators, including spraying, welding, building, cleaning, geophysical exploration, lighting or well servicing equipment
- Normally, both locomotion exposure and operations exposure would need to be subject of Business Auto Coverage Form
- But operations exposure excluded here and covered by stated exception to exclusion g. Aircraft, Auto or Watercraft of the CGL Coverage Form

10. Completed Operations

Exclusion

This insurance does not apply to:

10.Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a.** Work or operations performed by you or on your behalf; and
- b.** Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph **a.** or **b.** above.

Your work will be deemed completed at the earliest of the following times:

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

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

- The completed operations exposure is not intended to be the subject of insurance for the BAP
- The exclusion also delineates the circumstances under which the named insured's work will be considered completed
- Caution: snow removal using and automobile

11. Pollution

Exclusion

This insurance does not apply to:

11. Pollution

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

- a.** That are, or that are contained in any property that is:
 - (1)** Being transported or towed by, handled, or handled for movement into, onto or from, the covered “auto”;
 - (2)** Otherwise in the course of transit by or on behalf of the “insured”; or
 - (3)** Being stored, disposed of, treated or processed in or upon the covered “auto”;
- b.** Before the “pollutants” or any property in which the “pollutants” are contained are moved from the place where they are accepted by the “insured” for movement into or onto the covered “auto”; or
- c.** After the “pollutants” or any property in which the “pollutants” are contained are moved from the covered “auto” to the place where they are finally delivered, disposed of or abandoned by the “insured”.

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar “pollutants” that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered “auto” or its parts, if:

- (1)** The “pollutants” escape, seep, migrate, or are discharged, dispersed or released directly from an “auto” part designed by its manufacturer to hold, store, receive or dispose of such “pollutants”; and
- (2)** The “bodily injury”, “property damage” or “covered pollution cost or expense” does not arise out of the operation of any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of “mobile equipment”.

Paragraphs **b.** and **c.** above of this exclusion do not apply to “accidents” that occur away from premises owned by or rented to an “insured” with respect to “pollutants” not in or upon a covered “auto” if:

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

Pollution exclusion –continued

- Absolute pollution exclusion for cargo exposure
- Limited coverage for non-cargo exposure
- EXCEPTION – Pollution is covered if a result of fuel or fluids used by covered auto
EXCEPT as a result of the operation of the autos listed in paragraph 6.b. or 6.c. of the definition of mobile equipment
- EXCEPTION – Pollution is covered if a result of accidents away from insured's premises for pollutants not in or upon a covered auto
- May be modified by endorsement
 - **CA 99 48 – POLLUTION LIABILITY – BROADENED COVERAGE FOR COVERED AUTOS**

[Eliminates Paragraph a. except for contractual liability]

12. War

Exclusion

This insurance does not apply to:

12. War

“Bodily injury” or “property damage” arising directly or indirectly out of:

- a.** War, including undeclared or civil war;
- b.** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c.** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

- Presents a catastrophe exposure that does not necessarily depend on the insured's negligence

13. Racing

Exclusion

This insurance does not apply to:

13. RACING

Covered “autos” while **used in** any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered “auto” is being prepared for such a contest or activity.

- Precludes coverage for covered autos involved in extra-hazardous activities

14. Unmanned Aircraft

This insurance does not apply to:

14. Unmanned Aircraft

“Bodily injury” or “property damage” arising out of the ownership, maintenance or use of “unmanned aircraft”.

Q. “Unmanned aircraft” means an aircraft that is not:

1. Designed;
 2. Manufactured; or
 3. Modified after manufacture;
- to be controlled directly by a person from within or on the aircraft.

D. Limit Of Insurance Applicable To Section II

Limit of Insurance Provision

C. Limit Of Insurance

Regardless of the number of covered “autos”, “insureds”, premiums paid, claims made or vehicles involved in the “accident”, the most we will pay for the total of all damages **and** “covered pollution cost or expense” combined, resulting from any one “accident” is the Limit of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All “bodily injury”, “property damage” and “covered pollution cost or expense” resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one “accident”.

No one will be entitled to receive duplicate payments for the same elements of “loss” under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

- BAP Declarations contains a limit of insurance; and this provision sets forth the provisions as to how this limit of insurance will apply with respect to a particular claim, a particular accident and/or all claims which result
- Primarily aimed at preventing stacking of limits
- The final paragraph is intended to clarify the BAP does not want to duplicate payments under one or more additional coverages, even if these coverages are added by endorsement.

XI. BUSINESS AUTO COVERAGE FORM – SECTION III – PHYSICAL DAMAGE COVERAGE

- Section III is one of the two sections to address specific coverage provided by the BAP
- Divided into subsections
 - Insuring Agreement
 - Exclusions
 - Limit of Insurance
 - Deductible

A. Insuring Agreement

Insuring Agreement

1. We will pay for “loss” to a covered “auto” or its equipment under:

- Remember – covered autos are designated in the Declarations by use of numerical symbols

Definition

J. “Loss” means direct and accidental loss or damage.

- Indirect losses, i.e., loss of use claims, do not fall within the definition and are not included as losses

a. Comprehensive Coverage

From any cause except:

- (1) The covered “auto’s” collision with another object; or
- (2) The covered “auto’s” overturn.

- “Open perils” concept
- Burden of proof rests with insurer to show the loss is excluded or limited

b. Specified Causes of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

- Named perils concept
- Burden of proof rests with insured to prove resulted from a covered cause of loss
- May be modified by endorsement
 - **CA 99 14 – FIRE, FIRE AND THEFT, FIRE, THEFT AND WINDSTORM AND LIMITED SPECIFIED CAUSES OF LOSS COVERAGES**

c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

- Excluded by comprehensive coverage
- Separate deductible may apply

CA 04 65 09 22 – AUTO HACKING EXPENSE COVERAGE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO HACKING EXPENSE COVERAGE

THIS ENDORSEMENT PROVIDES COVERAGE FOR AUTO HACKING EXPENSES ONLY. NO LIABILITY OR PHYSICAL DAMAGE COVERAGE IS PROVIDED.

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

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

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

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Covered Autos	Auto Hacking Expense Aggregate Limit	Per Incident Auto Hacking Expense Deductible	Premium
			\$
	\$	\$	
		Total Premium	\$

If indicated by an "X" in the box to the left, Ransom Coverage also applies.

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

N
E
W

- Pays for “auto hacking expenses” – Includes: Towing, investigation, cost to restore or repair “computer system”, restore or repair “operational data”, temporary transportation expenses \$30/\$900
- Subject to the Aggregate Limit in the schedule
- “Auto hacking incident” must be discovered during the policy period or within 30 days after the end of the policy period
- “Auto hacking incident” – Includes: malicious code, virus, or any other harmful code; includes DoS attacks

- Exclusions:
 - War, warlike action, insurrection, etc.
 - Loss to a covered “auto” other than the “computer system”
 - BI or PD (only applies to physical damage)
 - Breakdown, malfunction, or inadequacy
 - Prior acts
 - Upgrade costs
 - Unauthorized or unsolicited transmission/dissemination of email, text messages, or telephone calls
 - Power surge or reduction
 - Disruption of communication services
- Excess over other collectible insurance
- Prompt notice
- No change in coverage territory
- Security updates or recalls must be complied with
- Confidentiality condition
- Ransom coverage is available for an additional premium

B. Additional Coverage – Towing And Labor Costs

Insuring Agreement

2. Towing And Labor

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered “auto” ~~of the~~ that is a private passenger type, light truck or medium truck is disabled. However, the labor must be performed at the place of disablement.

- Applicable to covered auto of the private passenger type
- Private passenger type not defined
- Labor must be performed at place of disablement

C. Specific Causes Of Loss – Comprehensive

Specific Causes Of Loss

3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered “auto”, we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. “Loss” caused by hitting a bird or animal; and
- c. “Loss” caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered “auto’s” collision or overturn considered a “loss” under Collision Coverage.

- Provision outlines how specific causes of loss will be covered
- But named insured has the option of having glass breakage caused by collision or overturn paid as a collision loss; therefore, only one deductible applies

D. Coverage Extensions

Coverage Extensions

a. Transportation Expenses

We will pay up to ~~\$20~~ \$30 per day to a maximum of ~~\$900~~ \$600 for temporary transportation expense incurred by you because of the total theft of a covered “auto” of the private passenger type. We will pay only for those covered “autos” for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the Policy’s expiration, when the covered “auto” is returned to use or we pay for its “loss”.

b. Loss Of Use Expenses

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

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered “auto”,
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered “auto”; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered “auto”.

However, the most we will pay for any expenses for loss of use is ~~\$20~~ \$30 per day, to a maximum of \$900 ~~\$600~~.

- Coverage extension provided for incurred transportation expenses as a result of a total theft of a covered auto subject to several limitations
 - Theft must be a covered peril
 - \$20 per day/maximum of \$600
 - Waiting period deductible of 48 hours
- May be modified by endorsement

▪ CA 99 23 – RENTAL REIMBURSEMENT COVERAGE

Endorsement

- E.** This coverage does not apply while there are spare or reserve “autos” available to you for your operations.

- Coverage extension provided for loss of use expenses for hired auto physical damage
 - Rented or hired without driver
 - \$20 per day/maximum of \$600
- May be modified by endorsement
 - **CA 99 90 – OPTIONAL LIMITS – LOSS OF USE EXPENSES**

E. Exclusions Applicable to Section III

1. Nuclear Hazard/War Or Military Action

Exclusion

SECTION III – PHYSICAL DAMAGE COVERAGE

B. Exclusions

1. We will not pay for “loss” caused by or resulting from any of the following. Such “loss” is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the “loss”.
 - a. **Nuclear Hazard.**
 - (1) The explosion of any weapon employing automatic fission or fusion; or
 - (2) Nuclear reaction or radiation, or radioactive contamination, however caused.
 - b. **War or Military Action.**
 - (1) War, including undeclared or civil war;
 - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- Exposures are uninsurable because of the catastrophic nature of the loss
- Provision clarifies the types of losses which will be considered nuclear hazard and the types of losses which will be considered war or military action

2. Extra-Hazardous Activities

Exclusion

2. We will not pay for “loss” to any covered “auto” while **used in** any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for “loss” to any covered “auto” while that covered “auto” is being prepared for such a contest or activity.

- Precludes coverage for covered autos involved in extra-hazardous activities

3. Normal Wear And Tear/Maintenance/Lack Of Maintenance

Exclusion

3. We will not pay for “loss” due and confined to:

- a.** Wear and tear, freezing, mechanical or electrical breakdown.
- b.** Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such “loss” resulting from the total theft of a covered “auto”.

- Physical damage coverage is not designed to protect the insured against expenses he/she incurs or should expect to incur which accompany automobile ownership
- **EXCEPTION** – coverage is provided for loss caused by other loss that is covered by this physical damage insurance
- **EXCEPTION** –coverage is provided if there is a total theft of the auto

4. Specific Types Of Equipment Or Accessories

Exclusion

4. We will not pay for “loss” to any of the following:
- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- Accessories and equipment are particularly susceptible to loss from theft
- May be modified by endorsement

▪ **CA 99 30 – TAPES, RECORDS AND DISCS COVERAGE**

Exclusion

4. We will not pay for “loss” to any of the following:
- b. Any device designed or used to detect speed-measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

- No provisions for providing coverage

Exclusion

4. We will not pay for “loss” to any of the following:
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
 - d. Any accessories used with the electronic equipment described in Paragraph c. above.

- Precludes physical damage coverage for electronic equipment, whether or not this equipment is permanently installed, if the equipment reproduces, receives or transmits audio, visual or data signals

Exception to Exclusion

- 5.** Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the “auto’s” electrical system that, at the time of “loss” is:
- a.** Permanently installed in or upon the covered “auto”;
 - b.** Removable from a housing unit which is permanently installed in or upon the covered “auto”;
 - c.** An integral part of the same unit housing any electronic equipment described in Paragraph **a.** and **b.** above; or
 - d.** Necessary for the normal operation of the covered “auto” or the monitoring of the covered “auto’s” operating system.

- Certain specific electronic equipment is provided coverage under special circumstances

Exclusion

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

Definition

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

- No intent to pay for loss in market value

F. Limit Of Insurance Applicable To Section III

Limit of Insurance Provision

C. Limit Of Insurance

1. The most we will pay for:
 - a. "Loss" in any one "accident" is the lesser of:
 - (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 - (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
 - b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss", is \$1,000, if, at the time of "loss", such electronic equipment is:
 - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
 - (2) Removable from a permanently installed housing unit as described in Paragraph b.(1) above; or
 - (3) An integral part of such equipment.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
3. If repair or replacement results in better than like kind or quality, we will not pay for the amount of betterment.

- Provision sets forth how much the insurer will pay for loss in any one accident
- May be modified by endorsement
 - **CA 99 28 – STATED AMOUNT INSURANCE**
 - **CA 20 71 – AUTO LOAN/LEASE GAP COVERAGE**
 - **CA 99 60 – AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS**

G. Deductible

Deductible Provision

D. Deductible

For each covered “auto”, our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations prior to the application of the Limit Of Insurance, provided that. ~~Any Comprehensive Coverage deductible shown in the Declarations does not apply to “loss” caused by fire or lightning.~~

1. The Comprehensive or Specified Causes Of Loss Coverage deductible applies only to “loss” caused by:
 - a. Theft or mischief or vandalism; or
 - b. All perils.
2. Regardless of the number of covered “autos” damaged or stolen, the maximum deductible applicable for all “loss” in any one event caused by:
 - a. Theft or mischief or vandalism; or
 - b. All perils.

will be equal to five times the highest deductible applicable to any one covered “auto” on the Policy for Comprehensive or Specified Causes Of Loss Coverage. The application of the highest deductible used to calculate the maximum deductible will be made regardless of which covered “autos” were damaged or stolen in the “loss”.

- Applies to each covered auto regardless of the number of covered autos involved in a loss
- Comprehensive deductible does not apply to fire or lightning
- **11/20 version includes an aggregate deductible**
- Perhaps should be modified by endorsement to have an aggregate deductible apply per occurrence, e.g., hail damage

▪ **MANUSCRIPT – AGGREGATE DEDUCTIBLE ENDORSEMENT**

XII. BUSINESS AUTO COVERAGE FORM – SECTION IV – CONDITIONS

- These conditions establish the ground rules for the relationship between the insurer and insured
- Business Auto Coverage Form divides the conditions section into Loss Conditions and General Conditions

A. Loss Conditions

1. Appraisal For Physical Damage Loss

Condition

SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. Loss Conditions

1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a.** Pay its chosen appraiser; and
 - b.** Bear the other expenses of the appraisal and umpire equally.
- If we submit to an appraisal, we will still retain our right to deny the claim.

- Condition gives the right to demand an appraisal of the loss to the insured or to the insurer
- The method to accomplish this appraisal, arbitration, is outlined
- An appraisal is to be used to determine the amount of loss, not to ascertain whether or not coverage is to be provided

2. Duties In the Event of Accident, Claim, Suit or Loss

Condition

2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a.** In the event of “accident”, claim, “suit” or “loss”, you must give us or our authorized representative prompt notice of the “accident” or “loss”. Include:
 - (1)** How, when and where the “accident” or “loss” occurred;
 - (2)** The “insured’s” name and address; and
 - (3)** To the extent possible, the names and addresses of any injured persons and witnesses.
- b.** Additionally, you and any other involved “insured” must:
 - (1)** Assume no obligation, make no payment or incur no expense without our consent, except at the “insured’s” own cost.
 - (2)** Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or “suit”.
 - (3)** Cooperate with us in the investigation, settlement or defense of the claim or “suit”.
 - (4)** Authorize us to obtain medical records or other pertinent information.
 - (5)** Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c.** If there is “loss” to a covered “auto” or its equipment you must also do the following:
 - (1)** Promptly notify the police if the covered “auto” or any of its equipment is stolen.
 - (2)** Take all reasonable steps to protect the covered “auto” from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
 - (3)** Permit us to inspect the covered “auto” and records proving the “loss” before its repair or disposition.
 - (4)** Agree to examinations under oath at our request and give us a signed statement of your answers.

- Distinguishes between duties of the named insured and duties of all insureds
- Many jurisdictions have established by case law just what set of circumstances will prejudice coverage

3. Legal Action Against Us

Condition

3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all of the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the “insured” has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the “insured’s” liability.

- Condition attempts to prohibit the insured and any other person or organization from involving the insurer in a suit to determine the insured’s legal obligation to pay.

4. Loss Payment – Physical Damage Coverages

Condition

4. Loss Payment – Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the “auto” from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the “loss”, our payment will include the applicable sales tax for the damaged or stolen property.

- Insurer has control over the method used to settle a loss

5. Transfer Of Rights Of Recovery Against Other To Us

Condition

5. Transfer Of Rights Of Recovery Against Others To Us

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

- Condition specifically states the insurer’s right to collect from the responsible party
- Inferred right to waive subrogation before a loss
- May not waive subrogation after a loss
- May be modified by endorsement
- **NEW – CA 04 43 – WAIVER OF TRANSFER OF RIGHTS OF RECOVERY TO US (WAIVER OF SUBROGATION) – AUTOMATIC WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**
- **CA 04 44 – WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

B. General Conditions

1. Bankruptcy

Condition

1. Bankruptcy

Bankruptcy or insolvency of the “insured” or the “insured’s” estate will not relieve us of any obligations under this Coverage Form.

- Regardless of the financial condition of the insured, the insurer is responsible to pay those sums the insured becomes legally obligated to pay.

2. Concealment, Misrepresentation or Fraud

Condition

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other “insured”, at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered “auto”;
- c. Your interest in the covered “auto”; or
- d. A claim under this Coverage Form.

- Outlines the provisions by which the coverage form will be void

3. Liberalization

Condition

3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

- Named insured receives immediate benefit of any additional coverage provided by revision for which no premium charge is made

4. No Benefit To Bailee – Physical Damage Coverages

Condition

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

- Even if the insured has waived subrogation prior to a loss, the waiver of subrogation will not be effective to a bailee for hire

5. Other Insurance

Condition

5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

- Owned covered auto except trailer – primary
- Nonowned covered auto except trailer – excess
- Trailer connected to owned auto – primary
- Trailer connected to nonowned auto – excess

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

- Primary insurance for hired physical damage
- BUT any auto that is leased, hired, rented or borrowed with a driver is not a covered auto
 - May be modified by endorsement
 - **CA 20 33 – AUTOS LEASED, HIRED, RENTED OR BORROWED WITH DRIVERS – PHYSICAL DAMAGE COVERAGE**
- Becomes a covered auto the named insured owns
- Primary insurance applies

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

- Primary for any liability assumed under an insured contract

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

- Contribute on a pro rata basis

Example

Covered Accident	Limits Insurer A	Limits Insurer B
\$300,000	\$500,000	\$1,000,000
Payment Pro Rata	\$100,000	\$200,000

(Contribution by limits)

CA 04 50 – PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

6. Premium Audit

Condition

6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

- Policy is auditable
- First Named Insured responsible for payment of premium
- First Named Insured payee for return premiums

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

- Re-rate at anniversary multi-year policy

7. Policy Period, Coverage Territory

Condition

7. Policy Period, Coverage Territory

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

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

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered

- Outlines when the accident of loss must take place for coverage to apply
- Outlines where the accident or loss must take place for coverage to apply

8. Two Or More Coverage Form Or Policies Issued By Us

Condition

8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same “accident”, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

- If two policies issued by same insurer apply to same accident, highest limit applies
- Provision does not apply to excess policies

XIII. ADDITIONAL ENDORSEMENTS

- A. Expand Coverage
- B. Restrict Coverage
- C. Clarify Coverage
- D. State Specific

XIV. CONCLUSION



James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 2

Underlying Versus Excess: A Closer Look At Policy Provisions



Underlying Versus Excess: A Closer Look at Policy Provisions

Presented by:

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The National Alliance

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I. Overview

A. Horizontal vs. Vertical Exhaustion of Limits

1. Horizontal – *legal theory that requires an insured with multiple primary and excess policies covering a common risk to exhaust all primary policy limits before invoking excess coverage.*

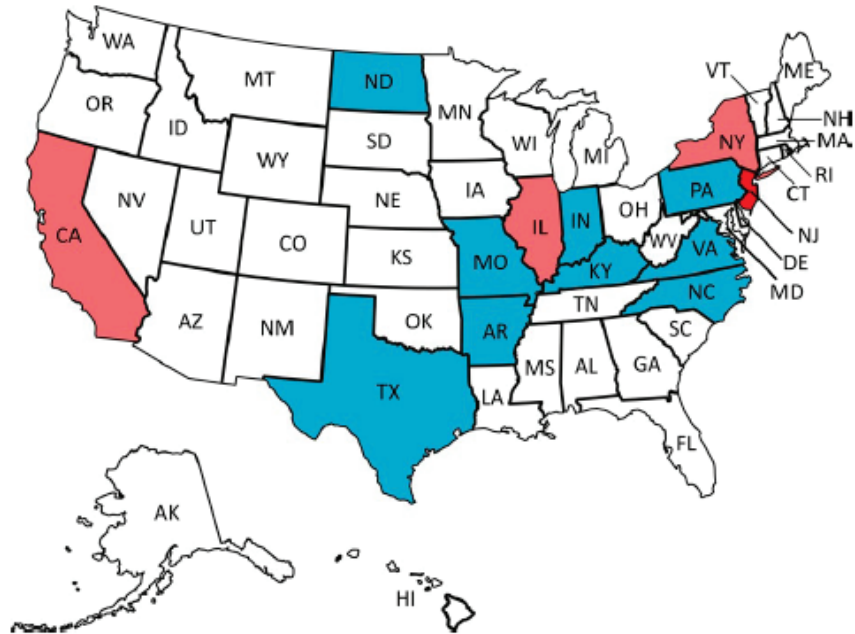
© International Risk Management Institute

- a. Sub's CGL
- b. AI's CGL
- c. Sub's Excess
- d. AI's Excess

2. Vertical – *legal theory that allows an insured with multiple primary and excess policies covering a common risk to seek coverage from an excess insurer as long as the insurance policies immediately beneath that policy, as identified in the excess policy's declaration page, have been exhausted, regardless of whether other primary insurance may apply.*

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- a. Sub's CGL
- b. Sub's Excess
- c. AI's CGL
- d. AI's Excess



Applicable Exhaustion Rule for Additional Insured Disputes

- Highest Court applies vertical exhaustion when analyzing additional insured coverage
- Lower Court or Federal Court applies vertical exhaustion when analyzing additional insured coverage
- Highest Court applies horizontal exhaustion when analyzing additional insured coverage
- Lower Court or federal court applies horizontal exhaustion when analyzing additional insured coverage

B. A Quick Look at Limits:

Ernie's Electric, Inc. is your insured. Ernie carries a CGL with limits of \$2,000,000/\$4,000,000 along with a Commercial Umbrella with limits of \$5,000,000/\$5,000,000. Ernie has ACME Contractors, a GC, added as an Additional Insured to his policy. The contract with ACME requires limits of \$1,000,000/\$2,000,000 on the CGL and \$5,000,000/\$5,000,000 on the Commercial Umbrella. A large loss occurs, and the judgment is in the amount of \$6,000,000.

How much will each policy pay?

CGL:

Umbrella:

Gap:

Ernie's Electric, Inc. is your insured. Ernie carries a CGL with limits of \$2,000,000/\$4,000,000 along with a Commercial Umbrella with limits of \$5,000,000/\$5,000,000. Ernie has ACME Contractors, a GC, added as an Additional Insured to his policy. The contract with ACME requires a minimum of \$1,000,000/\$2,000,000 on the CGL and \$5,000,000/\$5,000,000 on the Commercial Umbrella. A large loss occurs, and the judgment is in the amount of \$6,000,000.

How much will each policy pay?

CGL:

Umbrella:

Gap:

C. Types of Excess

1. Follow form
2. Stand alone
3. Umbrella

D. ISO / AAIS Forms

E. Proprietary Forms

1. Policy forms
2. Company-specific endorsements
3. Enhancement endorsements

II. Policy Forms

A. Standard ISO CGL form

1. Sections
 - a. Section I – Coverage
 - b. Section II – Who Is An Insured
 - c. Section III – Limits Of Insurance
 - d. Section IV – Commercial General Liability Conditions
 - e. Section V – Definitions

2. Version
 - a. Edition date denoted by the last four digits in the form number
 - b. May be several edition dates in use
- B. Excess policies
 1. Provide excess limits over underlying coverage
 2. Drop down over reduced or exhausted aggregates
 3. Types of excess:
 - a. Follow form excess – relies on the terms and conditions of the underlying policy(ies)
 - b. Stand-alone excess – has its own terms and conditions
 - c. Umbrella
 - i. Has its own terms and conditions
 - ii. Broader coverage than underlying policy(ies)
 - iii. Drops down to be primary for the broader coverage subject to the self-insured retention
 4. ALL excess policies may have coverage that is more restrictive than the underlying coverage
 5. ISO and AAIS both have standardized forms
 6. Many companies use their own forms – must read to understand

III. Who Is An Insured

A. Named insured

1. First named insured – rights and responsibilities –
IL 00 17 11 98
 - a. Pay premium
 - b. Receive premium refunds
 - c. Receive cancellation notices
 - d. Cancel the policy
 - e. Make changes
2. Named insured
 - a. CGL

CG 00 01 04 13 page 1 of 16

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

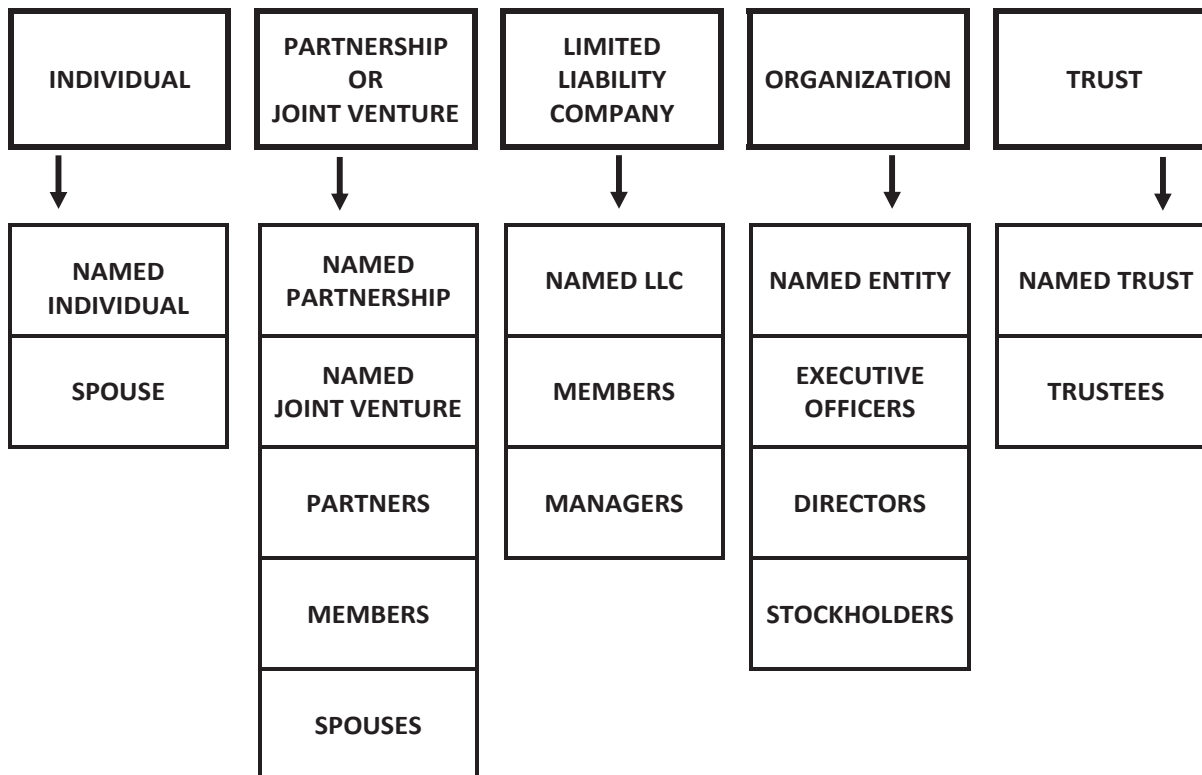
The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

WHO IS AN INSURED EXHIBIT

The following named insureds provide automatic coverage for those who are "down line"



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b. Follow form

Example 1

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

The word “insured” means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

SECTION II – WHO IS AN INSURED

A. COVERAGE A – EXCESS FOLLOW-FORM LIABILITY

With respect to Coverage A, the following persons and organizations qualify as insureds:

1. The Named Insured shown in the Declarations; and
2. Any other person or organization qualifying as an insured in the “underlying insurance”. If you have agreed to provide insurance for that person or organization in a written contract or agreement:
 - a. The limits of insurance afforded to such person or organization will be:
 - (1) The amount by which the minimum limits of insurance you agreed to provide such person or organizations in that written contract or agreement exceed the total limits of insurance of all applicable “underlying insurance”; or
 - (2) The limits of insurance of this policy;whichever is less; and
 - b. Coverage under this policy does not apply to such person or organization if the minimum limits of insurance you agreed to provide such person or organization in that written contract or agreement are wholly within the total limits of insurance of all available applicable “underlying insurance”.

c. Umbrella

Example 2

Throughout this policy the words “you” and “your” refer to the Named Insured identified under **SECTION II – WHO IS AN INSURED** of this policy.

