



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

Pennsylvania

March 10-11, 2026

JAMES K. RUBLE SEMINAR
Ruble Graduate Seminar
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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 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 courses are taught by active insurance and risk management 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 written in a cursive style and is positioned below a thin horizontal line.

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



James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 1

Proceed With Caution...Your Client Purchased a Condominium



PROCEED WITH CAUTION...
**Your Client Purchased a
Condominium**



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**LYON CONSULTING
SERVICES, LLC**



Steven D. Lyon
CPCU,CRM,CIC,AAI,ARM,AIS,CRIS,
MLIS,AFIS,TRIP

2

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DISCLAIMER

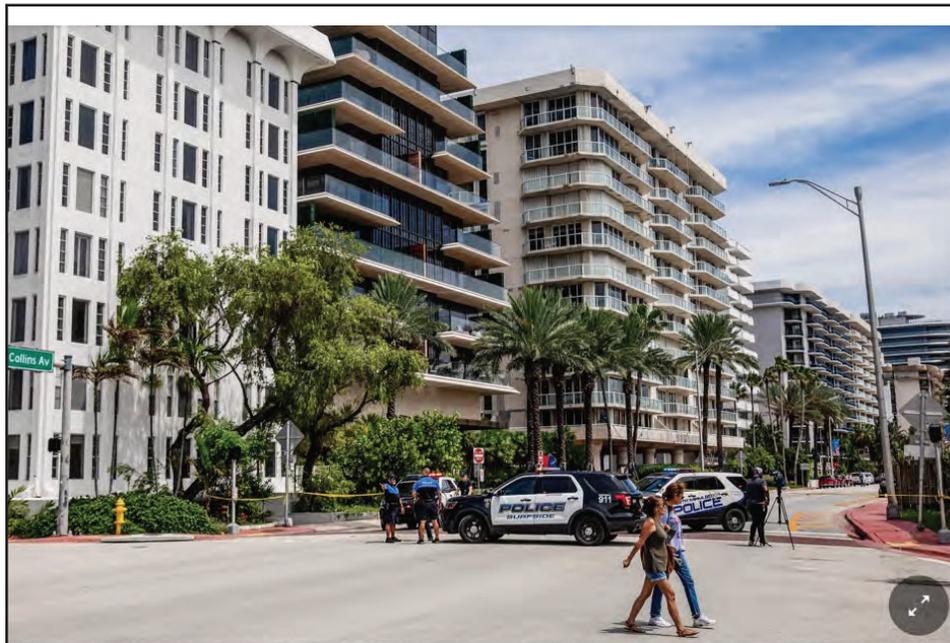
PLEASE BE ADVISED THAT THE CONTRACT LANGUAGE PROVIDED AND ANY DISCUSSION THEREOF, IS FOR INFORMATION PURPOSES ONLY.

I AM NOT AN ATTORNEY AND CANNOT OFFER LEGAL ADVICE. OR ADVICE ON THE POSSIBLE SUCCESS OR FAILURE OF THE LANGUAGE OR DISCUSSIONS PROVIDED.

MOREOVER, THIS LANGUAGE AND DISCUSSION MAY NOT WORK IN ALL SITUATIONS OR ALL JURISDICTIONS. SOME JURISDICTIONS INTERPRET CONTRACTS DIFFERENTLY, AND SOME STATES RESTRICT INDEMNITY AGREEMENTS. YOU SHOULD ALWAYS CONSULT AN ATTORNEY BEFORE DECIDING WHETHER TO MAKE USE OF ANY LANGUAGE PROVIDED OR DISCUSSED.

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High-rise condominiums along Collins Avenue, near the site of the Champlain South Towers collapse in Surfside, Fla. Scott McIntyre for The New York Times

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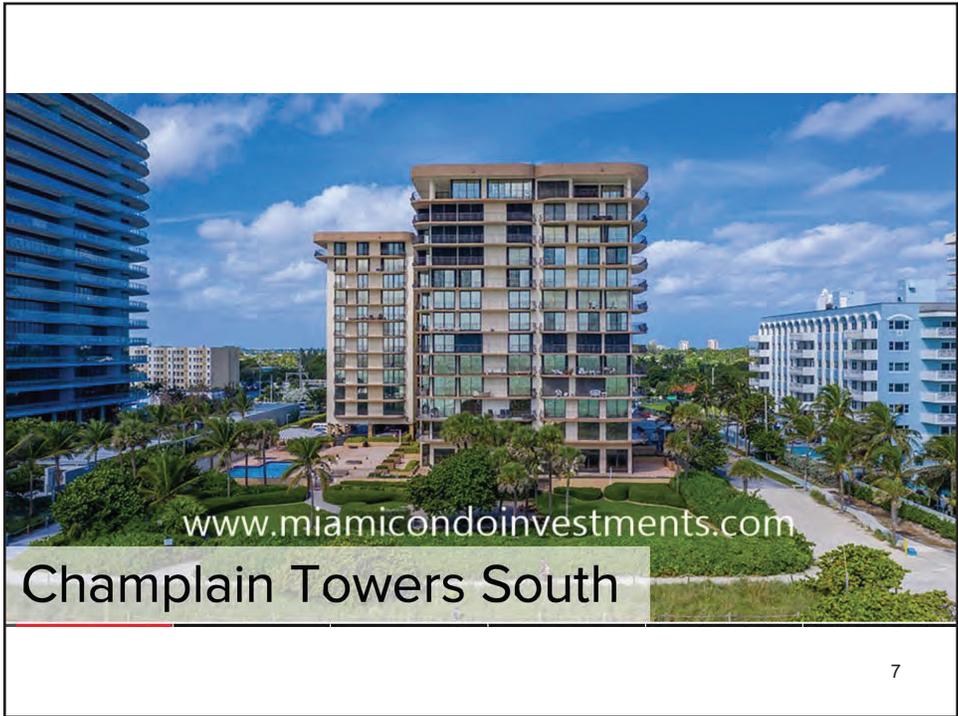
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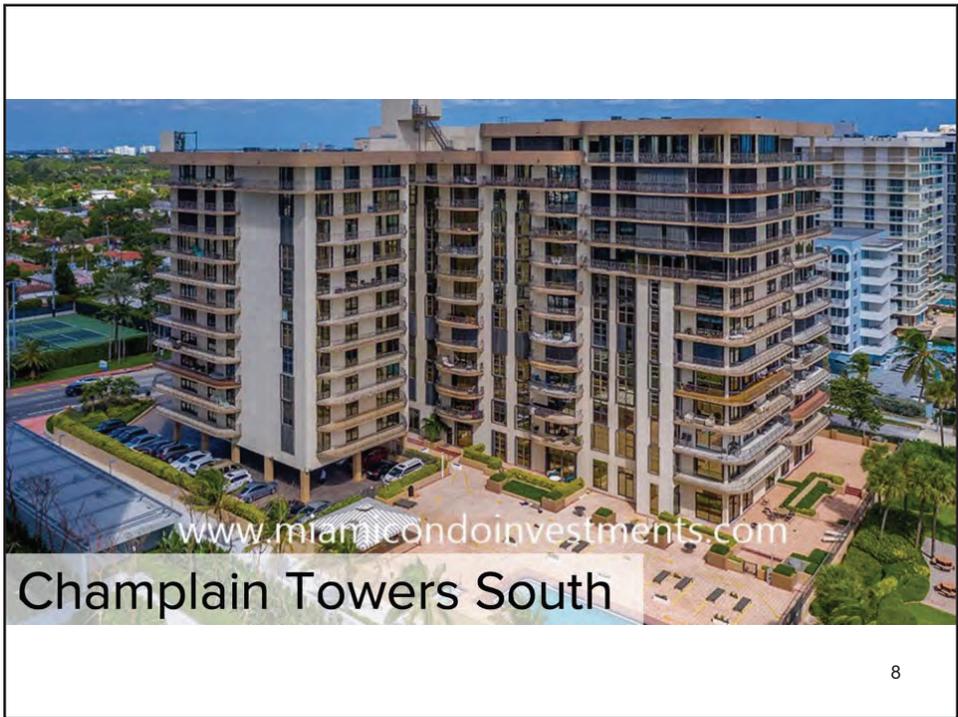


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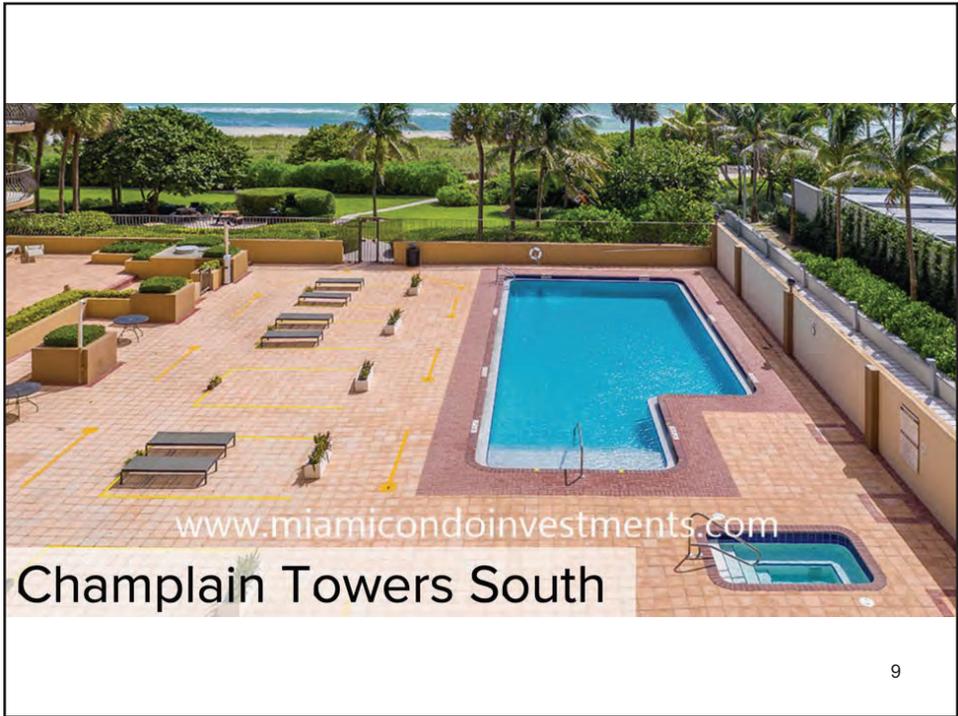
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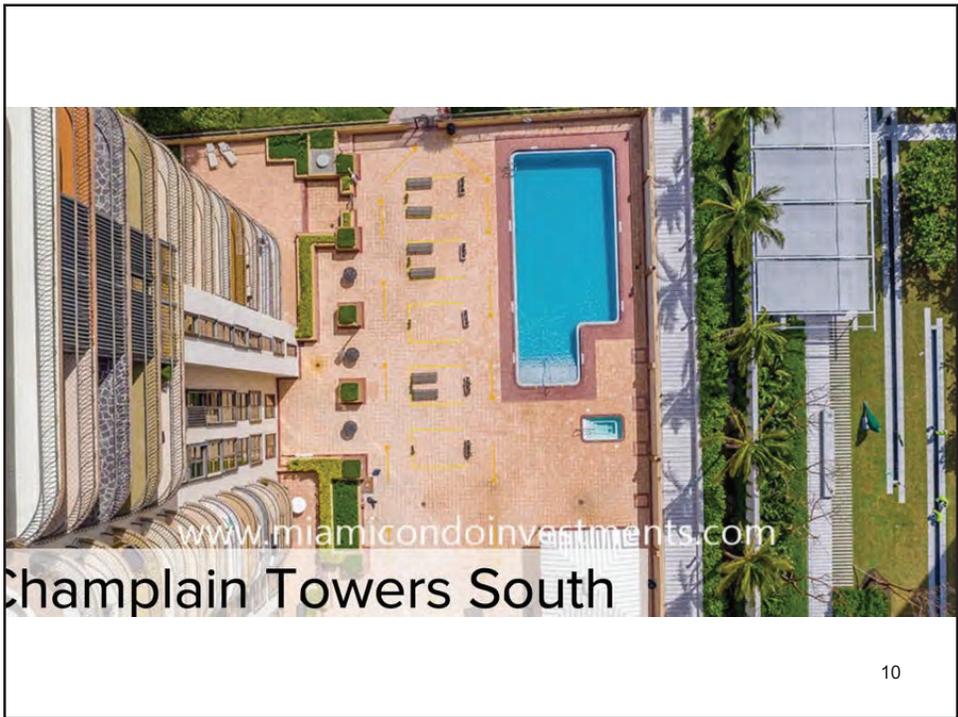
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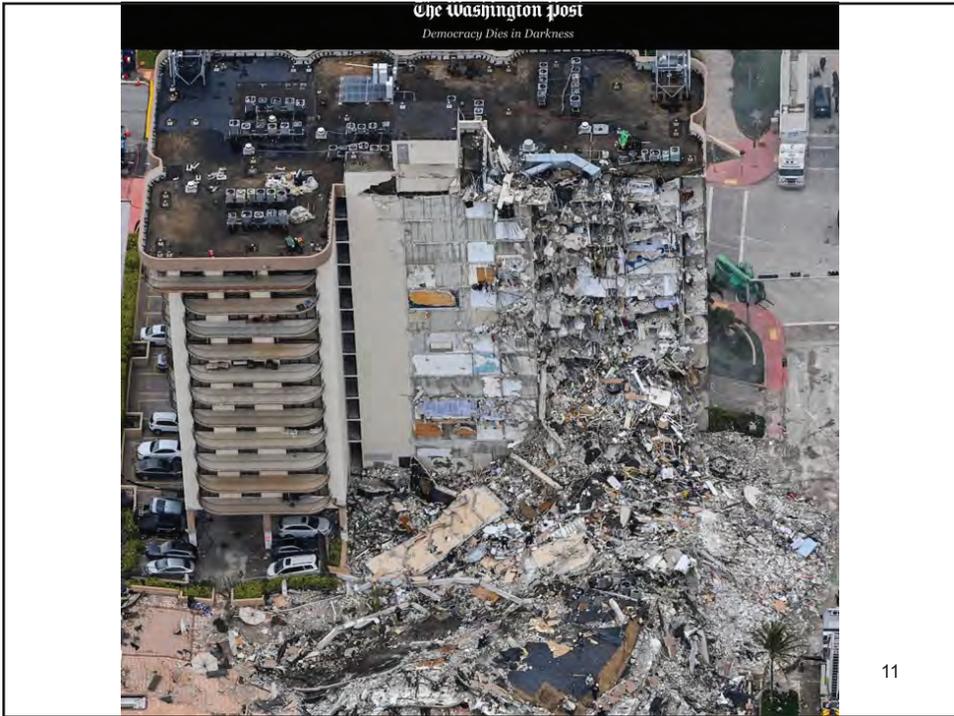
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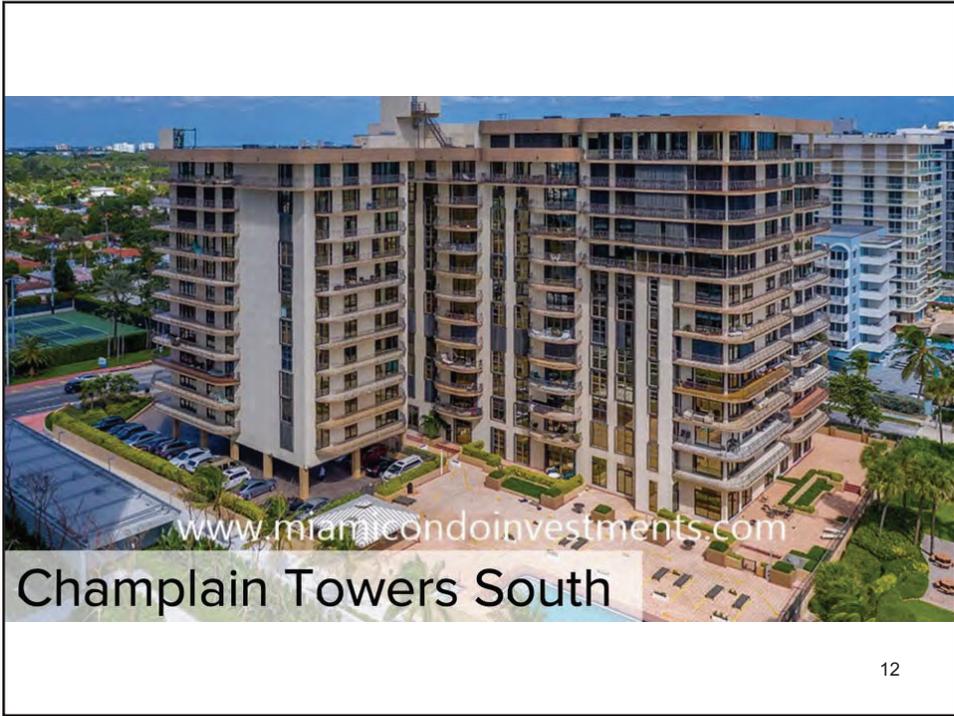


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www.miamicondoinvestments.com

Champlain Towers South

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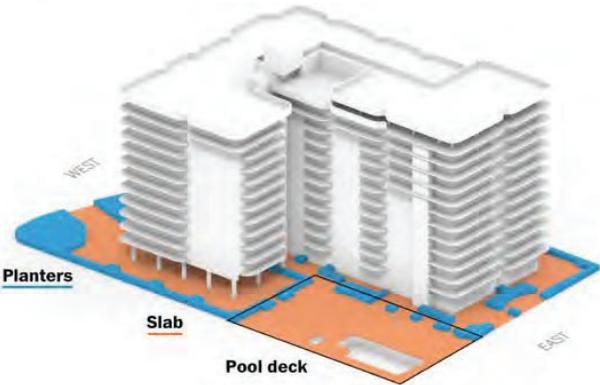
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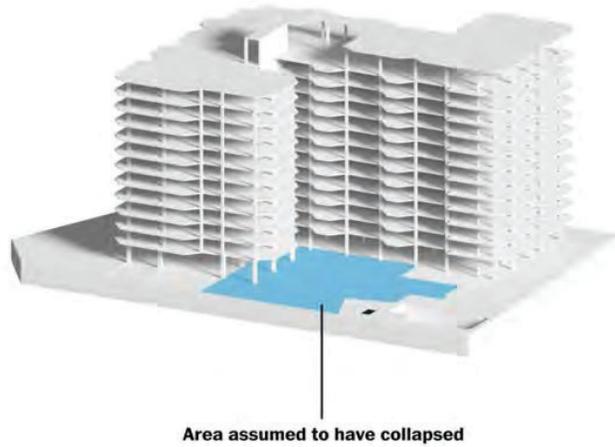
The troubled slab

Champlain Towers South, which contained 136 apartments, was built on a concrete slab about 9½-inches thick that spanned about 55,000 square feet. A grid of steel reinforcing bars, known as rebar, ran through the slab to boost its strength and stability.



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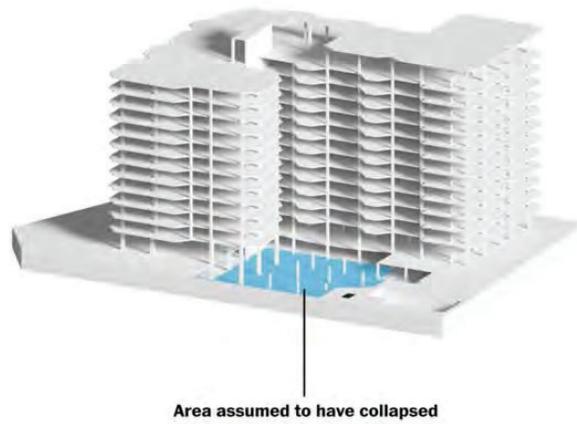
The simulation



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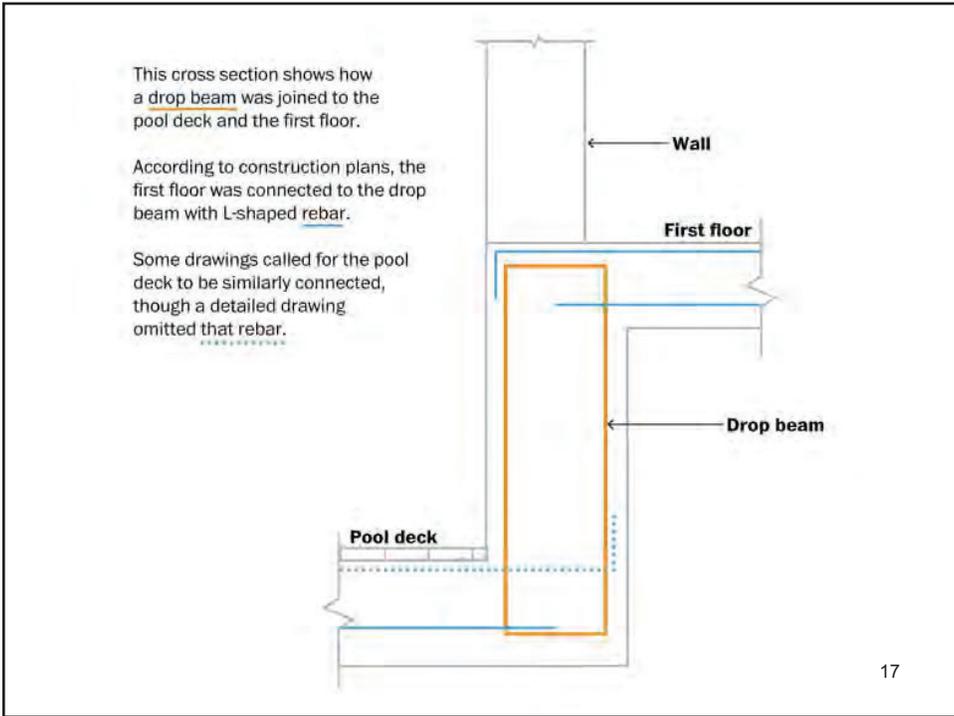
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The simulation

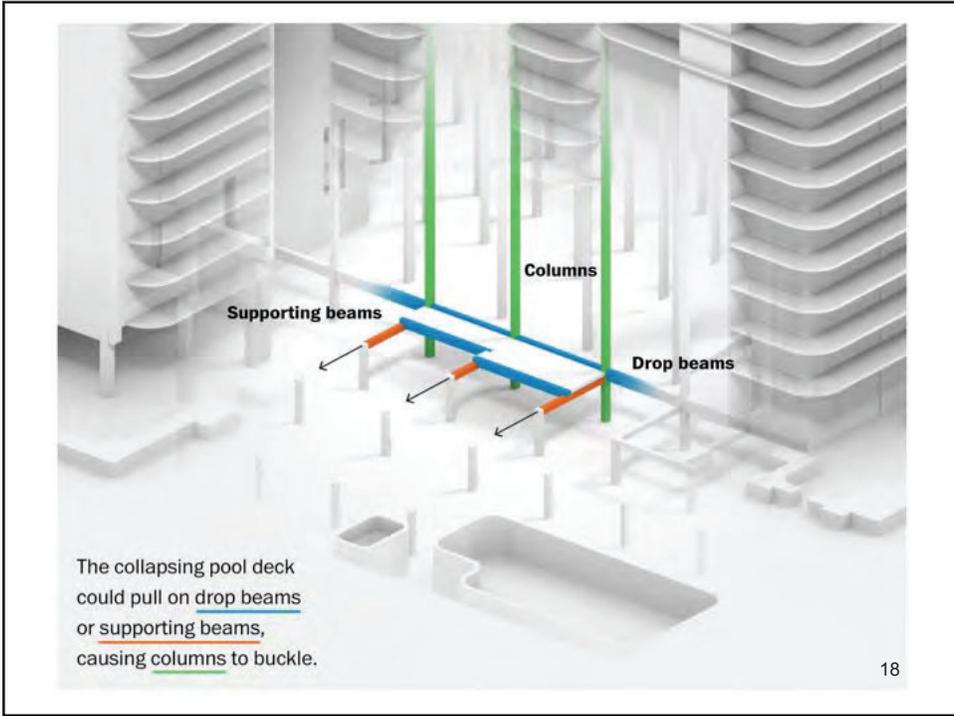


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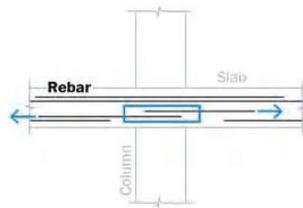


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Punching-shear failure at site of condo collapse



Structural drawings show lack of continuous rebar along the bottom in slab and column connections.