The word “insured” means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

SECTION II – WHO IS AN INSURED

1. Named Insured means any individual or organization stated in the Declarations of this policy and if you are designated in the Declarations of this policy as:
 - a. An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.

If you are designated in the Declarations of this policy as an individual, this policy shall not apply to liability arising out of your domestic or non-business activities. This does not apply to the ownership, maintenance, use or “loading or unloading” of any “automobile”, or to the Personal Umbrella Liability Coverage Part.

- b. A partnership or joint venture, you and your members, your partners, and their spouses, but only with respect to the conduct of your business.

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

- c. An organization other than a partnership or joint venture you and your executive officers and directors, but only with respect to their duties as your officers and directors. Your stockholders are also named insureds, but only with respect to their liability as stockholders.
 - d. A limited liability company, you and your members, but only with respect to the conduct of your business. Your managers are also named insureds but only with respect to their duties as your manager.

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

- e. A corporation or organization, other than partnerships, joint ventures or limited liability companies, that you form, acquire or gain control of during the policy period, but only with respect to “bodily injury,” “property damage” or “personal and advertising injury” taking place after you form, acquire or gain control of such corporation or organization.

B. Automatic insureds

1. CGL

- a. Employees
- b. Volunteers
- c. Real estate managers
- d. Legal representative if the named insured dies
- e. Person or organization with temporary custody of the named insured dies
- f. Newly acquired/newly formed organizations – until 90th day or end of the policy period; does not include partnerships, joint ventures, or LLCs

OTHERS INCLUDED AS AUTOMATIC INSURED				
EMPLOYEES AND VOLUNTEER WORKERS	REAL ESTATE MANAGERS	LEGAL REPRESENTATIVE IF NAMED INSURED DIES	PERSON OR ORGANIZATION WITH TEMPORARY CUSTODY IF NAMED INSURED DIES	NEWLY ACQUIRED OR NEWLY FORMED ORGANIZATIONS <ul style="list-style-type: none">• Until 90th Day OR end of policy period, <u>whichever is earlier</u>• Does NOT Include Partnerships, Joint Ventures, or Limited Liability Companies

With Possible Exclusions Or Limitations

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2. Excess

a. Follow-form – same as underlying; may include additional insureds as named in the underlying policies subject to written contract

b. Other:

i. Employees

ii. Volunteers

iii. Members and managers

iv. Corporate offices

v. Permissive uses of automobiles

vi. Subsidiaries if 50% ownership or more

vii. Newly formed or acquired

- May require 50% ownership
- Does not include partnership, joint venture, LLC
- No coverage for past partnerships, JV, LLC

C. Non-automatic or other insureds

1. CGL – Additional insureds added by endorsement

2. Excess – May contain automatic wording

IV. Bodily Injury and Property Damage Liability

A. Insuring agreements

1. CGL

- a. Pay sums the insured becomes legally obligated to pay as damages
- b. Right and duty to defend against any suit
- c. "Bodily injury"

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

d. "Property damage"

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17. "Property damage" means:

 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

2. Excess

- a. Follow form:
 - i. Pay sums in excess of underlying
 - ii. Must be exhausted by payment of damages
 - iii. May cover if defense is within limits

- b. Umbrella:
 - i. Pays sums in excess of the SIR
 - ii. In excess of underlying limits
- c. “Bodily injury”

Example 1

“Bodily injury” means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at the time which results as a consequence of the bodily injury, sickness or disease.

- d. “Property damage”

Example 2

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

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

For the purpose of this insurance, “electronic data” is not tangible property.

- 3. Bifurcated insuring agreements
 - a. BI/PD & P&AI
 - b. Excess & Umbrella
- 4. Singular insuring agreements

B. Exclusions

1. Expected or intended

a. CGL

- i. Applies from the standpoint of THE insured, not ANY insured
- ii. Exception for BI: use of reasonable force to protect persons or property

b. Follow form

c. Umbrella

- i. Applies from the standpoint of THE insured
- ii. Does not apply to the use of reasonable force to protect persons or property
- iii. Does not apply to Employers Liability for coverage listed in the schedule of underlying insurance

2. Contractual liability

a. CGL - Insured contract

- i. Lease of premises agreement
- ii. Easement agreement
- iii. An indemnification of a municipality
- iv. Sidetrack agreement
- v. Elevator maintenance agreement
- vi. Tort liability of another

b. Follow form

c. Umbrella

i. Definition is important

ii. May be similar to CGL

iii. May be broader

iv. May be more restrictive

3. Liquor liability

a. CGL

i. Excludes losses arising out of the business of selling, serving, manufacturing, distributing or furnishing

ii. Causing or contributing to the intoxication of any person

iii. Furnishing to a person under the legal drinking age or under the influence

iv. Any statute, ordinance or regulation

v. Exception for BYO establishments

vi. Implied exception for “host” liquor

b. Follow form

c. Umbrella

i. May be the same as ISO

ii. May be more restrictive

iii. May be broader (not likely)

Example

“Bodily injury” or “property damage” for which any insured may be liable by reason of:

- a. Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises for consumption on your premises;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- c. Any statute, ordinance or regulation relating to the sale, gift distribution or use of alcoholic beverages.

4. Workers comp

a. CGL

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2. Exclusions

This insurance does not apply to:

d. Workers' Compensation And Similar Laws

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

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5. Employers liability

a. CGL

- i. Bodily injury to an employee
- ii. Includes a leased worker
- iii. Consequential BI to a family member
- iv. Dual capacity
- v. Third party complaints – coverage provided for liability assumed under an “insured contract”

b. Follow form

c. Umbrella

- i. Bodily injury to an employee arising out of and in the course of employment
- ii. Consequential BI to a family member
- iii. Liable as an employer or any other capacity
- iv. Obligation to share damages or repay someone else who must pay damages because of BI

6. Pollution

a. CGL

SECTION V – DEFINITIONS

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

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i. Premises exceptions:

- BI sustained within a building caused by smoke, fumes, vapor or soot from building heating, cooling or dehumidifying equipment; water heaters for personal use of guests or tenants
- BI/PD if the named insured is a contractor performing operations at a premises where the owner has been added as an AI
- Hostile fire

ii. Operations exceptions

- BI/PD – accidental release of fuels, lubricants and other operating fluids from mobile equipment
- Third party PD not insured's pollutant
- Release of gases, fumes or vapors from materials brought into that building in connection with operations being performed
- Hostile fire

iii. Most products/completed operations exposures

- iv. Cleanup costs only covered if part of the PD damages
- b. Follow form
- c. Umbrella
 - i. Total pollution exclusion
 - ii. Total pollution exclusion with exceptions for hostile fire, normal operating fluids of mobile equipment or autos
- 7. Aircraft, watercraft, auto
 - a. CGL
 - i. Excludes ownership, maintenance, use or entrustment to others, including loading and unloading by ANY insured
 - ii. Exceptions:
 - Non-owned watercraft less than 26 feet; not used to carry persons or property or a charge
 - Watercraft ashore on premises
 - Parking of autos on or next to the premises
 - "Insured contract" for watercraft or aircraft
 - BI/PD arising out of the operation of machinery or equipment attached to an auto or other motor vehicle

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2. "Auto" means:

- a.** A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b.** Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.
However, "auto" does not include "mobile equipment".

b. Follow form

c. Umbrella

i. Auto

- Ownership, maintenance, use or entrustment to others
- Excludes “loading or unloading”
- Excludes negligent supervising, hiring, employment, training or monitoring
- Exception for outside of the U.S., territories and possessions, Puerto Rico, Canada
- Will be removed when sitting over BAP

ii. Watercraft

- Arising out of the ownership, maintenance, use or entrustment to others of any watercraft owned or operated by or rented or loaned to any insured including “loading or unloading”
- Excludes negligent supervising, hiring, employment, training or monitoring
- Exceptions for ashore on premises; 50 (or 55) feet or less for non-owned watercraft

iii. Aircraft

- Arising out of the ownership, maintenance, use or entrustment to others of any aircraft owned or operated by or rented or loaned to any insured including “loading or unloading”
- Excludes negligent supervising, hiring, employment, training or monitoring

8. Mobile equipment

a. CGL

- i. Transportation by an “auto” owned or operated by or rented or loaned to any insured
- ii. While practicing for, being prepared for, or in any stunting, racing, speed or demolition activity

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

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

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

- (1)** Equipment designed primarily for:
 - (a)** Snow removal;
 - (b)** Road maintenance, but not construction or resurfacing; or
 - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

9. War

10. Damage to property

a. CGL

i. Property owned, rented, or occupied by the NI

- Does not apply to premises rented to the NI for 7 or fewer consecutive days for perils other than fire

ii. Property sold, given away or abandoned if the damage arises out of any part of those premises

- Does not apply if the premises is “your work” and it was never occupied, rented or held for rental

iii. Property loaned to the NI

- Does not apply to property loaned to the NI for 7 or fewer consecutive days for perils other than fire
- Does not apply to liability assumed in a sidetrack agreement

iv. Personal property in the CCC of the insured

- Does not apply to property loaned to the NI for 7 or fewer consecutive days for perils other than fire
- Does not apply to liability assumed in a sidetrack agreement

v. Real property being worked on, damaged DURING OPERATIONS

- Does not apply to liability assumed in a sidetrack agreement

vi. Property that must be restored, repaired or replaced if the NI's work was faulty workmanship

- Does not apply to liability assumed in a sidetrack agreement
- Does not apply to PD included in the "products and completed operations hazard"

b. Follow form

c. Umbrella

i. No exception for property rented or used by the insured for 7 or fewer consecutive days

ii. No exceptions to any of the exclusions

11. Damage to your product

a. CGL

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k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Follow form

- c. Umbrella
 - i. May be excluded
 - ii. May have some minor give backs
 - iii. May be similar to CGL

12. Damage to your work

- a. CGL
 - i. BEWARE: CG 22 94

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22. "Your work":

a. Means:

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

b. Includes:

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

I. Damage To Your Work

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

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

- b. Follow form
- c. Umbrella
 - i. May be totally excluded
 - ii. May be similar to CGL

13. Impaired property

a. CGL

i. Coverage for direct damage

ii. No coverage for indirect damage

b. Follow form

c. Umbrella

i. May be excluded

ii. May be similar to CGL

14. Recall of products, work or impaired property

a. CGL

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n. Recall Of Products, Work Or Impaired Property

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

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

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

b. Follow form

c. Umbrella – typically similar to CGL

- 15. Personal and advertising injury
 - a. Covered in Coverage B
- 16. Electronic data / CG 21 06
 - a. CGL
 - i. Need a Cyber policy
 - b. Follow form
 - c. Umbrella
- 17. Recording and distribution of material or information in violation of the law
 - a. CGL
 - i. TCPA, CAN-SPAM, FCRA, FACTA
 - b. Follow form
 - c. Umbrella

18. Other exclusions not in CGL:
- a. Asbestos
 - b. Employment related practices
 - c. ERISA, COBRA, similar laws
 - d. Medical expense or payments
 - e. Uninsured motorist
 - f. Directors and officers
 - g. Nonemployment related discrimination
 - h. Fungi and microbes
 - i. Silica
 - j. Named insured vs. Named insured

V. Personal and Advertising Injury Liability

A. Insuring agreements

1. CGL

a. Duty to pay for a covered offense

b. Duty to defend

c. Definition

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- 14.** "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a.** False arrest, detention or imprisonment;
 - b.** Malicious prosecution;
 - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e.** Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f.** The use of another's advertising idea in your "advertisement"; or
 - g.** Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 1.** "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
- a.** Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b.** Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. Follow form
3. Umbrella
 - a. May be included in a single insuring agreement
 - b. Defined separately or together
 - c. Advertising injury definition
 - i. Oral or written publication, including publication by electronic means, of material in your advertisement that slanders, libels, or disparages a person's or organization's good, products or services
 - ii. Appropriation of name, voice, photograph or likeness in an "advertisement"
 - iii. Unreasonably places a person in false light
 - iv. Infringement of copyright, title or slogan in an "advertisement"

d. Personal injury definition

- i. False arrest, detention or imprisonment
- ii. Malicious prosecution
- iii. Wrongful eviction, entry, or invasion of the right of private occupancy
- iv. Oral or written publication that appropriates a person's name, voice, photograph or likeness (includes electronic means)
- v. Unreasonably places a person in a false light

e. Personal and advertising injury

- i. May be similar to CGL
- ii. May be "open offenses" subject to exclusions

B. Exclusions

1. Knowing violation of rights of another
2. Material published with knowledge of falsity
3. Material published prior to policy period
4. Criminal acts
5. Contractual liability – some umbrellas include contractual liability for personal & advertising liability
6. Breach of contract
7. Quality or performance of goods – failure to conform to statements
8. Wrong description of prices
9. Infringement of copyright, patent, trademark, or trade secret
10. Insureds in the media or internet type business
11. Electronic chatrooms or bulletin boards
12. Unauthorized use of another's name or product
13. Pollution
14. Pollution-related
15. War
16. Recording and distribution of material or information in violation of law

VI. Limits of Insurance

A. Occurrence

1. CGL

a. General aggregate

i. Per occurrence

ii. Personal & advertising injury

iii. Damage to premises rented to you

iv. Medical payments

b. Products/completed operations aggregate

i. Per occurrence applies

2. Follow form

3. Umbrella

a. Each occurrence and aggregate apply to underlying policies with occurrence/aggregate limits

b. No aggregate applies to underlying policies with no aggregate limit

B. Drop-down provisions

1. Exhausted limits

- a. Follow form – drops down over exhausted aggregates in underlying policies to become primary
- b. Umbrella – same feature: no SIR applies

2. Broader coverage

- a. Umbrella only
- b. Broader coverage – drops down to be primary subject to the SIR
- c. Does not drop down over sub-limits
- d. May not drop down over policies where defense is inside the limits of insurance

C. Non-concurrency

1. How policies become non-concurrent
 - a. Cancel/rewrite of underlying policy(ies)
 - b. Excess policy written mid-term
2. How excess policies respond to non-concurrency
 - a. Underlying limits required to be in full effect at the inception of the excess policy
 - b. If policy dates are non-concurrent, problems can be created
3. How to fix the problem
 - a. Reinstate the aggregates in the underlying policy(ies)
 - b. Short term the excess policy
 - c. Cancel/rewrite underlying policy(ies)
 - d. Remove the concurrency provision in the excess policy

VII. Supplementary Payments

A. Defense

1. Underlying

- a. Right and duty to defend allegations
- b. No coverage – no defense
- c. Defense is in addition to the limits

2. Excess

- a. No duty to defend
- b. Company has the right to participate if they choose
- c. Right and duty to defend when dropping down over exhausted aggregates
- d. Right and duty to defend when dropping down to be primary subject to SIR – “first dollar defense”
- e. Defense may be inside or outside of the limits depending upon the underlying coverage – will vary by company

B. Other supplementary payments

1. CGL

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SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

These payments will not reduce the limits of insurance.

2. Excess

- a. All expenses incurred by the company
- b. Cost of bail bonds and appeal bonds
- c. Reasonable expenses incurred by the insured at the company's request – may have a daily limit
- d. Court costs taxed against the insured
- e. Prejudgment interest
- f. Post judgment interest

VIII. Select Policy Conditions

- A. Underlying insurance requirements
 - 1. Limits cancelled or not maintained
 - a. Must maintain underlying coverage per the schedule of underlying insurance
 - b. Must be in full effect during the term of the excess policy
 - c. Failure to maintain does not invalidate coverage
 - d. Company is only liable for the amount in excess of the underlying limits required
 - 2. Material change to underlying policies
 - a. Must promptly report changes to the company
 - b. Premium may be adjusted to reflect changes in underlying coverages
- B. Bankruptcy or insolvency
 - 1. The insured
 - a. Does not change the company's obligation to pay
 - 2. Underlying carriers
 - a. Does not invalidate coverage
 - b. Coverage responds as if underlying coverage was in force

C. Coverage territory

1. CGL

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4. "Coverage territory" means:

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

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

2. Follow form

3. Umbrella

- a. May be worldwide
- b. May be limited worldwide
- c. May be worldwide with certain limitations

D. Other insurance

1. CGL

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4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

(1) This insurance is excess over:

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

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

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

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

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

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

- 2. Excess
 - a. Excess over any other insurance
 - b. May contain automatic primary/noncontributory wording
- E. Separation of insureds – applies to each insured as if they were the only insured; does not apply to limits
- F. Transfer of rights of recovery
 - 1. CGL
 - a. Insured must do nothing after the loss to impair the insurer's rights to recover
 - b. Can be waived prior to the loss
 - 2. Excess
 - a. Can be waived in writing in a contract or agreement

IX. Conclusion



James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 3

Crisis Response for Insurance Professionals: How to Assist an Insured's Response to A Crisis



Crisis Response for Insurance Professionals: How to Assist an Insured's Response to A Crisis

1

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2

THE AGENDA

1. General Principles of Crisis Response
2. The Insurance Implications of Specific Types of Crises:
 - *Active Assailant*
 - *Products Recall*
3. Putting it to Work: A Data Breach / Cybersecurity Exercise

3

General Principles of Crisis Response

Starting the Discussion

4

The Two Key Elements

1. Have a preexisting policy or procedure
2. Have a solid knowledge base and information gathering system to investigate and respond



5

Introduction

*But wait a minute...I'm just in admin!
Why do I need to know all this stuff?*

**Because of Cases Like...
The Soda Can Affair**

6

The Soda Can Affair

SHAWNEE, Okla. (MMD Newswire)
March 28, 2011 -- The U.S. Department of
Labor has reached an agreement with ...
Kwick Stop Conveniences Stores ...
resolving a lawsuit ... alleging that the
company illegally terminated a cashier
because of a safety complaint....

7

The Soda Can Affair

“A consent judgment ...provides for injunctive
relief, reinstatement of the employee as a
full-time cashier and payment of
\$17,000 in back wages.
The judgment also requires the defendants to
post notices
at their facilities of the
Occupational Safety and Health Act’s
anti-discrimination and anti-retaliation
provisions.”

8

The Soda Can Affair

“The OSHA whistleblower investigation found that the employee, a cashier at the Kwick Stop store in Shawnee, had complained to a supervisor that beverage boxes inside the cooler were stacked too high and were creating a safety hazard.

When the supervisor failed to correct the hazard, the employee filed a complaint with the local OSHA office. A few weeks later, the worker was fired.”

9

According to Axia Public Relations, The 3 “Red Flags” of a Crisis

1. “An event **outside of normal operation** expectations begins to **escalate** and becomes a situation with crisis potential.
2. “An **anomaly** occurs that could potentially cause embarrassment to your company or its leadership...

10

According to Axia Public Relations, The 3 “Red Flags” of a Crisis

2. ...with **expected profit or reputation diminishment**.
3. “Speculation by outsiders that takes a once controllable situation and forces your company to place valuable resources toward **managing the ramifications**, rather than focus on normal operations.”

11

Oglivy PR’s Eight Characteristics of a Crisis

1. Surprise
2. Insufficient Information
3. Escalating Flow of Events
4. Loss of Control over perception and impact
5. Intense external scrutiny
6. Possible “siege” mentality
7. Decisionmaker panic
8. Outside interests / public interests provide “solution”

12

1. Have a Policy and Procedure

THE POLICY OR PROCEDURE BEGINS WITH:

Immediate Assessment of The Situation

Physical security issues
Crowd Control
Building control
System controls (IT, etc.)

Signaling of the Need for Response

Internally
Leadership
Employees
Vendors
Externally
Media
Vendors

13

1. Have a Policy and Procedure

THE POLICY OR PROCEDURE BEGINS WITH:

Who is on the Response Team? What roles do they fulfill?

1. Senior Leadership

- Is there a “Cabinet”?
- Does it meet regularly?
- Is the membership the same as the Response Team?
- Board liaison? Are senior leaders on Board? Is there a prospect of a conflict of interest?

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1. Have a Policy and Procedure: An Example of the Insurance Ramifications

Employment Practices Liability Policies
require the insured to:

- ▶ "Record the specifics of the 'claim'"
- ▶ Notify carrier as soon as practicable
- ▶ Immediately forward suit or other legal papers

15

1. Have a Policy and Procedure

THE POLICY OR PROCEDURE BEGINS WITH:

Who is on the Response Team? What roles do they fulfill?

- Legal Counsel
- Public Relations
- Financial
- Human Resources

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1. Have a Policy and Procedure: An Example of Differing Roles

LAWYER

- ▶ Filter through which PR must function when potential for legal damage exists
- ▶ Trusted advisor
- ▶ Gatekeeper
- ▶ Influencer
- ▶ Protector against civil or criminal damage

PUBLIC RELATIONS ADVISER

- ▶ Filter through which legal should function when potential for reputation damage exists
- ▶ Trusted advisor
- ▶ Gatekeeper
- ▶ Influencer
- ▶ Protector of reputation

*Slide Courtesy of
Bobbi Simmons PR*

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1. Have a Policy and Procedure: An Example of Differing Roles

LAWYER

- ▶ A process with rules
- ▶ Most aspects known
- ▶ Automatic respect
- ▶ Legal words have precise meanings
- ▶ Logical

PR ADVISER

- ▶ How creative can we be?
- ▶ We make our best guess
- ▶ Respect is earned
- ▶ May use words with more general meanings
- ▶ Intuitive

*Slide Courtesy of
Bobbi Simmons PR*

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1. Have a Policy and Procedure: An Example of Differing Roles

- ▶ What is said in the first news cycle will determine how we go to court three years later
- ▶ Inconsistent or speculative communications destroy credibility
- ▶ May determine whether or not we can even try the case
- ▶ We don't want to be forced to settle
- ▶ Know what is privileged, what is discoverable

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1. Have a Policy and Procedure

THE POLICY OR PROCEDURE BEGINS WITH:

What Are the Communications Needs?

1. Internal (senior staff, employee, others)
2. External (vendors, community, public, others)
3. Board of Directors
4. Governmental (reporting requirements, law enforcement)
5. Media



20

1. Have a Policy and Procedure

THE POLICY OR PROCEDURE BEGINS WITH:

Is this an Insurance Event?

- Mandatory and optional reporting events
- When a claim is made
- Longer Term Considerations

Are there existing claims? Is there a need for a formal investigation?

21

1. Have a Policy and Procedure: An Example of the Insurance Ramifications

**Employment Practices Liability Policies
require the insured to:**

- ▶ Release all records to carrier
- ▶ Cooperate with the defense
- ▶ Permit third parties to be brought in
- ▶ DO NOT make any voluntary payment

22

Why the Focus on Procedure? The Blue Bell Saga



www.citizensreport.org

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Why the Focus on Procedure? The Blue Bell Saga

- ▶ “Federal records show that Blue Bell failed to follow practices recommended by government and industry groups that might have prevented **listeria** contamination of ice cream at all three of its main plants.”
- ▶ “Beginning in 2013, Blue Bell repeatedly found listeria in its Broken Arrow, Okla., facility—including on floors, a drain and at equipment that fills half-gallon containers with ice cream—indicating *the company didn’t do enough to identify the underlying cause or eliminate the source*, said David Acheson...”

Newman, *Wall Street Journal*, August 1, 2015

24

Why the Focus on Procedure? The Blue Bell Saga

“Blue Bell declined to comment. In May, a spokesman said, ‘**We thought** our cleaning process took care of any problems, but in hindsight, it was not adequate.’”

Newman, *Wall Street Journal*, August 1, 2015

25

Why the Focus on Procedure? The Blue Bell Saga

- ▶ “The recall of all Blue Bell’s products threatened to destroy the 108-year-old company, which last year was the third-biggest U.S. ice cream producer, with sales in 23 states.”
- ▶ “Blue Bell in May laid off 37% of its 3,900 workers, and warned shareholders that it faced a capital crisis that could force it to close.”

Newman, *Wall Street Journal*, August 1, 2015

26

Why the Focus on Procedure? The Blue Bell Saga

- ▶ Blue Bell was “behind the story, not in front of it; it looks as if they were forced into action”
- ▶ The recall was:
 - ▶ “overly complicated” and
 - ▶ Cascading
- ▶ “[Blue Bell] seems to have taken next steps only when forced to do so by what regulators found.”
- ▶ Blue Bell “completely lacked compassion...”

Davia Temin

Jonathan Bernstein

27

Why the Focus on Procedure? The Blue Bell Saga

“[The apology letter] could have done more than say ‘sorry’ and ask for future support. It could have cited actions being taken to prevent future problems... and offered a customer hot line. *Social media could have given more personalized and constant information.* [Blue Bell] missed a chance to build trust, educate the public, and take bold action to guarantee food safety.”

Judy Phair, [Crisis of the Week: Ice Cream Recall Snags Blue Bell]
Wall Street Journal Blog, April 14, 2015

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2. Investigate and Respond

According to Brian Van Vleck of Van Vleck Turner & Zaller LLP:

Who does the investigation? And, by extension, who takes charge?

- ▶ In-House Personnel?
- ▶ Outside Private Investigators?
- ▶ Outside Legal Counsel?


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2. Investigate and Respond

According to Mary Elizabeth Kurz, Vice Chancellor and General Counsel of N.C. State Univ., reports should contain:

1. Investigative background
2. Employer / Company policies, practices, etc. at issue
3. Key factual findings on each issue
4. Analysis of key factual findings
5. Conclusion

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2. Investigate and Respond

- ▶ What limitations exist on the scope of the investigation?
- ▶ What limitations exist on the methodology for the investigation?
- ▶ What written or verbal product is to result?
- ▶ Are there limits to the past activities to be investigated?

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2. Investigate and Respond

- ▶ Are there limitations as to activities to be investigated or specific transactional limitations?
- ▶ Is the investigation for purposes of making an evaluation?
- ▶ Or, is the investigation for simple “fact finding”?
- ▶ Specifically, is the investigation to look into board / leadership knowledge of the activities?
- ▶ Is the investigation to review corporate controls, including: how they were designed? Implemented? Their efficacy?

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2. Investigate and Respond

WITNESS INTERVIEWS:

According to Matt Effland, Ogletree Deakins (national employment law firm)

- ▶ Begin with determining the order of the interviews...are there concerns about
 - ▶ Witness tampering?
 - ▶ Confidentiality?
 - ▶ Surprise element?

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2. Investigate and Respond

WITNESS INTERVIEWS:

Effland: The Usual Order is:

- ▶ Complaining party
- ▶ Other witnesses to events (if any)
- ▶ Target party or alleged “bad” actor
- ▶ Other witnesses as identified

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2. Investigate and Respond

Effland: Normal introductory matters include:

- ▶ Why interview is occurring
- ▶ Investigation's seriousness
- ▶ The interviewee's role
- ▶ Requirement of candor and cooperation (of all witnesses)
- ▶ ***There will be no retaliation for good faith statements and reports.***



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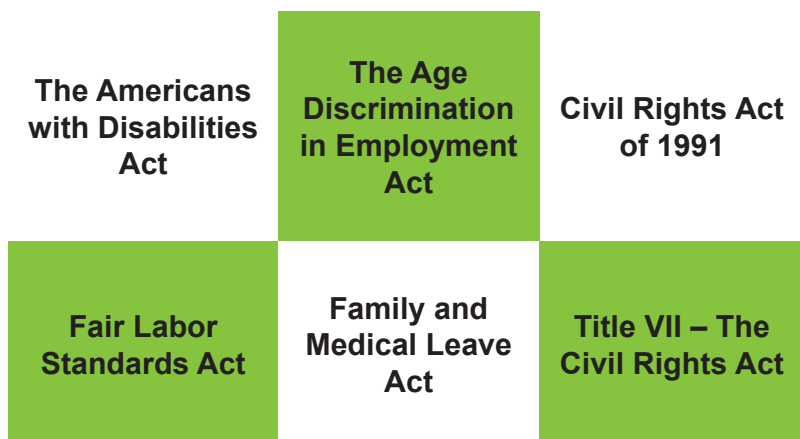
2. Investigate and Respond

Effland, Watch for:

- ▶ Inconsistency or vagueness in details
- ▶ “Sgt. Schultz” answers
- ▶ Known biases or motivations
- ▶ Demeanor, attitude, and physical characteristics
 - ▶ Blushing
 - ▶ Eye contact
 - ▶ Fidgeting

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2. Investigate and Respond



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2. Investigate and Respond

Age – ADEA:

Protected group:	Age 40 and up
No. of employees:	20
Prohibits:	Discriminatory treatment, based on age, in hiring, promotion, and firing
Permits:	Bona fide seniority system

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2. Investigate and Respond

Disabilities – ADA:

Protected Group:	Disabled – having a long-term physical or mental impairment that substantially limits a major life activity
No. of employees:	15
Prohibits:	Discriminatory treatment in pre-employment screening, hiring, promotion, and firing
Requires:	"Reasonable accommodations" for disabled employees

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2. Investigate and Respond

Wages – FLSA:

Protected Group:	Employees, especially hourly workers; teens
No. of Employees:	Not Applicable. \$500,000 in gross sales.
Requires:	Overtime pay for more than 40 hours in a week; minimum wage payments.
Prohibits:	Discrimination via retaliation.

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2. Investigate and Respond

Leave – FMLA:

Protected Group:	"Serious health condition" personal or in family; birth; adoption
No. of employees:	50
Requires:	Up to 12 weeks unpaid leave
Requires:	Reinstatement to same or similar position after leave expires

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2. Investigate and Respond

Civil Rights

Protects:	Race, color, national origin, religion, or gender
No. of Employees:	15
Requires:	Non-discrimination from recruitment through termination.
Requires:	Employment decisions to be made for legitimate, non-discriminatory reasons.

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2. Investigate and Respond

The Criminal Law Principles

The Thompson Memo (January 2003 US DOJ)

- ▶ Corporations should be treated neither leniently nor harshly simply because they are corporations.
- ▶ However, charging a corporation involves both general and specific deterrence opportunities

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2. Investigate and Respond

The Thompson Memo (January, 2003 US DOJ)

- ▶ Whether to charge a corporation involves:
 - Nature and seriousness of offense
 - The pervasiveness of wrongdoing
 - The corporation's voluntary and timely disclosure
 - The existence and adequacy of a compliance program*
 - The corporation's remedial actions*

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2. Investigate and Respond

FINANCIAL MATTERS

According to Jennifer Johnston, CPA, of Crowe Chizek in Chicago,

Don't expect external audits to catch everything

- ▶ An audit is obtaining a reasonable assurance of no material misstatement.
- ▶ Auditors are focused on the opinion and its processes; not necessarily the result.

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2. Investigate and Respond

Johnston, CPA, of Crowe Chizek

While the public expects financial fraud detection,
Management has responsibility for

- ✓ accounting policies
- ✓ internal controls and
- ✓ fair presentation of financial picture

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2. Investigate and Respond

Johnston, CPA, of Crowe Chizek

What they're looking for...and what you should be, too:

- ▶ Vague, implausible or conflicting answers to inquiries
- ▶ Infrequently used accounts or journal entries
- ▶ With a lack of documentation

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2. Investigate and Respond

Johnston, CPA, of Crowe Chizek

What they're looking for...and what you should be, too:

- ▶ Denial of access to personnel
- ▶ Possible management intimidation
- ▶ Unusual delays in providing answers

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2. Investigate and Respond

Be “Privileged” with Your Lawyer

- ▶ Communications between the lawyer and the directors, officers, and employees as ethically privileged.
- ▶ *Upjohn Co. v. United States*, 449 U.S. 383 (1981).
- ▶ “This does not mean, however, that constituents of an organizational client are the clients of the lawyer.”

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2. Investigate and Respond

BE AWARE OF WHISTLEBLOWER PROTECTION:

- ✓ Dozens of statutes provide protection to whistleblowers on both the federal and state level.
- ✓ The most commonly used is the general statute protecting employees on the federal level, the Whistleblower Protections Act.
- ✓ It protect employees who report mismanagement, legal violations, waste of funds, and the like.

5 U.S.C. § 2302 (b)(8)

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2. Investigate and Respond

According to Mike Androvett, Androvett Legal Media and Marketing of Dallas,

Media *Dos*:

- ▶ Respond immediately - *10 a.m. to 5 p.m. is an eternity for reporters*
- ▶ Yet, do know the difference between an emergency and a crisis - *overreacting to an emergency can lead to a crisis*

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2. Investigate and Respond

*Androvett, Media **Dos**:*

- ▶ Have written statements - *even if just for organization*
- ▶ Use voicemail and email - *provide answers, not just a phone number*
- ▶ Stall for time when you don't know the answer

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2. Investigate and Respond

Androvett, Media **Dos**:

- ▶ Have a single spokesperson
- ▶ Consider the timing and logistics of when to make a statement
- ▶ Bridge back to themes
- ▶ Be quotable and speak slowly

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2. Investigate and Respond

Androvett, Media **Do Nots**:

- ▶ Don't say "no comment" - *This translates to "I'm guilty" or "I'm hiding something."*
- ▶ Don't ask to see questions or a written story in advance

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2. Investigate and Respond

Androvett, Media **Do Nots**:

- ▶ Don't lie, mislead or fudge - **EVER**
- ▶ Don't ask to go "off the record" - *what exactly is that, anyway?*
- ▶ Don't be baited into confrontation
- ▶ Don't be baited into argument

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The Insurance Implications of Specific Types of Crises: Active Assailant

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Active Assailant Agenda

1. Introduction to Active Assailant Coverage
2. The Myths - Why coverage is thought not to be needed
3. Civil Liability Issues
4. Existing Coverage Issues
5. The Active Assailant Insurance Policy Coverages

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What is a “Mass Shooting?”

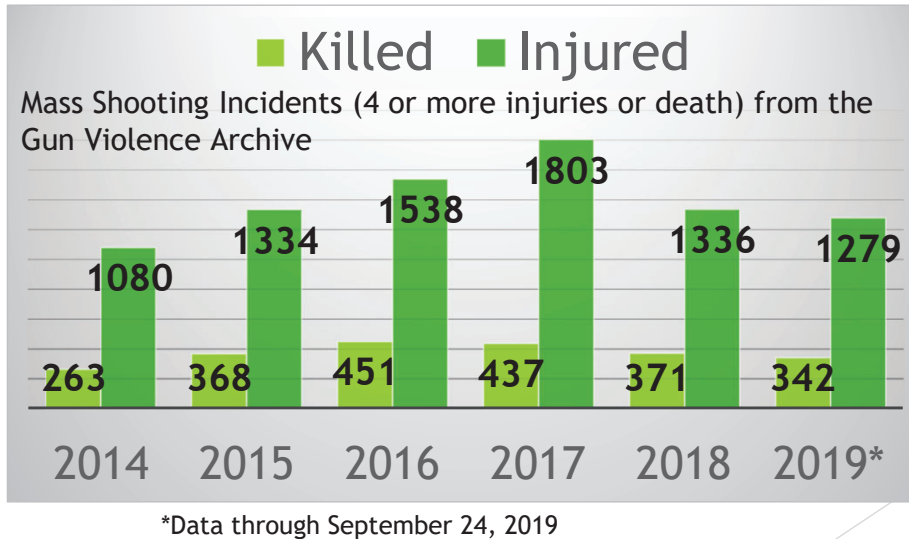
The Gun Violence Archive, which tracks every mass shooting incident in the country, defines a mass shooting as any incident in which at least **4 people are shot**, excluding the shooter.

In 2019, there have been more mass shootings than days of the year.

► Source: CBS News

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The Statistics:



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Recent Examples

June 12, 2016 - Orlando, Florida - ***Pulse*** Nightclub
49 Killed; 53 Injured

October 1, 2017 - ***Las Vegas*** Route 91 Harvest Music Festival
58 Killed; 851 Injured of which 422 were wounded by gunshots

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Recent Examples

February 14, 2018 - Parkland, Florida - ***Stoneman Douglas*** High School

17 Killed; 17 Injured

May 31, 2019 - ***Virginia Beach***, Virginia Municipal Building

12 Killed; 4 Injured

August 3, 2019 - ***El Paso***, Texas - Walmart

22 Killed; 24 Injured

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The Myths:

1. "I'm already covered."
2. My business interruption coverage or worker's compensation coverage will handle it.
3. Active Assailant training covers the risk - there's no need for insurance.

McGowan Program Administrators

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The Myths:

- 4. Active Assailant insurance is too specific to be worthwhile.
- 5. This stuff is only for large companies.
- 6. My business is safe. An attack wouldn't happen here.

McGowan Program Administrators

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The Myths:

- 7. If we have an attack, it's too late and the business is ruined.
- 8. The policy / product doesn't do anything to prevent an attack.
- 9. The policy would require exhaustion of other policies.
- 10. It's too expensive.

McGowan Program Administrators

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ARACENA v. GRULER, Fla. 2018

- Case arose from the Pulse nightclub shooting
- Gruler, an Orlando law enforcement officer, was on duty providing security for Pulse
- At 2 am, he was not at his post, which allowed the shooter to enter the club to “look around”
- The shooter then went back to his vehicle and retrieved his weapons, re-entered the club, and began an hours-long attack and hostage situation

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ARACENA v. GRULER, Fla. 2018

- Gruler immediately became aware of the situation, but stayed outside
- City of Orlando police arrived quickly and engaged the shooter
- Shooter barricaded himself and several hostages in a restroom
- About 3 hours later, police entered the club and neutralized the shooter

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ARACENA v. GRULER, Fla. 2018

- A victim's estate filed a lawsuit against the individual officer, alleging a civil rights violation for:
 - Abandoning his post and
 - Failing to enter immediately to engage and neutralize
- The estate also sued Orlando for failing to train officers.

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ARACENA v. GRULER, Fla. 2018

Generally speaking,

- Failing to protect an individual from third party criminal violence is not a constitutional violation and
- A generalized claim of a “failure to train” police personnel won’t overcome this to create municipal liability

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

- Las Vegas Route 91 Harvest Festival
- October 1, 2017
- Incident resulted in 58 deaths and 500 injuries
- In 2018, MGM Resorts, owner of the Mandalay Bay Casino & Hotel, filed a federal lawsuit in California against the victims
- A “declaratory judgment” was sought

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

- MGM wanted to consolidate claims in one federal court.
- Federal court was sought due to the provisions of the 2002 Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

- MGM argues that the concert's security company had been certified by the Department of Homeland Security "for protecting against and responding to acts of mass injury and destruction."
- MGM argues that the SAFETY Act means all lawsuits go to federal court

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

- More importantly, says MGM, the SAFETY Act protects it against liability.
- There is a limitation on liability for technologies and services that involve "preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause."
- At worst, it caps liability at the amount of insurance that was required at the time of certification as qualified anti-terrorism technology (QATT). At best, it eliminates liability completely.

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

According to PBS:

- The SAFETY Act “was a way to encourage private companies to deploy anti-terrorism technologies without an overriding fear of being held responsible.”
- **No motive was determined for the attack, nor was it ruled an act of terrorism, which raised questions about MGM’s legal action.**

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

Insurance Journal reports:

- In May 2019, MGM reported that a settlement will be reached between \$735 to \$800 million by May 2020.
- MGM said that it has \$751 million in insurance to pay toward a settlement

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MGM RESORTS V. VICTIMS OF RT. 91 SHOOTING, Cal. 2018

Insurance Journal reports:

- “A lawyer handling mediation talks for about **4,200 claimants in multiple states** said it was premature for MGM to report a possible settlement range, as they aren’t even close to resolving all the terms and issues at hand.”
- “The lawyer said ‘It’s true that a settlement is possible. But I will tell you it’s not probable. Nothing is signed. We have a long way to go before we have an agreement.’”

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Existing Coverage Questions

A reminder on the CGL:

- ▶ Sec. 1 - Coverages
 - ▶ Coverage A - bodily injury and property damage
 - ▶ Coverage B - personal and advertising injury
 - ▶ Coverage C - Medical Payments
- ▶ Sec. 2 - Who is an insured?
- ▶ Sec. 3 - Limits of Insurance
- ▶ Sec. 4 - Conditions
- ▶ Sec. 5 - Definitions

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Existing Coverage Questions

Structure of the CGL:

The CGL insuring clause (Coverage A) reads:

- We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury or property damage** to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages....

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Existing Coverage Questions

The Insuring Clause Continues:

“This insurance applies to ‘bodily injury’ and ‘property damage’ only if the ‘bodily injury’ or ‘property damage’ is **caused by an ‘occurrence’** that takes place in the ‘coverage territory...’”

An “occurrence” is:

- “[A]n **accident**, including continuous or repeated exposure to substantially the same general harmful conditions.”

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(Side Notes on “Occurrence”)

1. Two police officers seek to obtain a peaceful surrender
2. The shooter hits one officer; one minute later, hits both officers with a second shot; and then 45 seconds later, hits the second officer a second time
3. Is there one occurrence? Two? Three?
4. Carrier said “one;” claimants say “three”

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(Side Notes on “Occurrence”)

5. Carrier said “insanity” was the one cause
6. Claimants say the shotgun blasts were the cause
7. Court says that it is true the acts would have been intentional and not covered except for the insanity, but
8. There were multiple causes - and NOT a single, uninterrupted continuous cause.
9. **Three occurrences.**

American Indemn. Co. v. McQuaig,
435 So. 2d 414 (Fla. App. 1983)

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Existing Coverage Questions

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

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Existing Coverage Questions

- ▶ Exclusions Which Might Be at Issue
- ▶ 2(a) - Expected or Intended Injury
- ▶ 2(b) - Contractual Liability
- ▶ 2(d) - Workers' Comp
- ▶ 2(e) - Employer's Liability
- ▶ 2(i) - War
 - ▶ "Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of [war, including]
 - ▶ Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents...

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Existing Coverage Questions

- ▶ CG 21 90 01 06 EXCLUSION OF TERRORISM
- ▶ “Terrorism” is violence with an intent to intimidate, coerce, disrupt, or, a furtherance of ideology
- ▶ Among others conditions, the exclusion is applicable if an insured suffers:
 1. \$25,000,000 in property loss or
 2. “**Fifty or more** persons sustain death or serious physical injury”

83

What Are We Seeking to Cover?

- ▶ “The associated costs will go well beyond General Liability and will often include Business Interruption, Workers Compensation, Brand Impairment and potential lawsuits...”
- ▶ “All of these issues are coming at the Insured at a time of significant physical and emotional trauma.”
 - ▶ Jim Eades of Arlington/Roe in *IIA of IL e-Insight*

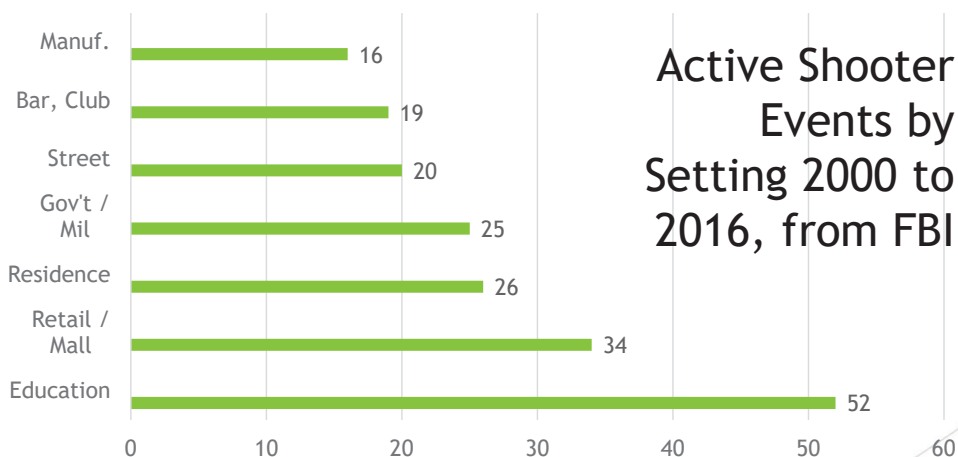
84

AM BEST SAYS

- ▶ “Targeted, new insurance solutions are helping these entities develop programs to help protect against and recover from unpredictable and shocking occurrences. Specialized, named-perils active assailant policies are helping...
- ▶ “In the past, named-perils policies have similarly been developed to help provide protection against storm risk, employment practices liability, and cyber events.”

85

Who Should Consider It?



86

Available Coverages:

Physical damage coverage

“Insureds can get indemnity for physical loss or damage to insured property caused by an active shooter / workplace violence incident. This might include expenses incurred during structural security upgrades along with **building closure, relocation or teardown.**”

- Insurance Business America, “What is active shooter insurance coverage?” by Bethan Moorcraft (12/14/18)

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Available Coverages:

Legal liability / litigation

“Insureds are legally obligated to pay for certain damages and claim expenses that arise from an active shooter / workplace violence incident. Organizations today are being held to a higher standard of accountability....”

- Moorcraft

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Available Coverages:

Crisis management

“Insurance carriers will indemnify the insured for specialist crisis response and consultant fees resulting solely and directly from an active shooter or threat event. This might include helping insureds deal with public relations, reassuring families and employees and reinforcing the company branding.”

► Moorcraft

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Available Coverages:

- Business interruption coverage
- Medical expenses, funeral expenses, and death benefit
- Loss of attraction

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Common Exclusions:

- Terrorism exclusions
- Casualties threshold limit
- Employee exclusions
- Vehicle exclusions
- Mental anguish exclusion

91

The Insurance Implications of Specific Types of Crises: Products Recall

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The Products Recall Agenda:

1. Introduction: Why Talk About Products Recall?
2. The "Sistership" Exclusion of the CGL
3. The ISO CGL Form 00 66
 - ▶ Coverages
 - ▶ Definitions
 - ▶ Conditions
 - ▶ Exclusions



93

The Most Expensive Product Recalls (Ira Sager, Bloomberg Business 2013)

"One of the most publicized product recalls in history, bottles of Johnson & Johnson's **Tylenol** were laced with potassium cyanide, killing seven people around Chicago in 1982. The company spent more than **\$100 million** to recall 31 million bottles of Tylenol and relaunch the product."

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The Most Expensive Product Recalls

(Ira Sager, Bloomberg Business 2013)



- ▶ "In 2000, Bridgestone/Firestone recalled 6.5 million tires after treads separated on models used in Ford Explorers and Mercury Mountaineers.
- ▶ "Ford engineers had suggested safety changes that were not heeded by either company.
- ▶ "The tire failure resulted in some 200 deaths and 3,000 major injuries. Bridgestone spent \$440 million on recall-related costs; the recall cost Ford \$3 billion."

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The Most Expensive Product Recalls

(Ira Sager, Bloomberg Business 2013)

"In 2004, pharmaceutical giant Merck voluntarily recalled Vioxx, an arthritis drug, after a study found that patients who took the drug for at least 18 months were prone to suffer heart attacks and strokes. At the time, the company said it expected **\$725 million in lost Vioxx sales**, which it ultimately removed from the market. In 2007, Merck agreed to pay **\$4.85 billion to settle 27,000 lawsuits** over the drug."

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Why Talk About Products Recall?

<i>Date</i>	<i>Recall</i>	<i>By</i>	<i>Because</i>
11/19/19	Isometric Exercise Devices	CPSC	Handles break and become projectiles
11/19/19	Ranitidine Oral Solution	FDA	Potential levels of N-Nitrosodimethylamine
11/15/19	Ground Beef Products	USDA	Salmonella risk
10/28/19	Ford Expeditions	Ford	Rear suspension toe link fasteners
10/22/19	Gun Holsters	CPSC	May change safety setting

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Why Talk About Products Recall?

<i>Date</i>	<i>Recall</i>	<i>By</i>	<i>Because</i>
2/26/15	Spyder RT	NHTSA	Engine temperature
2/25/15	Hand Trucks	CPSC	Wheel hub separation
2/25/15	Colistimethate	FDA	Sterilization
2/25/15	Kenmore Ranges	CPSC	Shock Hazard
2/20/15	Pork Belly	USDA	Inspection Issues

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Aon: The long term impact on revenue is bad because:

- ▶ "A reduction in **forecasted revenue** due to lost product confidence,
- ▶ "The amount of **time** needed to regain market share,
- ▶ "Whether or not **market share** should be expected to reach the same levels as before the recall,
- ▶ "A change in the timing of **cash flow** activity,
- ▶ "Increased **marketing expenses** necessary to regain market positioning, and
- ▶ "Analysts forecasts for future product sales and past performance benchmarks..."

99

Kozenski: Supply Chain Comment

"A May 2010 report issued by Deloitte on behalf of the Food Marketing Institute (FMI), the Grocery Manufacturers Association (GMA) and GS1 determined the average cost of a product recall to be **\$10 million**. That cost alone is enough to bring a large public corporation to its knees, not to mention the unquantifiable effect on reputation."

100

Tyco: Food Recall Cost Estimator

- ▶ MULTIPLY retail price of food product by number of units recalled, then
- ▶ ADD **four percent** for notification costs, then
- ▶ ADD **ten percent** for transportation costs, then
- ▶ ADD any other direct costs of recall (such as product destruction, investigation, and other costs)

101

Why Talk About Products Recall?

This is up from past reports. Marsh said:

"According to a study released by the American Society for Quality (August 2003), each product recall costs an organization, on average, more than **\$8 million**. This **conservative estimate** includes reimbursement expenses to consumers, recall execution costs, and compensatory damages from litigation. It does not include lost sales due to reduced marketplace credibility and lost market share."

102

History of ISO's CGL

History of ISO CGL:

- ▶ Prior to 1940, most, if not all, insurance written in the United States was provided on a "named perils" basis
- ▶ Beginning in the 1940s, insurance companies began providing insurance coverage on an "all-risk" policy coverage form or on a comprehensive general liability (CGL) insurance form

103

History of ISO CGL and the Changes:

- ▶ Some changes through the 1950's, 1960's and 1970's...
- ▶ Exclusions did begin to multiply.
- ▶ Occurrence versus claims made both became available products
- ▶ Big change in the '80's was the switch in name - from "comprehensive" to "commercial" general liability

104

History of the ISO CGL:

- ▶ 1966: switch from "accident" to "occurrence"
- ▶ 1973: the first pollution exclusion
- ▶ 1976: advertising injury "arrives"
- ▶ 1983: the "absolute" pollution exclusion
- ▶ 1993: the bolstering of the "workmanship" exclusions

105

The CGL insuring clause reads:

We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury or property damage** to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages....

106

The Structure of the CGL:

An "occurrence" is:

- ▶ "[A]n accident, including continuous or repeated exposure to conditions...
- ▶ which results in **bodily injury** or **property damage**...
- ▶ neither expected nor intended from the standpoint of the insured.

107

The CGL and Products Recall:

According to FC&S:

"It was in 1966 that insurance companies began to add to the standard form CGL liability policy exclusions such as **the sistership exclusion**, which sought to eliminate coverage for activities insurance professionals believed to be risks of developing and marketing a product."

108

The CGL and Products Recall:

- ▶ "Sistership" is believed to be derived from a historical accident in the airplane industry...
- ▶ ...in which a plane crashed and its "sister ships" were grounded to fix the common defect that had caused the crash.

109

The CGL and Products Recall:

Part 1 of the Sistership Exclusion (Exclusion "n") of the ISO CGL carves out:

"[d]amages claimed for any loss, cost or expense incurred by you or others for the loss of use, **withdrawal, recall**, inspection, repair, replacement, adjustment, removal or disposal of" the named insured's 'product,' 'work' or 'impaired property'... **IF**

110

The CGL and Products Recall:

Part 2 of Exclusion “n” continued:

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

111

The CGL and Products Recall:

- ▶ The language of "withdrawn or recalled" and the language of "by any person or organization" are both significant.
- ▶ The "withdrawn or recalled" is generally construed as a **limitation** on the exclusion, while
- ▶ The "by any person or organization" is a **broadening** of the exclusion.