According to experts, rebar could have slid out of the column in the event of a punching-shear failure.

Source: Adapted from a figure published in IBRACON Structures and Materials Journal, in an article by Paulo Sacramento, Mauricio Ferreira, D.R.C. Oliveira and Guilherme S. Melo.

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The building collapsed in stages



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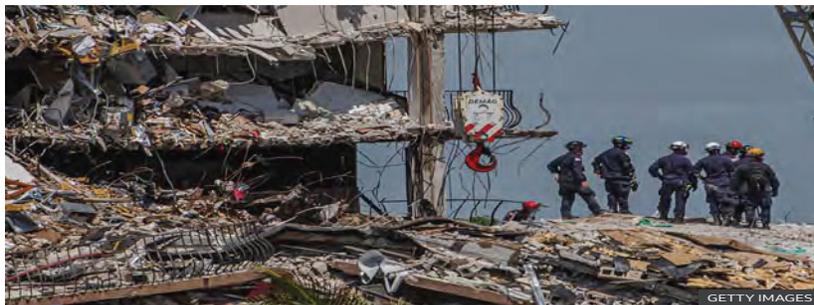
Miami building collapse: What could have caused it?

By The Visual Journalism Team
BBC News

© 1 July



Miami building collapse



Questions are being raised about what caused a 12-storey apartment complex to collapse in Surfside, near Miami in Florida.

Experts gathering information at the scene will have to consider a range of possible causes - from structural defects to environmental influences - and whether a combination of factors may have triggered the sudden collapse of

<https://www.bbc.com/news/world-us-canada-57651025>

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Did land movement contribute?

A study from researchers at Florida International University published last year found that the building was sinking at a rate of about two millimetres per year in the 1990s.

Such movement can cause cracking and contribute to structural problems.

Professor Shimon Wdowinski said the study did not focus on Champlain Towers South in particular, but the building stood out as one of the places that showed the most subsidence.

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It had not sunk much, he said, but as the study was more than 20 years ago it was not known whether the building had sunk further and whether this had affected its foundations.

"Maybe a point was reached where the structure couldn't hold the load and collapsed. But this is a structural problem. They are not things that I study," he told BBC Mundo, the BBC's Spanish language news service.

"What we do know is that the building that collapsed in Miami has been sinking for decades, but that alone does not explain the collapse."

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Could new building work be a factor?

Some people believe it is possible that vibrations from the recent construction of the adjacent 18-storey tower block - Eighty Seven Park - may have caused some ground movement.

Champlain Towers South residents raised concerns in 2019 that they had felt movement and shaking during the construction work, but were told to monitor the situation.

Are other buildings at risk of collapse?

Champlain Towers South was built on reclaimed wetland in 1981.

Most blocks along the coast, and high-rise buildings elsewhere, are built on pile foundations, using columns of concrete and steel to transfer the load of the building into the ground.

A short distance away is Champlain Towers North, built to an almost identical design.



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Demolition ? Debris Removal?



The lot where the Champlain Towers South once was (Getty)

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Federal Government to pay for Demo and Debris Removal

President Joe Biden, following his visit to Surfside yesterday, formally authorized the federal government on Friday to cover 100% of the cost of debris removal and emergency protective measures at the collapse site under the Public Assistance program for 30 days, beginning June 24.

Florida Division of Emergency Management Director Kevin Guthrie thanked the federal government and private-sector vendors for their support.

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BUSINESS INSURANCE.

Coverage 'inadequate' in Florida condo collapse: Judge

Posted On: Jul. 2, 2021 11:29 AM CST

Claire Wilkinson

The Surfside, Florida, condominium building that collapsed last week had \$48 million in total property and liability coverage, which will be "inadequate" to compensate everyone fully, a Miami-Dade circuit judge has said.

In an online meeting Thursday, Judge Michael Hanzman was told by attorneys for the Champlain Towers South condo association that they were aware of only \$30 million in property insurance and \$18 million in liability coverage, according to a segment posted online by the Miami Herald.

Great American Insurance Co. is the property insurer for the building.

"It looks like for the property damage claims and the injury and death claims there's going to be a total of \$48 million which will obviously be inadequate to compensate everyone fully to the extent of their harm," Judge Hanzman said.

"I don't know if there are any third-party claims. Maybe there are, maybe there aren't, but we are dealing with certainly a limited pot as far as insurers go," he said.



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VALUATION

- **Guaranteed Replacement Cost**
 - The carrier will rebuild all common buildings and structures—guaranteed, even if materials and/or the cost of labor unexpectedly increases for whatever reason. The Board has to agree to use the RC figures provided by the carrier and any increases at renewal.
- **Extended Replacement Cost**
 - The carrier will increase the building/structure limits by up to 25% above those stated in the policy; as long as the Board agrees to use the RC figures provided by and carrier and any increases

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Actual Claim

- During the Northern California fires in Sonoma, an entire 46 unit HOA was destroyed.
- The Board purchased GRC and also selected “Walls In including Upgrades”.
- The carrier rebuilt the entire HOA and improvements without limit !

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Get More Building Code Coverage

One other lesson learned after the California Fires by board members who lost their homes is that it is smart financial protection to have plenty of Building Code Coverage in your insurance policy. The older the HOA the more building code coverage needed. One General Contractor I know who has over 20 years of building experience advised me that if your buildings are over 25 years of age, get about 20% of the replacement cost figure for additional monies to bring buildings up to current codes post major fire loss. So if your replacement cost number is \$3,000,000, then get \$600,000. ($\$3,000,000 \times 20\% = \$600,000$). When I review and bid on HOA's I often discover this important coverage is far too low for an HOA that is over 25 years of age.

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BUSINESS INSURANCE.

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Champlain Towers South Site Approved for Estimated \$100M Sale

BY CHAVA GOURARIE JULY 15, 2021 5:57 PM

REPRINTS



SITE OF THE CHAMPLAIN TOWERS SOUTH, WHICH COLLAPSED JUNE 24, 2021.

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Miami-Dade Circuit Judge **Michael Hanzman**, who is overseeing the legal cases related to the building's collapse, said Wednesday that the sale should begin immediately, the *Miami Herald* [reported](#). Hanzman vetoed a suggestion to turn the site into a memorial, since that would not generate compensation for the victims.

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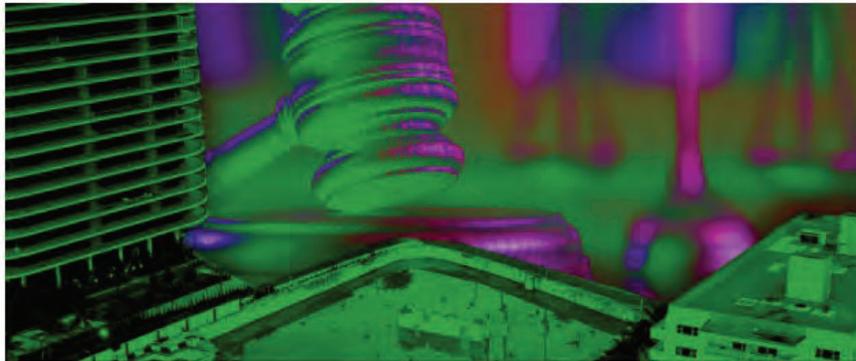
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Dubai developer's \$120M contract for Surfside site approved, appraisal for unit owners totals \$96M

Appraisal estimates the market value as of the day before deadly collapse

[Miami](#) / By Lidia Dinkova and Katherine Kallergis

September 30,
2021 03:35 PM



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The screenshot shows the ABC News website header with navigation links for VIDEO, LIVE, SHOWS, CORONAVIRUS, and OLYMPICS. The main headline reads "Judge: \$150M initially for victims in Florida condo collapse". Below the headline is a sub-headline: "A judge says victims and families who suffered losses in the collapse of a 12-story oceanfront Florida condominium will get a minimum of \$150 million in compensation initially". The byline is "By CURT ANDERSON and KELLI KENNEDY Associated Press" and the date is "July 22, 2021, 2:29 AM • 5 min read". Social media icons for Facebook, Twitter, and Email are visible on the right side of the article.

COMMERCIAL PROPERTY
CP 10 30 09 17

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.
 - (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

Exclusions

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.

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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.

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“Specified Cause of Loss”

“Specified causes of loss” means 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, and water damage.

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- (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;

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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.

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- 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;

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Months before the building’s collapse, a condo official warned that damage had ‘gotten significantly worse’ in recent years. 

Less than three months before the collapse of the Champlain Towers South condo in Surfside, Fla., the president of the condominium association warned in a letter that the damage in the building had “gotten significantly worse” since it was highlighted in a 2018 inspection.

The letter was written to residents by Jean Wodnicki, president of the association’s board of directors, explaining why a list of extensive construction projects were worth a \$15 million special assessment that residents were being asked to pay.

Along with the 2018 inspection, which warned of “major structural damage,” the letter, a copy of which The New York Times obtained, adds to a growing body of evidence that engineers had raised alarms about serious flaws in the building months and even years before the catastrophic building failure, which killed 12 people and left 149 unaccounted for.

Ms. Wodnicki could not immediately be reached for comment.

That 2018 inspection warned that concrete damage would “multiply exponentially” in the coming years, Ms. Wodnicki wrote in the letter, which was earlier reported by USA Today and The Wall Street Journal. The engineer who prepared that initial report, Frank Morabito, carried out “a much more detailed survey of the property” and found signs that this acceleration was indeed already happening. “When you can visually see the concrete spalling (cracking), that means that the rebar holding it together is rusting and deteriorating beneath the surface,” Ms. Wodnicki wrote.

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Water damage was visible on the garage ceiling close to where the concrete planters sat on the deck above, video recorded last summer shows. The condo association’s board warned residents in October that a lack of waterproofing on large sections of the slab had “exposed the garage to water intrusion for 40 years,” and said significant work was needed. “Where there is waterproofing, it has failed,” residents were told. “Water has gotten underneath and caused additional damage to the concrete.”



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Condo owners in Surfside building were facing assessments for \$15 million worth of repairs



By Casey Tolan, CNN

Updated 6:56 PM ET, Tue June 29, 2021



More from CNN



Roger Federer bit lucky survives.



She sued Why her worried.

This ad is good night's

Because it has fraud pro

Rest easy with Amex

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(CNN) — Condo owners in the South Florida tower that collapsed last week were facing assessments for millions of dollars worth of repairs -- with payments set to begin a week after the building's deadly fall.

The Champlain Towers South condo association approved a \$15 million assessment in April to complete repairs required under the county's 40-year recertification process, according to documents obtained by CNN.

The documents show that more than two years after association members received a report about "major structural damage" in the building, they began the assessment process to pay for necessary repairs.

Owners would have to pay assessments ranging from \$80,190 for one-bedroom units to \$336,135 for the owner of the building's four-bedroom penthouse, a document sent to the building's residents said. The deadline to pay upfront or choose paying a monthly fee lasting 15 years was July 1.

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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;

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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.

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- **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.

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- **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.

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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.

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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.**

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Exclusions

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.

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Definition

- 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.

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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.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

- A.** When this endorsement is attached to Standard Property Policy CP 00 99, the term Coverage Part in this endorsement is replaced by the term Policy.
- B.** The following provision applies when a Coinsurance percentage is shown in the Declarations:

Florida law states as follows:

Coinsurance contract: The rate charged in this policy is based upon the use of the coinsurance clause attached to this policy, with the consent of the insured.

- C.** The following is added:

If windstorm is a Covered Cause of Loss and loss or damage to Covered Property is caused by or results from windstorm, the following exclusion applies in:

1. Broward County;
2. Dade County;
3. Martin County;
4. Monroe County;
5. Palm Beach County; and
6. All the areas east of the west bank of the Intracoastal Waterway in the counties of:
 - a. Indian River; and
 - b. St. Lucie.

Windstorm Exterior Paint And Waterproofing Exclusion

We will not pay for loss or damage caused by windstorm to:

1. Paint; or
 2. Waterproofing material;
- applied to the exterior of buildings unless the building to which such loss or damage occurs also sustains other loss or damage by windstorm in the course of the same storm event. But such coverage applies only if windstorm is a Covered Cause of Loss.

When loss or damage to exterior paint or waterproofing material is excluded, we will not include the value of paint or waterproofing material to determine:

- a. The amount of the Windstorm or Hall Deductible; or
 - b. The value of Covered Property when applying the Coinsurance Condition.
- D.** The Loss Payment Condition dealing with the number of days within which we must pay for covered loss or damage is replaced by the following:

Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage upon the earliest of the following:

- (1) Within 20 days after we receive the sworn proof of loss and reach written agreement with you;
 - (2) Within 30 days after we receive the sworn proof of loss and:
 - (a) There is an entry of a final judgment; or
 - (b) There is a filing of an appraisal award with us; or
 - (3) Within 90 days of receiving notice of an initial, reopened or supplemental claim, unless we deny the claim during that time or factors beyond our control reasonably prevent such payment. If a portion of the claim is denied, then the 90-day time period for payment of claim relates to the portion of the claim that is not denied.
- Paragraph (3) applies only to the following:
- (a) A claim under a policy covering residential property;
 - (b) A claim for building or contents coverage if the insured structure is 10,000 square feet or less and the policy covers only locations in Florida; or

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Catastrophic Ground Cover Collapse

We will pay for direct physical loss or damage to Covered Property caused by or resulting from catastrophic ground cover collapse, meaning geological activity that results in all of the following:

1. The abrupt collapse of the ground cover;
2. A depression in the ground cover clearly visible to the naked eye;
3. "Structural damage" to the building, including the foundation; and
4. The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

However, damage consisting merely of the settling or cracking of a foundation, structure or building does not constitute loss or damage resulting from a catastrophic ground cover collapse.

The Earth Movement Exclusion and the Collapse Exclusion do not apply to coverage for Catastrophic Ground Cover Collapse.

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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.

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POLICY NUMBER: _____ COMMERCIAL PROPERTY
CP 04 05 09 17

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	Coverages B And C Combined Limit Of Insurance
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *

Post-Loss Ordinance Or Law Option: Yes No

*Do not enter a Combined Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations. 65

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Ordinance & Law Issues

- What percentage of the structure must be damaged ?
 - 41% - 51%
 - Discretion of Town Fathers
- What valuation method is used to determine the percentage?
 - Property Value ?
 - Replacement Cost ?
 - Tax Assessed Value ?
 - The City of Tallahassee says 50% of Property Value
 - Leon County 50% of the Assessed Value
 - Both ordinances say if Fire Marshall deems building ⁶⁶ unsafe, then it must be torn down

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Miami orders residents to evacuate 8-story condo building six weeks after collapse of Champlain Towers

By The Associated Press Updated August 10, 2021, 8:45 a.m.

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Residents of an eight-story condo building in Miami were ordered to evacuate after the building was deemed “unsafe” by city officials.

On Monday night, some six weeks after 98 people died in the collapse of the Champlain Towers South in nearby Surfside, residents of the 138-unit building lugged belongings to their vehicles, news outlets reported. They were ordered to be out by Tuesday morning.

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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.

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C. Coverage D – Loss Of Use

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

1. Additional Living Expense

If a loss by a Peril Insured Against under this policy to covered property or the building containing the property makes the "residence premises" not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

2. Fair Rental Value

If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest time required to repair or replace such premises.

3. Civil Authority Prohibits Use

If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against, we cover the loss as provided in 1. Additional Living Expense and 2. Fair Rental Value above for no more than two weeks.

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Policy No. MAC E658359 00 00
 Renewal Of

POLICY COMMON DECLARATIONS

NAMED INSURED Champlain Towers South Condominium Association, Inc.
AND ADDRESS: 8777 Collins Ave
 Surfside, FL 33154

IN RETURN FOR PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

AGENT'S NAME AND ADDRESS:
 AmVINS Brokerage of Florida
 1227 S Patrick Dr
 Ste 101
 Satellite Beach, FL 32937

Insurance is afforded by the Company named below, a Capital Stock Corporation:
 Great American Insurance Company

POLICY PERIOD: From 12/28/2020 To 12/28/2021
 12:01 A.M. Standard Time at the address of the Named Insured

This policy consists of the following Coverage Parts for which a premium is indicated. This premium may be subject to adjustment.

	Premium
Commercial Property	\$ 33,003.00
Commercial General Liability	
Commercial Crime and Fidelity	
Commercial Inland Marine	
Commercial Equipment Breakdown	\$ 1,414.00
Commercial Auto	
Commercial Umbrella	
Florida Commercial Property Fire Assessment	\$ 33.00
Florida Property Trust Fund - Commercial	\$ 4.00
Total	\$ 34,454.00

FORMS AND ENDORSEMENTS applicable to all Coverage Parts and made part of this Policy at time of issue are listed on the attached Forms and Endorsements Schedule IL 88 01 (11/85).

POLICY ALTERNATE MAILING ADDRESS:

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SELECT BUSINESS POLICY PLUS

NAMED INSURED: Champlain Towers South Condominium Association, Inc.
POLICY PERIOD: 12/28/2020 to 12/28/2021

TOTAL PROPERTY PREMIUM: \$ 33,003.00

DEDUCTIBLE AMOUNTS:

\$ 2,500 EDP Mechanical breakdown \$ 2,500 In transit
 \$ 2,500 All other

NOT AT A DESCRIBED PREMISES:
 Insurance is provided only for those coverages for which a Limit of Insurance has been inserted:

	Newly Acquired or Constructed Locations	At any other location	In transit, in or on any one conveyance unit
Building	\$ 500,000	\$ 50,000	\$ NOT COVERED
Business Personal Property	\$ 250,000	\$ 50,000	\$ 5,000
Business Income	\$ NOT COVERED	\$ NOT COVERED	\$ NOT COVERED
Extra Expense	\$ 10,000	\$ 10,000	\$ NOT COVERED

DESCRIBED PREMISES:
 At the locations specified below, insurance is provided for those coverages for which a Limit of Insurance has been inserted:

Location: Building: **See SB8118** Address:

BUILDING: Limit \$ Valuation
BUSINESS PERSONAL PROPERTY: Limit \$ Valuation
BUSINESS INCOME INCLUDING EXTRA EXPENSE: Limit \$
MORTGAGEHOLDER:

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**SELECT BUSINESS POLICY
SCHEDULE OF ADDITIONAL PROPERTY LOCATIONS**

Described Locations: At the locations specified below, insurance is provided only for those coverages for which a Limit of Insurance has been inserted.

Schedule of Locations						
Loc No.	Bldg. No.	Address	C	V	Coin/BI Opt	Limit of Insurance
1	1	8777 Collins Ave, Surfside, FL 33154 Condo	BLDG	RC	NONE	\$ 30,172,900
			BPP	RC	NONE	\$ 160,000
2		8777 Collins Ave, Surfside, FL 33154 Pool	BLDG	RC	NONE	\$ 85,000
3		8777 Collins Ave, Surfside, FL 33154 Whirlpool	BLDG	RC	NONE	\$ 20,000
4		8777 Collins Ave, Surfside, FL 33154 Pool Awning	BLDG	RC	NONE	\$ 8,000
5		8777 Collins Ave, Surfside, FL 33154 Pool Fence	BLDG	RC	NONE	\$ 25,000
6		8777 Collins Ave, Surfside, FL 33154 Deck Pavers	BLDG	RC	NONE	\$ 65,000
7		8777 Collins Ave, Surfside, FL 33154 Exterior Walls	BLDG	RC	NONE	\$ 150,000
8		8777 Collins Ave, Surfside, FL 33154 St Lighting	BLDG	RC	NONE	\$ 9,000
9		8777 Collins Ave, Surfside, FL 33154 Barbeques	BLDG	RC	NONE	\$ 2,000
10		8777 Collins Ave, Surfside, FL 33154 Monument	BLDG	RC	NONE	\$ 8,000

For additional locations, if any, see the Select Business Policy Schedule of Additional Property Locations attached to this Coverage Form.