112

The CGL and Products Recall:

- ▶ Why? The exclusion is only triggered when a product is “withdrawn or recalled” from the marketplace, BUT
- ▶ “By any person or organization” is a **broadening** of the exclusion because it includes both voluntary and government-ordered withdrawals.

113

The CGL and Products Recall:

Also, as to “withdrawn or recalled,” according to FC&S:

“Typically, the exclusion bars coverage for the cost incurred when a product is recalled due to a known or suspected defect or deficiency that may cause injury or damage; and it applies only to costs incurred in order to prevent future damage/injury, not to damage/injury that has already taken place...”

114

The CGL and Products Recall:

As to "withdrawn or recalled," according to FC&S:

"If the exclusion is applicable, it does not eliminate coverage for **all damage** incurred because of the need to replace a product. Rather, it eliminates coverage only for **damages incurred for the replacement.**"

115

The CGL and Products Recall:

As to "by any person or organization":

- ▶ The language dates from 1986 and
- ▶ Is designed to combat court cases that held the exclusion applicable only to situations in which the **insured** recalled or withdrew the product, because
- ▶ Courts have been generally hostile to a broad reading of the exclusion.

116

The Bottom Line:

“The intent of the sistership exclusion is that while insurance covers damages for bodily injury and property damage caused by the product that was defective or failed...

117

The Bottom Line:

“...it was never intended that the insurer would be saddled with the cost of preventing such defects or failures any more than it was intended that the insurer would pay the costs of the defect in the first place...”

118

The Bottom Line:

“...or preventing the first failure if the product has been discovered to be in a defective or dangerous condition before the occurrence.”

Olympic Steamship Co., Inc. v. Centennial Ins. Co.,
811 P.2d 676 (Wash. 1991) (*badly crimped cans of salmon not warehouseman’s “product” and a third party withdrawal did not trigger exclusion*).

119

Moving Toward a Solution:

- ▶ Prior to 2004, endorsements were available in the ISO family
- ▶ These were limited in coverage, even though they were broader than their predecessors.
- ▶ In 2004, ISO created a stand-alone form for products recall coverage.
- ▶ The form is the ISO CG 00 66 04 13.

120

Moving Toward a Solution:

According to FC&S:

- ▶ Coverage grants and forms vary tremendously among insurers.
- ▶ Coverage is expensive
- ▶ Companies are reluctant to buy it, but should consider:
 - ▶ Size
 - ▶ Financial resources
 - ▶ Are they high profile
 - ▶ The likelihood of tampering or contamination
 - ▶ Confidence levels in internal research and development

121

The ISO CG 00 66 04 13:

Insuring Clause (A):

"We will **reimburse** you for 'product withdrawal expenses' incurred by you because of a 'product withdrawal' ...

Insuring Clause (B):

"We will **pay** those sums that the insured becomes legally obligated to pay as **damages** for 'product withdrawal expenses' incurred because of a 'product withdrawal' ...

122

The ISO CG 00 66 04 13:

"Product withdrawal" means the recall or withdrawal:

- a. From the market; or
- b. From use by any other person or organization;
 - ▶ of "your products", or products which contain "your products", because of known or suspected "defects" in "your product", or known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property other than "your product".

123

The ISO CG 00 66 04 13:

"Product withdrawal expenses" means

- a. Cost of replacing "your product", repairing the "defect" in "your product" or repurchasing "your product" for your initial purchase price, whichever is less;
- b. Costs of notification;
- c. Costs of stationery, envelopes, production of announcements and postage or facsimiles;
- d. Costs of overtime paid to regular non-salaried employees and costs incurred by such employees, including costs of transportation and accommodations;

124

The ISO CG 00 66 04 13:

"Product withdrawal expenses" means

- e. Costs of computer time;
- f. Costs of hiring independent contractors and other temporary employees;
- g. Costs of transportation, shipping or packaging;
- h. Costs of warehouse or storage space; or
- i. Costs of proper disposal of "your products", or products that contain "your products", that can not be reused, not exceeding your initial purchase price or your cost to produce the products.

125

The ISO CG 00 66 04 13:

Conditions to Coverage A:

- This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
 - 1) You determine that the "product withdrawal" is necessary; or
 - 2) An authorized government entity has ordered you to conduct a "product withdrawal"...

126

The ISO CG 00 66 04 13:

Conditions to Coverage A:

- c) We will reimburse "product withdrawal expenses" only if:
 - 1) The expenses are incurred within one year of the date the "product withdrawal" was initiated;
 - 2) The expenses are reported to us within one year of the date the expenses were incurred; and
 - 3) The product that is the subject of the "product withdrawal" was produced after the Cut-Off Date designated in the Declarations.

127

The ISO CG 00 66 04 13:

Supplemental Payments under Coverage B:

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

- 1. All expenses we incur.
- 2. 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.
- 3. All court costs ...
- 4. Prejudgment interest...
- 5. [Post judgment interest]

These payments will not reduce the limits of insurance.

128

The ISO CG 00 66 04 13:

Both Coverage A and Coverage B **exclude**:

- ▶ Breach of Warranty
- ▶ Infringement of Copyright
- ▶ Deterioration or Decomposition
- ▶ Costs of Regaining Goodwill or Market Share
- ▶ Expiration of Shelf Life
- ▶ Known defect
- ▶ Governmental Ban

129

The ISO CG 00 66 04 13:

Coverage A only exclusions:

- ▶ Defense of Claims
- ▶ Third Party Damages
- ▶ Pollution

Coverage B only exclusions:

- ▶ Intercompany suits
- ▶ Contractual Liability
- ▶ Pollution AND pollution-related loss
- ▶ War
- ▶ Loss of Use

130

Putting it to Work: A Cybersecurity / Data Breach Claim

131

The Client's Background

- ▶ Your client is Fleetwood Mac Consulting, Inc.
- ▶ Fleetwood Mac Consulting, Inc. was started and is owned by Michael Fleetwood and Lindsay Buckingham
- ▶ FMCI:
 - ▶ Specializes in coordinating on rallies, events, concerts, promotions and the like
 - ▶ Has a national client base of musical artists, concert venues, political parties, major nonprofits, pro sports teams
 - ▶ Is headquartered in Landslide, Fleetwoodmac

132

The Client's Background

- ▶ Company's been around for 40 years and, as its promotional material says, it's **"Still Rockin!"**
- ▶ \$21,400,000 in revenue last year
- ▶ Now has 165 employees in three other states:
 - ▶ Sara, Tusk
 - ▶ Gypsy, Mirage
 - ▶ Songbird, Rumours

133

The Client's Background

- ▶ The **sports** side of FMCI's business is managed by John McVie
 - ▶ The **music** side is managed by his ex-wife, Christine McVie
- (Yes, there are HR issues...)*
- ▶ Our story begins with the employee review of young Stephanie Nicks

134

Tuesday (Day 1)

- ▶ Stephanie's annual employee review was Monday afternoon.
- ▶ Stephanie didn't get a good review... apparently, Stephanie has some "issues" with Lindsay Buckingham
- ▶ From the office's system, Stephanie went out to *Pins-Insta-Face-Interest*, a new e-community, to complain to some friends

135

Tuesday (Day 1)

- ▶ Now, the system's down at all of Fleetwood Mac's offices...all the monitors show is

*Adrast***os**

- ▶ Fleetwood Mac's IT department thinks it came from Pins-Insta-Face-Interest
- ▶ Stephanie "picked up" Adrast**os**, a known computer *virus / ransomware*

136

Tuesday (Day 1)

By the afternoon

- ▶ System is still down
- ▶ Backup doesn't work. Can't identify restore point

What legal and business concerns do we have?
What should we do or not do?
*Are we as insurance professionals “in the room”
for the discussion?*

137

A Data Breach Crisis

1. Strains PR Resources
2. Strains HR Resources
3. Strains IT Resources
4. Requires legal knowledge
5. Demands fast, cross-team, integrated response

138

A Data Breach Crisis is...

- ▶ Intrusive
- ▶ Extensive
- ▶ Expensive
- ▶ Very fast-paced,

Making PR preparation key in mitigating reputational and financial damage, and

- ▶ Impacted by multiple legal responsibilities

Making legal, insurance and risk management preparation key as well.

139

Wednesday (Day 2)

Mid-Morning

- ▶ Ransom request comes in - demand is for \$1.2 Million in cryptocurrency

Mid-Afternoon

- ▶ IT department accesses system externally; commences investigation of:
 - ▶ What databases were accessed
 - ▶ What information was contained in the databases

*What legal and business concerns do we have?
Do we encourage payment of the ransom?
What should we do or not do?*

140

Thursday (Day 3)

10:05 A.M.

Two employees go to Mick Fleetwood, asking, “What’s happened?” and “How’s it affect us?”

What legal and business concerns do we have?

What should we do or not do?

141

Thursday (Day 3)

1:15 P.M.

John McVie fields a phone call from the general manager of the local pro sports team, who asks, “What the @#)\$(is going on over there?”

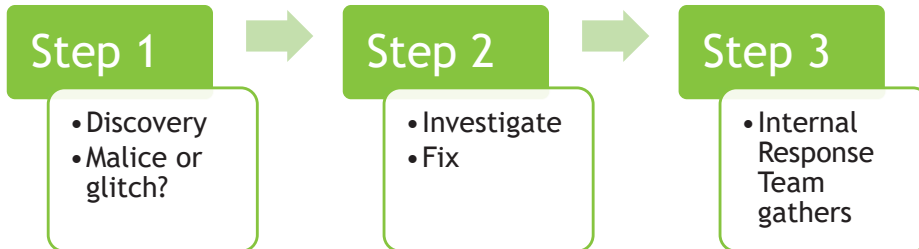
2:50 P.M.

Christine McVie gets an email from a local TV reporter, asking for comment...

*What legal and business concerns do we have?
Is there a carrier? What’s the carrier likely to do?*

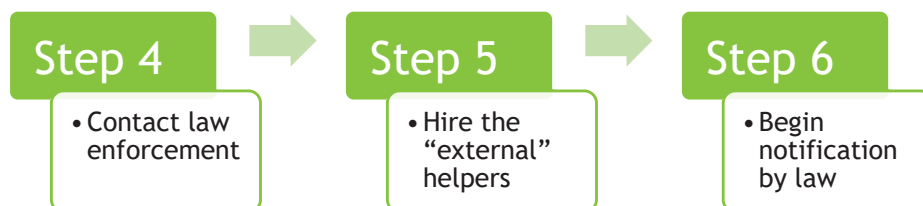
142

According to Experian...



143

According to Experian...

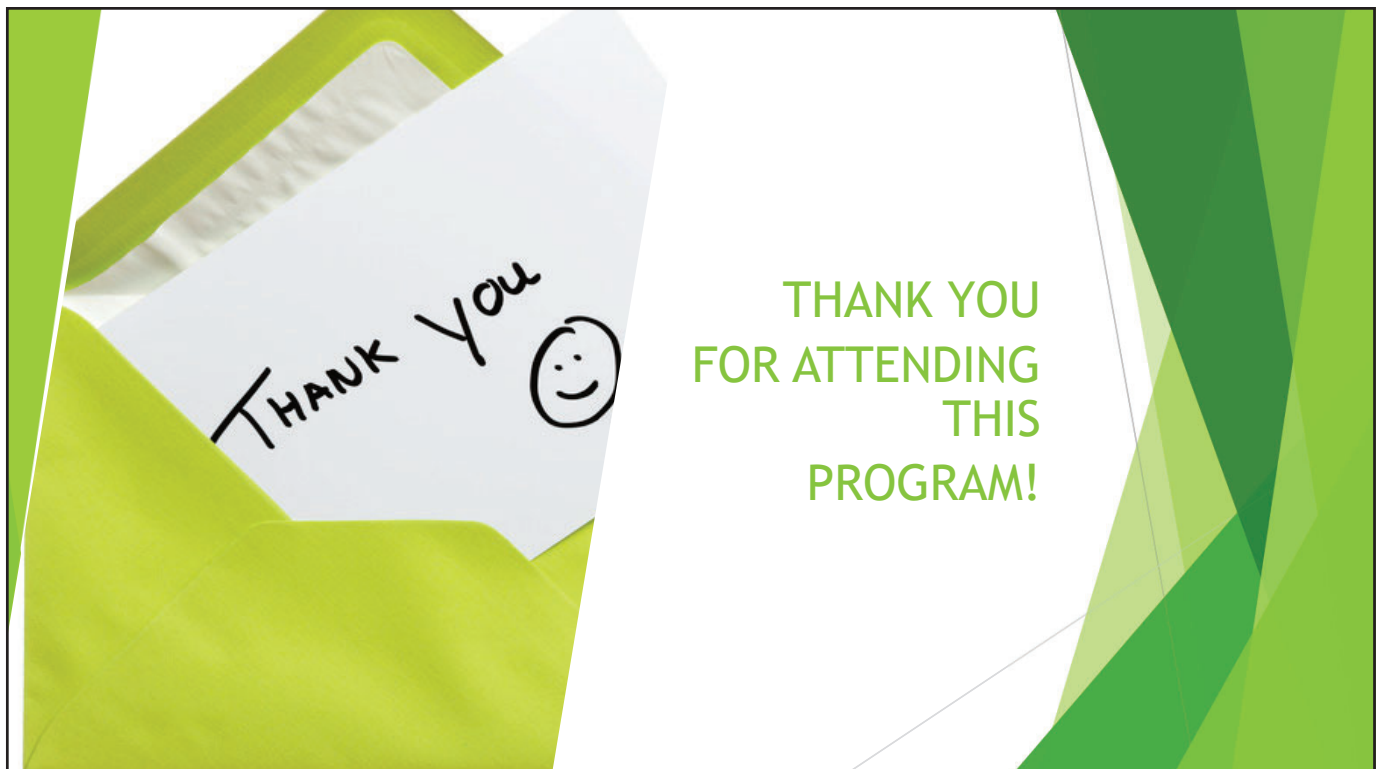


144

According to Experian...



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Section 4

Organizational Ethics



ORGANIZATIONAL ETHICS

I - INTRODUCTION –

The majority of Ethics and E&O classes I have attended deal with mistakes employees (including owners) have made that may create a potential problem (inadequate coverage, poor documentation, no procedures, etc.). The discussion then turns to the legal environment to paint the picture of what we will face if a claim is filed. Let me assure you they are all excellent courses and are correct in their approach. And yes, we will do some of this! But the majority of this course will attempt to create awareness that there are steps we can take as an organization to eliminate many of the causes before they take place. I think if you ask yourself, why enough times you will eventually wind back to the root problem we all face...Organizational culture and clarity.

II - ETHICS DEFINED: Ethics comes from two Greek words that mean “moral” and “character.” Ethics comprises standards of conduct that indicate how one should behave, based on moral obligations. It deals with the ability to distinguish right from wrong, good from evil, and the commitment to do what is right, good and proper.

The following are accepted definitions of ethics.

“Ethics is the branch of study that focuses on the values of human life, duty, and morality and presents rules of conduct.”

“Human and moral conduct according to principles of what is good or right to do.”

“The branch of philosophy dealing with values relating to human conduct, with respect to the rightness and wrongness of actions and the goodness and badness of motives and ends.”

What do you think of these definitions and how do they affect the insurance industry?

III - ETHICS VERSES VALUES: Many feel these two terms are synonymous. They are similar, but there is a very distinctive difference.

Morality – “right” vs. “wrong”

Ethics – “right” vs. “right”

ETHICS	VALUES
What you do or how you act. Ethics implies an action	What you believe or hold as important. Values can be passive, there may be no action taken.

Question: Do values affect a person's decision making?

Question: Are there times when the decisions we make contradict our values? Herein may lay the difference.

IV - APPROACHES TO ETHICAL DECISION MAKING

There are three basic approaches to making an ethical decision:

1. **Situational** – What is the best outcome possible given the circumstances?
 - A. Strengths – Takes a look at the long-term effect of the decision, prevents one from acting hastily.
 - B. Weaknesses – May lack the necessary facts to make the decision. Also may tend to decide based on a desired outcome.
2. **Rule Based** – Follow the rules and let the chips fall where they may.
 - A. Strengths - Makes decisions easier. The rules are the rules, ignorance is no excuse.
 - B. Weaknesses - Depends entirely on the validity of the rule. What if the rule is bad? Many unethical behaviors have been justified based on accepted practices such as racism. Also, ignores the long-term effect of the decision.
3. **People Based** – What would you have others do if faced with the same set of circumstances (the Golden Rule).
 - A. Strengths – Based on the “Golden Rule” which is accepted in almost every group or culture.
 - B. Weaknesses – Assumes the person has proper values.

V - ETHICS - ITS ALL ABOUT CULTURE –

A. What is Culture?

“The total of the inherited ideas, beliefs, values, and knowledge, which constitute the shared bases of social action.”

“The attitudes, feelings, values, and behavior that characterize and inform society as a whole or any social group within it.”

The bottom line is Culture is “Who you are.” Not who you say you are but how people and groups actually perceive you.

B. Why is Culture Important? The difference between Healthy and Smart!

1. It lays the foundation of the agency’s value system
2. It will project to your clients and companies the purpose and identity of your agency
3. Project a healthy image to the community

C. How do I Identify or Develop our Culture?

1. Start with “Why”
2. Why do we exist?
3. Why should anyone do business with us?
4. Why should our employees respect us?
5. Why should the carriers/community respect us?
6. Remember, Culture is dynamic, not static!

D. How Does Culture Effect Ethics Claims?

1. The “Eeyore” syndrome – This is the person that you don’t ask how their day is going in fear that you will get it!
2. The “Lucy” syndrome – This is the “Know It All”.
3. The “Olaf” syndrome - No matter who they talk to they agree with them.

E. How Is Culture Changed In An Organization?

1. It all starts at the top
2. Management has to sell the new culture to the staff
3. Staff has to embrace change
4. Management has to be willing to make tough decision to enforce change

VI - FIVE DYSFUCTIONS OF AN AGENCY ORGANIZATION –

- A. **Absence Of Trust** – I have heard a million times that “Trust has to be earned.” I just don’t know that I believe it! Most of us are trusting until we get burned. What can cause an ethical breach or E&O claim quicker than a bunch of employees that don’t trust each other? This should help.

Members Of Trusting Teams	Members Of Teams With Absence Of Trust
Admit weaknesses and mistakes	Conceal their weaknesses and mistakes from one another
Ask for help	Hesitate to ask for help or provide constructive feedback
Accept questions and input about their areas of responsibility	Hesitate to offer help outside their own areas of responsibility
Give one another the benefit of the doubt before arriving at a negative conclusion	Jump to conclusions about the intentions and aptitudes of others without attempting to clarify them
Take risks in offering feedback and assistance	Keep thoughts and ideas to themselves. Just go through the motions
Offer and accept apologies without hesitation	Hold grudges
Look forward to meetings and other opportunities to work as a group	Dread meetings and find reasons to avoid spending time together

- B. **Fear Of Conflict** – Now please understand, I am not trying to start fights in your organizations! However, healthy interaction based on mutual respect provides many more productive ideas and solutions than employees being gripped in the fear of having conflict.

Teams That Engage In Conflict	Teams That Fear Conflict
Have lively, interesting and productive meetings	Have boring and unproductive meetings
Extract and exploit the ideas of all team members	Create environments where back-channel politics and personal attacks thrive
Solve real problems quickly	Ignore controversial topics that are critical to team success
Minimize politics	Waste time and energy with posturing and interpersonal risk management
Put critical topics on the table for discussion	Fail to tap into all the opinions and perspectives of team members

- C. **Lack Of Commitment** – I can't believe we just used the "C" word! Without commitment from leadership there will be confusion and ambiguity in the organization.

A Team That Is Not Afraid To Commit	A Team That Fails To Commit
Creates clarity around direction and priorities	Creates ambiguity among the team about direction and priorities
Aligns the entire team around common objectives	Watches window of opportunity close due to excessive analysis and unnecessary delay
Develops an ability to learn from mistakes	Breeds lack of confidence and fear of failure
Takes advantage of opportunities before competitors do	Revisits discussions and decisions again and again
Moves forward without hesitation and changes direction without hesitation or guilt	Encourages second guessing among team members

- D Avoidance Of Accountability** – This may be the greatest weakness of our society in my opinion. We simply feel our actions don't have consequences, but they do! Every decision we make will affect someone else. This may very well be the key to ethical decision making. If you ever withdraw from allowing others to see your decision making process and build a wall around yourself you are now positioned for an ethical breach.

A Team That Holds One Another Accountable	A Team That Avoids Accountability
Ensures that poor performers feel pressure to improve	Creates resentment among team members who have different standards of performance
Identifies potential problems quickly by questioning one another's approaches without hesitation	Encourages mediocrity
Establishes respect among team members who are held to the same high standards	Misses deadlines and key deliverables
Avoids excessive bureaucracy around performance management and corrective actions	Places an undue burden on the team leader as the sole source of discipline

- C. Inattention To Performance Results** – We simply can't make decisions in an organization based on personality or feelings. Everything we measure (outside of complying with organizational values) should be based on performance. When we lose sight of this and make a decision based on personality it destroys morale and credibility within the group.

A Team That Focuses On Collective Results	A Team That Is Not Focused On Results
Retains achievement oriented employees	Stagnates/fails to grow
Minimizes individualistic behavior	Rarely defeats competitors
Enjoys success and suffers failure acutely	Loses achievement oriented employees
Benefits from individuals who subjugate their own goals/interests for the good of the team	Encourages team members to focus on their own careers and individual goals
Avoids distractions	Is easily distracted

VII – FOUR CORNERSTONES TO BUILDING A HEALTHY ORGANIZATION – (THE KEY TO ETHICAL DECISION MAKING)

- A. Build And Maintain Cohesive Leadership – Every organization needs a clear chain of command. In small organizations this may be a single individual. As the organization grows this need will become more apparent.

A healthy organization will have less politics and confusion, higher morale, lower turnover and higher productivity.

1. Who should this group of people be? The more diverse the group the better.
2. What should be their role within this group?

- B. Create Organizational Clarity – Every person in the organization should have a crystal clear picture of their role and how success and failure effect the entire organization. Be specific as to:

1. Values
2. Mission
3. Major Goals
4. Objectives
5. Roles and Responsibilities

- C. Communicate Agency Identity And Message – Have a structured plan how the clarity of the organization will be communicated.

1. Repetition
2. Simple messages
3. Multiple mediums

- D. Reinforce Agency Clarity Through Human Systems – In each of the following the organization must present a consistent message based on A-C.
1. Hiring Profiles – Good hires v. the cost of a bad hire
 2. Performance Management – An honest assessment is needed
 3. Rewards and Recognition – Everything is performance based
 4. Termination – Based on performance and values

VIII - POSITIONING A HEALTHY ORGANIZATION TO CONTROL RISK –

The following is a discussion on how Ethical decision making can affect E&O claims in an agency environment. The way employees perceive their job and the degree of job satisfaction they have (or don't have) directly impacts decision making and ultimately ethical breeches and E&O claims.

- A. Choose Your Clients
1. Select client to represent
 2. Agree on services to provide
 3. Document services and coverage's **not** desired
 4. Keep promises of services within agency capabilities
 5. Notify regularly of important changes
- B. Standardize Office Procedures – (The four “C’s” of procedure manuals)
1. Current –
 2. Communicated –
 3. Chargeable –
 4. Cross Referenced –

C. Documentation

1. Document all telephone conversations
2. Keep notes on conversations including coverage questions and recommendations
3. Confirm instructions in writing
4. Maintain and keep current all client records
5. Keep your records according to prescribed records retention program

Hearsay Evidence Rule-Business Record Exception.

- The record must be made in the ordinary course of business.
- The record must be made at or near the time of the event.
- The record must be kept in a secure place. (Chain of custody)
- The record must be original if possible. “Best Evidence Rule”

ELECTRONIC RECORDS - The same rules that apply to written documents also apply to computer (electronic) records. You must have the person making the input that was actually involved in the process. You may need to demonstrate that the process is reliable.

D. Product Knowledge

1. Know your products
2. Stay within your insurance expertise or enlist help
3. Try to eliminate coverage decisions

E. Agency Management

1. Issue binders promptly and correctly
2. Process orders and claims promptly and correctly
3. Examine policy to be sure it conforms to the insurance required
4. Use cover letters when delivering policies
5. Follow company instructions

F. Technology Issues

1. Smart Phones – Email, Texting, Messaging and Voice Mail
2. Social Media and Networking
3. Electronic Bulletin Boards and Chat Rooms

G. Claims Handling

1. Use ACORD forms when possible
2. Notify company at once
3. Don't offer an opinion on coverage
4. Follow-up until the claim is settled

H. Personnel

1. Hire quality individuals
2. Educate agency personnel
3. Provide specific E & O education
4. Utilize advanced education -- professional designations

IX. AGENCY DEFENSE ACTIVITIES

- A. Assign One Person To Act As Claims Coordinator
- B. Hold Staff Meetings Including All Involved Agency Personnel
 - 1. Discuss situation in general
 - 2. Have each person briefly describe their involvement
- C. Coordinator Gathers All Pertinent Information Into A Master File
- D. Prepare To Be A Good Witness

X - CONCLUSION –

Organizations are successful for two reasons, they are smart and they are healthy. Good ethics and E&O protection demands we are good at both. I think we spend a lot of time being smart, but I am not sure we spend much time learning what it takes to be healthy. I hope this course has given you one or two ideas you can take back and put into practice at your agency or company operations. Remember exposure can't be eliminated, but it can be controlled!



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Section 5

Insuring Fiduciary Exposures



Insuring Fiduciary Exposures

**A 4 Hour Insurance Continuing
Education Course**

1

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2

AGENDA

1. ERISA HISTORY

2. SCOPE OF ERISA

3. FIDUCIARY DUTIES

4. RECENT DEVELOPMENTS

5. CLAIM DATA

- a) Causes of Loss
- b) Costs of Loss & Frequency

6. UNDERWRITING

- a) Underwriting actors
- b) Loss Control
- c) Case Studies

7. POLICY ISSUES

- a) The Basic Insurance Policy
- b) Conditions and Definitions
- c) Subrogation and Recourse
- d) Exclusions

3

1. ERISA History

4

1. ERISA HISTORY

- Fiduciary liability exposure actually existed years before passage of the major law.
- Most commentators, however, track the history of fiduciary exposure to the passage of ERISA.

5

1. ERISA HISTORY

Gediman v.
Anheuser Busch,
Inc.



1962 Second
Circuit Decision

"The relationship between [Anheuser Busch] and its pension consultants, and Barsi, was plainly of the sort...where negligent communication, or failure to communicate with clarity, may give rise to liability..."

6

1. ERISA HISTORY

Don Malecki, in *Rough Notes*:

"[This case] is said to have prompted the need for employee benefits liability insurance. In this case an employer was held accountable to the estate of a former employee for providing incorrect information. *Employee benefits liability coverage appeared on the market shortly after that case was decided.*"

7

1. ERISA HISTORY

www.stude100.com



www.southbendtribune.com



8

1. ERISA HISTORY

- Employee Retirement Income Security Act (ERISA) passed in 1974.
- It is designed to assure that employees participating in pension and welfare plans would receive the benefits promised by such programs.

9

1. ERISA HISTORY

A. History

Clarke, Insurance Journal, Fiduciary Liability: The Most Misunderstood of Management Exposures (September 2004)

- From its origin as a carriage business in the mid-19th century, to tough financial times before World War II and enhanced engine production during the war, Studebaker generated a "family of workers"...

10

1. ERISA HISTORY

- ...who were assured by management they would be financially cared for in retirement.
- In 1963, after introducing the legendary Avanti, Studebaker was forced to close its doors.
- Unable to meet promised obligations to workers...

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1. ERISA HISTORY

- ...many were left financially challenged in retirement, and the situation was the focus of federal legislation [to] reform the U.S. pension and retirement system.
- Led by New York Republican Sen. Jacob Javits, **Congress passed** the comprehensive legislation known as **the Employee Retirement Income Security Act of 1974 (ERISA)**.
- Effective Jan. 1, 1975...

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1. ERISA HISTORY

- ERISA created numerous fiduciary liability exposures for employers that offered employee plans and
- In response, fiduciary liability insurance coverage became available on a widespread basis during the mid-1970s.

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2. The Scope of ERISA

14

2. SCOPE OF ERISA

According to ERISA provisions, persons working **within** business organizations that design, administer, and manage pension and employee benefit plans are **fiduciaries**.

15

2. SCOPE OF ERISA

Additionally, there are financial institutions (e.g., banks, insurance companies) and individuals (e.g., attorneys, actuaries, consultants, investment advisers) **who also perform fiduciary duties** in conjunction with the pension and employee benefit plans of client companies.

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A Brief Side Note: Terminology

What do we mean when we say
“employee benefits liability”?

IRMI.com defines it as: “Liability of an employer for an *error or omission in the administration of an employee benefit program*, such as failure to advise employees of benefit programs. Coverage of this exposure is *usually provided by endorsement to the general liability policy* but may also be provided by a fiduciary liability policy.”

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A Brief Side Note: Terminology

What do we mean when we say
“fiduciary liability”?

IRMI.com defines it as: “The responsibility on trustees, employers, fiduciaries, professional administrators, and the plan itself with respect to errors and omissions (E&O) in the administration of employee benefit programs as imposed by the Employee Retirement Income Security Act (ERISA).”

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2. SCOPE OF ERISA

- “Fiduciaries” are called that because of the relationship to the pension or benefit plan.
- “Fiduciary” comes from the Latin *fides*, meaning “faith” or “confidence.”
- Plan beneficiaries expect supervision and control over the plan’s policy, practice and performance.
- Fiduciary standards are the highest standards and involve both a duty of care and a duty of loyalty.

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2. SCOPE OF ERISA

- Under ERISA, employee benefits plans include:
 - Employee pension benefits plans, and
 - Employee welfare benefits plans.
- ***ERISA covers every employee benefit plan unless there is a specific exemption.***

20

2. SCOPE OF ERISA

Pension Benefit Plans--An employee pension benefit plan includes any plan, fund, or program established by an employer, union, or both that provides, by its express terms or as the result of surrounding circumstances, for a retirement income for employees or deferral of income for use after termination of employment. 29 USC § 1002(2)(a).

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2. SCOPE OF ERISA

Welfare Benefit Plans--An employee welfare plan is any plan fund or program established by an employer, union, or both that provides a wide variety of benefits including medical, sickness, accident, unemployment, vacation, disability, day care, scholarships, training programs and prepaid legal services. 29 USC §1002(1).

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2. SCOPE OF ERISA

Plans that Are Excluded from ERISA--Although the definitions of pension and welfare benefit plans are broad and somewhat confusing, the general rule is that any program for the delivery of employee benefits other than wages is presumed to be subject to the laws governing ERISA unless a specific exception can be found.

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2. SCOPE OF ERISA

- Benefit plans that are specifically excluded by ERISA include government plans, church plans, and plans designed to comply with state laws relating to worker's compensation, unemployment or disability insurance. 29 USC § 1003; 29 USC § 1101(a).
- In addition, certain unfunded excess benefits plans, benefits for sick leave, and vacation pay practices are excluded from ERISA. 29 USC § 1003(b); 29 USC § 1002(36).
- In the event that an employee benefit plan is found to be excluded from ERISA, state laws will control disposition of any employee claims.

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2. SCOPE OF ERISA

Advocate Health Care Network v. Stapleton

- June 5, 2017
- U.S. Supreme Court
- “[T]hree church-affiliated nonprofits that run hospitals and other healthcare facilities offer their employees defined-benefit pension plans.”

25

2. SCOPE OF ERISA

Advocate Health Care Network v. Stapleton

- “Those plans were established by the hospitals themselves, and are managed by internal employee-benefits committees.”
- “[The Courts below] held that a plan must be established by a church to qualify as a church plan.”

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2. SCOPE OF ERISA

Advocate Health Care Network v. Stapleton

- The Supreme Court holds that “A plan maintained by a principal-purpose organization qualifies as a ‘church plan,’ regardless of who established it.”

27

2. SCOPE OF ERISA

But back (just for a minute) to retirement plans...

- According to the U.S. Dept. of Labor:
- “ERISA covers both defined benefit plans and defined contribution plans...”

28

2. SCOPE OF ERISA

- "A defined benefit plan promises a specified monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement.
- "Or, more commonly, it may calculate a benefit through a plan formula that considers such factors as salary and service — for example, 1 percent of average salary for the last 5 years of employment for every year of service with an employer.

29

2. SCOPE OF ERISA

- "The benefits in most traditional defined benefit plans are protected, within certain limitations, by federal insurance provided through the Pension Benefit Guaranty Corporation (PBGC)."
- ***This can have a huge impact on underwriting and pricing.***

30

2. SCOPE OF ERISA

USDoL:

"A defined contribution plan, on the other hand, does not promise a specific amount of benefits at retirement. In these plans, the employee or the employer (or both) contribute to the employee's individual account under the plan, sometimes at a set rate, such as 5 percent of earnings annually....

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2. SCOPE OF ERISA

- "...These contributions generally are invested on the employee's behalf. The employee will ultimately receive the balance in their account, which is based on contributions plus or minus investment gains or losses.
- "The value of the account will fluctuate due to the changes in the value of the investments. Examples of defined contribution plans include **401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans.**"

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2. SCOPE OF ERISA

USDoL:

"A Profit Sharing Plan or Stock Bonus Plan is a defined contribution plan under which the plan may provide, or the employer may determine, annually, how much will be contributed to the plan (out of profits or otherwise). The plan contains a formula for allocating to each participant a portion of each annual contribution. A profit sharing plan or stock bonus plan include a 401(k) plan."

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2. SCOPE OF ERISA

USDoL:

- "A 401(k) Plan is a defined contribution plan that is a cash or deferred arrangement.
 - "Employees can elect to defer receiving a portion of their salary which is instead contributed on their behalf, before taxes, to the 401(k) plan. Sometimes the employer may match these contributions...
-

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2. SCOPE OF ERISA

USDOL:

- "...There are special rules governing the operation of a 401(k) plan. For example, there is a dollar limit on the amount an employee may elect to defer each year. An employer must advise employees of any limits that may apply.
- "Employees who participate in 401(k) plans assume responsibility for their retirement income by contributing part of their salary and, in many instances, by directing their own investments."

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2. SCOPE OF ERISA

USDOL:

- An Employee Stock Ownership Plan (ESOP) is a form of defined contribution plan in which the investments are primarily in employer stock.
- A Money Purchase Pension Plan is a plan that requires fixed annual contributions from the employer to the employee's individual account. Because a money purchase pension plan requires these regular contributions, the plan is subject to certain funding and other rules.

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2. SCOPE OF ERISA

For ERISA to apply, it has to be a "plan."

USDoL – The essential elements of a plan are:

1. A written plan that describes the benefit structure and guides day-to-day operations;

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2. SCOPE OF ERISA

2. A trust fund to hold the plan's assets
3. A recordkeeping system to track the flow of monies going to and from the retirement plan; and
4. Documents to provide plan information to employees participating in the plan and to the government.

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2. SCOPE OF ERISA

Who is a “fiduciary?” Anybody who...

1. exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

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2. SCOPE OF ERISA

Who is a “fiduciary?” Anybody who...

2. renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, OR

40

2. SCOPE OF ERISA

Who is a “fiduciary?” Anybody who...

3. has any discretionary authority or discretionary responsibility in the administration of such plan.

29 U.S.C. § 1002(21)(A).

41

2. SCOPE OF ERISA

Who is a “fiduciary?” Anybody who...

- Has the money in hand?
- Including an agent?
- *Chao v. Day* says, “yes.”

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3. Fiduciary Duties under ERISA

43

3. FIDUCIARY DUTIES AND EXPOSURES

First, the basics:

USDoL: Fiduciaries must be:

1. Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;

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3. FIDUCIARY DUTIES AND EXPOSURES

Fiduciaries must be:

2. Carrying out their duties prudently;
3. Following the plan documents (unless inconsistent with ERISA);
4. Diversifying plan investments; and
5. Paying only reasonable plan expenses.

45

3. FIDUCIARY DUTIES AND EXPOSURES

Now, the advanced stuff – how do fiduciaries do that?

- John K. Barry 2006 compilation:
 - Automatic Enrollment
 - Mapping
 - Lifecycle Funds

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3. FIDUCIARY DUTIES AND EXPOSURES

According to Barry, liability for new products will reflect the rules of the old:

“Liability for mistake is rare; liability for an interested transaction is automatic.”

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3. FIDUCIARY DUTIES AND EXPOSURES

Barry says that automatic enrollment is “prudent” because:

- IRS Ruling & Regulation
- Department of Labor Advisory Opinions
- Trends in Social Research
- Retirement Plan Statistics

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3. FIDUCIARY DUTIES AND EXPOSURES

- **Defined:** Direction of money to an investment option selected by the Trustee.
- **Mapping:** Trustee selection when fund is closed.
- **Default:** All other circumstances such as automatic enrollment.

49

3. FIDUCIARY DUTIES AND EXPOSURES

The Concept Is...

- Modern Pension Trust relies on Individual Choice - a shift of responsibility from Trustee to Employee.
- This inherently restricts Trustee liability.

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3. FIDUCIARY DUTIES AND EXPOSURES

However...

- Mapping organizes choice but does not replace it.
- Mapping is supported by the tradition of the Trustee's accounts.
- Mapping is supported by Trustee obligation to monitor and replace available choices.

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3. FIDUCIARY DUTIES AND EXPOSURES

Also...

- Liability Determined by Action and Choice.
- Trustee's account inherently limits liability for automatic enrollment choices.
- Duty of competent execution for movement of existing balances.
- The Exclusive Benefit Rule and recent litigation – liability for self-interested choice of default option.

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3. FIDUCIARY DUTIES AND EXPOSURES

- Defined: A fund that changes its investment allocation and strategy to correspond with the age of the investor.
- Are Trustee responsibilities different for lifecycle funds?
- Alteration of Mapping and Default Practices through use of lifecycle funds as evidence of different responsibilities.

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3. FIDUCIARY DUTIES AND EXPOSURES

Trustee Recommendation of Lifecycle Funds.

- The duty of fair and accurate recommendations.
- The duty of competent execution.
- The risks of the stock market.
- The risks of the exclusive benefit rule.

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4. Recent Developments in ERISA Liability

55

4. CHANGES IN ERISA

Pension Protection Act of 2006

- Establishes safe harbor for automatic enrollments
- But may mandate matching contributions in plans.
- Also impacts true pension plans.

56

4. CHANGES IN ERISA

According to Torillo & Associates, CPAs:

“With the change in administrations, there has been a lull in activity, but significant changes are expected and the effects could be significant to benefit plan sponsors.”

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4. CHANGES IN ERISA

- “The fiduciary rule of the Department of Labor (“DOL”) has been delayed but whether it will be scrapped, modified or put in place in its current form is still unknown.”

58

4. CHANGES IN ERISA

"The Conflict of Interest Rule which was scheduled to go into effect commencing April 10, 2017 concerning fiduciary and investment advice for retirees, has been delayed until June 9, 2017. However, since the rule is a final regulation, it is much harder to undo."

59

4. CHANGES IN ERISA

"The AICPA Auditing Standards Board recently issued on April 20, 2017, its Exposure Draft on EBP Reporting which is expected to have a major impact on auditors and plan sponsors, as compliance matters would be reported in the auditors' report, among other significant modifications."

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5. ERISA Claims Data

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Why Do We Care?

Chubb 2013 Private Company Risk Survey

- "22% of private company decision makers are concerned about lawsuits filed by an employee or retiree over benefits issues"
- "28% plan to reduce or eliminate some employee benefits in the year ahead – increasing their fiduciary risk."

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Why Do We Care?

Chubb 2013 Private Company Risk Survey

- Despite their concern, decision makers at private companies purchase fiduciary liability insurance only 26% of the time
- 51% believe the exposure is covered by their general liability policy and 21% don't know if it is

63

Why Do We Care?

Travelers / Towers Perrin says

- The average settlement of an ERISA case is \$994,000
- The average defense costs are \$365,000
- 69% of ERISA litigation is decided in favor of plaintiffs

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5. CLAIMS DATA

- Tillinghast-Towers Perrin 2000 Fiduciary Liability Survey
- 483 U.S. survey participants, all major industrial groups were represented.
- Median asset size of the participants was approximately \$600 million (196 had more than \$1 billion in assets).

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5. CLAIMS DATA

Claims Experience

- Approximately 12 percent of U.S. survey participants reported one or more claims against the fiduciaries of their employee benefit plans over a 10-year experience period.
- The frequency of fiduciary liability claims has doubled since the previous survey was conducted in 1993, with most of the increase reported by organizations that sponsor very large benefit plans.

66

5. CLAIMS DATA

According to IRMI:

“Organizations with a history of merger, acquisition, or divestiture activity and public companies were more than twice as likely to experience a claim against their fiduciaries of their employee benefit plans...”

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5. CLAIMS DATA

- “...It was noted that ownership and merger activity are correlated with size, since larger organizations are more likely to be publicly traded and more likely to merge with or acquire another firm.
- “Firms in the transportation and communications industry and durable good manufacturers reported the highest claim incidence of the U.S. business groups analyzed in this survey.”

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5. CLAIMS DATA

Claim Causes

- Benefit disputes
 - 47 % of fiduciary liability claims AND
 - More than 90% of employee benefit plan participants.
- Reduction of benefits and miscommunication are tied for second leading cause

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5. CLAIMS DATA

Claim Issue	% of Claims
Benefits disputes (including denial)	47
Civil Rights (including discrimination)	9
Reduction of plan benefits	9
Communication of plan benefits	7
Misleading representations	5
Administrative Error	5
Imprudent Investments	4
Other	13

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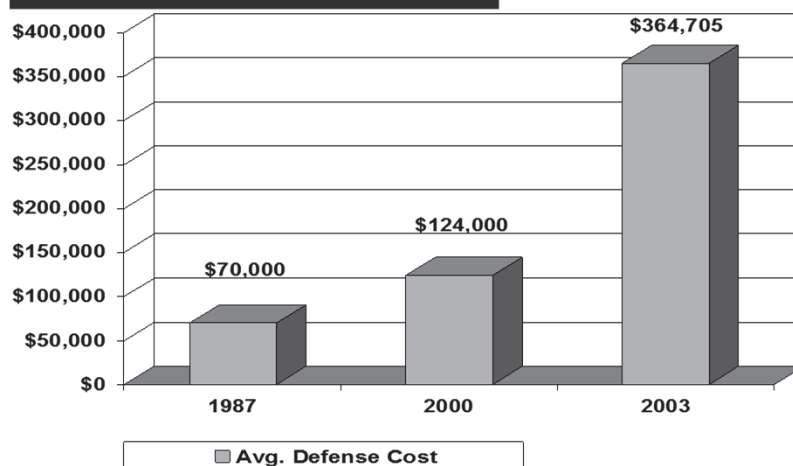
5. CLAIMS DATA

According to IRMI:

- "Of the 143 claims reported as closed by U.S. participants, 13 were dropped by the claimant, and the majority of those not dropped were closed without an indemnity payment being made. In the case of closed claims where an indemnity payment was made, the indemnity paid (court award or settlement) to the claimant by U.S. survey participants averaged an all-time high of \$1.2 million, up 36 percent from \$0.9 million in the 1993 survey."

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5. CLAIMS DATA



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5. CLAIMS DATA

Causes of Loss

According to Morgan Lewis, stock drop cases are substantial:

- 76 pending in 2005
- 14 settled; 11 dismissed
- 51 active
- Average settlement in the 14 was \$33 million; only 5 were less than \$10 million

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5. CLAIMS DATA

Causes of Loss

- Morgan Lewis reports that carriers are looking most strongly at the underwriting of account plans that use company stock as investments
- Also, look at the underwriting when there is
 - Corporate fraud
 - Earnings restatement
 - Industry downturn
 - Business plan failure

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5. CLAIMS DATA

Causes of Loss

Who are potential defendants? Morgan Lewis reports:

- Named fiduciaries
- Fiduciary committees
- Board members
- Recordkeepers and outside service providers (CPAs, consultants, etc.)

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5. CLAIMS DATA

Causes of Loss

- Prudence
- Investment in the company plan should not have occurred because of business circumstances adversely affecting the company;
- The trustees / fiduciaries breached their fiduciary duty by allowing company investment.

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5. CLAIMS DATA

Causes of Loss

- The fiduciaries knew of adverse circumstances, but permitted the self-investment.
- Claim for breach of fiduciary duty for failing to warn plan participants that there were risks to the investment
- The fiduciary duty involves an affirmative duty to speak, not just a negative duty not to mislead

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5. CLAIMS DATA

Causes of Loss

- ERISA prevents any clauses that would relieve a fiduciary from the obligations imposed by the Act.
- Fiduciaries cannot be indemnified by the plan (but third parties or employers can)
- Documents need to be checked carefully for compliance

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5. CLAIMS DATA

Causes of Loss

- Indemnification can cover negligence and gross negligence, but should not cover willful or intentional misconduct.
- Also can be an issue of state law

79

6. Underwriting Fiduciary Liability

80

6. UNDERWRITING

- No rating bureau
- No shared loss information
- Pricing is subjective and dependent upon:
 - The \$\$\$ in the plan
 - The number of people in the plan

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6. UNDERWRITING

A. Underwriting Factors

1. Funding adequacy
2. Nature of plan investments
3. Single employer versus multiemployer plans
4. Types of covered plans
5. Legal counsel's opinion
6. Profile of covered fiduciaries and directors and officers of the organization

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6. UNDERWRITING

A. Underwriting Factors

1. Funding Adequacy

- Will there be enough dollars to cover future liabilities?
- Do we need an actuarial opinion?

83

6. UNDERWRITING

A. Underwriting Factors

2. Nature of Plan Investments

- Diversification
- Assumed rate of return
- Overall risk
- Maturity structure
- Speculative investments?

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6. UNDERWRITING

A. Underwriting Factors

3. Single Employer versus Multiemployer Plans

- More assets
- More complexity
- Claim frequency and severity are higher
- Premium rates are higher

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6. UNDERWRITING

A. Underwriting Factors

4. Types of Covered Plans

- Defined benefit versus defined contribution
- In defined benefit, the sponsoring company assumes the financial risk
- Putting pressure on the investments to perform
- But defined contribution have risks, too

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6. UNDERWRITING

A. Underwriting Factors

5. Compliance Opinions

- Usually legal counsel
- Could be actuarial / consultant
- Clean opinion history may even generate a credit

6. Covered Fiduciaries: History, knowledge, experience, loss control

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6. UNDERWRITING

B. Fiduciary Liability Loss Control – The consequences of not having it:

- Absorption of deductibles or retentions
 - Increased premiums in future policies owing to prior adverse loss experience
 - Possible cancellation or nonrenewal by the incumbent insurer given poor claim experience
-

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6. UNDERWRITING

B. Fiduciary Liability Loss Control – The consequences of not having it:

- Loss of management time required to defend claims
- Loss of corporate reputation
- Negative effect upon employee-employer relations

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

- Conduct periodic, independent ERISA compliance audits
- Use "experts" to design benefit plans
- Fund plans adequately

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

- Invest plan assets prudently
- Avoid conflicts of interest
- Avoid prohibited transactions
- Report and disclose plan information as required

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

Fiduciaries should:

- Meet regularly
- Keep minutes
- Be very familiar with plan documents
- Document all decisions
- Develop and follow a written investment policy
- Confirm compliance with that investment policy

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

- The “appointers” of fiduciaries have obligations, too:
- Being prudent in who to appoint
- Monitoring the performance of the appointed fiduciary
- The Department of Labor has supported lawsuits against the “appointers” in some cases, e.g., Enron.

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

- “Appointers” should
- Evaluate candidates carefully
- Document the selection process
- Match qualifications to duties
- Train the appointed individuals
- Make sure the appointed trustees are active and involved in reality.

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

- Appointers should:
- Meet with the fiduciaries regularly
- Review:
 - Performance
 - Fees
 - Costs
 - Document meetings
- Replace non-performers
- Review fiduciary coverage

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6. UNDERWRITING

B. Fiduciary Liability Loss Control

According to IRMI:

- "One means of providing a layer of insulation from liability for imprudent investment decisions is for an insured to retain an adviser who is registered under the Investment Company Act of 1940.
- "This will provide an insured organization's fiduciaries with a layer of insulation should allegations be made that fiduciaries were negligent in selecting an investment adviser. This protection arises from the fact that corporate fiduciaries cannot be held liable for an investment manager's imprudent decisions. They can only be found liable for negligently selecting the investment manager."

96

7. Fiduciary Liability Coverage Issues

97

A Prefatory Note: Bond vs. Insurance

Faulk & Winkler, LLC says:

- “Each plan official must be bonded in an amount equal to at least 10% of the amount of funds he or she handled in the previous year, with a minimum bond requirement of \$1,000.”

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A Prefatory Note: Bond vs. Insurance

Faulk & Winkler, LLC says:

- “Generally, the maximum bond amount that can be required for any plan official is \$500,000 per plan.
- “The maximum required bond amount is \$1 million for officials of plans that hold employer securities.”

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A Prefatory Note: Bond vs. Insurance

Faulk & Winkler, LLC says:

“[Y]our plan’s fidelity bond insures against losses due to fraud or dishonesty on the part of persons handling plan funds. Fiduciary liability **insurance** protects against claims for losses sustained because of a **breach of fiduciary duty** or because of administrative errors.”

100

7. POLICY ISSUES

- Insuring Clause usually contains “wrongful act” definition, i.e., “...arising out of a ‘wrongful act’...”
Wrongful act includes:
 - Any breach of fiduciary duty specified in the Employee Retirement Income Security Act (ERISA) of 1974

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7. POLICY ISSUES

- **Wrongful act includes:**
 - Liability under common and statutory law in conjunction with management of employee pension and welfare plans not covered by ERISA
 - Any error or omission involving the administration of employee benefit plans
 - Any claim made against a covered fiduciary solely by reason of that person's status as a fiduciary

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7. POLICY ISSUES

According to IRMI,

“Not all employee benefit plans are governed by ERISA (e.g., plans of federal and state governments and other so-called nonqualified plans...). As a result, fiduciary policies also cover the legal liability of fiduciaries that stems from common or statutory law other than ERISA. Accordingly, this provision would apply to and cover the liability of fiduciaries for the administration of ‘nonqualified’ plans not subject to ERISA.”

103

7. POLICY ISSUES

A. The Basic Insurance Policy

- Most fiduciary policies will also provide employee benefits liability coverage, for administrative errors such as:
 - failure to enroll an employee in a company health plan
 - providing an incorrect monthly retirement pension amount when questioned by an employee.

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7. POLICY ISSUES

A. The Basic Insurance Policy

- Who is an insured? Usually,
 - any Natural Person Insured;
 - any Plan(s);
 - the Sponsor Organization; and
 - any other person or entity in his, her or its capacity as a Fiduciary, Administrator or trustee of a Plan and included in the Definition of Insured by specific written endorsement attached to this policy.

Source: American International Companies, Employee Benefit Plan Fiduciary Liability Insurance

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7. POLICY ISSUES

A. The Basic Insurance Policy

- **Consider an endorsement for omnibus "Insured" Wording**
- "... and any employee welfare or pension benefit plans maintained or administered by any insured or sponsor organization and its subsidiaries as now exist or may hereafter be constituted, acquired or formed."

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7. POLICY ISSUES

A. The Basic Insurance Policy

- **Important consideration: Liability for Acts of Third Parties...**
 - Look for insuring clause language for coverage for "... any person for whose Wrongful Acts the Insured is legally responsible. ..."
 - This is coverage for delegated responsibilities...

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7. POLICY ISSUES

A. The Basic Insurance Policy

- **...but only for Vicarious Liability**
 - Outsiders (accountants, attorneys, consultants, etc.) are not insureds
 - But the coverage for "negligent hire" or "negligent appointment" should apply.
 - Coordination of coverage with professional is advisable.

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7. POLICY ISSUES

A. The Basic Insurance Policy

- Fiduciary liability is written on a claims made, rather than occurrence, basis.
- Look for variations between a “pure” claims made policy (with reasonable notification to the company)...
- ...and a claims made with a 30 or 60 day post-policy reporting window (which conditions the coverage on the claim AND reportage within 30 or 60 days of expiration).

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7. POLICY ISSUES

A. The Basic Insurance Policy

- Don’t confuse the “window” with a true “extended reporting period,” i.e., the “tail coverage.”
- An ERP does not create a new policy period – it merely extends the time for reporting claims under the last policy.
- Retro dates and aggregate limits for that last policy still apply.

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7. POLICY ISSUES

A. The Basic Insurance Policy

- ERP Issues to Consider
- Is the ERP available after insurer and insured initiated cancellation or non-renewal?
- Is there a time limit on electing an ERP?
- Is there a differing requirement for notice of a potential claim under an ERP?
- What is time time limit for the ERP? 1, 3 or other years?

111

7. POLICY ISSUES

A. The Basic Insurance Policy

- Most plans will cover new plans automatically, for at least 60 to 90 days after a merger or acquisition
- But coverage for the new plan on a permanent basis is not guaranteed.
- Usually, if the acquired plan's assets are more than 10 to 25 percent of the existing plan's, the 60 to 90 day limit is applicable...
- ...and the coverage will only exist for events occurring prior to acquisition.