All other terms and conditions of this Policy remain unchanged.

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SB 81 18 (Ed. 05/16) (Page 1 of 1)

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CHAMPLAIN TOWERS SOUTH

A Development Of
Toronto Enterprises

8777 Collins Avenue
Surfside, Florida

135 UNIT CONDOMINIUM			
UNIT	Number	sq ft	Type
A	12	2242	3-2
B	12	1794	2-2
C	23	1673	2-2
D	11	1748	2-2
E	11	1990	2-2
F	11	1728	2-2
G	22	1200	1-2
H	22	1425	1-2
I	11	1728	2-2

*Review D.T. 13
A- 20.30*

TOURTOUR SURFSIDE
 Approved
 Approved as noted
 Disapproved

Approximately 220,000 sq ft

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Commercial cost per square foot in the Eastern US

Using figures from **New York City, Boston, Washington DC, Philadelphia, and the Raleigh-Durham area**, we've come up with the average cost per square foot for commercial projects in the East.

On average, the cost to build a **single-story commercial office building** on the high end is \$361 per square foot. On the low end, the average cost is \$301 per square foot. For a **mid-rise building**, the numbers jump to \$719 and \$599, respectively. **High rise buildings** jump a bit more, with a high average of \$827 and a low average of \$688 per square foot.

A standard **neighborhood strip mall's** cost per square foot averages at \$371 per square foot on the high end and \$309 on the low end. A **regional mall's** top-end average is \$554 per square foot and \$461 for a bottom average.

For a **three-star hotel**, your high and low average costs per square foot are \$604 and \$489, respectively. Bump that up to a **five-star hotel**, and you're looking at \$871 per square foot on the high side and \$677 on the lower end.

When it comes to elementary, middle, and high **school construction**, the average cost per square foot on the high end is \$381, while the low end comes in at \$317.

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2021 Q2: U.S. Costs per Square Foot of Gross Floor Area 2021 - Infogram 2/28/22, 8:26 AM

CUMMING
By Metro Voice Investor - Leoben, AT

U.S. Costs per Square Foot of Gross Floor Area 2021

	West		Midwest		South		East	
	Atlanta	Dallas	Miami	Orlando				
RESIDENTIAL								
Single Family Detached-Medium Quality	\$254	\$195	\$228	\$190	\$225	\$187	\$221	\$184
Apartment/Condominium-Mid Rise	\$802	\$603	\$603	\$603	\$579	\$230	\$572	\$190
COMMERCIAL / OFFICE								
Single Story	\$294	\$245	\$287	\$239	\$283	\$235	\$278	\$231
Mid-Rise	\$586	\$489	\$571	\$476	\$564	\$470	\$554	\$462
High Rise	\$674	\$561	\$657	\$547	\$648	\$540	\$637	\$530
RETAIL								
Neighborhood Strip Center	\$305	\$255	\$295	\$246	\$291	\$242	\$286	\$238
Regional Mall	\$452	\$377	\$440	\$367	\$455	\$362	\$427	\$356
HOSPITALITY / LODGING								
Three-Star Hotel	\$493	\$353	\$480	\$336	\$473	\$351	\$465	\$345
Five-Star Hotel	\$708	\$480	\$685	\$464	\$676	\$455	\$664	\$447
WAREHOUSE / MANUFACTURING								
Warehouse-Regional Distribution	\$212	\$152	\$207	\$148	\$204	\$146	\$200	\$143
Warehouse-Light Industrial	\$236	\$168	\$230	\$164	\$227	\$162	\$223	\$159
Manufacturing-Tech Laboratory	\$589	\$491	\$575	\$478	\$566	\$472	\$556	\$464
HEALTHCARE								
Acute Care Facility	\$821	\$616	\$799	\$600	\$789	\$591	\$775	\$581
Medical Office Building	\$421	\$351	\$410	\$341	\$475	\$350	\$485	\$360
Specialty Clinic	\$526	\$438	\$512	\$427	\$505	\$421	\$496	\$414
PRIMARY & SECONDARY EDUCATION								
Elementary School	\$244	\$205	\$238	\$198	\$234	\$195	\$230	\$192
Middle School	\$267	\$225	\$260	\$217	\$257	\$214	\$252	\$210
High School	\$294	\$245	\$286	\$238	\$282	\$235	\$277	\$231
HIGHER EDUCATION								
Academic/Classroom	\$518	\$452	\$505	\$421	\$498	\$415	\$489	\$408
Laboratory	\$716	\$597	\$698	\$581	\$688	\$573	\$676	\$563
Administration	\$536	\$447	\$522	\$435	\$515	\$430	\$506	\$423
Dormitory	\$286	\$232	\$278	\$226	\$275	\$223	\$270	\$219
PUBLIC / COMMUNITY FACILITIES								
Gov't Administrative Buildings	\$565	\$467	\$551	\$455	\$544	\$449	\$534	\$441
Museum/Performing Arts	\$857	\$686	\$835	\$668	\$824	\$659	\$809	\$647
Recreation/Gymnasium	\$368	\$307	\$358	\$299	\$353	\$294	\$347	\$289
Police Stations	\$535	\$446	\$521	\$434	\$514	\$429	\$505	\$421
PARKING STRUCTURES								
Below Grade-Multi-Level	\$339	\$314	\$335	\$311	\$335	\$309	\$331	\$307

<https://www.infogram.com/b9e5ce0c-f127-4d92-b7bf-3f108f39d265?pare...rpinights.com%2Fcosts-per-square-foot%2F&src=embed#asyn...embed> Page 1 of 2

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HARP INC.
HARP, INC - Risk Purchasing Group

CERTIFICATE OF COVERAGE
UMBRELLA AND EXCESS LIABILITY INSURANCE

9954-7

HARP Inc, Risk Purchasing Group Member (Certificate Holder) and Mailing Address:
Champlain Towers South Condominium Association, Inc.
8777 Collins Avenue MIAMI BEACH, FL 33154

Designated Location(s) and other Named Insured(s): See Schedule of Locations Form
8777 Collins Avenue
MIAMI BEACH, FL 33154

Coverage Period: 12/28/2020 to 12/28/2021
12:01 a.m. Standard Time at the Mailing Address of Purchasing Group Member as stated herein.

APPLICABLE LIMITS OF INSURANCE AND PARTICIPATING INSURERS:

COMBINED LIMIT OF LIABILITY: \$15,000,000 EACH OCCURRENCE AND AGGREGATE AS APPLICABLE

PARTICIPATING INSURANCE COMPANIES AND LIMITS:

LEAD INSURANCE	Policy#	Limit of Insurance
Fireman's Fund Insurance	USL00656920U	\$10,000,000 Each Occurrence \$10,000,000 General Aggregate (where applicable) \$10,000,000 Products/Completed Operations
EXCESS UMBRELLA INSURANCE		
DBE Insurance	HRP2620	\$5,000,000 Each Occurrence and Aggregate Excess of \$10,000,000
		Each Occurrence and Aggregate Excess of

Harp, Inc. (Harp) a Purchasing Group formed in Delaware pursuant to the Liability Risk Retention of 1986 (as amended) (15 U.S.C. 3910 et. seq.) and Delaware Law, in connection with its risk purchasing group activities, Harp has appointed PG Administrators LLC (PG) to administer certain risk purchasing group operations of Harp and PG has paid an administration fee by for such services. Trivedi - Capacity Associates LLC (Trivedi) is the insurance agent through which PG currently purchases the insurance coverage for Harp's members and is an affiliate of PG.

ISSUE DATE: 12/28/2020 AUTHORIZED SIGNATURE: 

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Schedule Of Underlying Insurance

For the insured shown above, and subject to all the terms and conditions of Coverage-Excess Follow-Form Coverage A, this insurance follows form on to those coverages:

- which are indicated below by an X and
- for which policies of underlying insurance in at least the limits shown have been issued to and remain in force for each insured.

Commercial General Liability:
\$1,000,000 Per Occurrence
\$2,000,000 General Aggregate (per location if more than one location)
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal & Advertising Injury

Carrier: James River Insurance Company
Policy No: As Assigned by Carrier
Policy Period: 12/28/2020 to 12/28/2021

Employee Benefits Liability: Claims Made
\$1,000,000 Per Claim Retrospective Date:
\$1,000,000 Aggregate *Note retrospective date is the same as the policy inception date.

Carrier:
Policy No: Occurrence
Policy Period:

Liquor Liability:
\$1,000,000 Each Common Cause
\$1,000,000 Aggregate

Carrier:
Policy No:

Commercial Automobile Liability:
\$1,000,000 Combined Single Limit

Carrier: James River Insurance Company
Policy No: As Assigned by Carrier
Policy Period: 12/28/2020 To 12/28/2021

Employers Liability:
\$200,000 Each Accident
\$500,000 Disease Policy Limit
\$500,000 Disease Each Employee

Carrier: CNA
Policy No: As Assigned by Carrier

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Garage Keeper Legal Liability
\$1,000,000 Each Occurrence
\$1,000,000 Aggregate

Carrier:
Policy No:

Directors & Officers (Condo/Co-Op)
\$1,000,000 Each Claim
\$1,000,000 Aggregate Per Association (Defense in addition to the limit)

Carrier: Philadelphia
Policy No: As Assigned by Carrier

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CHAMTOZ DP-10: MS
DATE REVISED: 01/04/2021

ACORD CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURERS, AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Chamberlain Towers South 2900 RW 1480 Avenue Miramar, FL 33027-6602 Peter C. Catala	AGENT Peter C. Catala Phone: 954-883-2900 Fax: 954-517-7400 Email: Address:
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INSURED Chamberlain Towers South (condominium, association, etc.) Surfside, FL 33154	INSURERS AFFORDED COVERAGE <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>INSURER A: James River Ins. Company</td> <td>NAIC # 12283</td> </tr> <tr> <td>INSURER B: Philadelphia Indemnity Ins. Co.</td> <td>18058</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURER A: James River Ins. Company	NAIC # 12283	INSURER B: Philadelphia Indemnity Ins. Co.	18058	INSURER C:		INSURER D:		INSURER E:	
INSURER A: James River Ins. Company	NAIC # 12283										
INSURER B: Philadelphia Indemnity Ins. Co.	18058										
INSURER C:											
INSURER D:											
INSURER E:											

COVERAGES	CERTIFICATE NUMBER	REVISION NUMBER														
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, ENDS, SHOWING MAY HAVE BEEN RECEIVED BY THIS COMPANY.																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>TYPE OF INSURANCE</th> <th>POLICY NUMBER</th> <th>ISSUE DATE</th> <th>EXPIRES</th> <th>REVISION</th> <th>AMOUNT</th> <th>COVERAGE</th> </tr> <tr> <td> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> DIRECTORS & OFFICERS </td> <td>000885321</td> <td>12/28/2020</td> <td>12/28/2021</td> <td></td> <td>1,000,000</td> <td> DIRECTORS & OFFICERS COMMERCIAL GENERAL LIABILITY AUTO COLLISION & AUTO THEFT PERSONAL & AUTO THEFT GENERAL AGGRIEVANCE PRODUCTS - COMMODITY 1,000,000 </td> </tr> </table>	TYPE OF INSURANCE	POLICY NUMBER	ISSUE DATE	EXPIRES	REVISION	AMOUNT	COVERAGE	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> DIRECTORS & OFFICERS	000885321	12/28/2020	12/28/2021		1,000,000	DIRECTORS & OFFICERS COMMERCIAL GENERAL LIABILITY AUTO COLLISION & AUTO THEFT PERSONAL & AUTO THEFT GENERAL AGGRIEVANCE PRODUCTS - COMMODITY 1,000,000		
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DEFINITIONS OF OPERATIONS, LOCATIONS, VEHICLES, FACILITY (BY ADDRESS) RENEWAL & RENEWAL, may be attached to this certificate in separate sheet.

136 Unit Condominium Association

CERTIFICATE HOLDER Champlain Towers South Proof of Insurance Only 8777 Collins Avenue Surfside, FL 33154	PROOF#1 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE:
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Property Insurance Coverage LAW BLOG

THE POLICYHOLDER'S ADVOCATE®

Great American Agrees to Pay Champlain Towers South Property Insurance Claim

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By Chip Merlin on July 20, 2021

Great American Insurance Company attorney **Bill Wilson** of the Mound Cotton law firm announced at a hearing in the Champlain Towers South Case that the insurer would

<https://www.propertyinsurancecoveragelaw.com/2021/07/articles/insurance-claim-and-more-to-be-discussed-on-tuesday-2-with-chip-merlin/> Page 2 of 7

Great American Agrees to Pay Champlain Towers South Property Insur... Merlin - Property Insurance Coverage Law Blog - Merlin Law Group 10/6/21, 10:50 AM

tender its full policy limits and pay additional coverages totaling more than 30 million dollars. The catastrophe was on June 24 and the claims decision was announced only 22 days after the occurrence. While I have often criticized insurance claims executives for taking too long to investigate and come to a claims determination, Great American deserves a *Bravo* and resounding accolades for putting this claims determination to rest.

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U.S. Treasury Department set to reimburse Surfside residents for \$750,000 cash found in collapse

WLRN 91.3 FM | By Jay Weaver
Published December 2, 2021 at 12:03 PM EST



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An estimated \$750,000 in randomly scattered cash that was recovered in the rubble of the Surfside condo collapse will soon be driven in an armored truck to Washington, D.C., and converted into a lump-sum payment – courtesy of the Treasury Department for the benefit of residents who lost the money in the summer tragedy.

That promising news was delivered Wednesday by the receiver for the Champlain Towers South condo association to a Miami-Dade Circuit judge who is overseeing legal matters, including a class-action lawsuit, in the aftermath of the 136-unit building collapse in which nearly 100 people died.

Receiver Michael Goldberg said he was coordinating a plan with the Secret Service to haul the badly damaged currency to the nation's capital. The Treasury Department has agreed to clean up the cash, count it and then wire the reimbursement check to him, so he can distribute the money to the Champlain condo residents.

Read more at our news partner [the Miami Herald](#).

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Serving on a Condo Board

- Evaluate the Board before agreeing to be a member
- Make sure they carry adequate D&O cover, and suggest stand alone Side A cover for board members added protection
- Obtain current appraisals
- Recommend CGL and Umbrella/Excess liability. Always show additional limits are available
- Evaluate the Association's financial condition, repair records, and escrow funding

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Lawsuits Filed Within Days of Collapse

 Several lawsuits have been filed against the association naming the board and individual board members as defendants. The first lawsuit, a class action suit filed by Manuel Drezner, alleges that the condo association "disregarded the rights of Plaintiff and Class members by intentionally, willfully, recklessly, or negligently doing the following: failing to take adequate and reasonable measures to ensure the safety and protection of its residents and their property, failing to disclose to its residents and visitors that it did not have adequate safety measures in place to safeguard occupants of Champlain Towers South, failing to take available steps to prevent the catastrophic collapse of the building, and failing to monitor the building and activities that led to the collapse of the building, among other things."

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

ROSA ANA QUESADA,

Plaintiff,

CASE NO.

LIMITED FUND CLASS ACTION
COMPLAINT

v.

CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.,
GREAT AMERICAN INSURANCE
COMPANY, JAMES RIVER INSURANCE
COMPANY, PHILADELPHIA INDEMNITY
INSURANCE COMPANY, FIREMAN'S FUND
INSURANCE COMPANY, and QBE
INSURANCE CORPORATION,

Defendants.

LIMITED FUND CLASS ACTION COMPLAINT

Plaintiff, ROSA ANA QUESADA ("Plaintiff"), sues Defendants, CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. (the "Association"), GREAT AMERICAN INSURANCE COMPANY ("GAIC"), JAMES RIVER INSURANCE COMPANY ("JRJC"), PHILADELPHIA INDEMNITY INSURANCE COMPANY ("PIC"), and FIREMAN'S FUND INSURANCE COMPANY ("FFIC") (collectively, "Defendants"), and states as follows:

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HOA Breach of Fiduciary Duty

The HOA also has a duty to act in the best interests of their residents. Such obligation is called fiduciary liability. The fiduciary duties of HOA Board members are defined by individual state corporation law. This fiduciary duty applies to HOAs even though they are typically nonprofit corporations and HOA Board members serve as volunteers. In addition to the duty of care discussed above HOA Board members owe the duty of loyalty and the duty to act within the scope of their authority.

Duty of Care – Board members have an obligation to make informed decisions. Depending on the matter before the Board, members may be required to do extensive research or to consult with lawyers, engineers, architects, geologists, or other experts and consultants. Board members also must generally be familiar with the HOA By-laws, CC&Rs and applicable state statutes. Board members always must act in a prudent and reasonable manner, use sound business judgment and avoid uninformed or impulsive decisions.

Duty of Loyalty – Board members must act in good faith, fairly and for the benefit of the HOA as a whole. Board members must not make decisions based on personal interest or potential for gain. Board members should also avoid any actual or perceived conflict of interest.

Duty to Act – Although Board members must perform all obligated duties, they must be careful not to make decisions or act on matters where the authority to do so does not exist. The authority of the Board comes solely from its obligations under state laws, and any authority granted to it in the Association's governing documents.

→ The Champlain Towers South Condominium Association was the first to be named in a lawsuit over the collapse. Filed less than 24 hours after it occurred, the \$5 million class-action suit claims the HOA failed to "properly protect the lives and property" of residents by not implementing needed repairs. It has since been revealed that in an independent budget review prepared for the association in 2020, the HOA was considered critically underfunded for necessary structural repairs and had just 6.9% of the funds recommended to make repairs and stay financially secure. This underfunding of reserves most commonly occurs when the needed repairs are so costly that even a special assessment cannot be imposed on the HOA members because it is deemed to be unaffordable. 88

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What are the lessons to be learned from the Champlain Towers collapse and how can the HOA's Board of Directors minimize the risk building damage, loss of life and of lawsuits?

Inspections

Inspections by qualified engineers can investigate hidden portions of a building to identify hidden damage in several ways. "Non-destructive" testing (NDT) can be used to determine the location and extent of damage—particularly rot or corrosion. Infrared cameras can be used to determine the extent of moisture intrusion in certain types of buildings. Another method involves use of a borescope – a small camera inserted through a hole in the outer skin. For concrete and steel buildings which often require more sophisticated methods of detecting internal damage, ground penetrating radar can assess corrosion in rebar or beams covered in concrete.

"Destructive" testing, where portions of the building are removed or opened, can be used to obtain a direct view of framing, shear walls, and waterproofing. Other hidden decay, such as corrosion of metal components may also become apparent during routine repair of other elements. Concrete can be cored to reach decay or corrosion.

To maximize effectiveness, inspections must start early following building construction when water intrusion leading to deterioration can be identified and repaired economically. However, inspections can be lifesaving even several years later.

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Structural Study

When there is concern about the structural integrity of the building, a structural study, conducted by a licensed engineer, can identify any immediate and potential future problems. In some areas of the country, periodic building recertification is required by state or local government. For maximum effectiveness, the recertification process should be started as soon as there is a concern, rather than waiting until the recertification deadline.

Maintenance

Maintenance or repair recommendations, even if relatively minor, should be addressed as soon as they are presented. As evident with the Champlain Towers, putting off repairs until they are "convenient" or even "affordable" can lead to serious trouble. Building maintenance should be scheduled and ongoing – not performed occasionally when a problem is brought to the Board's attention.

Insurance

The Board should make sure the adequate property and liability insurance limits, as required by the Association's governing documents, is maintained. In many cases, the documents only specify minimum insurance requirements. If those limits are unrealistic, additional coverage should be purchased in order to avoid the potential

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for lawsuits. If the Board feels that the D&O policy limits are insufficient protection from lawsuits, consideration should be given to buying higher limits, or paying for additional "Side A" coverage for the directors.

Claim Against the Architect or Builder

Where inspections or structural studies disclose a major problem with design or construction of the building, a claim should be made against the architect or the builder as soon as the problem is identified. Waiting to do this may impair the Board's ability to pursue the claim.

Communicate

Even if the Board is convinced to periodically inspect and perform necessary repairs, the effort may fail without support of the Association members, particularly where the cost of repairs is substantial and exceeds reserves. Accordingly, members have to be informed of inspection plans and their cost. But more important, members have to understand that with hidden damage, disaster may be lurking. Having meetings where the experts who do the inspections explain the process and their findings opens up lines of communication and instills confidence, particularly where the inspections are conducted to comply with statutes or good industry practice. If the cost of needed repairs requires a special assessment, it is essential to make the members understand that the assessment is necessary to avoid compromising the safety of the residents.

When a special assessment is not possible or affordable for the member, a bank loan may be the answer. The ability to get a loan, however, is of course dependent on the creditworthiness of the HOA. While the present owners may only have a short-term interest in the condition of the building, the Association has a long-term interest and must maintain the structure properly according to law and most governing documents. Because these two interests conflict, the Board of Directors may be tempted to keep expenses low and defer inspections and maintenance. However, a Board should not sacrifice the interests of owners who will come later to the interests of current members.

Conclusion

Like a scientist that studies creatures that swarm and multiply in a drop of water, the horrific Champlain Towers disaster has focused a microscope on the acts and omission of HOA board members both past and present. While it may be appropriate to hold such positions accountable for decades of deferred maintenance, kicking the can down the road for future boards to solve is not the solution. It is the homeowners that are collectively and ultimately responsible for the HOA board's performance.

As such a much more vocal and active association body is needed to ensure that the board is following at minimum the suggestion offered in this paper. In addition, legislative reforms regarding periodic safety inspections, reserve funding

requirements and local ordinances may be needed to ensure that the board and association members are held to a higher degree of care regarding the collective interests of all owners.

Gary W. Griffin, ARM is President of Griffin Communications, Inc. and G2 Risk Consulting, publishers of risk and insurance reference materials and independent risk management consultants located in Southern California. Gary may be reached at 949.331.7522 or Gary@G2risk.com.

Alan P. Schreiberman, ARM is a principal consultant with Integrated Risk Management, a Culver City-based risk management and insurance consulting firm. Alan may be reached at 310.559.7032 or integratedrisk@ca.rr.com.

FC&S Editors

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Breach of Fiduciary Duty

- **Duty of Care**
 - Board members have a duty to make informed decisions. This may require them to conduct research or consult with professionals, to avoid uninformed or impulsive decisions
- **Duty of Loyalty**
 - Board members must act in good faith and the best interest of its member
- **Duty to Act**
 - Board members must act in line with the authority granted them in the By-Laws

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Champlain Towers South Association Lawsuit

- Filed within 24 hours of claim
- Board failed to protect the lives and property of the residents, by not implementing timely repairs
- Independent budget review shows CTS was critically underfunded for necessary structural repairs (6.9% of recommended funds)

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Solutions

- Florida is one of the most strict states in the nation– it has vigorous 40 year reinspection requirement of hi-rise buildings
- Board should get a professional appraisal to determine adequate limits/values
- Regular Inspections by Engineers
- Scheduled Maintenance and Repairs
- Adequate Property and Liability Insurance
- In the event of failures/problems, the filing of claims against the builder / architect
- Communication and cooperation of members
- Bank loans if needed
- Conflict of Interest between Board & Members

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What Does D&O Cover

- Any actual or alleged act, error or omission, misstatement, misleading statement, or breach of fiduciary duty or other duty by an Insured Person.
- Making decisions to run and manage a business

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D & O for Non-Profits

TOP TEN Association D&O Claims

1. Failure to adhere to the By-Laws
2. Failure to properly notice Elections
3. Failure to properly count votes / proxies
4. Improper removal of Board Members
5. Challenges to Assessments
6. Breach of Fiduciary Duty
7. Failure to maintain Common Areas
8. Failure to properly disburse funds
9. Defamation of Board Member
10. Challenges by Members regarding Board Power

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Coverage under your HO for Serving on a Board ?

- In short, maybe... but, probably not what you really need and not proper coverage
- Your HO policy only applies to claims for BI, PD, and PI; not wrongful acts or bad decisions
- Many Board claims are for financial damages or non-monetary damages
- HO policy has a business exclusion (Trade, Profession or Occupation) with a volunteer exception for no remuneration
- HO policy has a “Professional Services” exclusions (although your service on the Board may not be deemed professional, if you are involved in placing, consulting, or advising on the Board’s Insurance matters, that very well may be!)
- High End HO Endorsements / Stand Alone Excess Side A policies 99

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Condo, Coops, Associations- Directors and Officers Liability (BP 17 24)

- The liability coverage section of the businessowners policy applies only to claims alleging bodily injury, property damage, or personal and advertising injury. In contrast, service on a boards of directors typically produces liability for financial injury. This exposure to liability for financial injury that faces those serving as directors and officers of condominium, co-operative building, and community associations would otherwise remain uncovered by the businessowners policy, absent the coverage afforded by BP 17 24.
- The endorsement adds a form of errors and omissions liability insurance for those entrusted with managing a condominium or co-op association. Often, the kinds of claims made against such persons involve misuse of funds or business mistakes committed when managing such properties. In addition, claims are frequently made against condominium/co-op directors/officers, in which it is alleged that they committed an employment practices violation, including (but not limited to) wrongful termination, sexual harassment, discrimination, or retaliation.

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Condo, Coops, Associations- Directors and Officers Liability (BP 17 24)

- **Following are a handful of representative claim scenarios to which this endorsement would apply.**
- **Miscalculation of reserve fund.** A condominium association maintains a reserve fund that is earmarked for performing routine, periodic maintenance. However, 5 years after the condominium is built, the directors and officers discover significant underfunding, thereby creating a \$500,000 shortfall. This discovery necessitates that each of the condominium owners be assessed an emergency \$10,000 fee. As a result of the miscalculation, the owners sue the association and its directors and officers.
- **Negligent employee supervision.** The bookkeeper for the condominium embezzles \$250,000 from the reserve fund. The directors and officers are sued by owners of condominium units, alleging failure to prevent and detect the embezzlement.
- **Discrimination (against a nonemployee).** A Hispanic couple is denied the opportunity to purchase a condominium unit in an association, despite the fact that they can easily afford both the price and monthly maintenance fee. As a consequence of what appears to be an obvious case of discrimination, the couple sues the association and its directors and officers.
- **Wrongful termination.** An employee of the condominium association is terminated by the manager of the association, despite receiving favorable performance reviews for the previous 2 years. Nor had she ever received any prior notification that her performance had been unsatisfactory. As a result, she files a wrongful termination claim against the manager, the condominium association, and against its directors and officers.
- **Failure to perform routine maintenance.** The directors and officers fail to replace the roof of the building, which is 20 years old. (The manufacturer of the roofing material suggests replacing it every 15 years.) As a consequence of their inaction, all units in the top floor of the building suffer heavy water damage during a rainstorm.
- **Misinterpretation of zoning laws.** The directors and officers of a condominium association propose that it build a club house on land owned by the association, a resolution that is approved by the association's unit owners. Three months following the start of construction and after \$350,000 has been spent, the local building inspector advises the directors and officers that the location of the club house violates the local zoning ordinance. Given the directors' and officers' misinterpretation of the applicable zoning laws, the owners bring suit against them.

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D & O Cover for Associations Presents Challenges

By Sherry Branson, Kevin Davis Insurance

Insurance Advocate

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- Directors and Officers Liability claims across the board have increased in the past several years. Common claims which Community Associations are facing are Breach of Fiduciary Duty, Breach of Contract, Violation of Covenants, Conditions, and Restrictions, and Discrimination.
- Having coverage that will protect and prepare an association for multiple scenarios is very important.
- Here are some examples of Directors and Officers Liability Insurance claims you can share with Community Association Property Managers and Board Members as you help them understand the importance of Directors and Officers Liability.

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Breach of Contract

- Plaintiff seeking \$150,000 for fulfillment of contract.
- Defense Costs: \$15k An Association hires a company to maintain the grounds for a three year term. After the first year of the contract, the board is not happy with the foliage selection and fires the grounds company. Grounds company files suit against the Association for fulfillment of contract.

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Violation of Covenants, Conditions & Restrictions:

- The Association By-Laws have several restrictions regarding the color schemes of homes. An owner is building a home and wants to paint it brown. The Association approves.
- The owner subsequently decides to paint the house pink and they don't notify the Association.
- The Association notifies the owner that the color was not approved and the owners sue for arbitrary, discriminatory treatment since they believe that other homes in the neighborhood are not on the approved color list, also.

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Breach of Fiduciary Duty

- \$280,000 Defense Costs. A condo association was sued by a unit owner over parking spaces. The owner filed a lawsuit against the board of directors at his condo association alleging they breached their fiduciary duty in that they violated the condominium act and local parking regulations by creating illegal parking spaces.
- Specifically, the plaintiff alleged that the defendants knowingly and willfully violated the condominium act by allowing parking spaces to be auctioned off resulting in non-unit owners occupying portions of the common parking garage to the exclusion of all other unit owners. The condo owner sued the board of directors in an effort to force the association to rescind the sale of the spaces, pay for punitive damages and attorney's fees.

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Election Dispute

- Election Dispute: \$660,000 in Defense Costs.
- Following an initial board of director's election, a dispute arose concerning the validity of that election. The association held another election to attempt to fix the dispute and that only caused more problems as the originally elected board members refused to relinquish their posts to the newly elected board members. The association had to sue the board members in an effort to determine which set of board members should be able to keep their posts.

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Wrongful Termination

- Wrongful Termination: \$550,000 Settlement
- \$170,000 in Defense Costs. A 74-year-old condo association employee filed a wrongful termination claim against an association, claiming he was wrongfully terminated as a result of his reporting dangerous working conditions to OSHA. The employee also claimed he wasn't properly paid minimum wage and overtime wages.

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Discrimination

- \$100,000 Settlement-\$ 140,000 in Defense Costs A complaint was filed by a prospective buyer against a Condo Association with the Department of Housing and Urban Development (“HUD”) alleging that the prospective buyers’ application to purchase a unit within the Association was denied for discriminatory reasons.
- Specifically, the buyer alleged the Association President discriminated against him by denying his application based on his age, national origin, and familial status. The HUD commission issued a finding of probable cause. During that time, the Board allowed the prospective buyer to purchase the exact unit they had initially sought.
- Despite this, the buyer filed a lawsuit against the Association alleging discrimination and included damages representing the difference of the unit purchase price during the time of the disputed application approval process, attorney fees, compensatory and punitive damages.

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Exclusions

- Another extremely important point to bring to the attention of Board Members and Property Managers at Community Associations is for them to be aware of what is excluded in their current Directors and Officers Liability policy.
- Many policies currently available exclude breach of contract, discrimination, employment issues and architectural issues, so the old saying BUYER BEWARE!
- It is very important when considering a Directors and Officers Liability policy and what is NOT covered in the policy.

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Non-Profit Directors and Officers Liability:

- Defense costs are in addition to the limit of liability
- Coverage for defense costs for any actual or alleged breach of contract agreements, except breach of employment contract claims - \$25,000
- Coverage available for breach of employee contract claims
- Primary limits up to \$10,000,000 with excess limits available
- Outside Directorship Coverage
- 5 part policy, including D&O, Employment Practices Liability, Fiduciary Liability, Workplace Violence, and Internet Liability



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Wrap⁺

Community Association Management Liability Coverage

THIS IS A CLAIMS-MADE AND REPORTED POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.

PLEASE READ THE POLICY CAREFULLY.

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VII. NOTICE/DATE OF CLAIM/INTERRELATED CLAIM CLAUSE/ SWORN PROOF OF LOSS

1. If, during the **Policy Period** or any Extended Reporting Period, if applicable, any **Claim** is first made against the **Named Entity Insureds**, the **Named Entity Insureds** shall, as a condition precedent to the obligations of the Insurer under this Policy, give a written notice to the Insurer as soon as reasonably possible.

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XI. APPLICATION

The **Named Entity Insureds** represent and acknowledge that the statements contained in the **Application** are true, are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy, and shall be deemed material to the acceptance of this risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

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Potential D&O Issues / Exclusions

- BI/PD exclusion
- Failure to obtain maintain insurance
- Malicious, fraudulent, criminal acts
- Willful violation of statute
- Construction defects
- Insured vs insured
- Violation of construction related inspections/maintenance

- A&E policy limits =- \$1-\$2 mil
- Contractual limitation of liability
- Statute of Repose

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Marbella Condominium Assoc.

- MCA hired a contractor to install hurricane impact windows
- The windows installed were not compliant with city requirements
- Two unit owners sued MCA, the contractor, and the Association's president individually
- One of the unit owners was previously the president of MCA
- MCA tendered to its D&O carrier, who denied coverage based upon the insured vs insured exclusion.
- The D&O policy defines an "insured" as any past, present or future director, officer, employee, committee member..."
- No coverage. There was an exception if the person had not served for more than 3 years – it was not applicable¹⁶

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HISTORY OF SHARED OWNERSHIP

- Babylonians 2000 BC
- Commonwealth of Puerto Rico – 1958
 - Arose out of housing shortage, high cost of real estate, land shortage
 - First Horizontal Property Act – sub-divides the space occupied by a building into horizontal “strata” or layers
 - Beginning of U.S. Condo law
- State of Utah - 1960
- State of Hawaii – 1961
- State of Florida – 2009 update

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What 5 States account for more than 35% of all Condo Associations in the U.S. ?

CA, FL, LA, NJ and TX

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Hawaii

- *35% of all housing in Hawaii are Condominiums*

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File:Marco Polo condo fire on July 14, 2017.jpg

File **Talk**

Language



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Marco Polo condo fire

The **Marco Polo condo fire** was a **high-rise fire** that occurred at 2:17pm on July 14, 2017 in the 36-story Marco Polo condominium building at 2333 Kapiolani Boulevard in the McCully-*Mō'ili'ili* neighborhood of Honolulu, Hawaii.^[5] 4 people were killed, and 13 others (including 1 firefighter) were injured.^{[2][6]} Over 200 units were damaged or destroyed^[8] giving the destruction of the building at more than \$100 million.^[4] Additionally, concern about the abatement of **asbestos**, which was built into the Marco Polo structure, is under investigation by the state of Hawai'i's Department of Health and Department of Labor's workplace safety division.^{[7][8][9][10][11]}

■ Building history

The Marco Polo was completed in 1971.^[5] A previous fire in 2013 caused \$1.1 million in property damage to two apartments, but no injuries were reported.^{[6][12]}

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Honolulu

Four Years After Deadly Fire, Many Honolulu High-Rises Still Lack Sprinklers

Property owners say the cost of retrofitting older buildings with sprinklers and other fire safety improvements could bankrupt them.



By Cassie Ordonio / August 16, 2021
 Reading time: 6 minutes.



Honolulu has tried tax credits and waiving city permit fees, but many high-rise condominium owners still struggle to comply with strict fire safety rules four years after the deadly Marco Polo blaze.

The July 2017 fire, which killed four people, prompted a law to be passed the next year requiring older buildings over 10 stories tall to install automatic sprinkler systems or pass a point-based system measuring other safety features such as smoke detectors, alarm systems and concrete walls.

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In an indication of the extent of failure to comply, the 2018 law applies to 324 high-rise buildings without sprinklers, according to the Honolulu Fire Department.

Failure To Comply

Since the Marco Polo fire, there have been 239 high-rise fires and 79.4% of the buildings that burned did not have sprinklers, according to HFD.

In the latest incentive effort, City Councilwoman Carol Fukunaga introduced a bill on Aug. 5 that would give individual high-rise condo owners property tax breaks in exchange for making the improvements. If the bill becomes law, it will go into effect on July 1, 2023.

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Condominium

A unique form of property ownership wherein the interest of a purchaser includes:

- 1) The air space in the individual unit; [not just a box of air]
- 2) Certain property attached to the building within the unfinished perimeter walls, floors, and ceiling;
- 3) an undivided interest with all other unit-owners in the common elements
- 4) The type of individual ownership is usually fee simple. (HO-6 / Coverage "A" Building)

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Condominium



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Condominium
8th Avenue
New York City



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Condominium



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Condominium – How many Units do you need ?



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Condominium- Commercial



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Condominium- Comm'l/Resdt'l



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Trump Tower

721 Fifth Ave, NYC

- Condominium
- Mixed Occupancy
- Commercial
- Retail
- Residential



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Dockominiums



We Sell Homes for Boats

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Hop aboard the Floating Condominium Community

Updated: Friday, 25 Mar 2011, 11:00 AM CDT
Published : Friday, 25 Mar 2011, 11:00 AM CDT

River Cities Launches Model Sales Boat for Floating Condominium Community.

Wouldn't it be nice to live in a condo on the water? Soon, you may be able to! "The Marquette" is a proposed 180 condo unit vessel expected to hit the water in 2012, that would be the first of its kind.

....

The boat will migrate with the seasons and travel year-round in the U.S. on a 10,700 mile cruise route of navigable rivers and Intracoastal Waterways. The waterways link 21 states in a large area from Pittsburgh to Muskogee and St. Paul to Port Isabel. The Marquette will be visiting Pensacola every year so that its residents may enjoy the cultural and recreational opportunities. The docking site will be at the Palafox Pier.

.....

Residents of the Marquette can choose from either full-time, half-time or 2 month cruising options. Prices range from \$55,000 to \$1,800,000

.....

The Marquette will offer amenities such as two restaurants, two lounges, a deli, grocery store, theaters, pools and hot tubs, fitness center, walking areas, an 18 hole chipping / putting golf course, watercraft and fishing equipment rental, health spa, and beauty and hair salon. In addition, a concierge service will be available to arrange on-shore excursions for residents. A fleet of buses, cars, mopeds and bikes will be available for residents shore transportation

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THE MARQUETTE

This River City will be on the move all year, cruising the northern rivers in the summer and the southern rivers and Intracoastal Waterways in the winter when weather conditions are most pleasant.



The Marquette passing the Gateway Arch in St Louis, MO.

With a contiguous series of 5,500 miles of rivers and 1,100 miles of Intracoastal Waterways, the United States has an extensive navigable waterway system. All of this will be at your doorstep when you make the Marquette your home.

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“Condop”

- “Coop within a Condo”

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Benefits of Shared Ownership

- Convenience –
 - Located near stores / shopping areas
 - Little or no outside maintenance
 - Nearby to public transportation / highways
 - Local School systems, hospitals, public services
- Economics –
 - Sharing of common expenses with other unit-owners
 - Less expensive than 1-2 family dwelling
 - Economies of Scale / Purchasing power
- Security –
 - Private security services
 - Other families nearby
 - Gated communities
 - Volunteer community patrol

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Benefits of Shared Ownership

- Social –
 - Common community atmosphere
 - Opportunity to join with others
 - Activities / Trips
 - Clubhouse / Restaurant
- Recreational –
 - Golf
 - Skiing
 - Swimming
 - Beachfront / Beach access
 - Vacation areas

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UNDERSTANDING CONDOMINIUM OWNERSHIP

- Condo Meaning / Origin
 - “Joint sovereignty or ownership”
 - “Together for a common benefit”
- What did I buy ? / How do I protect myself ?
 - Most people are very confused when it comes to Condominium Ownership.
 - No one has explained how an Association operates or the responsibilities.

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UNDERSTANDING CONDOMINIUM OWNERSHIP

- Condominium
 - **Private ownership of a specific unit, coupled with the undivided joint ownership of common elements of the building and grounds.**

 - Deed
 - Fee Simple
 - Other types

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UNDERSTANDING CONDOMINIUM OWNERSHIP

- Condominium Association
 - An organization composed of ALL unit owners which shares ownership of the common areas and the expenses of maintaining the condominium.

- Unit-Owner
 - The owner of a specific unit in the condominium, and the co-owner of an undivided interest in common elements.

- Board of Directors
 - Individual members of the condominium association, elected by the members of the association, to administer the association in accordance with its bylaws.

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Mortgagee

- Mortgagee
 - A mortgage is a method of using property (real or personal) as security for the payment of a debt.
- Mortgagee Issues
 - Overlending ?
- Unit Selling Cost.....\$ 250,000
- Mortgage Amount...(80%)...\$ 200,000
- Equity.....\$ 50,000
- Total number of units..... 50
- Square Footage / Unit..... 1200
- RC per Square Foot..... \$125
- Total Replacement Cost.....\$ 7,500,000 *
- (\$6,000,000 @ 80% Coins)
- Selling Price of all Units.....\$12,500,000
- Total Unit Mortgages (80%)..\$ 8,000,000

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Bad Fire Loss

- Insurance Pays Policy Limit of \$7,500,000 / 50 unit owners = \$150,000 per unit owner
- 40 Unit Owners Can't pay off Mortgage with \$150,000
- Where is the Owners Equity for all 50 unit owners?
- In the LAND ! Until which time every Mortgagee agrees, the land cannot be sold.
- Unit Owners will break even if the land is sold for at least \$5,000,000
- Unit Owners with Mortgages are out \$100,000; others \$50,000

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Community Association Insurance and Risk Management (CIRMS)

- Last fall, our entire Condo complex was destroyed by wild fires in the Smokey Mountains of Tennessee. 7 buildings and 77 units with a 100% total loss. We are now discovering that we are very short, about 5 million (25%) in insurance money to rebuild the common areas. Any special assessment is out of the question. It would required 100% approval from the owners and that is not going to happen.

Knowing our budget, many construction companies will not even place a bid to rebuild, they know we are not even close.

It appears that a vote will be taken very soon to simply dissolve the association. We will sell the remaining assets, split up the proceeds and move on.

Lawsuits are already to be talked about and I am convinced that they will happen.

Who is responsible for the lack of insurance? And is there any action that can be taken?

-

- The Board may have failed to do a required annual review, and if so, could it fall on their D&O Insurance (Directors and Officers coverage). 143
-The Insurance agent who set up and sold the policy and said this is all you need.

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Mortgagee Interest

- Should Mortgagee be shown on Association Master policy ?
 - » NO ! Insurable Interest ?
 - » Claim Draft is payable to who ?
 - » Certificate of Property Insurance (Acord 24)
- Should Mortgagee Interest be shown on Unit Owners Policy ?
 - » YES ! Insurable Interest ?
 - » Improvements and Betterments
 - » Additions and Alterations
 - » Full Mortgage amount ?

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RSK.IQ Question of the Week 3/11/19

Bank as Loss Payee on Condominium Flood Policy

Issue/Inquiry

When one or more units of a residential condominium is securing a loan from a bank, should the bank be listed as the loss payee on the flood insurance policy covering such condominium?

Response Summary

A bank cannot be listed on an RCBAP as a "mortgagee" or "loss payee" when the loan is to the unit owner and not the condominium association. In order to protect its interest, a financial institution may seek to be listed on the policy as an "other interest"; however, in the event that this cannot be done, a bank should, as a matter of best practice, have the borrower assign the borrower's interest in the RCBAP to the bank.