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7. POLICY ISSUES

A. The Basic Insurance Policy

- Also, look for coverage issues for newly created plans or terminated plans.
- Look for a 10 to 25% threshold (again)
- Notice to carrier necessary
- Otherwise, new underwriting and new premium
- If there is a plan termination, review the policy to determine whether there is a coverage limitation. Generally speaking, there is no coverage related to terminated plans for events arising after plan termination (or, of course, claims made after the expiration of the policy in force at the time of termination).

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7. POLICY ISSUES

B. Conditions and Definitions

- The definition of "Loss" usually contains some substantial limitations:
- 'Loss' means Defense Costs and any money the Insured is legally obligated to pay as damages or in settlement but, 'Loss' shall not include:

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7. POLICY ISSUES

B. Conditions and Definitions

- 'Loss' shall not include...
- 1. criminal or civil fines or penalties imposed by law except:
 - a. civil penalties of up to five percent (5%) imposed pursuant to Section 502 (i) of ERISA and for inadvertent violation of Section 406 of ERISA; and
 - b. civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty;

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7. POLICY ISSUES

B. Conditions and Definitions

- 'Loss' shall not include...
- 2. taxes or matters deemed uninsurable under the law to which this Policy shall be construed;
- 3. punitive or exemplary damages or the multiple portion of any damages award;

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7. POLICY ISSUES

B. Conditions and Definitions

- 'Loss' shall not include...
- 4. any benefits or contributions deemed to be due (or become due) under the terms of any Plan or that portion of any settlement or award in an amount equal to such benefits, unless and to the extent that the recovery of such benefits is payable as a personal obligation of the Insured who is a natural person.

Source: Philadelphia Insurance Companies

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7. POLICY ISSUES

B. Conditions and Definitions

- **Non-cumulation of Limits Provisions**
- "All Claims arising out of the same Wrongful Act or Interrelated Wrongful Acts of one or more of the Insureds shall be considered a single Claim. Such Claims shall be deemed first made when the first such Claim is made, or deemed to be made..."

Source: Twin City Fire Insurance

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7. POLICY ISSUES

B. Conditions and Definitions

- **Per-Wrongful Act Deductibles**
- "Losses based upon or arising out of the same Wrongful Act or Related Wrongful Acts of one or more of the Insureds shall be considered a single Loss incurred as a result of a single Claim ... The applicable Retention shall apply only once to each such single Claim."

Source: Gulf Insurance

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7. POLICY ISSUES

B. Conditions and Definitions

- Prohibitions against making voluntary settlements
- Cooperation clauses
- Notification procedures in the event of a claim
- Requirements for insureds who sue insurers
- Nontransferability of coverage provisions

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7. POLICY ISSUES

B. Conditions and Definitions

- Consent to Settle and the Settlement “Hammer”
- The Insurer may, with the consent of the Named Company, settle any claim for any monetary amount that the Insurer deems reasonable. If the Named Company withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Defense Costs incurred as of the date such settlement was proposed in writing by the Insurer to the Named Company.

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7. POLICY ISSUES

B. Conditions and Definitions

- **Severability**
 - Included in virtually all policies
 - a/k/a “Non-imputation” clauses
 - Impacts application as well as coverage questions
 - Also solidifies limits issues

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7. POLICY ISSUES

C. Subrogation and Recourse

- Fiduciary policies, unlike other forms of professional liability insurance, do permit subrogation against an insured.
- If the plan insures the fiduciary, ERISA permits subrogation against that fiduciary
- If the company insures the fiduciary as a corporate (not plan) expense, then there is no subrogation against the insured.

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7. POLICY ISSUES

C. Subrogation and Recourse

- According to IRMI: “[For a] specified additional premium, the insurer will waive its right of recourse. This is favorable for the insured because it prevents an insurer from subrogating against an insured whose nonwillful error causes a loss. The additional premium is generally less than \$200 per covered fiduciary...[Unless the premium is paid] from plan assets, insurers will not subrogate against insureds, thus making waiver of recourse endorsements unnecessary....”

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7. POLICY ISSUES

D. Exclusions

- **Contractual Liability** Some fiduciary liability policies exclude coverage in situations where an insured has held a third party harmless
- **Failure To Collect Contributions Owed to an Employee Benefit Plan** The majority of the policies exclude coverage for claims caused by a fiduciary's failure to collect contributions owed to a pension or benefit plan. (The exposure arises in multiemployer, union-sponsored plans.)

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7. POLICY ISSUES

D. Exclusions

- **Benefits Payable to a Beneficiary.** Most policies preclude coverage for payment of benefits owed to a claimant if monies are available within the plan to make such a payment (although the policies do cover defense costs for such claims). For example, assume that as a result of a lawsuit or settlement, it is determined that a claimant is entitled to specific amounts of money held within an insured's pension plan. If such monies can be paid from the plan, it is not the intent of a fiduciary policy to make such payment, because this would in effect be covering a business risk.

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7. POLICY ISSUES

D. Exclusions

- Dishonesty.
 - Usually requires “a judgment” or “final adjudication” prior to invocation
 - Compare duty to defend to duty to indemnify
 - Practical effect is “virtually nil” according to IRMI

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7. POLICY ISSUES

D. Exclusions

- **Personal Profit Exclusion** “The Insurer shall not be liable for Loss on account of any Claim made against any Insured ... based upon, arising out of, or attributable to such Insured gaining in fact any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.
Source: St. Paul Insurance Company
- **Failure To Purchase or Maintain Insurance or Bonds** “The Insurer shall not be liable to pay any Loss under this Coverage ... in connection with any Claim ... based upon, directly or indirectly arising out of or in any way involving the failure ... to procure or maintain insurance or bonds on Plan assets.”

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Section 6

Commercial Property Claims Issues



COMMERCIAL PROPERTY CLAIMS ISSUES

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Each claim issue will be discussed without the benefit of the policy language in the outline. After discussion and questions, we will look up the answer to each question in the policy forms and endorsements located in the exhibits section of the outline.

Claim # 1: Your insured has a strip mall which is used by many seasonal businesses. As a result, your insured rents stalls in the mall for five months at high rates including a percentage of the gross receipts as reported to the State Department of Revenue with the sales tax payments. The convenience store that occupies 20% of the building remains open year-round but the rest of the space is not rented for seven months. How does the vacancy definition apply?

Claim # 2: An insured leases his four-story building to two tenants. One tenant occupies three floors while the other occupies only one. The tenant that occupies three floors has notified the landlord that they intend to terminate their lease at the end of the term. They are building their own building. Does the landlord have any concerns with regard to the vacancy condition?

Causes of Loss	Property vacant 60 days or less, loss paid (subject to all other policy terms and conditions)	Property vacant more than 60 days, loss paid (subject to all other policy terms and conditions)
Vandalism, Sprinkler leakage, Building glass breakage, Water damage, Theft or attempted theft	Full loss is paid	Nothing is paid
Any other covered Cause of Loss other than Vandalism, Sprinkler leakage, Building glass breakage, Water damage, Theft or attempted theft	Full loss is paid	85% of loss is paid

Note: A building under construction is **not** considered vacant.

Are there available Endorsements to address the Vacancy issue outlined above?

Vacancy Permit – CP 04 50 07 88

Used to waive the Vacancy Condition, allowing coverage to continue for a specified period when a building is deemed vacant beyond 60 consecutive days. Can still exclude vandalism and/or sprinkler leakage.

Vacancy Changes – CP 04 60 10 12

Used to change the 31% minimum use requirement by indicating the new percentage in the Schedule. All other terms of the Vacancy Condition remain unchanged.

Claim # 3 There is a large furniture manufacturer located in your city. The owner has asked your agency to give them a quote when their insurance comes up for renewal next year. They own a 25,000-square foot concrete building valued at \$600,000. In addition, his inventory is valued at \$1,000,000. The owner has expressed a concern over a loss that a competitor of his had in 2016. His competitor suffered major damage to his building and inventory in a hurricane. The insurance company paid for the damage, however, the insured was left holding a \$50,000 bill for debris removal. He wants you to see that this never happens to him.

How does the CPP cover Debris Removal?

How do you calculate the amount payable for Debris Removal in the CPP?

If this is not sufficient, how can this exposure be covered?

Claim # 4: Hot Stuff Welding leases a building from Mr. Jones. One of the things that made the building so attractive to Hot Stuff Welding is that the building contained an arc welding unit. Hot Stuff Welding has also leased \$140,000 in computers, copy machines and telephone system. The building suffered a fire loss and the above property was destroyed. The Lease states:

Lessor shall pay property insurance premiums on the leased premises.

Lessee will provide insurance on any personal property that the Lessee moves to the leased premises.

Lessee agrees to replace leased personal property if damaged or destroyed. More specifically, Lessee agrees to pay Lessor \$40,000 in the event of destruction of the arc welding unit.

How does the unendorsed Building and Personal Property Coverage form define the above property?

Let's look at the policy...

- b. Your Business Personal Property...**located in or on the building...in the open (or in a vehicle)...within 100 feet of the premises described in the Declarations, whichever distance is greater:
- (1) Furniture and fixtures;
 - (2) Machinery and equipment;
 - (3) "Stock"; (defined under **H.**, page 15) merchandise, raw materials, work in-process, finished goods, packing & shipping materials; also, note Valuation 7.c., page 12 - if sold but not delivered, value at selling price less discounts and expenses the named insured would otherwise have had.
 - (4) All other personal property owned by you and used in your business;
 - (5) Labor, materials or services furnished or arranged by you on personal property of others;
 - (6) Your use interest (lessee has use interest; lessor has ownership interest) as tenant in improvements and betterments...
 - (7) Leased personal property with a **contractual** responsibility to insure...

Excerpt from CP 00 10 10 12 page 1 of 16

What about valuation...**3. Replacement Cost**

- a. Replacement cost (without deduction for depreciation) replaces ACV...
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;...

[Note: this is lower case "property of others" which means all property of others not just Personal Property of Others. Most adjust losses as Personal Property of Others. If there is a loss payee property remains PPO. If the owner is named as additional insured, their property now becomes BPP, since it is property of an insured.]

Excerpt from CP 00 10 10 12 Page 15 of 16

What if the property in question is Personal Property...

Leased Property - CP 14 60, used to insure personal property leased to insured as insured's business personal property. Property covered on replacement cost basis or on agreed value basis. Leased property where there is a *contractual responsibility to insure* is within the BPP definition of the CPP. Leased property where there is no contractual responsibility to insure is PPO. Leased property under a written contract without an insurance requirement becomes BPP if the CP 14 60 is used. Regardless of the type of property for coverage purpose, the Replacement Cost Optional Coverage says that personal property of others is always paid on an actual cash value basis.

LEASE SAYS	TYPE OF COVERED PROPERTY	VALUATION	NEED CP 14 60
Lessee will insure the leased property.	BPP	ACV/RC	Not Needed*
Lessee will insure the leased property in an amount sufficient to replace the leased property.	BPP	ACV/RC	Not Needed*
Lessee will replace the leased property if damaged or destroyed.	PPO	ACV/RC	Not Needed*
Lessee will insure the leased property for a certain sum.	BPP	ACV/RC	To write an agreed value

* Assumes the underwriter will allow Replacement Cost coverage to be activated on the Declarations. If not, CP 14 60 may still be needed.

What if the property in question is Real Property...

The Tenants Improvements and Betterments issue:

What if the lease contains language like this?

Lessor further agrees to insure Lessee's improvements, additions, alterations, and betterments. In the event of loss or damage to Lessee's improvements, additions, alterations, and betterments and if Lessor can rebuild within 180 days, Lessor will replace said improvements, additions, alterations, and betterments to the extent that insurance is available. If improvements, additions, alterations, and betterments are not replaced, Lessor will pay Lessee a proportion of Lessee's original cost based upon the remaining lease period as a percentage of the full lease period.

Fire totally destroys the building and Lessor notifies Lessee that Lessor does not plan to rebuild. Lessor is selling the land. Does Lessee have any recovery for his Tenants Improvements and Betterments?

What if the lease were silent on the Tenants Improvements and Betterments? Who insures and how?

DAMAGE TO TENANTS IMPROVEMENTS AND BETTERMENTS	VALUE FOR PAYMENT UNDER TENANT'S CPP
Tenant repairs	ACV (RC if option is activated)
Landlord repairs	Nothing paid
Cannot repair or rebuild	Proportional on original cost
NOTE: If no damage to TIB and lease cancels CPP pays nothing. Need Leasehold Interest.	

A little more fun found in the lease...

If by fire or other casualty the Premises are totally damaged or destroyed, or the Building containing the Premises is partially damaged or destroyed to the extent of twenty-five per cent (25%) or more of the replacement cost thereof, or the damage to the Building otherwise exceeds the amount of \$10,000 (even though the Premises may not be damaged), Landlord will have the option of terminating this Lease or any renewal thereof by serving written notice upon Tenant within one hundred and eighty (180) days from the date of the casualty and any prepaid Rent or Additional Rent will be prorated as of the date of destruction and the unearned portion of such Rent will be refunded to Tenant without interest.

Four years into the lease, Lessor sends Lessee a letter stating that the windstorm damage to the roof would cost \$47,590 to repair. The letter further states that Lessee has six months to find another location as the letter is the formal notice of cancellation under the terms of the lease (above). Lessee discovers that a comparable location will cost 20% more than his current lease.

Does Lessee have any insurance to protect him from the higher rents at the new location?

What about Lessee's investment in TIB? Leasehold Interest Coverage Form
CP 00 60 06 95

A. COVERAGE

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

1. Covered Leasehold Interest

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

- a. Tenants’ Lease Interest**, meaning the difference between the:
 - (1) Rent you pay at the described premises; and
 - (2) Rental value of the described premises that you lease.
- b. ...**
- c. Improvements and Betterments**, meaning the unamortized portion of payments made by you for improvements and betterments. It does not include the value of improvements and betterments recoverable under any other insurance, but only to the extent of such other insurance.

Excerpt from CP 00 60 06 95 Page 1 of 4

Damage must occur to property at the premises described in the declarations.

What happens to Lessee if he was insured under a BOP? Rents? TIB?

If you have never written a Leasehold Interest Coverage Form and you decide to give it a try, here is a Emeril Lagasse (Cookbook) for writing Leasehold Coverage.

You have to establish several things to write the coverage, because once the policy is written it operates like Valued Coverage. All of the numbers used to adjust the loss are agreed to before the policy is written.

1. Need to produce the current lease to establish the current lease payment.
2. Need to produce a comparable lease or an appraisal by a real estate professional that establishes the cost for this or similar tenancy at today's rental rates.
3. Need to agree to the interest rate to be used to discount the value of money.
4. Need to prove the investment in the tenants improvements and betterments, prepaid rents, or bonus payments.

All of this is agreed to at the time the policy is written, if there is a loss, use the numbers on the endorsement to the policy that memorializes all this stuff.

Let's go to the numbers... **ASSUME: Year 1 of policy.**

Present rent of \$10.00 per square foot each year on 7,500 square feet. Cost to relocate in a satisfactory location would result in a rental value of \$16.00 per square foot each year. There are 57 months remaining on lease as of the effective date of policy. The insured spent \$90,000 on Tenants Improvements and Betterments at the inception of the lease. Original lease 10 years.

Policy limit will be present value of gross leasehold interest plus unamortized value of the TIB.

$$\begin{array}{rcl} 7,500 \times \$10 & = & \$75,000 \text{ per year} \\ 7,500 \times \$16 & = & \$120,000 \text{ per year} \end{array} \qquad \begin{array}{r} \$6,250 \text{ per month} \\ \$10,000 \text{ per month} \end{array}$$

The gross leasehold interest is \$3,750 (\$10,000-\$6,250).

Assuming a present value of money at 6% the gross leasehold interest is:

$$\$3,750 \times 49.6711 \text{ (PVAF 6\% @57 months)} = \$186,267$$

Now let's look at the Tenants Improvements and Betterments...

$$\$90,000 \times 57/120 = \$42,750 \text{ unamortized interest in TIB's.}$$

$$\$186,267 \text{ (interest in lease)} + \$42,750 \text{ (interest in TIB's)} = \$229,017$$

Now let's look at how to arrive at the correct premium...

Net leasehold interest for the policy year:

$$\begin{array}{rcl} \$3,750 \times 49.6711 \text{ (PVAF 6\%-57 months)} & = & \$186,267 \\ \$3,750 \times 40.3249 \text{ (PVAF 6\%-45 months)} & = & \$151,218 \\ \hline & & \$337,485/2 = \$168,743 \end{array}$$

Average TIB for the policy year:

$$\begin{array}{rcl} \$90,000 \times 57/120 & = & \$42,750 \\ \$90,000 \times 45/120 & = & \$33,750 \\ \hline & & \$76,500/2 = \$38,250 \\ \text{Premium basis is } \$168,743 + \$38,250 & & = \$206,993 \end{array}$$

Writing this coverage on the basis of the premium will leave the client underinsured in the first six months of the policy period. Remember the limit and the premium basis are different.

Let's go a little further... Same risk year 2 (renewal).

Present rent of \$10.00 per square foot each year on 7,500 square feet. Cost to relocate in a satisfactory location would result in a rental value of \$16.00 per square foot each year. (In year 2) 45 months are remaining on the lease as of the effective date of policy. The insured spent \$90,000 on Tenants Improvements and Betterments at inception of the lease. Original lease term was for 10 years.

Assuming the present value of money at 6% the value of the gross leasehold interest is:

$$\text{\$3750} \times 40.3249 \text{ (PVAF 6\% @45 months)} = \text{\$151,218}$$

The interest in Tenants Improvements and Betterments is:

$$\text{\$90,000} \times 45/120 = \text{\$33,750 unamortized TIB}$$

$$\text{\$151,218 (interest in lease} + \text{\$33,750 (interest in TIB's)} = \text{\$184,968.}$$

The premium will be based as follows:

Net leasehold interest for the policy year:

$$\text{\$3750} \times 40.3249 \text{ (PVAF 6\%-45 months)} = \text{\$151,218}$$

$$\text{\$3750} \times 30.4178 \text{ (PVAF 6\%-33 months)} = \underline{\text{\$114,067}}$$

$$\text{\$265,285/2} = \text{\$132,643}$$

Average TIB for the policy year:

$$\text{\$90,000} \times 45/120 = \text{\$33,750}$$

$$\text{\$90,000} \times 33/120 = \underline{\text{\$24,750}}$$

$$\text{\$58,500/2} = \text{\$ 29,250}$$

$$\text{Premium basis is: } \text{\$132,643} + \text{\$29,250} = \text{\$161,893}$$

Ok, just a little further ... Same risk year 2. Comparable rents \$17.00 per square foot.

$$\begin{array}{rclcl} \$17.00 & \times & 7500 & = & \$127,500/12 = \\ & & & & \$10,625 \text{ per month} \\ & & & & \underline{\$ 6,250} \text{ current rent} \\ & & & & \$ 4,375 \text{ leasehold interest} \end{array}$$

Assuming the present value of money at 6% the value of the gross leasehold interest is:

$$\$4375 \times 40.3249 \text{ (PVAF 6\%-45 months)} = \$176,421$$

$$\$90,000 \times 45/120 = \$33,750 \text{ unamortized TIB}$$

$$\mathbf{\$176,421 \text{ (interest in lease)} + \$33,750 \text{ (interest in TIB's)} = \mathbf{\$210,171.}$$

PREMIUM will be based upon:

Net leasehold interest for the policy year:

$$\$4375 \times 40.3249 \text{ (PVAF 6\%-45 months)} = \$176,241$$

$$\begin{array}{rcl} \$4375 \times 30.4178 \text{ (PVAF 6\%-33 months)} & = & \underline{\$133,078} \\ & & \$309,499/2 = \$154,749 \end{array}$$

Average TIB for the policy year:

$$\$90,000 \times 45/120 = \$33,750$$

$$\begin{array}{rcl} \$90,000 \times 33/120 & = & \underline{\$24,750} \\ & & \$58,500/2 = \$29,250 \end{array}$$

$$\mathbf{\text{Premium basis is } \$154,749 + \$29,250 = \$183,999}$$

EXPLANATION OF DISCOUNT FACTOR FOR LEASEHOLD INTEREST

1. The discount factor is not used for the first three months of Leasehold Interest based on the assumption that it will take the insurance company that amount of time to adjust the loss. Accordingly, the insured probably would not receive any payment under the insurance prior to the three months period. 2. Loss payment under Leasehold Interest is made in one lump sum which could represent a significant financial advantage to the insured if they were to invest the money at the current interest rate providing them with more money than the loss represented. Accordingly, the insurance is written to discount the amount by the current interest rate thus if the insured were to invest the money they would end up even, 3. The factor is used in arriving at the amount of insurance to be provided and in setting the premium basis.

An EXAMPLE: \$2000 Leasehold Interest per month x 60 (5 years remaining on the lease). \$120,000 (Total Leasehold Interest). With a 6% interest assumption, the insured would purchase \$103,848 which represents a sum that would produce a \$2000 per month annuity for 5 years if invested at 6%. (6%-60 month PVAF is 51.9238)

Claim # 5 Christine's Seaside Inn is located along a beautiful stretch of the South Carolina coast. Christine has been informed by local city and county officials that if her Inn is damaged 50% or greater, she will be required to rebuild the entire structure to the new building ordinance codes. Christine has done a lot of research to come up with the following information:

Current Appraised Value	\$ 3,000,000.00
Additional Cost to build to Code	\$ 400,000.00
Demolition cost (50% left)	\$ 60,000.00

Explain the Building Ordinance problem to Christine.

What further information do you need from Christine to arrive at the correct amount of insurance (Policy Limit)?

If Christine decides to rebuild after a loss, how much insurance does she need on the property policy and how much on the Building Ordinance Endorsement?

Christine suffers 25% damage to her structure from a fire and no demolition is required. In spite of her great protests, she is required by the local coastal building requirements to include storm awnings over all windows at a cost of \$40,000. Christine wants her loss paid. Is it covered by her insurance?

Claim # 6 Jon's Steaks is a restaurant insured by your insurance agency. Jon has suffered a severe fire loss. The building and contents are insured under one policy. Jon has exhausted his building limit; however, he still has plenty of coverage on the business personal property portion of his policy. Jon has included his refrigerator, cooking and dishwashing equipment on his contents inventory form for the adjuster. Much to Jon's displeasure the adjuster has denied the claim on the above items because he says they are building items.

Is the adjuster correct in his interpretation of the policy?

If so, can you find any coverage for these items?

How should this account have been written to avoid this problem?

Claim # 7 The insured was the owner of an office complex. The total construction cost of the complex was 15 million dollars. The complex was insured for the entire construction cost at the insistence of the lender that had loaned 15 million to the owner. The value of the land was 5 million dollars and the land was used by the insured as collateral. The complex suffered major damage in 2016 in a hurricane. The following property was damaged:

Building:	\$2,300,000
Personal Property:	\$ 750,000
Parking Lot:	\$ 250,000
Foundation:	\$ 150,000
Landscaping:	\$ 350,000

How much did the insureds Building and Personal Property coverage form pay?

Could any items that were not paid for have been covered with an endorsement?

Did the insured over insure his building based on this information?

How would you have handled the lender?

Claim # 8 An insured owned an older, two-story building downtown. Replacement cost is \$1,000,000. The second floor is not functional in the business and would not be built back if the building were destroyed. The building also features large concrete artisan work that substantially increases the value. Since a \$560,000 building would serve the same purpose, the insureds do not want to purchase the limit necessary to comply with the coinsurance condition.

The insured wants to insure a \$1,000,000 building for \$560,000. What are the insured's options in insuring this building? Explain each.

Claim # 9 The insured owns a large flooring company that specializes in exotic tile. The insured has two distributors that he can get the tile from. He is devastated when the larger of the two distributors that is located in Italy notifies him they have had a fire loss and will not begin production for 18 months. The insured has estimated his loss of income to be \$1,200,000.

Does the unendorsed Business Income policy provide any coverage for this loss?

If not, how could the agent have written this coverage that would have paid this claim?

Claim # 10 The insured is a wholesale meat distributor. His coolers and refrigerated warehouse depend on local utilities. A drunk driver ran over an above ground utility junction box. The junction box is not on the insureds premises. Power is interrupted for 15 days while repairs are being made. The insured has lost approximately \$100,000 of product and \$225,000 of revenue. The insured has purchased an unendorsed Building and Personal Property Coverage form and Business Income coverage form, what is your advice?

ENDORSEMENTS THAT WILL HELP!

Utility Services - Direct Damage - CP 04 17 provides coverage for direct damage to an insured property due to loss of services from water supply services, communication supply services and power supply services. It may or may not include overhead transmission lines. If a limit is shown on the schedule on the endorsement (used when property is written on a blanket basis), it does not increase the overall limit.

Utility Services - Time Element - CP 15 45. Provides time element coverage for losses resulting from the failure of power lines, transformers, and other utility property located outside the covered building regardless of whether the property is on or off the insured premises. Utility Services applies to: Water Supply Property, Communications Supply Property, Power Supply Property. Windstorm and earthquake the serious risks. (Hurricanes Hugo and Andrew produced numerous E&O claims for failure to provide this coverage). Coverage for overhead transmission lines are an option triggered on this endorsement.

A limit of insurance will now be shown in the schedule of CP 15 45 to enable coverage to be written subject to a stated limit of insurance for each described premises.

The coinsurance clause has been waived with respect to coverage provided under CP 15 45.

Claim # 11 “Stains Be Gone” is a local linen cleaning service in your city. They have contracts with the local hospital, nursing home and several restaurant and hotels. You have been their agent for only a year but it has been a good account with very few losses. That streak is coming to an end!

The CFO of “Stains Be Gone” has reported a major loss to their processing plant from a recent hurricane. He has no idea the extent of the loss, but has been assured by his plant manager that they can make the necessary repairs quickly and limit the interruption to only a few months. You have written their Business Income and Extra Expense coverage and are sure it will meet the needs of this relatively short period of restoration.

When the CFO files the proof of loss for Business Income you notice the amount is staggering. When asked why it is so high he mentions that several of his contracts were cancelled due to the loss and their inability to clean the linens. He has included the entire amount of the contract for reimbursement.

Is the adjuster going to pay for the value of the entire contracts?

- | | |
|---|---|
| <p>3.</p> <p>a.</p> <p>(1)</p> <p>(2)</p> <p>b.</p> <p>(1)</p> <p>(2)</p> | <p>"Period of restoration" means the period of time that:</p> <p>Begins:</p> <p>72 hours after the time of direct physical loss or damage for Business Income Coverage; or</p> <p>Immediately after the time of direct physical loss or damage for Extra Expense Coverage;</p> <p>caused by or resulting from any Covered Cause of Loss at the described premises; and</p> <p>Ends on the earlier of:</p> <p>The date when the property at the de-scribed premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or</p> <p>The date when business is resumed at a new permanent location. "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law...</p> |
|---|---|

Excerpt from **CP 00 30 10 12** page 9 of 9

Why won't the policy respond if the loss was incurred during the “Period of Restoration” described above? The contracts would not have been lost if the loss did not take place.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

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

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

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

Excerpt from **CP 10 30 10 12** page 5 of 10

Does this language take away coverage for the loss of the contract that did not take place within the "Period of Restoration"?