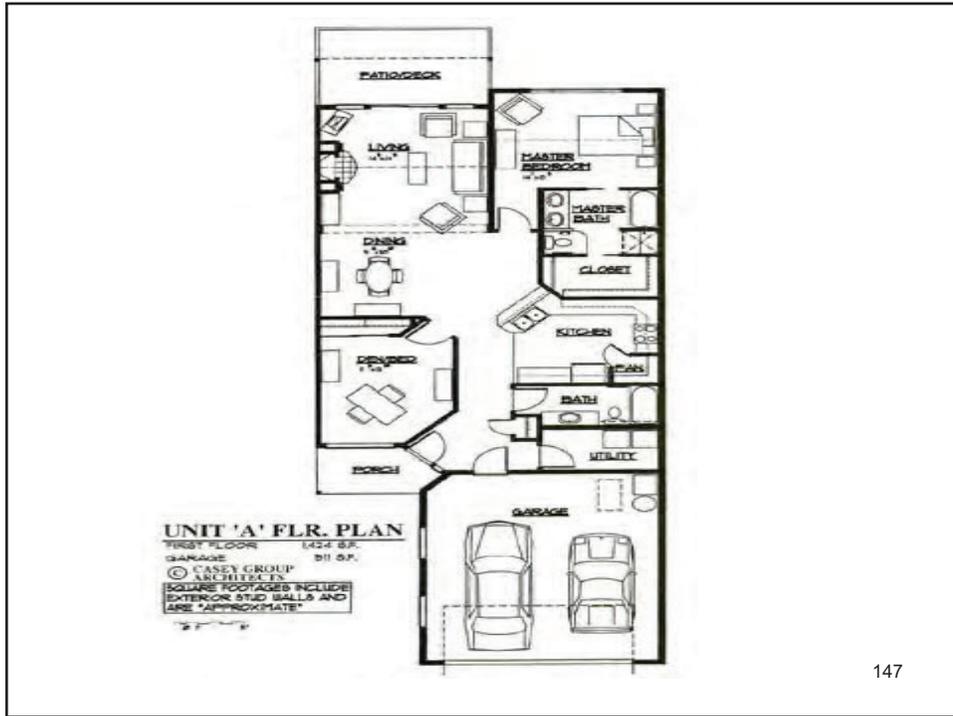
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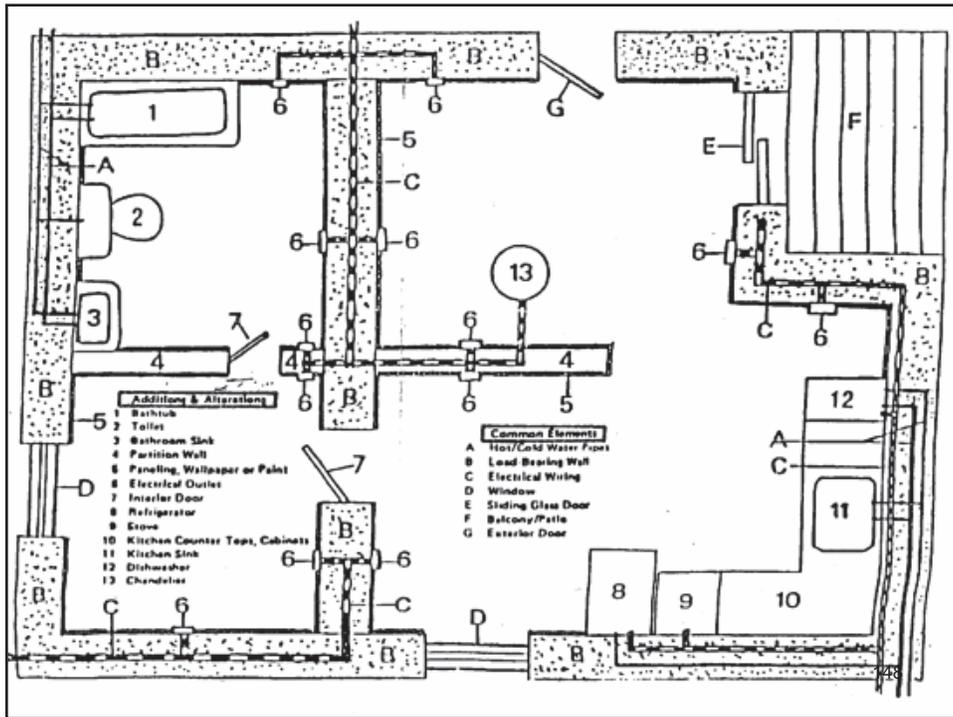
Who's Responsible for What?

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Uniform Common Interest Act

- Developed by the National conference of Commissioners on Uniform State Laws, to try to bring some uniformity to state condo laws.
- Associations are required to insure all real property regardless of location or ownership, or how it was classified.
 - Common Elements
 - Limited Common Elements
 - Part of “unit” as defined
- Their idea was that all real property was inextricably linked, and should be replaced together

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Master Deed

- Charter / Master Deed / Covenant, Conditions and Restrictions (CCR)
 - **New York Condominium Act of 1964** [and subsequent revisions]
 - Article 9-B of Real Property Law (rev. 2006)
 - **NJ Horizontal Property Act (applicable to condos prior to 1970)**
 - **Condominium Act of the State of New Jersey (after 1970)**
 - NJSA 46:8 B-14 (g)
 - PL 1969C.257
- **Most important condominium document**



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Master Deed

- Charter / Master Deed / Covenant, Conditions and Restrictions (CCR)
 - **New Hampshire Condominium Law of 1977** [and subsequent revisions]
 - Title XXXI - Chapter 356-B Condominium Act (rev. 2016)
 - **Vermont**
 - Title 27A - Uniform Common Interest Ownership Act (1994)
 - **Most important condominium document**



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Master Deed

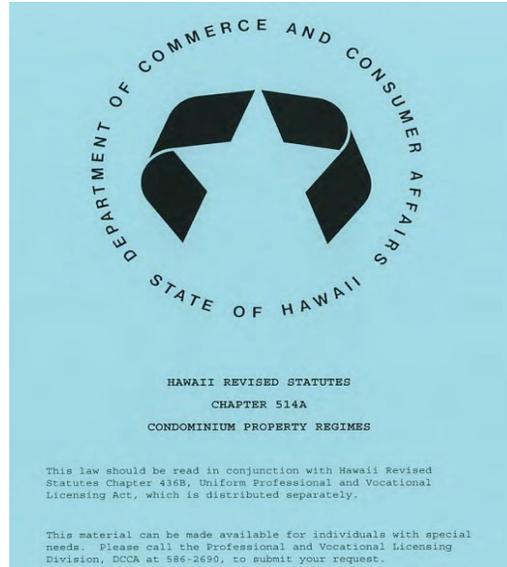
- Charter / Master Deed / Covenant, Conditions and Restrictions (CCR)
 - **Connecticut Condominium Act of 1976** [prior to 1984]
 - Title 47, Chapter 825
 - **Common Interest Ownership Act of 1984** (after 1984)
 - Title 47, Chapter 828
 - **Most important condominium document**



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Master Deed



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Statutes are Usually Defaults

- BE CAREFUL !
- The Uniform Common Interest Act and state statutes are often default mechanisms only; and can be over-ridden and changed by the Condo Board of Directors voting to amend the Condo document.

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STATE STATUTES GOVERNING CONDOMINIUMS

- Common Ownership Interest Act – CT and VT
- Maryland Condo Act
 - Maryland 6/08 Appellate Division Case- Bare Walls (26 yrs)
- [HB 287](#), Condominium Master Policy Insurance. This legislation provides that condominium master policy insurance policies must cover both general common elements and common elements in units. Up to \$5000 of the deductible will be the responsibility of the unit owner where the damage originated. Each unit owner must be informed in writing each year as to the amount of the deductible. This took effect 6/1/09.
- Florida Condominium Act 2009 and revisions
 - Florida Condominium Statute (Title XL ss.Chapter 718.101-718.1256)
 - **Introduced in 1978, has been amended at least 21 times**
 - New Statute 1/1/09 (requires HO-6 + Assoc. as NI)
 - FL State Statute dictates who is responsible for what property (except NFIP)
 - Most important condominium document
 - Regulate governance and procedures
 - Define who is responsible for what vs. who maintains what
 - Address unit owners status as Additional Insured's
 - Provide Other Insurance and Subrogation procedures
 - Claims Situations / Handling

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Florida Condo Statutes- Overview

- Applies to **residential condos** ONLY
- See Master-Deed, By-Laws, and CC&R's for non-residential
- Issues
 - Who owns what
 - Who has to maintain what
 - What has to replace what
 - Who has to insure what

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Property Coverage Residential Condominium Associations			Flood Coverage Residential Condominium Associations		
Building Feature	Association	Unit Owner	Building Feature	Association	Unit Owner
Building Plumbing	X		Building Plumbing	Primary	Excess
Building Slab/Foundation	X		Building Slab/Foundation	Primary	Excess
Building Wiring/Electrical	X		Building Wiring/Electrical	Primary	Excess
Cabinetry/Countertops		X	Cabinetry/Countertops	Primary	Excess
Doors/Framing - Exterior	X		Doors/Framing - Exterior	Primary	Excess
Doors/Framing - Interior	X		Doors/Framing - Interior	Primary	Excess
Doors/Garage Doors	X		Doors/Garage Doors	Primary	Excess
Electric Fixtures - Exterior	X		Electric Fixtures - Exterior	Primary	Excess
Electric Fixtures - Interior		X	Electric Fixtures - Interior	Primary	Excess
Flooring - Unfinished	X		Flooring - Unfinished	Primary	Excess
Flooring/Floor Coverings - Interior		X	Flooring/Floor Coverings - Interior	Primary	Excess
HVAC System (Compressors, Duct Work, etc.)	X		HVAC System (Compressors, Duct Work, etc.)	Primary	Excess
Hurricane Shutters - Association Installed	X		Hurricane Shutters - Association Installed	Primary	Excess
Hurricane Shutters - Unit Owner Installed		X	Hurricane Shutters - Unit Owner Installed	Primary	Excess
Plumbing Fixtures (Toilets, Sinks, Bathtubs)	X		Plumbing Fixtures (Toilets, Sinks, Bathtubs)	Primary	Excess
Roof Truss	X		Roof Truss	Primary	Excess
Roof Deck	X		Roof Deck	Primary	Excess
Roof Covering	X		Roof Covering	Primary	Excess
Roof Drainage	X		Roof Drainage	Primary	Excess
Roof Soffit/Fascia	X		Roof Soffit/Fascia	Primary	Excess
Siding	X		Siding	Primary	Excess
Staircases - Exterior	X		Staircases - Exterior	Primary	Excess
Staircases - Interior	X		Staircases - Interior	Primary	Excess
Skylights	X		Skylights	Primary	Excess
Walls Framing - Exterior	X		Walls Framing - Exterior	Primary	Excess
Walls Framing/Drywall/Sheetrock - Interior	X		Walls Framing/Drywall/Sheetrock - Interior	Primary	Excess
Walls - Moldings/Trim	X		Walls - Moldings/Trim	Primary	Excess
Wall Covering/Paint - Exterior	X		Wall Covering/Paint - Exterior	Primary	Excess
Wall Covering/Paint - Interior		X	Wall Covering/Paint - Interior	Primary	Excess
Water Heaters		X	Water Heaters	Primary	Excess
Window Blinds		X	Window Blinds	Primary	Excess
Window Frames/Windows	X		Window Frames/Windows	Primary	Excess

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Different Types of Property

- Common Elements
 - Property that is owned by and benefits ALL unit owners
- Limited Common Elements
 - Property that is owned by and benefits more than one, but less than all unit owners
- Unit Owner Property
 - Property owned by and benefits just the unit owner
 - Additions / Alterations / Improvements
- Unit Owners Personal Property

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Responsibility vs. Coverage “A”

- Bare Walls
 - Association responsible for Common Elements. Unit-owner is responsible for insuring all building items defined as part of the “Unit” in the Declaration. (From the bare-walls in: wallpaper, cabinets, fixtures, appliances, carpeting, etc.)
- “Original Spec” / Upgrades Only / Studs Out
 - All building items are insured by the Association (but only the cost necessary to return the building and units to their original condition using materials of like kind and quality) and the unit-owner is responsible for upgrades, improvements, and personal property.
- Single Entity / Broad Form
 - Condo Bldg. is treated as a single entity. The Association is responsible for insuring everything attached to the building, even if it is inside the unit.
- All In / All Inclusive
 - Similar to Single Entity, but the Association is also responsible for unit owner installed upgrades.

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Alterations, Additions and Improvements

- **Builder Upgrades**
- **Your Improvements**
- **Previous Owners Improvement**

8.2.2 Appearance of Units. No Co-Owner shall make any additions, alterations, or modifications to any of the Common Elements, nor make any changes to the exterior appearance or structural elements of the Unit without the prior written approval of the Association. The Association shall not approve any alterations or structural modifications that would jeopardize or impair the soundness, safety, or appearance of the Project

8.2.2.1 Window and Door Treatments. Each Co-Owner shall maintain a standard window and door treatment for all exterior windows and doors that conforms to the requirements of the Association, as defined in the Master Deed and, from time to time, in the rules and regulations of the Association.

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Improvements and Additions

8.2.2.2 Personal property. No Co-Owner shall display, hang, or store any clothing, sheets, blankets, laundry, or other articles of personal property outside a Unit. This restriction shall not be construed to prohibit a Co-Owner from placing and maintaining outdoor furniture and accoutrements and decorative foliage of a customary nature and appearance on a patio, deck, or balcony appurtenant to a Unit; provided, that no such furniture or other personal property shall be stored during the winter season on any open patio, deck, or balcony that is visible from another Unit or from the Common Elements.

8.2.2.3 Other Alterations. Any Co-Owner may make alterations, additions, or improvements within the Co-Owner's Unit without the prior approval of the board; provided that the Co-Owner shall be responsible for any damage to other Units, the Common Elements, or the property resulting from any such alterations, additions, or improvements.

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Use and Occupancy Restrictions

8.1 Residential Use of Units. All Condominium Units shall be used exclusively for residential purposes, and no Unit or appurtenant Common Element shall be used for any purpose other than that of a single family residence or purposes incidental to residential use.

8.1.1 Home Occupations. Home occupations, including work conducted at home in the course of employment, conducted entirely within the residence and participated in solely by members of the immediate family residing in the residence that do not generate unreasonable traffic by members of the general public and do not change the residential character of the Unit or neighborhood, are permitted as incidental to primary residential use.

To be permitted as a "home occupation," there must be: (1) no sign or display that indicates from the exterior that the residence is being utilized for any purpose other than that of a single family dwelling; (2) no goods or commodities shall be kept for viewing or sale within the Condominium Unit or within the Project; (3) no provision of services within the Condominium Unit or within the Project; (4) no exchange of cash within the condominium Unit or within the Project; and (5) no mechanical or electrical equipment is used, other than personal computers and other office equipment. 163

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Loss Assessment

6.2.2 Annual Assessment. The annual assessment to be levied against each unit in the Project shall then be determined on the basis of the Annual Budget and shall be equal to an amount necessary to meet the obligations of the Annual Budget (the "Annual Assessment"). The Annual Assessment shall be apportioned in a manner consistent with these Bylaws and described more fully below.

6.2.3 Supplemental Assessment. If at any time, the board in its sole discretion determines that the Annual Assessment levied is insufficient: (1) to pay the costs of operation and maintenance of the Common Elements; (2) to provide for the replacement of existing Common Elements; (3) to provide for additions to the Common Elements not exceeding \$5,000 or \$100 per unit annually, whichever is less; or (4) to respond to an emergency or unforeseen development; then the board shall establish an amended annual budget, if necessary, reflecting any unforeseen Expenses of Administration (the "Amended Annual Budget") and the board shall be authorized to increase the Annual Assessment (the "Amended Annual Assessment") or to levy such supplemental assessments as it deems to be necessary (the "Supplemental Assessment"). The discretionary authority of the board to levy additional Assessments, Supplemental or otherwise, will rest solely with the board for the benefit of the Association and its Members, and may not be attached by or subject to specific performance by any creditors of the Association.

6.2.4 Special Assessment. A special assessment, in excess of those permitted by subsections 6.2.2 and 6.2.3 regarding Annual or Supplemental Assessments, may be made by the board from time to time to meet other needs or requirements of the Association but only with the prior approval of the Co-Owners as provided for in this sub-section, including but not limited to: (1) assessments for additions to the Common Elements costing more than \$5,000 in any year.... 164

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Loss Assessment Default

6.4.0 Legal Remedies for Default on Assessments. In the event of default by any Co-Owner in paying any periodic payment of an Assessment, the board may declare all unpaid installments of the any Assessment for the pertinent fiscal year to be immediately due and payable. In addition, the board may impose reasonable late charges and interest at the legal rate on such Assessment in default from and after the due date.

6.4.1 Lien. In the event of default, the following shall constitute a lien on the Unit prior to all other liens, except tax liens in favor of any state of federal taxing authority and sums unpaid upon a mortgage of record recorded prior to the recording of any notice of lien by the Association: unpaid Assessments, together with interest on the unpaid assessments, collection charges, and late charges.....

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Insurance

Insurance: The Board of Directors shall be required to obtain and maintain to the extent obtainable insurance for the Property against loss by fire and other hazards as are covered under standard extended coverage provision for the **full insurable replacement cost** of all the Common Elements and the Apartment Units, as provided in the By-Laws.

Such coverage shall be in the name of the Association for the benefit of the Association, the Unit Owners, and their respective mortgagees, if any, as their interest may appear.

In addition, the Board of Directors shall also maintain comprehensive public liability and property damage insurance in such amounts as it shall deem desirable, insuring each Unit Owner and the Association and the Board of Directors from liability in connection with the Common Elements.

In addition, the Board of Directors shall also maintain flood insurance on the project to the extent authorized by law. The premium for all insurance purchased pursuant to the foregoing and the By-Laws shall be Common Expense.

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Florida Broker Negligence: What is the Broker's Duty to the Insured?

Merlin Law Group –Ashley Harris April 9, 2014

- Judge Hurley of the United States Southern District Court of Florida recently set out what may be the most extensive statement of an insurance broker's duty under Florida law.¹ In *Tiara Condominium Association, Inc. v. xxxxxx.*, the court was posed with the question:
- When an insurance broker shares a 'special relationship' with its client, is the broker subject to an extra-contractual enhanced duty of care requiring the broker to advise the client about the amount of coverage prudently needed to meet its complete insurance needs?
- Florida law recognizes that an insurance broker owes a fiduciary duty of care to the insured.² The duty generally imposes an obligation on the broker to inform and explain the coverage it has secured **at the client's direction**.³ In addition, Florida law imposes a separate duty of care upon a broker, requiring it to use reasonable care in the procurement of requested insurance coverage.⁴

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- The *Tiara* court answered the question posed above in the affirmative: a finding of a "special relationship" between the broker and insured imposes a heightened duty upon the broker to advise the insured regarding the amount of coverage prudently needed to meet its insurance needs.
- **The court determined that whether a "special relationship" exists between the broker and insured depends upon a multi-factor analysis, which includes:**
 - representation by the broker about its expertise;
 - representation by the broker about the breadth of the coverage obtained;
 - the length and depth of the relationship;
 - the extent of the broker's involvement in the client's decision making about its insurance needs;
 - information volunteered by the broker about the client's insurance needs; and
 - payment of additional compensation for advisory services.
- Ultimately, whether an insurance broker has a "special relationship" with its client is a question of fact for the jury.

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- Tiara is a 43 story oceanfront tower located near Singer Island, FL
- The Association had secured a \$50 mil windstorm policy through xxxx, who told them coverage was on a per occurrence basis
- Condo was severely damaged by back-to back hurricanes in 2004, causing \$130mil in damage
- xxxxx argued the full limits should apply for each loss, but even so, this would have left Tiara \$30mil short
- **When purchasing insurance the Association’s insurance committee sought to reduce its premiums by using a two year old property appraisal**
- **xxxxxx typically recommends a new appraisal, but allowed them to use the old one**
- **At the time of loss, the buildings were underinsured and the carrier threatened to invoke a coinsurance penalty**
- **Instead they negotiated an \$89 mil settlement – over \$40 mil less than it had paid to repair the damage**
- The Association sues xxxxxx, which it had retained under contract, which stated – “xxxxx would be Tiara’s exclusive insurance, risk management, and risk financing advisor and broker”. The suit alleged breach of contract, negligent misrepresentation, breach of covenant of good faith and fair dealing, and breach of fiduciary duty

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Insurance

7.2.3 Fidelity insurance. The Association may obtain, if desired, fidelity coverage to protect against dishonest acts by its officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association.

7.2.5 Indemnification. Each individual Co-Owner shall indemnify and hold harmless every other Co-Owner, the Developer, and the Association for all damages, costs, and judgments, including reasonable attorney fees, that any indemnified party may suffer as a result of defending claims arising out of an occurrence on or within individual Co-Owner’s Unit or appurtenant Limited Common Elements. This provision shall not be construed to give an insurer any subrogation right or other right or claim against an individual Co-Owner, the Developer or the Association.

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CT. Condos now missing \$1 million in Accounting Scandal

CIRMS post

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- A Westport property management firm is facing more legal trouble in a widening accounting scandal and from fallout from a string of thefts at a Greenwich apartment complex.

This week, Community Association Underwriters of America Inc. filed a lawsuit against Consolidated Management Group of Westport, and its former controller in an attempt to recover more than \$1 million missing from the bank accounts of eight condominium associations that Consolidated manages. This lawsuit and another one brought individually by the Whitney Glen Condominium Association allege the funds have been embezzled possibly for years.

Westport Police confirmed on Thursday they are investigating the alleged embezzlement but could provide no further information at this time.

Consolidated was named as a defendant in a lawsuit earlier this month stemming from thefts at Greenwich Shore Apartments by property manager Michael Orr that started in 2009. Orr was sentenced in 2011 to 12 years in prison for stealing an estimated \$450,000 from residents in the complex.

Greenwich Shore residents Robert and Renee along with their insurance company, are suing for \$180,000.

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Homeowner's Association Embezzler gets Six Years

Asbury Park Press

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- **FREEHOLD TOWNSHIP — THE WOMAN WHO EMBEZZLED MORE THAN \$400,000 FROM A HOMEOWNERS' ASSOCIATION WILL SERVE A SIX-YEAR PRISON TERM, MONMOUTH COUNTY PROSECUTOR PETER E. WARSHAW, JR. SAID.**
- **THERESA TIERNEY, 60, OF OAKHURST, WHO PLEADED GUILTY TO A SECOND-DEGREE THEFT CHARGE IN DECEMBER, WAS SENTENCED FRIDAY BY SUPERIOR COURT JUDGE RICHARD W. ENGLISH, WARSHAW SAID.**
- **A PROSECUTOR'S OFFICE INVESTIGATION REVEALED TIERNEY, WHO WAS PROPERTY MANAGER OF THE FREEHOLD TOWNSHIP-BASED STRICKLAND FARMS CONDOMINIUMS, MADE HERSELF THE SOLE SIGNATORY ON A BANK ACCOUNT SHE OPENED IN 2003 IN THE COMPANY'S NAME. INSTEAD OF TRANSFERRING THE FUNDS TO THE SOLOMON ORGANIZATION MANAGEMENT COMPANY, TIERNEY,¹⁷⁴ POKED THE MONEY.**

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President of Homeowners Association Accused of Embezzlement

WINK News Now !

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President of Homeowners Association Accused of Ebezzlement

- "NORTH FORT MYERS, Fla.- Board members of the Sabal Springs Golf and Raquet Club filed charges Wednesday against the former president of the homeowners association, claiming he embezzled more than a \$1 million over the last 3 years.
- Kay Joyce has lived in the Sabal Springs community for the last 16 years. When homeowners were notified the board would pursue legal action against their former leader, Joyce said, "I was really disappointed that something like that could happen to our community." The report filed with the Lee County Sheriffs Office says an audit conducted by the association's treasurer showed the accused would write a check or transfer money from the reserve account to Sabal Springs Golf, to himself, or to his father. Board members say the accused admitted to taking \$665,000.

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Association Insurance Responsibilities

- Master Policy
 - Property & Casualty Insurance
 - Condominium Property
 - Common Elements

- Coverage Issues
 - Property & Casualty Insurance
 - Adequate Limits
 - Insurance to Value

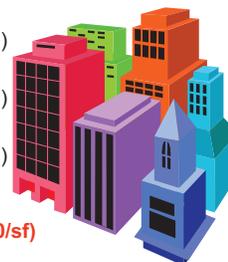


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What's the REAL Replacement Cost of a 30,000 Sq Ft Structure ?

100% Structure.....	\$ 4,500,000 (\$150/sf)
Demolition.....	\$ 100,000 (2.5%)
Debris Removal.....	\$ 300,000 (7.5%)
Architects/Engineer.	\$ 400,000 (10%)
ICC.....	\$ 600,000 (15%)
Market Conditions..	\$ 800,000 (20%)
Other *.....	\$ 800,000 (20%)



REAL R.C. \$ 7,500,000 (\$250/sf)

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Valued Policy Law States

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State	Statute	Property Protected	Causes of Loss
Arkansas	23-88-101	All Real Property	Fire and natural disasters (excluding flood and quake)
California	2052, 53, 54, 55, 56, 58 and 75	Buildings	All perils covered by the property policy
Florida	627.702	Any building (including mobile and manufactured homes)	All perils covered by the property policy
Georgia	33-32-5	1 or 2 family residential bldgs.	Fire
Kansas	40-905	All improvements on real property	Fire, tornado, wind, lightning
Louisiana	22:1318	Inanimate / immovable property	Fire
Minnesota	65A.08	All property	All perils covered by the policy
Mississippi	83-13-5	Buildings	Fire
Missouri	379.140; 145	All property	Fire
Montana	33-24-102 and 103	Improvements to Real Property	All perils covered by the property policy
Nebraska	44-501.02	Real property	Fire, tornado, wind, lightning, explosion
New Hampshire	407:11	Buildings	Fire and lightning
North Dakota	26.1-39-05	Real property	All perils covered by the property policy
Ohio	3929.25	Any building	Fire and lightning
South Carolina	38-75-20	All real property	Fire
South Dakota	58-10-10	Real property	Fire, lightning, and tornado
Tennessee	56-7-801 to 803	Any building	Fire
Texas	862.053	All real property	Fire
West Virginia	33-17-9	Real property	All perils covered by the property policy
Wisconsin	632.05(2)	Owner-occupied dwellings	All perils covered by the

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Community Association Insurance and Risk Management (CIRMS)

- Last fall, our entire Condo complex was destroyed by wild fires in the Smokey Mountains of Tennessee. 7 buildings and 77 units with a 100% total loss. We are now discovering that we are very short, about 5 million (25%) in insurance money to rebuild the common areas. Any special assessment is out of the question. It would required 100% approval from the owners and that is not going to happen.

Knowing our budget, many construction companies will not even place a bid to rebuild, they know we are not even close.

It appears that a vote will be taken very soon to simply dissolve the association. We will sell the remaining assets, split up the proceeds and move on.

Lawsuits are already to be talked about and I am convinced that they will happen.

Who is responsible for the lack of insurance? And is there any action that can be taken?

-

- The Board may have failed to do a required annual review, and if so, could it fall on their D&O Insurance (Directors and Officers coverage). 181
- The Insurance agent who set up and sold the policy and said this is all you need.

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If nothing else, agents will consider my suggestion of a bold cover letter stating, inter alia, that the agent is not an insurance appraiser and the carrier is not an insurance appraiser and that the stated limits are not a guaranty of any kind that that stated limits are adequate to rebuild the building and that the association board and manager are strongly urged to obtain at the association's cost an independent insurance appraisal from a license company with lots of E&O coverage not limited by its contract. It protects the agent. If I were an agent I'd attach a copy of what started this discussion the post by the woman from Tennessee who lived in a 77 unit condominium that burned to the ground and there is a \$5 million shortfall. If I were a board member, I don't think I would want to be the one announcing that news to unit owners.

And to get a code expert and engineer to determine costs for ordnance and code changes and demolition.

The agents don't want to give a proposal of \$20 million of coverage if competitors are quoting based on \$10 million or maybe they d

As a condominium litigator, I am often seeking a "cure" for our clients of something that could have been prevented. Condominium insurance can be just as tricky and controversial as health insurance.

Insurance is typically one of the highest budgeted item for condominium associations. Because of this, condominium boards are often looking for a way to cut that cost in order to keep monthly expenses down. Unlike the current healthcare proposal, condominium board's cannot eliminate insurance entirely, but they can do damage. Condominium boards need to be careful what they cut you cut or don't have in the first place.

I hope I am wrong but of the 4,000 condominium associations we represent in Mass, NH and RI, I'd be shocked is half a dozen have obtained independent Insurance appraisals ever, never mind reviewing them each year.

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Adequate Coverage

- Property
 - » Association Common Property
 - » Business Income / Extra Expense (loss of maintenance fees receivable)
 - » Bridges, Bulkheads, Docks, Piers, Retaining Walls
 - » Money & Securities on/off premises
 - » Building Ordinance & Law
 - » Elevator & Escalator Collision
 - » Fine Arts
 - » Debris Removal / Demolition
 - » Equipment Breakdown

- Liability
 - » Products / Completed Operations
 - » Hired and Non-Owned Autos
 - » Unit-Owners as Additional Insured
 - No Subrogation – Why ? Anti-Subrogation Rule

- Flood / Earthquake / DIC

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Adequate Coverage

- Umbrella / Excess
- Fidelity / Crime
 - » Employee Dishonesty
 - » Computer Fraud / Funds Transfer
 - » Social Engineering- who's \$\$
 - » Forgery
 - » Management Company
- Garage-keepers Liability
- Directors & Officers Liability
 - » Failure to Secure or Maintain Insurance Exclusion
 - » Cross Suits / Insured vs. Insured
- Employment Practices Liability
- Workers Compensation/ Employers Liability
- Flood / Quake
- Environmental Impairment Liability – Mold / Fungus / Bacteria
- Signs / EDP
- Detached Structures / pools, etc.
- Increased Demo / Debris Removal
- Ordinance and Law – Limit, Post Loss, Green, Downzoning

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POLICY NUMBER: _____ COMMERCIAL PROPERTY
CP 04 05 09 17

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	Coverages B And C Combined Limit Of Insurance
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *

Post-Loss Ordinance Or Law Option: Yes No

*Do not enter a Combined Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.
 Information required to complete this Schedule, if not shown above, will be shown in the Declarations. 185

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TYPE OF PROPERTY NOT COVERED	HOW TO BUY COVERAGE BACK	NOT INSURABLE
Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities.	Commercial Crime Coverage Forms	
Animals, unless "boarded" or "your stock"	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Autos held for sale	Garage Forms	
Bridges, roadways, walks, patios or other paved surfaces	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Contraband, illegal transportation/trade	N/A	XXXXXXX
Excavations, grading, backfilling or filling	CP 1410 Additional Covered Property	
Foundations of buildings, structures, machinery	CP 1410 Additional Covered Property	
Land, water, growing crops or lawns	Crops or lawns -- Inland Marine Coverage Forms	
Airborne or waterborne personal property	Inland Marine Coverage Forms, or Ocean Marine Coverage Forms	
Bulkheads, pilings, piers, wharves or docks	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Property covered elsewhere	BPP Form pays excess	
Retaining walls	CP 1410 Additional Covered Property	
Underground pipes flues or drains	CP 1410 Additional Covered Property	
Electronic data	CP 0430 E-Commerce or Inland Marine Coverage Forms	
Research, replace, restore information on valuable papers and records	Valuable Papers & Records CP Form, or Inland Marine Coverage Forms	
Vehicles or self propelled machines...	CP 1410 Additional Covered Property	
Certain outdoor property	Fences -- CP 1410 Additional Covered Property Signs -- CP 1440 Outside Signs Antennas -- CP 1450 Radio or TV Antennas Trees -- CP 1430 Outdoor Trees, Shrubs and Plants -- or Inland Marine Coverage Forms	

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Wisniski v. Brown & Brown-2006

- VERY IMPORTANT CASE FOR AGENTS!
- In 1994 insured purchased package policy from agent
- On 9/7/99 insured's business was severely damaged by a flood
- Agent and package carrier denied coverage
- Insured filed suit against agent for failing to inspect, investigate and inform them that flood insurance was needed and not included in the package policy
- **Court's decision: While it very well may be a wise and sound business practice for a broker to inspect the premises and recommend insurance based upon that inspection---making such inspection mandatory would have "onerous" consequences** (Acord 60- Flood Rejection)

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Condominium Associations Must Purchase Flood Insurance

By Chip Merlin on June 25, 2018

- Many state statutes and condominium bylaws require the purchase of reasonably available property insurance which covers all direct physical risks of loss on an extended and replacement cost basis. One issue I have heard associations and their insurance agents ask: "Is flood insurance reasonably available" so that it has to be insured.
- This question was recently answered in *Porter v. Beaverdam Run Condominium Association*. The holding is significant:
 - **[W]e conclude that the Association is obligated by the Declaration and the Condominium Act to maintain insurance against all risks of direct physical loss which are commonly insured against, to the extent that such insurance is reasonably available. We further conclude that flood is a risk of direct physical loss which is commonly insured against for residential buildings located in a FEMA-designated flood zone. Accordingly, we conclude that the Association has an obligation to provide flood insurance for the Community's buildings located within the FEMA flood zone each year when such insurance is reasonably available.**
- Condominium associations should be very wary that some insurance agents could leave the Board and Association liable for uninsured or underinsured losses by selling cheap insurance. These agents compete on premium price and propose packages of insurance that do not include commonly available coverages, especially sufficient law and ordinance coverage, flood, and earthquake coverage.
- *Porter v. Beaverdam Run Condominium Association*, No. COA17-793, 2018 WL 2011355 (N.C. App. May 1, 2018).¹⁹⁰

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Single Building

As stated, the maximum limits apply per building. NFIP defines a single building as follows:

B. Single Building

To qualify as a single building structure and be subject to the single building limits of coverage, a building must be separated from other buildings by intervening clear space or solid, vertical, loadbearing division walls.

A building separated into divisions by solid, vertical, load-bearing walls from its lowest level to its highest ceiling may have each division insured as a separate building. A solid load-bearing interior wall cannot have any openings and must not provide access from one building or room into another (partial walls).

However, if access is available through a doorway or opening, then the structure must be insured as one building unless the building is self contained; it is a separately titled building contiguous to

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the ground; it has a separate legal description; and it is regarded as a separate property for other real estate purposes, meaning that it has most of its own utilities and may be deeded, conveyed, and taxed separately.

Following Hurricane Katrina, there were numerous errors and omissions lawsuits brought against insurance agencies involving flood insurance and the single building concept. In not understanding the single building definition, agencies wrote one \$250,000 policy on townhome complexes with multiple individual owners, as opposed to writing one policy per ~~owner.~~ In one specific case, there was a homeowners' association composed of eight buildings with eight separate units per building, each unit being separated by loadbearing, vertical, division walls. The agency wrote only eight policies, failing to realize that there were in fact 64 separate "single buildings" as defined by the NFIP manual.

Who Buys The Policy?

The NFIP Flood Insurance Manual is silent about the issue of whether the policy/policies are written in the name of the association or the individuals. The NFIP Mandatory Purchase of Flood Insurance Guidelines publication (September, 2007 edition date) states the following, starting on page 50:

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Commercial Associations

- CP 0017
- Definition of Building is similar to CP 0010
- Contains extra item:
 - The following property that is in a unit and without regard to ownership, is covered: fixtures, improvements, and alternations that are part of the building/structure and any appliances for refrigeration, ventilation, cooking, dishwashing, laundering, security or housekeeping.
 - **HOWEVER**, these items are only covered if the Condominium Agreement or Bylaws state that they are to be covered by the Association Insurance.

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Commercial Unit Owners

- BOP / CPP
- CPP Commercial Unit Owners Form CP 0018
 - Definition of BPP is similar to CP 0010
 - Same wording as CP 0017 (but opposite- if not covered by Association Insurance)
- CP 0418 Commercial Unit Owners Optional Coverages
 - Loss Assessment
 - May be limited
 - Misc. Real Property
 - A/C Units
 - Detached garage
 - Patios
 - Fences
 - Storage Buildings, etc.

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- Miscellaneous real property coverage adds miscellaneous real property that pertains to the insured's condominium or that the insured is required by the condominium association agreement to insure to the definition of covered property. Since improvements to the condominium are covered under the condominium unit owners form, this optional coverage is needed only for property that would not be considered an improvement to the condominium unit (e.g., outbuildings constructed on the grounds by the insured).

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International Risk Management Institute

ISO Commercial Property Forms and Endorsements: Condominium Commercial Unit-Owners Coverage Form (CP 00 18)

The condominium commercial unit-owners form is designed to dovetail with the condominium association coverage form. There is no building coverage, although \$1,000 of coverage for signs attached to buildings is provided. Improvements and betterments, fixtures, and business personal property are covered under business personal property. Under the coverage extensions, the \$100,000 extension for newly acquired personal property applies, but there is no extension applicable to newly acquired buildings.

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Sample Association Coverage Form

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1. COMMUNITY PROPERTY		
Causes of Loss	Limit of Insurance	* Deductible
Special including "Equipment Breakdown"	Guaranteed Replacement Cost	\$5,000 Per Occurrence
* In addition to the deductible which may result under D.2.		
Community Buildings	Community Structures	Community Personal Property
All buildings described in Declarations C.1. including: <ul style="list-style-type: none"> • Residences 	All of the items listed below are covered when not forming part of, or located within, or on a building. <ul style="list-style-type: none"> • "Swimming Pools" • Statues • Outdoor fixtures • Pool and Pump Houses • Signs • Roads, drives, walkways and other paved surfaces • Recreation fixtures and courts • Antennas and satellite dishes • Sheds • Temporary seasonal structures • Shelters • Cabanas • Freestanding walls (excluding retaining walls) • Fountains • Fences and gates • Gazebos • Gate houses • Mailboxes • Light and flag poles • Benches 	<ul style="list-style-type: none"> • Equipment • Tools • Supplies and furnishings • "Money" and "Securities" • Non-motorized watercraft • "Computer equipment", and "Media" • "Valuable papers and records" • Accounts receivables

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2. "UNITS": All real property comprising the "unit" as initially installed in accordance with your association's original plans and specifications, or like kind and quality of such property.

Causes of Loss	Limit of Insurance	* Deductible
Ice Damming	Guaranteed Replacement Cost	\$5,000 Per "Unit"

* In addition to the deductible which may result under D.1.

3. ADDITIONAL COMMUNITY PROPERTY

Causes of Loss	Valuation	Deductible
Special including "Equipment Breakdown"	Replacement Cost	None

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Condominium Association Insurance Policy

Covered Property	Limit of Insurance
Additional Structures: Bridges, Docks, Retaining Walls, Piers, Bulkheads and Wharves	\$10,000
Newly Acquired Buildings and Structures Buildings and Structures as described in D.1. above that you acquire at locations other than the location described in C.1.	\$250,000
Newly Acquired Community Personal Property Community personal property while at locations other than the "premises"	\$250,000
Newly Conveyed Buildings and Structures New buildings and structures built at the location described in C.1.	\$250,000
"Personal Effects" Personal Property of your directors and "officers" or "employees" while acting in the scope of their duties as such.	\$5,000 Per Person \$15,000 Per Occurrence
Personal Property of Others Personal property of others temporarily in your care, custody or control.	\$5,000 Per Person \$15,000 Per Occurrence
Off "Premises" Community Personal Property Community personal property while temporarily at other locations within the "coverage territory".	\$50,000
Community Personal Property In Transit Community personal property while on conveyances being operated between points in the "coverage territory".	\$50,000
"Fine Arts" Paintings, Pictures, Prints, Etchings, Sculptures, Art Glass, "Jewelry", "Furs", and other bona fide works of art of rarity, historical value or artistic merit.	\$15,000 Per Item \$50,000 Per Occurrence

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4. NATURAL OUTDOOR PROPERTY		
Causes of Loss	Valuation	Deductible
"Specified Causes of Loss"	Replacement Cost	None
Covered Property		Limit of Insurance
Trees, Lawns, Shrubs, Plants		\$1,000 Maximum Per Tree, Plant, Lawn or Shrub \$20,000 Per Occurrence

DECLARATIONS E: PROPERTY CONSEQUENTIAL LOSS COVERAGES			
<p>Coverages apply only as a consequence of direct physical loss or damage to "covered property" caused by or resulting from a covered Cause of Loss.</p> <ul style="list-style-type: none"> Unless otherwise indicated, all Limits apply on a per occurrence basis No Deductible applies to Property Consequential Loss Coverages <p>1. ORDINANCE OR LAW 2. LOSS OF INCOME 3. SUPPLEMENTARY PAYMENTS</p>			
1. ORDINANCE OR LAW			
Covered Property	Consequential Loss Coverage	Limit of Insurance	Valuation
Community Buildings, "Units"	Undamaged Portion	Guaranteed Replacement Cost	Guaranteed Replacement Cost
Community Buildings, "Units"	Demolition Costs	\$300,000	Actual Loss Sustained
Community Buildings, "Units"	Increased Cost of Construction	\$300,000	Increased Replacement Cost
2. LOSS OF INCOME			
Community Income and Maintenance Fees and Assessments; Extra Expense; Rents; Community Income; Increased Period of Restoration; other temporary operation expenses.		Limit of Insurance	Valuation
		Actual Loss Sustained	Actual Loss Sustained

3. SUPPLEMENTARY PAYMENTS		
	Limit of Insurance	Valuation
• Removal of Fallen Trees	\$10,000 \$1,000 Maximum per Tree	Actual Loss Sustained Actual Loss Sustained
• "Pollutant" Cleanup and Removal	\$25,000 per continuous 12 month period	Actual Loss Sustained
• Property Removal	\$300,000	Actual Loss Sustained
• Monetary Reward	\$5,000	10% of Paid Claim
• Debris Removal	\$300,000	Actual Loss Sustained
• Fire Department Service Charges	\$10,000	Actual Loss Sustained
• Fire Extinguisher Recharge	\$1,000	Actual Loss Sustained

DECLARATIONS F: CRIME COVERAGES		
• Unless otherwise indicated, all Limits apply on a per occurrence basis		
Valuation		Deductible
Actual Loss Sustained		None
Covered Property	Causes of Loss	Limit of Insurance
All "Covered Property"	"Employee Dishonesty"	\$150,000 Combined Limit
All "Covered Property"	"Computer Fraud"	
"Covered Instruments"	"Depositors Forgery"	

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DECLARATIONS G: 1. LIABILITY COVERAGES - PRIMARY AND EXCESS		
1. Liability - Primary and Excess	Limits of Insurance apply as:	
	<ul style="list-style-type: none"> • Indemnity payments for claims or "suits" seeking damages • Both primary and excess unless otherwise indicated 	
Coverage	Limit of Insurance	Type of Limit
"Bodily Injury" And "Property Damage"	\$2,000,000	Per "Occurrence"
Products / Completed Operations	\$2,000,000 \$2,000,000	Per "Occurrence" Annual Aggregate
"Personal Injury" & "Advertising Injury"	\$2,000,000	Per "Offense"
Property Damage Legal Liability-Real Property	\$1,000,000	Per "Occurrence"
"Hired Auto" and "Nonowned Auto"	\$2,000,000	Per "Occurrence"
Medical Payments	\$5,000	Per Accident
Garage and Parking Areas Legal Liability		
Comprehensive Coverage	\$500 Deductible Applies Per "Occurrence"	Per "Occurrence" Limit
	\$25,000	
Collision Coverage	\$500 Deductible Applies Per "Occurrence"	Per "Occurrence" Limit
	\$25,000	

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DECLARATIONS H: CLAIMS MADE LIABILITY COVERAGES

1. DIRECTORS AND OFFICERS LIABILITY COVERAGE

1. DIRECTORS AND OFFICERS LIABILITY - CLAIMS MADE

- Limits of Insurance apply as:
- Indemnity payments for "claims" or "suits" seeking pecuniary relief.
 - "Defense costs" for "claims" or "suits" seeking non-pecuniary relief.