What about the "Extended Period Of Indemnity" Optional Coverage. Will this help?

E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item....

4. Extended Period Of Indemnity

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

Excerpt from **CP 00 30 10 12** pages 7 & 8 of 9

Claim # 12 Betty's Boutique is located in Uptown Mall. Betty called you to report a loss of the cash receipts during the Mall's annual sidewalk sale, which happens the first weekend of each month. Betty says that she can prove a loss of \$9,000. She has Theft, Disappearance and Destruction Form CR 00 04 with a \$10,000 On Premises and \$2500 Off Premises limits. How do you respond? Remember, Betty is not happy with you or the Falling Moon Insurance Company because of the denial of the claim for the robbery of \$2000 in cash that her Junior League friends were taking to the bank because Betty had a pedicure appointment.

What do you do to cover losses like the Junior League folks?

What about Betty's \$9,000 loss? How much is paid?

- A. COVERAGE** - We will pay for loss of Covered Property resulting directly from the Covered Causes of Loss.
- 1. Section 1. - Inside The Premises**
 - a. Covered Property:** “Money” and “securities” inside the “premises” or a “banking premises.”
 - b. Covered Causes of Loss**
 - (1) “Theft”
 - (2) Disappearance
 - (3) Destruction ...
 - 2. Section 2. - Outside the Premises**
 - a. Covered Property:** “Money” and “securities” outside the “premises” in the care and custody of a “messenger”
 - b. Covered Causes of Loss**
 - (1) “Theft”
 - (2) Disappearance
 - (3) Destruction
 - c. Coverage Extension**

Conveyance of Property By Armored Motor Vehicle Company:
We will pay for loss of Covered Property resulting directly from the Covered Causes of Loss while outside the “premises” in the care and custody of an armored motor vehicle company.

But, we will pay only for the amount of loss that you cannot recover:

 - (1) Under your contract with the armored motor vehicle company;
and
 - (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

Excerpt from CP 00 04 10 90 page 1 of 2

Premises definitions in (CR 00 04)

- a. “Banking Premises”** means the interior of that portion of any building occupied by a banking institution or similar safe depository.

Excerpt from CP 00 04 10 90 page 2 of 2

- d. “Premises”** means the interior of that portion of any building you occupy in conducting your business.

Excerpt from CP 00 04 10 90 page 2 of 2

Modification to the definition of “Premises” can be endorsed via Extended Premises to Entire Plot of Ground Under Your Control. (CR 15 26)

B. PROVISIONS

“Premises” also includes the entire plot of ground under your control at the address shown in the SCHEDULE.

Excerpt from CP 15 26 10 90 page 1 of 1

For the Junior League as well as for leased employees, agents, brokers, factors, etc. there is no off premises coverage. Solution: Include Covered Property in Custody of Designated Agents (CR 15 27).

B. PROVISIONS

1. “Premises” includes the interior of that portion of any building occupied by an agent (other than an armored motor vehicle company) shown in the SCHEDULE in conducting its business.
2. “Messenger” includes any agent (other than an armored motor vehicle company) shown in the SCHEDULE and any officer, partner or employee of the agent.

Excerpt from CP 15 27 10 90 page 1 of 1

Claim # 13 Your insured owns a group of retail stores and a warehouse used to prep and hold inventory prior to moving to the retail locations. You have written the insurance on a Building and Personal Property Coverage form on a blanket basis with Agreed Value at a limit of \$9,500,000. At the time the account was written the statement of values are as follows:

	Building	Contents
Retail # 1 –	\$500,000	\$2,000,000
Retail # 2 –	\$500,000	\$1,000,000
Retail # 3 –	None	\$3,000,000
Warehouse –	\$2,000,000	\$ 500,000

Six months into the policy period the insured reports a claim at the warehouse location. A fire has destroyed the building and contents. In the proof of loss that is filed he reports the building replacement value at \$2,500,000 and the contents at 1,000,000 for a total of \$3,500,000. You assure the insured that the limit written of 9.5 million will be sufficient to cover the loss. Much to your disappointment the insurance company adjuster has only offered \$3,100,000. Needless to say, the insured is not happy and wants to know why the reduction of \$400,000. The adjuster refers him to an endorsement know as a “Margin Clause.”

What is the “Margin Clause” Endorsement?

Could the adjuster be correct?

Forms List

CP 00 10 10 12	Building and Personal Property Coverage Form
CP 04 50 07 88	Vacancy Permit
CP 04 60 10 12	Vacancy Changes
CP 04 15 10 12	Debris Removal Additional Insurance
CP 14 60 07 88	Leased Property
CP 00 60 06 95	Leasehold Interest Coverage Form
CP 04 05 10 12	Ordinance or Law Coverage
CP 14 20 11 91	Additional Property Not Covered
CP 14 10 06 95	Additional Covered Property
CP 14 15 07 88	Additional Building Property
CP 19 10 06 95	Your Business Personal Property – Separation of Coverage
CP 04 38 10 12	Functional Building Valuation
CP 00 30 10 12	Business Income Coverage Form (and Extra Expense)
CP 15 08 10 12	Business Income From Dependent Properties Broad Form
CP 04 17 10 12	Utility Services – Direct Damage
CP 15 45 10 12	Utility Services – Time Element
CP 10 30 10 12	Causes of Loss – Special Form
CR 00 04 10 90	Theft, Disappearance and Destruction Coverage Form
CP 12 32 06 07	Limitation on Loss Settlement – Blanket Insurance (Margin Clause)

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;
 - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property

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

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

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

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

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
 - (c) Rowboats or canoes out of water at the described premises; or
 - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:
- (1) Grain, hay, straw or other crops;
 - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
 - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;
 - (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
 - (e) Remove deposits of mud or earth from the grounds of the described premises;
 - (f) Extract "pollutants" from land or water; or
 - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
 - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
 - (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
 - (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.
- The amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this Additional Coverage:
- (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced at the same or another premises; and
 - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
 - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
 - (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
 - (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.
- f. Electronic Data**
- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
 - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

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

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

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

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

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

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
 - (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
 - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.

(3) Coverage under this Extension:

- (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
 - (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example 1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

$$\begin{array}{r} \$ 60,100 \\ - \quad 250 \\ \hline \end{array}$$

\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:

$$\$59,850 + \$80,000 = \$139,850$$

Example 2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
 - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
- (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

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

- (i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (ii) Used by the building owner to conduct customary operations.

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

b. Vacancy Provisions

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

- (1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:
- (a) Vandalism;
- (b) Sprinkler leakage, unless you have protected the system against freezing;
- (c) Building glass breakage;
- (d) Water damage;
- (e) Theft; or
- (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
- If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example 1 (Underinsurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

Example 2 (Adequate Insurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ($\$40,000$ amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example 3

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	\$ 250,000

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is: \$ 180,000

The Deductible is: \$ 1,000

The amount of loss is:

Building at Location 2: \$ 30,000

Personal Property at Location 2: \$ 20,000

\$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$

(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

- (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example

If: The applicable Limit of Insurance is: \$ 100,000
 The annual percentage increase is: 8%
 The number of days since the beginning of the policy year (or last policy change) is: 146
 The amount of increase is:
 $\$100,000 \times .08 \times 146 \div 365 =$ \$ 3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

- d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

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

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

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

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VACANCY PERMIT

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

Prem. No.	Bldg. No.	SCHEDULE		Permit Period	
		Excepted Causes of Loss		From	To
		Vandalism	Sprinkler Leakage		

- A.** The VACANCY Loss Condition does not apply to direct physical loss or damage:
- 1. At the locations; and
 - 2. During the Permit Period;
- shown in the Schedule or in the Declarations.
- B.** This Vacancy Permit does not apply to the Excepted Causes of Loss indicated in the Declarations or by an "X" in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VACANCY CHANGES

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
MORTGAGEHOLDERS ERRORS AND OMISSIONS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number	Building Number	Minimum Percentage Rented/Used
		%
		%
		%
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

A. Except with respect to the Mortgageholders Errors And Omissions Coverage Form and the Standard Property Policy, Paragraph **a.(1)(b)** of the **Vacancy** Loss Condition is replaced by the following:

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least a certain percentage (as indicated in the Schedule) of its total square footage is:

- (i)** Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

B. In the Mortgageholders Errors And Omissions Coverage Form, the **Vacancy** Loss Condition is replaced by the following:

k. Vacancy

We will not pay for any loss or damage if the building where loss or damage occurs, or out of which a claim or "suit" arises, has been vacant for more than 60 days before that loss or damage, or the event that gives rise to the claim or "suit".

A building is vacant unless at least a certain percentage (as indicated in the Schedule) of its total square footage is:

- (1)** Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
- (2)** Used by the building owner to conduct customary operations.

C. In the Standard Property Policy, under the **Vacancy** Loss Condition, Paragraph **a.(1)(b)** is replaced by the following:

- (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is "vacant" or "unoccupied" unless at least a certain percentage (as indicated in the Schedule) of its total square footage is not "vacant" or "unoccupied".

SAMPLE

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 15 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEBRIS REMOVAL ADDITIONAL INSURANCE

This endorsement modifies insurance provided under the following:

BUILDERS RISK COVERAGE FORM
BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY
TOBACCO SALES WAREHOUSES COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Debris Removal Amount	Additional Premium
		\$	\$
		\$	\$
		\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

The additional amount of \$25,000 for debris removal in the **Debris Removal** Additional Coverages section is replaced by the higher amount shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEASED PROPERTY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

Premises No.	Bldg. No.	SCHEDULE Description of Property	Agreed Value (Optional)
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- A.** When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

B. Your Business Personal Property is revised to include personal property of others in your care, custody or control under written leases, as described in the Schedule or in the Declarations.
- C.** If an agreed value is entered for property in the Schedule or in the Declarations, this amount will be considered to be the value of the described property at the time of loss or damage. But this does not otherwise alter the application of the Coinsurance condition.

D. Property described in the Schedule or in the Declarations is not included under any Personal Property of Others coverage in this Coverage Part.

LEASEHOLD INTEREST COVERAGE FORM

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F. – DEFINITIONS.

A. COVERAGE

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

1. Covered Leasehold Interest

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

a. **Tenants' Lease Interest**, meaning the difference between the:

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

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

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

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

Improvements and betterments are fixtures, alterations, installations or additions:

- (1) Made a part of the building or structure you occupy but do not own; and

- (2) You acquired or made at your expense but cannot legally remove.

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

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

2. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

B. EXCLUSIONS AND LIMITATIONS

See applicable Causes of Loss Form as shown in the Declarations.

C. LIMITS OF INSURANCE

1. Applicable to Tenants' Lease Interest

a. The most we will pay for loss because of the cancellation of any one lease is your "net leasehold interest" at the time of loss.

But, if your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:

- (1) The difference between the rent you now pay and the rent you will pay under the new lease or other arrangement; or
- (2) Your "net leasehold interest" at the time of loss.

- b. Your "net leasehold interest" decreases automatically each month. The amount of "net leasehold interest" at any time is your "gross leasehold interest" times the leasehold interest factor for the remaining months of your lease. A proportionate share applies for any period of time less than a month.

Refer to the end of this form for a table of leasehold interest factors.

2. Applicable to Bonus Payments, Improvements and Betterments and Prepaid Rent

- a. The most we will pay for loss because of the cancellation of any one lease is your "net leasehold interest" at the time of loss.
- But, if your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:
- (1) The loss sustained by you; or
 - (2) Your "net leasehold interest" at the time of loss.
- b. Your "net leasehold interest" decreases automatically each month. The amount of each decrease is your "monthly leasehold interest". A proportionate share applies for any period of time less than a month.

D. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss Of Covered Leasehold Interest

- a. You must see that the following are done in the event of loss of Covered Leasehold Interest:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the property at the described premises from further damage by a Covered Cause of Loss. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (7) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

3. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if:

- a. You have complied with all of the terms of this Coverage Part; and
- b.(1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

4. Vacancy

a. Description of Terms

- (1) As used in this Vacancy Condition, with respect to the tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions – Subleased Premises

The following provisions apply if the building where direct physical loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs, provided you have entered into an agreement to sublease the described premises as of the time of loss or damage:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) With respect to a Covered Cause of Loss not listed in (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.
- c. If you have not entered into an agreement to sublease the described premises as of the time of loss or damage, we will not pay for any loss of Covered Leasehold Interest.

E. ADDITIONAL CONDITION

The following condition replaces the Cancellation Common Policy Condition:

CANCELLATION

- 1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance notice of cancellation.
- 2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
- 3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- 4. Notice of cancellation will state the effective date of cancellation. The policy will end on that date.
- 5. If this policy is cancelled, we will send the first Named Insured any premium refund due. The cancellation will be effective even if we have not made or offered a refund.
- 6. If this coverage is cancelled, we will calculate the earned premium by:
 - a. Computing the average of the "net leasehold interest" at the:
 - (1) Inception date, and
 - (2) Cancellation date, of this coverage.
 - b. Multiplying the rate for the period of coverage by the average "net leasehold interest".
 - c. If we cancel, we will send you a premium refund based on the difference between the:
 - (1) Premium you originally paid us; and
 - (2) Proportion of the premium calculated by multiplying the amount in paragraph a. times the rate for the period of coverage for the expired term of the policy.
 - d. If you cancel, your refund may be less than the refund calculated in paragraph c.
- 7. If notice is mailed, proof of mailing will be sufficient proof of notice.

F. DEFINITIONS

1. **"Gross Leasehold Interest"** means the difference between the:

- a. Monthly rental value of the premises you lease; and
- b. Actual monthly rent you pay including taxes, insurance, janitorial or other service that you pay for as part of the rent.

This amount is not changed:

- (1) Whether you occupy all or part of the premises; or
- (2) If you sublet the premises.

Example:

Rental value of your leased premises	\$5,000
Monthly rent including taxes, insurance, janitorial or other service that you pay for as part of the rent	-4,000
"Gross Leasehold Interest"	\$1,000

2. **"Monthly Leasehold Interest"** means the monthly portion of covered Bonus Payments, Improvements and Betterments and Prepaid Rent. To find your "monthly leasehold interest", divide your original costs of Bonus Payments, Improvements and Betterments or Prepaid Rent by the number of months left in your lease at the time of the expenditure.

Example:

Original cost of Bonus Payment	\$12,000
With 24 months left in the lease at time of Bonus Payment	÷ 24
"Monthly Leasehold Interest"	\$500

3. "Net Leasehold Interest":

- a. Applicable to Tenants' Lease Interest.

"Net Leasehold Interest" means the present value of your "gross leasehold interest" for each remaining month of the term of the lease at the rate of interest shown in the Leasehold Interest Coverage Schedule.

The "net leasehold interest" is the amount that, placed at the rate of interest shown in the Leasehold Interest Coverage Schedule, would be equivalent to your receiving the "Gross Leasehold Interest" for each separate month of the unexpired term of the lease.

To find your "net leasehold interest" at any time, multiply your "gross leasehold interest" by the leasehold interest factor found in the table of leasehold interest factors attached to this form.

Example:

(20 months left in lease, 10% effective annual rate of interest)

"Gross Leasehold Interest"	\$ 1,000
Leasehold Interest Factor	× 18.419
"Net Leasehold Interest"	\$18,419

- b. Applicable to Bonus Payments, Improvements and Betterments or Prepaid Rent.

"Net Leasehold Interest" means the un-amortized amount shown in the Schedule. Your "net leasehold interest" at any time is your "monthly leasehold interest" times the number of months left in your lease.

Example:

"Monthly Leasehold Interest"	\$ 500
With 10 months left in lease	× 10
"Net Leasehold Interest"	\$5,000

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Building Number/ Premises Number	Coverage A	Coverage B Limit Of Insurance	Coverage C Limit Of Insurance	Coverage B And C Combined Limit Of Insurance
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *

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

*Do **not** enter a Blanket Limit of Insurance if individual Limits of Insurance are selected for Coverages **B** and **C**, or if one of these Coverages is not applicable.

A. Each Coverage – Coverage **A**, Coverage **B** and Coverage **C** – is provided under this endorsement only if that Coverage(s) is chosen by entry in the above Schedule and then only with respect to the building identified for that Coverage(s) in the Schedule.

B. Application Of Coverage(s)

The Coverage(s) provided by this endorsement applies only if both **B.1.** and **B.2.** are satisfied and are then subject to the qualifications set forth in **B.3.**

1. The ordinance or law:

- Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- Is in force at the time of loss.

But coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

2.a. The building sustains direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

c. But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this endorsement even if the building has also sustained covered direct physical damage.

3. In the situation described in **B.2.b.** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B**, and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section **H.** of this endorsement provides an example of this procedure.)

However, if the covered direct physical damage, alone, would have resulted in a requirement to comply with the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this endorsement.

- C.** We will not pay under Coverage **A**, **B** or **C** of this endorsement for:

1. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
2. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

D. Coverage

1. Coverage A – Coverage For Loss To The Undamaged Portion Of The Building

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage **A** for the loss in value of the undamaged portion of the building as a consequence of a requirement to comply with an ordinance or law that requires demolition of undamaged parts of the same building.

Coverage **A** is included within the Limit Of Insurance shown in the Declarations as applicable to the covered building. Coverage **A** does not increase the Limit of Insurance.

2. Coverage B – Demolition Cost Coverage

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building as a consequence of a requirement to comply with an ordinance or law that requires demolition of such undamaged property.

The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

3. Coverage C – Increased Cost Of Construction Coverage

- a.** With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (1) Repair or reconstruct damaged portions of that building; and/or
- (2) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required;

when the increased cost is a consequence of a requirement to comply with the minimum standards of the ordinance or law.

However:

- (1) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (2) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

The Coinsurance Additional Condition does not apply to Increased Cost of Construction Coverage.

- b.** When a building is damaged or destroyed and Coverage **C** applies to that building in accordance with **3.a.** above, coverage for the increased cost of construction also applies to repair or reconstruction of the following, subject to the same conditions stated in **3.a.**:

- (1) The cost of excavations, grading, backfilling and filling;

- (2) Foundation of the building;
- (3) Pilings; and
- (4) Underground pipes, flues and drains.

The items listed in **b.(1)** through **b.(4)** above are deleted from Property Not Covered, but only with respect to the coverage described in this provision, **3.b.**

E. Loss Payment

1. All following loss payment provisions, **E.2.** through **E.5.**, are subject to the apportionment procedures set forth in Section **B.3.** of this endorsement.
2. When there is a loss in value of an undamaged portion of a building to which Coverage **A** applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:
 - a. If the Replacement Cost Coverage Option applies and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
 - (1) The amount you would actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
 - b. If the Replacement Cost Coverage Option applies and the property is **not** repaired or replaced, or if the Replacement Cost Coverage Option does **not** apply, we will not pay more than the lesser of:
 - (1) The actual cash value of the building at the time of loss; or
 - (2) The Limit Of Insurance shown in the Declarations as applicable to the covered building.
3. Unless Paragraph **E.5.** applies, loss payment under Coverage **B** – Demolition Cost Coverage will be determined as follows:

We will not pay more than the lesser of the following:

 - a. The amount you actually spend to demolish and clear the site of the described premises; or

- b. The applicable Limit Of Insurance shown for Coverage **B** in the Schedule above.
4. Unless Paragraph **E.5.** applies, loss payment under Coverage **C** – Increased Cost Of Construction Coverage will be determined as follows:
 - a. We will not pay under Coverage **C**:
 - (1) Until the property is actually repaired or replaced, at the same or another premises; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
 - b. If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage **C** is the lesser of:
 - (1) The increased cost of construction at the same premises; or
 - (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.
 - c. If the ordinance or law requires relocation to another premises, the most we will pay under Coverage **C** is the lesser of:
 - (1) The increased cost of construction at the new premises; or
 - (2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule above.
5. If a Combined Limit Of Insurance is shown for Coverages **B** and **C** in the Schedule above, Paragraphs **E.3.** and **E.4.** of this endorsement do not apply with respect to the building that is subject to the Combined Limit, and the following loss payment provisions apply instead:

The most we will pay, for the total of all covered losses for Demolition Cost and Increased Cost of Construction, is the Combined Limit Of Insurance shown for Coverages **B** and **C** in the Schedule above. Subject to this Combined Limit of Insurance, the following loss payment provisions apply:

 - a. For Demolition Cost, we will not pay more than the amount you actually spend to demolish and clear the site of the described premises.

b. With respect to the Increased Cost of Construction:

(1) We will not pay for the increased cost of construction:

- (a)** Until the property is actually repaired or replaced, at the same or another premises; and
- (b)** Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(2) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the increased cost of construction is the increased cost of construction at the same premises.

(3) If the ordinance or law requires relocation to another premises, the most we will pay for the increased cost of construction is the increased cost of construction at the new premises.

F. The terms of this endorsement apply separately to each building to which this endorsement applies.

G. Under this endorsement we will not pay for loss due to any ordinance or law that:

- 1.** You were required to comply with before the loss, even if the building was undamaged; and
- 2.** You failed to comply with.

H. Example of proportionate loss payment for Ordinance Or Law Coverage Losses (procedure as set forth in Section B.3. of this endorsement).

Assume:

- Wind is a Covered Cause of Loss; Flood is an excluded Cause of Loss
- The building has a value of \$200,000
- Total direct physical damage to building: \$100,000
- The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- Loss under Ordinance Or Law Coverage **C** of this endorsement: \$60,000

Step 1: Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

Step 2: Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage **C** loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

Note: The same procedure applies to losses under Coverages **A** and **B** of this endorsement.

I. The following definition is added:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL PROPERTY NOT COVERED

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
 CONDOMINIUM ASSOCIATION COVERAGE FORM
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
 STANDARD PROPERTY POLICY

The following is added to PROPERTY NOT COVERED if an "X" is shown in a box in the Schedule below:

Prem. No.	Bldg. No.	SCHEDULE* Description of Property
<input type="checkbox"/>		Awnings or canopies of fabric or slat construction, including their supports
<input type="checkbox"/>		Brick, metal, stone, or concrete chimneys or stacks not forming part of a building, or metal smokestacks
<input type="checkbox"/>		Crop silos
<input type="checkbox"/>		Swimming pools, diving towers or platforms
<input type="checkbox"/>		Waterwheels, windmills, wind pumps or their towers
<input type="checkbox"/>		The value of improvements, alterations or repairs (including labor, materials and supplies) being performed by _____. This includes existing real property that will be demolished or permanently removed in the course of making the improvements, alterations or repairs.
<input type="checkbox"/>		Personal Property contained in safes or vaults
<input type="checkbox"/>		Contents of crop silos
<input type="checkbox"/>		Glass which is not part of a building or structure
<input type="checkbox"/>		Metals in ingots, pigs, billets, or scraps
<input type="checkbox"/>		Ores, gravels, clay, or sand
<input type="checkbox"/>		Property of others
<input type="checkbox"/>		Property stored in open yards
<input type="checkbox"/>		Signs inside the premises
<input type="checkbox"/>		Vending machines or their contents
<input type="checkbox"/>		Tenants improvements and betterments
<input type="checkbox"/>		"Stock"

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

Prem. No.	Bldg. No.	Description of Property
<input type="checkbox"/>		Buildings or their contents in which any cooking is done, including restaurants and lunch rooms
<input type="checkbox"/>		Buildings or their contents used to repair tires or electric batteries except for buildings or their contents used for patching of tires and tubes
<input type="checkbox"/>		Buildings or their contents used to store or repair motor vehicles you do not own except for buildings or their contents used for occasional incidental repairs
<input type="checkbox"/>		Buildings used principally for storage, sales or repairing of appliances or heating devices or their parts
<input type="checkbox"/>		Petroleum products and other merchandise, including the contents of above or below ground tanks

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 14 10 06 95

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL COVERED PROPERTY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

The following is withdrawn from PROPERTY NOT COVERED and added to COVERED PROPERTY:

SCHEDULE*				
Prem. No.	Bldg. No.	Paragraph Reference	Description of Property	Type of Property Coverage (Enter BUILDING or PERSONAL PROPERTY)

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL BUILDING PROPERTY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY

Prem. No.	Bldg. No.	SCHEDULE Additional Building Property
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- A.** Additional Building Property described in the Schedule or in the Declarations is added to BUILDING.
- B.** Additional Building Property described in the Schedule or in the Declarations does not apply under YOUR BUSINESS PERSONAL PROPERTY.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

YOUR BUSINESS PERSONAL PROPERTY – SEPARATION OF COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

- A.** The following Limits of Insurance and Covered Causes of Loss apply to the types of property included under YOUR BUSINESS PERSONAL PROPERTY:

SCHEDULE					
Prem. No.	Bldg. No.	Type of Property	Limit of Insurance	Causes Of Loss Form Applicable	Coinsurance

- B.** If a Limit of Insurance is shown for Your Business Personal Property in the Declarations, without further indication of the Type of Property, that Limit of Insurance will not apply to any property described in this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNCTIONAL BUILDING VALUATION

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Limit Of Insurance
		\$
		\$
		\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

- A.** The Limit Of Insurance shown in the above Schedule is the only limit of insurance applicable to the building described in the above Schedule.
- B.** The **Coinsurance** Additional Condition does not apply to the building described in the above Schedule.
- C.** With respect to the building described in the above Schedule, the following replaces Items **a.** and **b.** of the **Valuation** Loss Condition:
- 1.** If you contract for repair or replacement of the loss or damage to restore the building shown in the above Schedule for the same occupancy and use, within 180 days of the damage unless we and you otherwise agree, we will pay the smallest of the following, **a.**, **b.**, **c.** or **d.**:
 - a.** The Limit Of Insurance shown in the above Schedule as applicable to the damaged building;
 - b.** In the event of a total loss, the cost to replace the damaged building on the same site (or on a different site if relocation is required by an ordinance or law as described in Paragraph **E.2.a.** below), with a less costly building that is functionally equivalent to the damaged building;
 - c.** In the event of partial loss:
 - (1)** The cost to repair or replace the damaged portion of the building with less costly material, if available, in the architectural style that existed before the loss or damage occurred; and
 - (2)** The amount you actually spend to demolish and clear the site of undamaged parts of the building as described in Paragraph **E.2.b.** below.
 - d.** The amount you actually spend:
 - (1)** That is necessary to repair or replace the lost or damaged building with less costly material if available; and
 - (2)** To demolish and clear the site of undamaged parts of the building as described in Paragraph **E.2.b.** below.
 - 2.** If you do not make a claim under Paragraph **1.** above, we will pay the smallest of the following, **a.**, **b.** or **c.**:
 - a.** The Limit Of Insurance shown in the above Schedule as applicable to the damaged building;
 - b.** The "market value" of the damaged building, exclusive of the land value, at the time of loss; or

- c. The amount it would cost to repair or replace the damaged building on the same site, with less costly material in the architectural style that existed before the damage occurred, less allowance for physical deterioration and depreciation.

D. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Functional Building Valuation insurance. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Functional Building Valuation insurance bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, our insurance is excess. But we will not pay more than the applicable Limit of Insurance.