Coverage	Limit of Insurance
Directors and Officers Liability	\$2,000,000 Each "Wrongful Act"
	\$2,000,000 Aggregate

Retroactive Date: NONE

This insurance does not apply to "loss" because of "wrongful acts" which took place before the Retroactive Date.

Optional Extended Reporting Period: 3 years

The premium for the Optional Extended Reporting Period is: \$1,391

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ Community Manager - Directors and Officers

This endorsement modifies insurance provided by the Directors and Officers Liability Coverage Part under the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

1. Paragraph A. of III. DIRECTORS AND OFFICERS LIABILITY WHO IS AN INSURED SECTION is amended by the addition of the following:
Any person or organization acting as community manager for the Named Insured while performing community management duties for the Named Insured, but only with respect to liability for "wrongful acts" committed at the express direction of the Named Insured. However, your community manager is not an insured for "claims" or "suits" brought against them by you.
2. Paragraph B.2 of III. DIRECTORS AND OFFICERS LIABILITY WHO IS AN INSURED SECTION is deleted in its entirety.

All other terms and conditions of this policy remain unchanged by this endorsement.

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DECLARATIONS I: EARTHQUAKE AND "VOLCANIC ERUPTION" COVERAGE

1. Property Direct Coverages		Valuation
<ul style="list-style-type: none"> Unless otherwise indicated, all Limits apply on an annual aggregate basis 		Replacement Cost
a. Community Property and "Units"		
Covered Property	Annual Aggregate Limit of Insurance	Deductible
Community Buildings and "Units"	\$14,697,200	5% of Each Building(s) Replacement Cost Value
Community Personal Property	Included in the Community Buildings and "Units" Limit	5% of Replacement Cost Value
Community Buildings	Units	Community Personal Property
All buildings described in Declarations C. 1, including: <ul style="list-style-type: none"> Residences 	All real property comprising the "unit" as initially installed in accordance with your association's original plans and specifications, or like kind and quality of such property.	<ul style="list-style-type: none"> Equipment Tools Supplies and furnishings "Money" and "Securities" Non-motorized watercraft "Computer equipment", and "Media" "Valuable papers and records" Accounts receivables

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2. Property Consequential Loss Coverages

Coverages apply only as a consequence of direct physical loss or damage to "covered property" caused by or resulting from Earthquake or "Volcanic Eruption".

- Unless otherwise indicated, all Limits apply on a per occurrence basis
- No Deductible applies to Property Consequential Loss Coverages

- Ordinance or Law
- Loss of Income
- Supplementary Payments

a. Ordinance or Law

Covered Property	Consequential Loss Coverage	Annual Aggregate Limit of Insurance	Valuation
Community Buildings, "Units"	Undamaged Portion	Included in the Community Buildings and "Units" Limit	Actual Loss Sustained
Community Buildings, "Units"	Demolition Costs	Included in the Community Buildings and "Units" Limit	Actual Loss Sustained
Community Buildings, "Units"	Increased Cost of Construction	Included in the Community Buildings and "Units" Limit	Actual Loss Sustained

b. Loss of Income

	Annual Aggregate Limit of Insurance	Valuation
Community Income and Maintenance Fees and Assessments; Extra Expense; Rents; Community Income; Increased Period of Restoration; other temporary operation expenses.	Included in the Community Buildings and "Units" Limit	Actual Loss Sustained

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c. Supplementary Payments		
	Annual Aggregate Limit of Insurance	Valuation
Property Removal	Included in the Community Buildings and "Units" Limit	Actual Cost
Debris Removal	Included in the Community Buildings and "Units" Limit	Actual Cost

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THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

■ Disclosure Pursuant to Terrorism Risk Insurance Act

This endorsement modifies insurance provided by the following policies:
 CONDOMINIUM ASSOCIATION INSURANCE POLICY
 COOPERATIVE APARTMENT INSURANCE POLICY
 HOMEOWNERS ASSOCIATION INSURANCE POLICY
 OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

This policy includes coverage for Certified Acts of Terrorism. Please refer to the applicable charge below.

SCHEDULE	
Terrorism (Certified Acts)	PREMIUM \$528
Federal share of terrorism losses	80% Year 2020

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Power Failure or Interruption Coverage - Sump Pump**

This endorsement modifies insurance provided by the Property Coverage Part of the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

IV. **PROPERTY ADDITIONAL COVERED CAUSES OF LOSS SECTION** is amended by the addition of the following:

POWER FAILURE OR INTERRUPTION COVERAGE – SUMP PUMP

Subject to the limit of insurance and valuation shown below, we will pay for direct physical loss or damage to "covered property" caused by or resulting from water which backs up through, overflows, or is otherwise discharged from a sump well, if the back up, overflow or discharge results from a power failure, or power interruption to a sump pump or related equipment. No deductible applies to this coverage.

LIMIT OF INSURANCE

\$15,000 per occurrence

VALUATION

Replacement Cost

All other terms and conditions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Deductible Credit**

This endorsement modifies insurance provided by the Property Coverage Part of the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

The following is added to the Property Coverage Part, **VI. PROPERTY CONDITIONS SECTION, K. DEDUCTIBLE:**

DEDUCTIBLE CREDIT

1. When the amount we pay for direct physical loss or damage caused by or resulting from one or more COVERED CAUSES OF LOSS to "covered property" covered under I. PROPERTY DIRECT COVERAGES SECTION including any amount we pay for resulting loss or damage covered under II. PROPERTY CONSEQUENTIAL COVERAGES SECTION exceeds \$250,000 in any one occurrence, the applicable deductible amount shown in the "Declarations" is waived for that one occurrence.
2. This endorsement does not apply to:
 - a. Any deductibles shown on endorsements to this policy or deductibles shown on any other coverage part;
 - b. Any per "unit", per building, or percentage deductibles; or
 - c. Earthquake And "Volcanic Eruption" Coverage deductibles, if any, shown in the "Declarations".

All other terms and conditions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Deductible Allowance**

This endorsement modifies insurance provided by the Property Coverage Part of the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

The following is added to the Property Coverage Part, **VI. PROPERTY CONDITIONS SECTION, K. DEDUCTIBLE:**

DEDUCTIBLE ALLOWANCE

- A. For every consecutive annual "policy period" that you do not sustain a loss or damage caused by or resulting from a COVERED CAUSE OF LOSS to "covered property", to which the deductible amount shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations" applies, we will annually allot 20% of the deductible amount shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations" to a Deductible Allowance to be used in the event of a future loss or damage resulting from a COVERED CAUSE OF LOSS to "covered property".
- B. The Deductible Allowance is subject to the following conditions:
 - 1. The Deductible Allowance shall be used for any loss or damage caused by or resulting from a COVERED CAUSE OF LOSS to "covered property" that exceeds the applicable deductible shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations";
 - 2. The Deductible Allowance may not be used if loss or damage caused by or resulting from a COVERED CAUSE OF LOSS to "covered property" is less than the applicable deductible shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations";
 - 3. The Deductible Allowance is eliminated in the event we pay a loss or damage caused by or resulting from a COVERED CAUSE OF LOSS to "covered property" for which the deductible shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY applies;
 - 4. The Deductible Allowance cannot exceed the applicable deductible amount shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations". The maximum Deductible Allowance you may accrue is \$5,000.
- C. For example, if your deductible amount shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations" is \$5,000 and you do not sustain a loss or damage from a COVERED CAUSE OF LOSS to "covered property" for four consecutive annual "policy periods", the Deductible Allowance will have accrued \$4,000. If you then sustain a loss or damage caused by or resulting from a COVERED CAUSE OF LOSS to "covered property", that exceeds the applicable deductible shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY on the "Declarations", and the deductible shown in section D. PROPERTY DIRECT COVERAGES, 1. COMMUNITY PROPERTY applies, the Deductible Allowance of \$4,000 may be used to reduce the applicable deductible by \$4,000.
- D. This endorsement does not apply to any deductibles shown on endorsements to this policy, shown on any other coverage part, or to any per "unit", per building, or percentage deductibles.

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All other terms and conditions of this policy remain unchanged by this endorsement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Employee Dishonesty - Community Manager**

This endorsement modifies insurance provided by the Property Coverage Part of the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

Definition 18. "Covered employee" (PROPERTY) of **XXII. DEFINITIONS SECTION** is deleted and replaced by the following:

18. "Covered employee" (PROPERTY) means:
- a. Any natural person:
 - (1) While in your service (and for 30 days after termination of service);
 - (2) Whom you compensate directly by salary, wages or commissions; and
 - (3) Whom you have the right to direct and control while performing services for you.
 - b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you. However, any such person is excluded while having care and custody of property outside the "premises".
 - c. Any natural person who is a duly elected or appointed director, trustee, "officer", "committee" volunteer or "committee member", whether salaried or not, and any other person acting on behalf or at the direction of an "officer" or board of directors of your Association with the exception of the developer when acting in a capacity as the developer.
 - d. Other than your "employee", any person or any organization while acting as your community manager.
- But covered employee does not include
- a. Any "employee" immediately upon discovery by:
 - (1) You; or
 - (2) Any of your "officers" and directors not in collusion with the employee, director, "officer" or board member; of any dishonest act committed by that employee, director, "officer" or board member whether before or after being hired or appointed by you.

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Unit Owners Insurance

- Determination
 - Non-Standard Agreements
 - Disagreements
 - Claims Adjusters
- Description of Unit
- Valuation
- Same carrier as Master Policy, if possible
- Insuring Concepts
 - Bare Walls
 - “Original Spec” / Single Entity / Broad Form
 - All In

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Responsibility vs. Coverage “A”

- Bare Walls
 - Association responsible for Common Elements. Unit-owner is responsible for insuring all building items defined as part of the “Unit” in the Declaration. (From the bare-walls in: wallpaper, cabinets, fixtures, appliances, carpeting, etc.)
- All In / All Inclusive
 - Similar to Single Entity, but the Association is also responsible for unit owner installed upgrades.
- “Original Spec” / Single Entity / Broad Form
 - All building items are insured by the Association (but only the cost necessary to return the building and units to their original condition using materials of like kind and quality) and the unit-owner is responsible for upgrades, improvements, and personal property.

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Unit Owners Insurance

- Structural Items Required under Master Deed and By-Laws
 - Non-load bearing walls
 - Utilities servicing your unit
- Personal Property
- Improvements & Betterments / Additions & Alterations
- Loss of Use
- Personal Liability
- Detached Structures (on/off premises)
 - Garage
 - Boat Dock
- Decks / Patios
- Builder supplied upgrades as Incentives
- Loss Assessment

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HO-3 vs. HO-6

- Coverage “A” Special Form / **Broad Form**
- Coverage “B” Special Form / **Broad Form**
- Coverage “C” Broad Form / **Broad Form**
- Coverage “D” Loss of Use / **Ingress+Egress**
- Coverage “E” Personal Liability
- Coverage “F” Medical Payments

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Homeowners HO-6 Unit Owners Policy

- Coverage "A": Dwelling **(Broad Form)**
 - Includes \$5000
 - Insurance to Value – PROBLEM!

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SECTION I – PROPERTY COVERAGES

HO 00 06 1122

A. Coverage A – Dwelling

1. We cover:

- a. The alterations, appliances, fixtures and improvements which are part of the building contained within the "residence premises";
- b. Items of real property which pertain exclusively to the "residence premises";
- c. Property which is your insurance responsibility under a corporation or association of property owners agreement; or
- d. Structures owned solely by you, other than the "residence premises", at the location of the "residence premises".

2. We do not cover:

- a. Land, including land on which the "residence premises", real property or structures are located;
- b. Structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
- c. Structures from which any "business" is conducted; or
- d. Structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling, provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

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Homeowners HO-6 Unit Owners Policy

- Coverage “A”: Dwelling **(Broad Form)**
 - Includes \$5000
 - Insurance to Value – PROBLEM!
 - **Mutual Service Office policies / Others**
- Coverage “B”: Other Structures **(Broad Form)**
 - Part of Coverage “A”
 - Excludes OS off premises
 - Held for rental
 - Used in Business
- Coverage “C”: Personal Property- Limit selected by Insured **(Broad Form)**
 - Owned or used by an insured anywhere in the world
 - Property in an apartment regularly rented or held for rental- NOT COVERED

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Homeowners HO-6 Unit Owners Policy

- Coverage “D”: Loss of Use – 50% of Coverage “C”
 - Additional Living Expense / Rental Income
 - Ingress / Egress
- Coverage “E”: Personal Liability
- Coverage “F”: Medical Payments
- **RENTAL OF UNIT: HO 17 33 or DWELLING FIRE POLICY** [watch endorsement on DP forms]

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Loss Assessment

a. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. **The assessment must be made as a result of direct loss to property, owned by all members collectively,** of the type that would be covered by this policy if owned by you, *caused by a Peril Insured Against under Coverage A*, other than:

- (1) Earthquake; or
- (2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

c. **Special Limit -- We will not pay more than \$1,000 of your assessment per unit that results from a deductible in the policy of insurance purchased by a corporation or association of property owners.** ****Deleted in 2011 Form****

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Loss Assessment

• Coverage E – Personal Liability

Coverage E does not apply to:

1. Liability:

a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in D. Loss Assessment under Section II – Additional Coverages;

• Personal Umbrella / Excess Policy

- Usually Excluded

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Top Ten List for Condo Unit Owners Coverage

1. Get a copy of the Condo Documents
2. Have client estimate RC on structural items they are responsible for (AA+ IB)
3. Ascertain Master policy deductible
4. Add items 2 + 3 together and round up
5. Convert from Named Perils to Special

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Top Ten List for Condo Unit Owners Coverage

6. Add Special form Contents coverage
7. Add Personal Injury Endt.
8. Add sewer, water backup, and sump pump failure coverage
9. Propose Flood and Earthquake
10. Recommend adequate Liability Limits and Umbrella
11. Loss Assessment Coverage- special form and earthquake

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Unit Owner Responsibility	Replacement Cost
Carpeting, hardwood floors, ceramic tile, other flooring	\$5,000
Wall Coverings	\$2,000
Lighting Fixtures	\$1,000
Plumbing Fixtures	\$2,000
Built-In Appliances	\$5,000
Kitchen Cabinets	\$15,000
Unit Owner Installed Improvements	\$2,000
Improvements by previous owners	\$-0-
Structural Items- Master Deed/By-Laws	\$5,000
Master Policy Deductible	\$-0-
Total	\$37,000

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Unit Owner Responsibility	Replacement Cost
Carpeting, hardwood floors, ceramic tile, other flooring	\$20,000
Wall Coverings	\$5,000
Lighting Fixtures	\$2,000
Plumbing Fixtures	\$8,000
Built-In Appliances	\$10,000
Kitchen Cabinets	\$30,000
Unit Owner Installed Improvements	\$10,000
Improvements by previous owners	\$10,000
Structural Items- Master Deed/By-Laws	\$50,000
Master Policy Deductible	\$10,000
Total	\$155,000

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
LOSS ASSESSMENT COVERAGE [HO 04 35](#)
SCHEDULE*

"Residence Premises" – Additional Amount Of Insurance:	
A	.
B	Additional Locations . Location Of Unit And Limit Of Liability
*Entries may be left blank if shown elsewhere in this policy for this coverage.	

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Interesting.....

- As you broaden the coverage provided under the HO-6 policy, you also broaden Loss Assessment Coverage
 - With exceptions
- Broad Form > Special Form Coverage "A"
- Personal Injury Endt
- Add Earthquake Endt.
 - No !

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POLICY NUMBER:

HOMEOWNERS
HO 04 36 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS ASSESSMENT COVERAGE FOR EARTHQUAKE

SCHEDULE*

A. Location Of The Unit And Limit Of Liability

B. Earthquake Loss Assessment Deductible Percentage Amount:

*Entries may be left blank if shown elsewhere in this policy for this coverage.

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Bill's Dilemma –

- Bill lives in a COA
- Bill's HO-6 has a \$500 deductible and a \$4,400 hurricane deductible, which is 2% of his \$220,000 Coverage A limit.
- His policy runs 1/1/22 – 1/1/23.
- On 1/25/22 a hurricane damages his home and he is paid for the \$25,000 in damage less his 2% hurricane deductible.
- On 2/1/22 he is assessed \$2900 for repairs to the COA clubhouse which was damaged in the same hurricane.

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Bill's Dilemma –

- Is this one claim or two separate claims, and how many times does the deductible apply?
- Does his policy pay the \$2900 assessment less his \$500 deductible; OR
- Does his policy not pay this anything, because the assessment does not exceed his 2% (\$4400) hurricane deductible ??

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Bill's Dilemma –

The assessment is a completely separate loss to the homeowners policy holder. They may or may not have suffered damage when the COA property was damaged.

The trigger for loss assessment coverage, as pointed out earlier, is the assessment by the COA– not the occurrence.

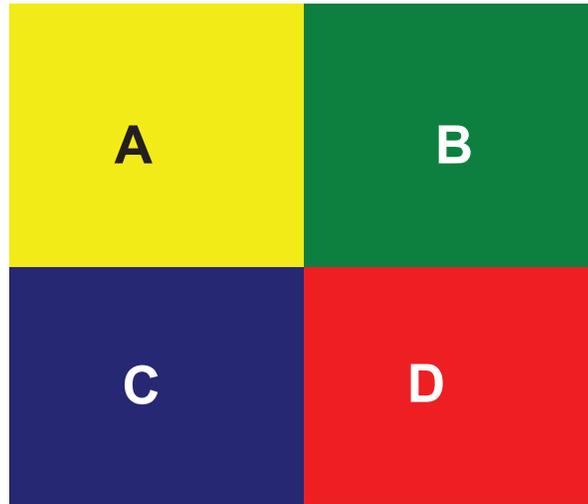
The homeowners policyholder has suffered loss when the COA passed along an assessment for damage to common property. Their loss did not result from the peril of windstorm during a hurricane...it resulted from an assessment made by the COA.

Keep in mind too, the assessment is a separate loss to the insured, a separate occurrence, and a separate deductible applies.

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Simple Condo Association



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LOSS ASSESSMENT FOR
FLOOD ?

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Unit Owner Examples

- **NO RCBAP**

- If the unit owner purchases building coverage under the DP and there is no RCBAP, the DP policy responds to assessments against unit owners for damages to common areas up to the dwelling limit.
- However, if there is damage to the building elements of the unit as well, the building coverage limit under the DP may not be exceeded by the combined settlement of unit building damages, which would apply first, and the loss assessment.

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Unit Owner Examples

- **RCBAP Insured to at least 80% of RC**

- If the unit owner purchases building coverage under the DP, and there is a RCBAP insured to 80% RC, the DP policy responds to assessments against unit owners for damages that exceed the 80% of building's RC.
- **The loss assessment coverage under the DP will not cover the associations policy deductible.**
- If building elements within units have also been damaged, the DP pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Combined coverage cannot exceed ~~038~~ \$250,000 per unit.

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Unit Owner Examples

- **RCBAP Insured to less than 80% of RC**
 - If the unit owner purchases building coverage under the DP, and there is a RCBAP insured to less than 80% RC, the loss assessment coverage cannot be used to reimburse the association for its coinsurance penalty.
 - Loss assessment is only available to cover the building damages in excess of the 80% required amount at the time of loss. Meaning, the covered damages to the condo association building must be greater than 80% of the buildings RC at the time of loss, before loss assessment becomes available.
 - Covered repairs to the unit, if applicable, would have ²³⁹ priority over loss assessments under the DP

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Endorsements

- **HO 04 35 Loss Assessment Coverage**
 - Increases the basic \$1,000 loss assessment limit for damage to the residence premises up to \$50,000
- **HO 04 90 Personal Property Replacement Cost**
 - Changes loss settlement for Personal Property to Replacement Cost
- **HO 04 36 Loss Assessment Coverage For Earthquake**
 - Provides loss assessment coverage for an earthquake loss
- **HO 04 77 Ordinance Or Law Increased Amount**
 - Increases the 10% coverage limitation of the homeowners policy
- **HO 04 54 Earthquake**
 - Adds the peril of earthquake for the dwelling, other structures, and personal property coverage
- **HO 17 31 Unit-Owners Coverage C Special Coverage**
 - Changes Coverage C – Personal Property to open perils
- **HO 17 32 Unit-Owners Coverage A Special Coverage**
 - Changes Coverage A – Dwelling to open perils
- **HO 17 33 Unit Owners Rented to Others**
 - Permits Rental of Unit ? / Dwelling Fire Policy – Watch endorsements !
- **HO 24 82 Personal Injury**
- **HO 1734 Other Insurance Revision**
 - Permits Unit owner to recover regardless of whether Assoc. can or not ²⁴⁰ (large deductible)

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\$12 Million Reasons Your Associations Need Liability Insurance

CIRMS Blog 10/10/13

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\$12million Reasons

- On January 16, 2011, Andrew Curtis, a nine-year-old boy, and his father were riding their bicycles on U.S. Highway 1 in the town of Jupiter, Florida.
- Andrew was following his father as the two approached the driveway of the Villas on the Green Condominiums. While Andrew's father passed the driveway without incident, as Andrew began to cross, he was struck by a minivan driven by Helen Bygel.
- Andrew was airlifted from the scene of the accident to St. Mary's Medical Center, where doctors were unable to save his life. 242

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- Andrew's mother, Tracy Curtis, filed a wrongful death claim against driver Bygel, as well as property owner, Villas on the Green Condominium Association, Inc., and property management company, M.M.I. of the Palm Beaches Inc.
- Plaintiff claimed that Bygel failed to yield the right of way. In addition, Plaintiff claimed that both the property owner and property management company failed to comply with state and local regulations concerning the height and location of stop signs and hedges, which contributed to the fatal accident. Specifically,
- Plaintiff claimed that the hedges at the entrance to Villas on the Green were four feet eight inches high, nearly double the maximum allowable height. Also, the stop sign governing the intersection of the driveway with Highway 1 was four feet too short and too far back from the sidewalk pursuant to the Florida Department of Transportation's regulations.