E. Ordinance Or Law Coverage

1. Application Of Coverage

The Ordinance Or Law Coverage provided under this endorsement applies to the building described in the above Schedule only if both **E.1.a.** and **E.1.b.** are satisfied and are then subject to the qualifications set forth in **E.1.c.**

a. The ordinance or law:

- (1) Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (2) Is in force at the time of loss.

But Ordinance Or Law Coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

- b.(1)** The building sustains direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

- (2)** The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

- (3)** But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no Ordinance Or Law Coverage under this endorsement even if the building has also sustained covered direct physical damage.

- c. In the situation described in **E.1.b.(2)** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section **G.** of this endorsement provides an example of this procedure.)

However, if the covered direct physical damage alone would have resulted in a requirement to comply with the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A**, **B** and/or **C** of this endorsement.

2. Description Of Coverage

The following coverage(s) applies to the building described in the above Schedule, subject to Paragraph **C.** and all other provisions of this endorsement.

This is not additional insurance; losses covered under Coverages **A**, **B** and **C** are included within the Limit Of Insurance shown in the above Schedule as applicable to the building.

a. Coverage A – Coverage For Loss To The Undamaged Portion Of The Building

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage **A** for the loss in value of the undamaged portion of the building as a consequence of a requirement to comply with an ordinance or law that requires the demolition of undamaged parts of the same building.

b. Coverage B – Demolition Cost Coverage

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of a requirement to comply with an ordinance or law that requires demolition of such undamaged property.

c. Coverage C – Cost To Reconstruct In Compliance With An Ordinance Or Law

With respect to the building that has sustained covered direct physical damage, the cost to repair, reconstruct or remodel the damaged and/or undamaged portions of the building (whether or not demolition is required) will include costs that are a consequence of a requirement to comply with the minimum standards of the ordinance or law. If the building is repaired or rebuilt, it must be intended for similar occupancy as the current building, unless otherwise required by zoning or land use ordinance or law.

However, we will not pay for the cost to reconstruct in compliance with an ordinance or law if the building is not repaired or replaced.

3. We will not pay under this endorsement for:

- a.** Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- b.** The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

4. Under this endorsement, we will not pay for loss due to any ordinance or law that:

- a.** You were required to comply with before the loss, even if the building was undamaged; and
- b.** You failed to comply with.

F. The following definition is added:

"Market value", as used in this endorsement, means the price which the property might be expected to realize if offered for sale in a fair market.

G. Example of proportionate loss payment for Ordinance Or Law Coverage losses (procedure as set forth in Section E.1.c. of this endorsement)

Assume:

- Wind is a Covered Cause Of Loss; Flood is an excluded Cause Of Loss
- The building sustains a partial loss
- Total direct physical damage to building: \$100,000
- Portion of direct physical damage that is covered (caused by wind): \$30,000
- Portion of direct physical damage that is not covered (caused by flood): \$70,000
- The cost to repair the building includes \$60,000 attributable to enforcement of an ordinance (Coverage C)

Step 1:

Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

Step 2:

Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage C loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

NOTE: The same procedure applies to losses under Coverages A and B of this endorsement.

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

A. Coverage

1. Business Income

Business Income means the:

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

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

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

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

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

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

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

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

2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
- d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

a. Civil Authority

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

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

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

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

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

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

b. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
 - (a) Used in the construction, alterations or additions; or
 - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (1)(a) above.

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

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

(2) "Rental Value"

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

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
 - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (2)(a) above.

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

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

d. Interruption Of Computer Operations

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.

- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations – Interruption Of Computer Operations does not apply based on Paragraph A.4.d. therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
 - (1) This policy expires;

(2) 30 days expire after you acquire or begin to construct the property; or

(3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (7) Cooperate with us in the investigation or settlement of the claim.
- (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
 - (1) The Net Income of the business before the direct physical loss or damage occurred;
 - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
 - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
 - (4) Other relevant sources of information, including:
 - (a) Your financial records and accounting procedures;
 - (b) Bills, invoices and other vouchers; and
 - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
 - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
 - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
 - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
 - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

D. Additional Condition

COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
 - a. The Net Income (Net Profit or Loss before income taxes), and
 - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
- (11) All payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
The Coinsurance percentage is: 50%
The Limit of Insurance is: \$ 150,000
The amount of loss is: \$ 80,000

Step (1): $\$400,000 \times 50\% = \$200,000$
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$150,000 \div \$200,000 = .75$

Step (3): $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
The Coinsurance percentage is: 50%
The Limit of Insurance is: \$ 200,000
The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$400,000 \times 50\%$). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
- (2) The Limit Of Insurance shown in the Declarations.

2. Monthly Limit Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
 - (1) The Limit of Insurance, multiplied by
 - (2) The fraction shown in the Declarations for this Optional Coverage.

Example

When: The Limit of Insurance is: \$ 120,000
 The fraction shown in the Declarations for this Optional Coverage is: 1/4
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000
 (\$120,000 x 1/4 = \$30,000)
 If, in this example, the actual amount of loss is:

Days 1–30:	\$ 40,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	<hr/>
	\$ 90,000

We will pay:

Days 1–30:	\$ 30,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	<hr/>
	\$ 80,000

The remaining \$10,000 is not covered.

3. Business Income Agreed Value

- a. To activate this Optional Coverage:
 - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
 - (a) During the 12 months prior to the date of the Work Sheet; and

(b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

(2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

- (a) The Coinsurance percentage shown in the Declarations; multiplied by
- (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

b. The Additional Condition, Coinsurance, is suspended until:

- (1) 12 months after the effective date of this Optional Coverage; or
- (2) The expiration date of this policy; whichever occurs first.

c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

- (1) Within 12 months of the effective date of this Optional Coverage; or
- (2) When you request a change in your Business Income Limit of Insurance.

d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

- (1) The Business Income Limit of Insurance; divided by
- (2) The Agreed Value.

Example

When: The Limit of Insurance is: \$ 100,000
 The Agreed Value is: \$ 200,000
 The amount of loss is: \$ 80,000
 Step (1): $\$100,000 \div \$200,000 = .50$
 Step (2): $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

4. Extended Period Of Indemnity

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

F. Definitions

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:

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

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

- a. Begins:

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

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

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

- b. Ends on the earlier of:

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

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

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

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

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

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

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

5. "Rental Value" means Business Income that consists of:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and

- b. Continuing normal operating expenses incurred in connection with that premises, including:

- (1) Payroll; and

- (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.

6. "Suspension" means:

- a. The slowdown or cessation of your business activities; or

- b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS INCOME FROM DEPENDENT PROPERTIES – BROAD FORM

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

SCHEDULE

Name And Describe Occupancy And Location	
Contributing Locations:	
Secondary Contributing Locations (Not Named):	<input type="checkbox"/>
Recipient Locations:	
Secondary Recipient Locations (Not Named):	<input type="checkbox"/>
Manufacturing Locations:	
Leader Locations:	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to "dependent property" at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss. However, coverage under this endorsement does not apply when the only loss to "dependent property" is loss or damage to electronic data, including destruction or corruption of electronic data. If the "dependent property" sustains loss or damage to electronic data and other property, coverage under this endorsement will not continue once the other property is repaired, rebuilt or replaced. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

B. The provisions of the Business Income Coverage Form respecting direct physical loss or damage at the described premises, including the applicable Limit of Insurance, will apply separately to each "dependent property" described in the Schedule.

C. Secondary Dependencies – Contributing And Recipient Locations

1. If the Schedule shows applicability of coverage for a "secondary contributing location", then the following applies, subject to Paragraphs **C.3.** and **C.4.**:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at a "secondary contributing location", caused by or resulting from a Covered Cause of Loss, which in turn results in partial or complete interruption of the materials or services provided to you by the "dependent property" described in the Schedule, thereby resulting in the "suspension" of your "operations".

2. If the Schedule shows applicability of coverage for a "secondary recipient location", then the following applies, subject to Paragraphs **C.3.** and **C.4.**:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at a "secondary recipient location", caused by or resulting from a Covered Cause of Loss, which in turn results in partial or complete interruption of the acceptance of your materials or services by the "dependent property" described in the Schedule, thereby resulting in the "suspension" of your "operations".

3. Coverage under this endorsement does not apply when the only loss at the "secondary contributing location" or "secondary recipient location" is loss or damage to electronic data, including destruction or corruption of electronic data. If the "secondary contributing location" or "secondary recipient location" sustains loss or damage to electronic data and other property, coverage under this endorsement will not continue once the other property is repaired, rebuilt or replaced. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

4. With respect to a "suspension" of your "operations" covered under this provision, **C.**, the maximum amount payable is the Business Income Limit of Insurance. This provision, **C.**, does not increase the Business Income Limit of Insurance, as any amount payable under this provision is considered part of, not in addition to, such Limit of Insurance, even if the "suspension" of your "operations" is caused by direct physical loss of or damage to "dependent property" and property at one or more "secondary contributing locations" or "secondary recipient locations".

D. The following is added to Additional Coverages:

Miscellaneous Locations

We will pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the premises of a "dependent property" not described in the Schedule (miscellaneous location) caused by or resulting from any Covered Cause of Loss. A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a miscellaneous location.

Under this Additional Coverage – Miscellaneous Locations, we will not pay more than .03% of the Business Income Limit of Insurance for each day's "suspension" of "operations" due to loss arising from any one location. This Additional Coverage – Miscellaneous Locations does not increase the Business Income Limit of Insurance; any amount payable under this provision is considered part of, not in addition to, such Limit of Insurance, even if the "suspension" of your "operations" is caused by direct physical loss of or damage to "dependent property" and property at one or more miscellaneous locations.

This Additional Coverage – Miscellaneous Locations does not apply to a "secondary contributing location" or "secondary recipient location" when coverage is provided under this endorsement for such secondary locations.

E. Under the Loss Determination Loss Condition, the following is added to the Resumption Of Operations Provision:

We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

1. Source of materials; or
2. Outlet for your products.

F. The following is added to the Definitions section:

1. "Dependent property" means property operated by others whom you depend on to:
 - a. Deliver materials or services to you, or to others for your account (Contributing Locations). But any property which delivers any of the following services is not a Contributing Location with respect to such services:
 - (1) Water supply services;
 - (2) Power supply services;
 - (3) Wastewater removal services; or

- (4) Communication supply services, including services relating to Internet access or access to any electronic network;

- b. Accept your products or services (Recipient Locations);
 - c. Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); or
 - d. Attract customers to your business (Leader Locations).

2. "Period of restoration", with respect to "dependent property" (or "secondary contributing location" or "secondary recipient location"), means the period of time that:

- a. Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property" (or "secondary contributing location" or "secondary recipient location"); and
 - b. Ends on the date when the property at the premises of the "dependent property" (or "secondary contributing location" or "secondary recipient location") should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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

- a. Regulates the construction, use or repair, or requires the tearing down, of any property; or
 - b. Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

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

3. "Secondary contributing location" is an entity which:
 - a. Is not identified in the Schedule;
 - b. Is not owned or operated by the Contributing Location identified in the Schedule; and
 - c. Delivers materials or services to the Contributing Location identified in the Schedule, which in turn are used by that Contributing Location in providing materials or services to you.

A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a "secondary contributing location".

Any property which delivers any of the following services is not a "secondary contributing location" with respect to such services:

- (1) Water supply services;
- (2) Power supply services;
- (3) Wastewater removal services; or
- (4) Communication supply services, including services relating to Internet access or access to any electronic network.

4. "Secondary recipient location" is an entity which:

- a. Is not identified in the Schedule;
- b. Is not owned or operated by the Recipient Location identified in the Schedule; and

c. Accepts materials or services from the Recipient Location identified in the Schedule, which in turn accepts your materials or services.

A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a "secondary recipient location".

G. With respect to the coverage provided under this endorsement, the following supersedes any provision to the contrary:

We do not cover loss of Business Income arising out of loss or damage at the premises of a "dependent property", "secondary contributing location", "secondary recipient location" or miscellaneous location which is located outside the Coverage Territory.

UTILITY SERVICES – DIRECT DAMAGE

This endorsement modifies insurance provided under the following:

BUILDERS' RISK COVERAGE FORM
 BUILDING AND PERSONAL PROPERTY COVERAGE FORM
 CONDOMINIUM ASSOCIATION COVERAGE FORM
 CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
 STANDARD PROPERTY POLICY
 TOBACCO SALES WAREHOUSES COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Utility Services Limit Of Insurance	Enter "X" for each applicable property.				
			Water Supply Property	Communication Supply Property (including overhead transmission lines)	Communication Supply Property (not including overhead transmission lines)	Power Supply Property (including overhead transmission lines)	Power Supply Property (not including overhead transmission lines)
		\$					
Covered Property:							
Causes Of Loss Form Applicable:							
		\$					
Covered Property:							
Causes Of Loss Form Applicable:							
		\$					
Covered Property:							
Causes Of Loss Form Applicable:							
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.							

A. Coverage

We will pay for loss of or damage to Covered Property described in the Schedule, caused by an interruption in utility service to the described premises. The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss (as indicated in the Schedule) to the property described in Paragraph C. if such property is indicated by an "X" in the Schedule.

B. Exception

Coverage under this endorsement for loss or damage to Covered Property does not apply to loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

C. Utility Services

1. Water Supply Services, meaning the following types of property supplying water to the described premises:
 - a. Pumping stations; and
 - b. Water mains.
2. Communication Supply Services, meaning property supplying communication services, including telephone, radio, microwave or television services to the described premises, such as:
 - a. Communication transmission lines, including optic fiber transmission lines;

b. Coaxial cables; and

c. Microwave radio relays except satellites.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

3. Power Supply Services, meaning the following types of property supplying electricity, steam or gas to the described premises:

a. Utility generating plants;

b. Switching stations;

c. Substations;

d. Transformers; and

e. Transmission lines.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

- D. As used in this endorsement, the term transmission lines includes all lines which serve to transmit communication service or power, including lines which may be identified as distribution lines.

- E. If a Utility Services Limit Of Insurance is shown in the Schedule, such limit is part of, not in addition to, the Limit Of Insurance stated in the Declarations or in the Separation Of Coverage endorsement as applicable to the Covered Property.

If no Limit of Insurance is shown for Utility Services, coverage under this endorsement is subject to the applicable Limit Of Insurance on the Covered Property as shown in the Declarations or in the Separation Of Coverage endorsement. But this Utility Services endorsement does not increase the applicable Limit of Insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UTILITY SERVICES – TIME ELEMENT

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
EXTRA EXPENSE COVERAGE FORM**SCHEDULE**

Premises Number	Building Number	Utility Services Limit Of Insurance	Enter "X" for each applicable property.					
			Water Supply Property	Waste-water Removal Property	Communication Supply Property (including overhead transmission lines)	Communication Supply Property (not including overhead transmission lines)	Power Supply Property (including overhead transmission lines)	Power Supply Property (not including overhead transmission lines)
		\$						
Causes Of Loss Form Applicable:								
		\$						
Causes Of Loss Form Applicable:								
		\$						
Causes Of Loss Form Applicable:								
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.								

A. Coverage

Your coverage for Business Income and/or Extra Expense, as provided and limited in the applicable Coverage Form, is extended to apply to a "suspension" of "operations" at the described premises caused by an interruption in utility service to that premises. The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss (as provided under the applicable Causes of Loss Form indicated in the Schedule) to the property described in Paragraph C. if such property is indicated by an "X" in the Schedule.

B. Exception

Coverage under this endorsement does not apply to Business Income loss or Extra Expense related to interruption in utility service which causes loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

C. Utility Services

1. Water Supply Property, meaning the following types of property supplying water to the described premises:
 - a. Pumping stations; and
 - b. Water mains.
2. Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the described premises, other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities.

Coverage under this endorsement does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.

3. Communication Supply Property, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, such as:

- a. Communication transmission lines, including optic fiber transmission lines;
- b. Coaxial cables; and
- c. Microwave radio relays except satellites.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

4. Power Supply Property, meaning the following types of property supplying electricity, steam or gas to the described premises:

- a. Utility generating plants;
- b. Switching stations;
- c. Substations;
- d. Transformers; and
- e. Transmission lines.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

- D. As used in this endorsement, the term transmission lines includes all lines which serve to transmit communication service or power, including lines which may be identified as distribution lines.

- E. The **Coinsurance** Additional Condition does not apply to this endorsement.

- F. The Utility Services Limit Of Insurance, as shown in the Schedule, is the only Limit which applies to the coverage provided under this endorsement, and is part of, not in addition to, the Limit Of Insurance stated in the Declarations as applicable to the described premises.

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G**. Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings; or
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:

a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b.** Delay, loss of use or loss of market.
- c.** Smoke, vapor or gas from agricultural smudging or industrial operations.
- d.(1)** Wear and tear;
- (2)** Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3)** Smog;
- (4)** Settling, cracking, shrinking or expansion;

- (5)** Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

- (6)** Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

- (7)** The following causes of loss to personal property:

- (a)** Dampness or dryness of atmosphere;
- (b)** Changes in or extremes of temperature; or
- (c)** Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e.** Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f.** Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g.** Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1)** You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
 - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.
- k. Collapse, including any of the following conditions of property or any part of the property:
- (1) An abrupt falling down or caving in;
 - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
 - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, **k.**, does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage, Collapse; or

(b) To collapse caused by one or more of the following:

- (i) The "specified causes of loss";
- (ii) Breakage of building glass;
- (iii) Weight of rain that collects on a roof; or
- (iv) Weight of people or personal property.

- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, **l.**, does not apply to damage to glass caused by chemicals applied to the glass.

- m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **1.** above to produce the loss or damage.

- b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

- c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms:

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

We will not pay for:

- (1) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- (5) Any other consequential loss.

b. Leasehold Interest Coverage Form

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

c. Legal Liability Coverage Form

- (1) The following exclusions do not apply to insurance under this Coverage Form:
 - (a) Paragraph B.1.a. Ordinance Or Law;
 - (b) Paragraph B.1.c. Governmental Action;
 - (c) Paragraph B.1.d. Nuclear Hazard;
 - (d) Paragraph B.1.e. Utility Services; and
 - (e) Paragraph B.1.f. War And Military Action.
- (2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

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

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

(b) Nuclear Hazard

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

5. Additional Exclusion

The following provisions apply only to the specified property:

Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

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.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
 - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
 - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
 - (2) Changes in or extremes of temperature;
 - (3) Disease;
 - (4) Frost or hail; or
 - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
 - a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

 - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income Coverage or to Extra Expense Coverage.

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.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a.** Results in discharge of any substance from an automatic fire protection system; or
- b.** Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a.** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b.** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (1) A cause of loss listed in **2.a.** or **2.b.**;
 - (2) One or more of the "specified causes of loss";
 - (3) Breakage of building glass;
 - (4) Weight of people or personal property; or
 - (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does not apply to:

- a.** A building or any part of a building that is in danger of falling down or caving in;
- b.** A part of a building that is standing, even if it has separated from another part of the building; or
- c.** A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a.** Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
 - c. Yard fixtures;
 - d. Outdoor swimming pools;
 - e. Fences;
 - f. Piers, wharves and docks;
 - g. Beach or diving platforms or appurtenances;
 - h. Retaining walls; and
 - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
 - b. The personal property which collapses is inside a building; and
 - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- 6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in **D.1.** through **D.7.**

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:

- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
- b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
 - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

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.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.

- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "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.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or
 - (2) Sinking or collapse of land into man-made underground cavities.
 - b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means:

- (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

THEFT, DISAPPEARANCE AND DESTRUCTION COVERAGE FORM

A. COVERAGE – We will pay for loss of Covered Property resulting directly from the Covered Causes of Loss.

1. Section 1. – Inside The Premises

a. Covered Property: "Money" and "securities" inside the "premises" or a "banking premises."

b. Covered Causes of Loss

- (1) "Theft"
- (2) Disappearance
- (3) Destruction

c. Coverage Extensions

(1) **Containers of Covered Property:** We will pay for loss of, and loss from damage to, a locked safe, vault, cash register, cash box or cash drawer located in the "premises" resulting directly from an actual or attempted:

- (a) "Theft" of; or
- (b) Unlawful entry into those containers.

(2) **Premises Damage:** We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of Covered Property if you are the owner of the "premises" or are liable for damage to it.

2. Section 2. – Outside the Premises

a. Covered Property: "Money" and "securities" outside the "premises" in the care and custody of a "messenger."

b. Covered Causes of Loss

- (1) "Theft"
- (2) Disappearance
- (3) Destruction

c. Coverage Extension

Conveyance of Property By Armored Motor Vehicle Company: We will pay for loss of Covered Property resulting directly from the Covered Causes of Loss while outside the "premises" in the care and custody of an armored motor vehicle company.

But, we will pay only for the amount of loss that you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

B. LIMIT OF INSURANCE

The most we will pay for loss in any one "occurrence" is the applicable Limit of Insurance shown in the DECLARATIONS.

C. DEDUCTIBLE

We will not pay for loss in any one "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the DECLARATIONS. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance. In the event more than one Deductible Amount could apply to the loss, only the highest Deductible Amount may be applied.

D. ADDITIONAL EXCLUSIONS, CONDITION AND DEFINITIONS: In addition to the provisions in the Crime General Provisions, this Coverage Form is subject to the following:

1. Additional Exclusions: We will not pay for loss as specified below:

a. Accounting or Arithmetical Errors or Omissions: Loss resulting from accounting or arithmetical errors or omissions.

b. Acts of Employees, Directors, Trustees or Representatives: Loss resulting from any dishonest or criminal act committed by any of your "employees," directors, trustees or authorized representatives:

- (1) Acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise.

c. Exchanges or Purchases: Loss resulting from the giving or surrendering of property in any exchange or purchase.

d. Fire: Loss from damage to the "premises" resulting from fire, however caused.

e. Money Operated Devices: Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

f. Transfer or Surrender of Property

(1) Loss of property after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises:"

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat to do:

i. Bodily harm to any person; or

ii. Damage to any property.

(2) But, this exclusion does not apply under COVERAGE, Section 2. to loss of Covered Property while outside the "premises" or "banking premises" in the care and custody of a "messenger" if you:

(a) Had no knowledge of any threat at the time the conveyance began; or

(b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism: Loss from damage to the "premises" or its exterior or to containers of Covered Property by vandalism or malicious mischief.

h. Voluntary Parting of Title to or Possession of Property: Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

2. Additional Condition

Duties in the Event of Loss: If you have reason to believe that any loss of, or loss from damage to, Covered Property involves a violation of law, you must notify the police.

3. Additional Definitions

a. "Banking Premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.

b. "Messenger" means you, any of your partners or any "employee" while having care and custody of the property outside the "premises."

c. "Occurrence" means an:

(1) Act or series of related acts involving one or more persons; or

(2) Act or event, or a series of related acts or events not involving any person.

d. "Premises" means the interior of that portion of any building you occupy in conducting your business.

e. "Theft" means any act of stealing.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION ON LOSS SETTLEMENT – BLANKET INSURANCE (MARGIN CLAUSE)

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number:		Building Number:		Margin Clause:	%
Description Of Property:					
Premises Number:		Building Number:		Margin Clause:	%
Description Of Property:					
Premises Number:		Building Number:		Margin Clause:	%
Description Of Property:					
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.					

A. This endorsement applies to loss settlement on property that is subject to a Blanket Limit of Insurance.

A Blanket Limit of Insurance is a single Limit of Insurance that applies to any of the following as shown elsewhere in this policy:

1. Two or more buildings;
2. Building and contents;
3. Contents of more than one building; or
4. Contents at more than one premises.

B. Margin Clause

With respect to property that is subject to a Blanket Limit of Insurance, we will determine a maximum loss payable for each building and for the contents of each building or the contents at each premises. The maximum loss payable is determined by applying the applicable Margin Clause percentage indicated in the Schedule to the value of the property as shown in the latest statement of values reported to us. If the statement of values does not state individually the value of each building and the value of contents at each building or premises, we will determine individual values as a part of the total reported values prior to application of the Margin Clause percentage.

Actual loss payment will be determined based on the amount of loss or damage subject to all applicable policy provisions including the Limits of Insurance Condition, Coinsurance, Deductible and Valuation Conditions. But the actual loss payment, for each building, for the contents of each building or for the contents at each premises, will not exceed the maximum loss payable as described above and will not exceed the Blanket Limit of Insurance.

The Margin Clause does not increase the Blanket Limit of Insurance.

C. Examples

In the following examples, the figures and Margin Clause percentages are used for illustrative purposes only and do not reflect your actual insurance.

EXAMPLE #1

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,500,000. The combined value of these three buildings at the time of loss is \$5,000,000. There is a Coinsurance requirement of 90% ($.90 \times \$5,000,000 = \$4,500,000$); therefore no Coinsurance penalty.

The value stated for Building #1 is \$1,000,000. **The Margin Clause percentage is 120%. The maximum loss payable for Building #1 is \$1,200,000 ($\$1,000,000 \times 1.20$).**

Building #1 sustains a loss of \$1,200,000.

The Deductible is \$10,000.

Step (1): Amount of loss minus Deductible ($\$1,200,000 - \$10,000 = \$1,190,000$)

Step (2): Since \$1,190,000 is not more than the maximum loss payable, we will pay \$1,190,000.

EXAMPLE #2

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,500,000. The coverage in this example is written without a Coinsurance requirement.

The value stated for Building #1 is \$1,000,000. **The Margin Clause percentage is 115%. The maximum loss payable for Building #1 is \$1,150,000 ($\$1,000,000 \times 1.15$).**

Building #1 sustains a loss of \$1,300,000.

The Deductible is \$10,000.

Step (1): Amount of loss minus Deductible ($\$1,300,000 - \$10,000 = \$1,290,000$)

Step (2): The result of Step (1) exceeds the maximum loss payable. We will pay \$1,150,000, the maximum loss payable in accordance with the Margin Clause.

EXAMPLE #3

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,000,000. The combined value of these three buildings at the time of loss is \$5,000,000. There is a Coinsurance requirement of 90% ($.90 \times \$5,000,000 = \$4,500,000$); therefore **the Blanket is underinsured and there will be a Coinsurance penalty.**

The value stated for Building #1 is \$1,000,000. **The Margin Clause percentage is 120%. The maximum loss payable for Building #1 is \$1,200,000 ($\$1,000,000 \times 1.20$).**

Building #1 sustains a loss of \$1,200,000.

The Deductible is \$10,000.

Step (1): Amount of Blanket Limit divided by Coinsurance requirement ($\$4,000,000 \div \$4,500,000 = .889$)

Step (2): Amount of loss times Coinsurance penalty factor ($\$1,200,000 \times .889 = \$1,066,800$) is the adjusted amount of loss

Step (3): Adjusted amount of loss minus Deductible ($\$1,066,800 - \$10,000 = \$1,056,800$)

Step (4): We will pay \$1,056,800 (less than the maximum loss payable). The remainder of the loss, \$143,200, is not covered due to application of the Coinsurance penalty and Deductible.

Thank
You!