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- Defendant Bygel claimed that she stopped at the stop sign but did not see either of the riders. At trial, Bygel's attorney alleged that the collision occurred because neither Bygel nor the bicyclists could see each other due to the height of the hedges and the improper placement of the stop sign.
- Counsel for the property owner and management company claimed that the collision occurred solely because of Bygel's negligence for failing to check for pedestrians or cyclists before proceeding forward.
- After a four-week trial the jury concluded that all the Defendants were responsible for the accident and apportioned 10% to Bygel, 30% to the property owner and 60% to the property management company.

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- They awarded Plaintiffs \$64,302 for medical, funeral and burial expenses and \$12,000,000 for pain and suffering.
- *VERDICT:* *\$12,064,302*
- *COURT:* *15th Circuit Court for Palm Beach County, Florida*

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Minnesota Pool Owner Settles for \$8 Million in Case with Girl Fatally Hurt

September 5, 2008

The Minneapolis Golf Club says it has reached an \$8 million settlement with the family of Abigail Taylor, the 6-year-old girl who was fatally wounded by a swimming pool drain. Taylor died of injuries she suffered last summer when she sat on the drain of the club's wading pool. The powerful suction ripped out part of her intestinal tract.

Club President Herb Houndt says in a statement on September 3 that the amount exceeds the limits of the club's insurance, so the members had to vote to get a loan to pay the difference.

Houndt says the club and its members are happy to have reached the settlement for the sake of closure for both the club and Taylor's family. He did not immediately return a call from the *Associated Press*.

After Abigail died in March, her family was instrumental in persuading the state Legislature to pass a new pool safety law. ²⁴⁶

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Dolphin Towers Condo Ass'n. Sarasota, Florida

Herald Tribune

Kevin McQuaid

July 14, 2011

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Dolphin Towers on Gulfstream Ave. in Downtown Sarasota, Florida



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Dolphin Tower owners walk away

June 27, 2011



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- *SARASOTA* - Frustrated by a lack of repair progress and swelling costs to fix severely damaged concrete, a growing number of Dolphin Tower unit owners appear to be walking away from the troubled 15-story downtown condominium.
- The owners' decisions to stop paying monthly condo dues of \$520 and other assessments comes as the expected costs to repair the building's primary concrete slab have risen to as much as \$11.5 million, or roughly \$100,000 per unit, according to a recent estimate communicated by the building's homeowners group.
- Previously, the expense to fix that key two-foot-thick transfer slab was believed to be about \$8.2 million, or \$70,000 per unit.

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Who Will Pay for San Francisco's \$750M Sinking Luxury Tower?

February 2, 2017 / By James Tarmy and Kartikay Mehrotra

Nina Agabian, a retired director of research in global health science at the University of California, bought a 29th-floor apartment in San Francisco's Millennium Tower in 2010. "It was supposed to be a wonderful building," she said in January, sitting in a leather chair in the building's vast, low-lit, owner's-club level. "For many of us, who left our business lives to start our older years, this had become a nice, comfortable place."

The building, which opened in 2008 and was touted as the most luxurious tower in San Francisco, became a beacon of the city's burgeoning wealth, attracting tech millionaires, venture capitalists, and even the San Francisco 49ers retired quarterback Joe Montana.

The 58-story tower's shine faded on May 10, 2016, when Agabian attended a homeowners association meeting and was informed that the building had sunk 16 inches into the earth and tilted over 15 inches at its tip and 2 inches at the base, according to suits filed by residents and the city of San Francisco. "You can imagine how distressed we were to know that, for one, our lifetime investment and savings are at risk," she said. "And we have no idea whether or not there's a fix to it, and if there is a fix to it, what it will entail."

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The situation at San Francisco's sinking skyscraper is so dire, residents are selling their condos at a loss of millions

- [Melia Robinson](#)
- Dec. 22, 2017, 12:40 PM
- 29,325



Millennium Tower (left) rises 58 stories above San Francisco's Financial District. Vanguard Properties

- Millennium Tower, a luxury residential building in San Francisco, has sunk 17 inches and tilted 14 inches since it was completed in 2008.
- Residents say they're selling multimillion-dollar condos at a loss.
- A two-bedroom, three-bath unit at Millennium Tower sold in December 2017 for 30% less than what it sold for in 2013.

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OCEAN POINT CONDO ASSOCIATION

Miami Beach, Florida
August 2012

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The Trouble with Condos

(and their Boards of Directors)

- One of my friends (an insurance producer) owns a condo near South Beach, Fl. His condo association has only 2 employees, plus a maintenance worker that they paid using a 1099. The maintenance worker was killed in 2010 while working on the elevator (something failed & he was crushed in the elevator shaft).
- The young man's parents are now threatening to sue the condo assoc, and are demanding \$2MM to settle.
- The condo association did not purchase workers compensation insurance because FL State law does not require companies with 4 or less employees to purchase it. So the condo assoc had no workers compensation insurance.
- The condo assoc's CGL denied coverage citing policy exclusions for claims resulting from employee injuries, employers liability, etc.

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The Trouble with Condos

(and their Boards of Directors)

- The condo assoc made the common mistake of assuming that by simply paying a worker on a 1099, that that would protect the assoc against any claims. Unfortunately the assoc was this workers' sole employer, so the CGL carrier argues that despite the 1099, he was an employee of the association.
- But right now the condo association is looking at a wrongful death lawsuit right now without any insurance coverage.
- They recently sent out the attached notice to all their unit owners, including my friend. Although he has a Chubb masterpiece policy on his primary NJ home, I understand that since this is a second home, my friend bought only an inexpensive HO6 from a FL agent for this condo, which provides only \$1,000 in loss assessment coverage.
- So he could be looking at a substantial loss assessment, without enough coverage!

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Worker killed in elevator shaft

- 11 October 2010 t
- One worker was killed and one worker was hurt in an elevator accident inside a South Beach condominium.
- Two people were working on an elevator at the Ocean Point Condo, located at 345 Ocean Drive according to Miami Beach Fire Chief Javier Otero. One person was inside the elevator, while the other was on top of the elevator in the shaft.
- According to news reporters on the scene the building employee who was on top of the elevator got trapped, then crushed between the elevator and the elevator shaft wall between the fifth and sixth floors. Chief Otero says the person inside the elevator was not hurt, unlike the person in the shaft that was killed.
- He had gone through the roof opening into the shaft and for still unknown reasons, the elevator began to move, which caused him to be crushed.
- On condo resident described the man as very well liked. "What a sweet guy, he was. Friday I needed a battery for my husband's motor scooter and he went all the way to the store out and away from here to get the battery," she said, her voice choking with emotion. "Very painful."
- More than three hours after the accident, the dead man's body remained wedged in the elevator shaft.
- The Otis Elevator Company sent technicians to help officials with the removal of his body.
- Chief Otero says it's not known what caused the accident.

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OCEAN POINT ASSOCIATION, INC.
345 Ocean Drive
Miami Beach, Florida 33139

Re: Claim by Estate of Edelberto Fernandez

Dear Members:

This letter is being sent to each Member of Ocean Point Association, Inc. The purpose of this letter is to advise you of certain claims being made against the Association and the potential liability that may result from the claims. The claims are being made by The Estate of Edelberto Fernandez. Edelberto Fernandez was contracted to provide various services to the Condominium operated by the Association. On October 11, 2010, it is alleged that Mr. Fernandez suffered fatal injuries as a result of being crushed by an elevator he was working on at the Condominium. The insurance carrier that provides coverage for claims of this type has denied coverage. Among other things, they take the position that Mr. Fernandez was employed by the Association as an employee, rather than as an independent contractor. Bodily injury claims of employees are typically covered by Workers' Compensation insurance and are excluded under the general liability policy which would normally provide coverage for this type of claim.

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While the Association is still investigating the denial of the claim, the specifics of the claim itself and other avenues which may provide relief from the claim, the Board determined that the members should be aware of the claim. Currently, the attorneys for the Estate of Edelberto Fernandez have demanded that the Association pay them \$2 Million dollars no later than the close of business, August 1, 2012. They threatened that, if payment is not made, they will file a lawsuit and will ask a jury to return a verdict of at least \$10 Million dollars. Obviously, the Association does not have \$2 Million dollars to pay this claim and it is not clear that the Association is liable or that the denial of insurance coverage is proper. Nonetheless, all of the members of the Association may be faced with a significant financial obligation to the extent the claim remains denied and to the extent The Estate of Edelberto Fernandez is successful in pursuing its claim in court, as threatened. If legal action is commenced, and the denial of coverage remains, you will be provided a formal notice under the provisions of the Florida Condominium Act regarding the potential liability of each owner and each owners' right to intervene and defend any action brought against the Association. No lawsuit has yet been commenced, but this claim raises serious concerns.

If you are involved in any sales transaction, you may be required to disclose this information as part of your obligations as a seller. The Association will be required to disclose this information as part of the reporting requirements under the Condominium Act, to the extent a lawsuit is commenced. The Board is committed to passing on any additional information as such information becomes available.

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Please Also Note that :

"At the time of the incident in October 2010, Ocean Point Association did not have workers compensation insurance covering Mr. Fernandez."

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Big Assessment Coming for Gallery Tower

- Before you read any further, I want to make this very clear. This assessment that Gallery is getting ready to enact is absolutely necessary and it's a good thing. With any assessment of this size, there's going to be some heartburn that goes along with it. But Gallery has made the right choice – they are no longer ignoring needed maintenance, they are tackling it with a plan!
- With that all said, Gallery Tower is readying a 1 million to 1.3 million dollar assessment. The assessments to individual home owners will range from about \$5,000 to over \$10,000.
- Yes, this is a large amount, but by no means the largest Downtown has seen. The Airye Condominium levied assessments a few years ago ranging from \$15,000 to over \$80,000 for the penthouse. Even MarketHouse assessed \$15,000 to \$20,000 per unit back in 2007 for window replacement and building repair/updating.
- What makes Gallery unique is the percentage of the assessment against the cost of the units. With one bedrooms selling for around \$50,000, this makes the assessment almost 10% of value!

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Wayne condo owners could be on the hook for \$3M in repairs

Philip DeVencentis, North Jersey Record | Published 10:00 a.m. ET Aug. 31, 2018 | Updated 3:24 p.m. ET Sept. 5, 2018



(Photo: Danielle Partizkaran/NorthJersey.com)

CONNECT TWEET LINKEDIN COMMENT 3 EMAIL MORE

Brittany Chase, a sprawling complex of 395 condominiums and town houses off Berdan Avenue in Wayne, is meticulously landscaped and its streets are home to families and senior citizens alike.

Beneath its polished exterior, however, a problem exists that could disrupt hundreds of lives: the foundations of two town houses on the eastern edge of the complex are failing, according to documents obtained by NorthJersey.com and the USA TODAY NETWORK New Jersey.

And the cost to repair it is in the millions.

For homeowners at Brittany Chase, the situation has become a potential financial nightmare: they've been told they may have to foot the bill to pay for the repairs — even if their homes aren't directly affected. A final decision is pending.

"I don't understand how it could be fair," said 92-year-old Lucille Kotran, a condominium owner on a fixed income.

Unit owners were told in May about the problems, which were blamed on a "construction defect." The price to fix them: more than \$2.6 million.

LET'S TAKE A BREAK !

SEE YOU BACK HERE IN 10
MINUTES

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The Lowest Bidder

It is unwise to pay too much, but it is worse to pay too little. When you pay too much, you lose a little money—that is all. When you pay too little, you sometimes lose everything, because the thing you bought is incapable of doing what it was bought to do. The common law of business balance prohibits paying a little and getting a lot—it can't be done. If you deal with the lowest bidder, it is well to add something extra for the risk you run. And if you do that, you will have enough to pay for something better”

John Ruskin (1819-1900)

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James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 2

Understanding Occurrence and Claims-Made Triggers



UNDERSTANDING OCCURRENCE and CLAIMS MADE TRIGGERS



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Coverage Triggers

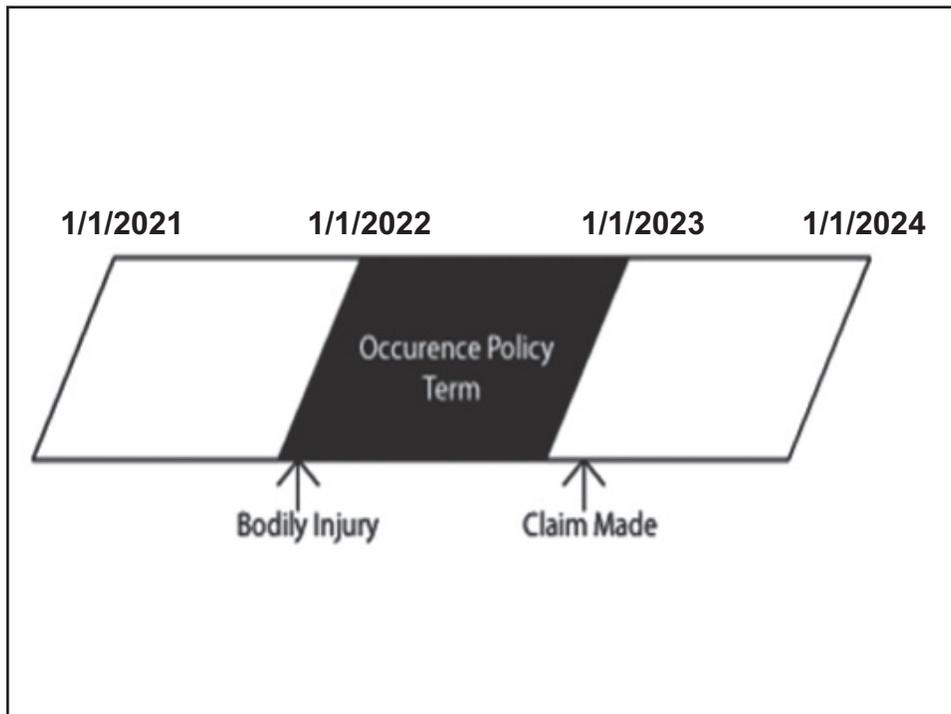
- Refers to the event that must occur before a liability policy applies to a loss
- Determines which liability policy among a series of liability policies covers a loss
- Two types
 - Occurrence
 - Claims-made

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Coverage Triggers

- Occurrence
 - The policy in effect when an accident or wrongful act causes injury or damage
- Claims-Made
 - The policy in effect when a claim is made against an insured

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Claims Reporting – Occurrence

Bob Smith, a long time client is very cost conscious. You have moved his account from company to company over the past 22 years. On January 20, 2022 Bob came into your office with a lawsuit alleging negligence on a project he completed in 2016 caused an injury to the claimant in 2020. Which Insurance Company should you report the claim to?

- 97-00 Podunck Mutual \$300,000
- 00-02 Lloyds of Lubbock \$500,000
- 02-16 Browntree Ins Co \$500,000
- 16-21 Everly Ins Group \$1,000,000

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Claims Reporting – Occurrence

Bob Smith, a long time client has decided to retire and cancels his policies on 12/31/21. During the past years, Bob has had coverage with the following carriers, shown below. On June 10, 2022 there is a fire in a home which was built by Bob in 2016, where a young girl is badly injured. On December 10, 2022 a lawsuit is filed against Bob for negligence and faulty construction. Which carrier will respond to this claim ?

- 97-00 Podunck Mutual \$300,000
- 00-02 Lloyds of Lubbock \$500,000
- 02-16 Browntree Ins Co \$500,000
- 16-21 Everly Ins Group \$1,000,000

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Occurrence Policies.....

- **DO NOT HAVE “TAILS”**
- **DO NOT HAVE “EXTENDED REPORTING PERIODS”**
- THESE ARE “CLAIMS MADE” TERMS
- *Same potential problem with CM an CM&R*

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Discontinued Products and Completed Operations Coverage

- Continue CGL policy in force if possible
 - Must justify there is a need
- Buy a separate policy for this coverage
 - Standard vs. Excess Market
- Not just for Occurrence Policies- Claims Made too !
- How long does this exposure last ?
 - Statute of Repose

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Statute of Repose

AL=7	AK=10	AZ=8	AR=4	CA=10	CO=6	CT=7	DE=6
DC=10	FL=10	GA=8	HI=10	ID=6	IL=10	IN=10*	IA=10*
KA=10	KY=7	LA=5	ME=6	MD=10	MA=6	MI=6	MN=10
MS=6	MO=10	NE=10	NV=10	NH=8	NJ=10	NM=10	NY=na
NC=6	ND=10	OH=10	OK=10	OR=10	PA=12	RI=10	SC=8
SD=10	TN=4	TX=10	UT=9	VT=na	VA=5	WA=6	WV=10
WI=7	WY=10						

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Misunderstanding...

- **Every person is personally liable for their own torts**, even if the torts are business torts committed while acting solely on behalf of a corporation, this protection is extraordinarily important to owners of small corporations. An all too common misunderstanding of business owners is that the “corporate veil” shields the owner from all tort liability.

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‘Officers and directors may be held individually liable for personal participation in tortious acts even though performed solely for the benefit of the corporation’

- *Terr. of the U.S.V.I. v. Goldman, Sachs & Co.*, 937 A.2d 760, 794 n.153 (Del. Ch. 2007)
- *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, 70 P.3d 35, 41 (Utah 2003);
- *Miller v. Keyser*, 90 S.W.3d 712, 717 (Tex. 2002);
- *Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 788 A.2d 268, 273 (N.J. 2002);
- *Haupt v. Miller*, 514 N.W.2d 905, 909 (Iowa 1994);
- *Camacho v. 1440 Rhode Island Ave. Corp.*, 620 A.2d 242, 246-47 (D.C. 1993);
- *Weir v. McGill*, 203 Ga. App. 431, 417 S.E.2d 57, 59 (Ga. 1992);
- *Hecker v. Ravenna Bank*, 237 Neb. 810, 468 N.W.2d 88, 95 (Neb. 1991);
- *Ingram v. Machel & Jr. Auto Repair, Inc.*, 148 A.D.2d 324, 325, 538 N.Y.S.2d 539 (N.Y. App. Div. 1989);
- *Mississippi Printing Co. v. Maris, West & Baker, Inc.*, 492 So. 2d 977, 978 (Miss. 1986); *Wyatt v. Union Mortg. Co.*, 24 Cal. 3d 773, 157 Cal. Rptr. 392, 598 P.2d 45, 52 (Cal. 1979);
- *Jabczenski v. Southern Pac. Memorial Hosp.*, 119 Ariz. 15, 579 P.2d 53, 57 (Ariz. Ct. App. 1978);
- *Taylor v. Alston*, 79 N.M. 643, 447 P.2d 523, 525 (N.M. Ct. App. 1968);
- *New Eng. Box Co. v. Gilbert*, 100 N.H. 257, 123 A.2d 833, 835 (N.H. 1956).”

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Can I Set Up An LLC To Avoid Personal Liability In A Lawsuit?

- Posted on May 26, 2009 by Max Kennerly, Esq.
- Among the many creative “legal” ideas floating around on the internet is:
- If you set up an LLC for yourself and conduct all your business through it, the LLC will be liable in a lawsuit but you won’t.
- Last week, I was asked if this “asset protection strategy” worked. No, it doesn’t. Conducting your personal business through an LLC provides no protection against a tort verdict, the type of liability that most people are worried about. The use of corporate forms — like LLCs, S-Corporations, or Incorporation — has many important purposes, but avoiding personal tort liability for your own conduct is not one of them.

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- If Warren Buffet defrauded Mom and Pop’s Ice Cream Stand wholly for the benefit of Berkshire Hathaway, he would *personally* be on the hook for the damage just the same as Berkshire.
- Let’s go back to your personal LLC. Assume you hit a pedestrian with a car, defame someone in a blog post, or cause a building fire. It doesn’t matter if you were “employed” by your LLC when you did it — you will still be *personally* liable, as will the LLC that “employed” you.
- Thus, in order to “protect your assets,” you need to put enough money into the LLC that it can completely pay any tort judgment against you, or else the injured person can go for your assets long after it has bankrupted the LLC.
- That just defeats the nominal purpose of the LLC (to avoid liability), since you’ll have to pay the same amount anyway, just through the LLC. Again, there are plenty of reasons for setting up an LLC, such as protecting investors, limiting *contractual* liability, limiting liability arising from *employee’s* conduct, and a host of business and tax uses, but avoiding personal liability for your own conduct isn’t one of them.
- There’s an easier and more effective way. Buy good personal liability insurance and buy a Liability and Umbrella Insurance policy with good limits

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Montrose Chemical Corp. vs. Admiral Insurance Co., 10 Cal. 4th 645, 42 Cal. Rptr. 2d 324, 913 P.2d. 878 (1995)

- Admiral Insurance Co. began insuring Montrose Chemical Corp. of California on a commercial general liability policy effective Oct. 13, 1982.
- Each of the four successive policies Admiral issued to Montrose contained the 1973 "occurrence" and "property damage" definitions.
- No later than two months before the first Admiral policy became effective, a Montrose Northern California (Levin Metals) site was discovered by the insured to be contaminated.
- In addition, six weeks before inception of the first Admiral policy, Montrose was notified by the Environmental Protection Agency that it was a *potentially responsible party* for response costs at a Southern California (Stringfellow) site.
- Montrose sought protection under Admiral's policies, obviously, to gain access to more limits because it was already being defended by six other CGL insurers.
- Admiral moved for summary judgment that it had no duty to defend or indemnify. The trial court decided in favor of Montrose, but the Court of Appeals reversed. Ultimately, the California Supreme Court granted review to consider the issue of whether defense (not indemnification) coverage was triggered by the pollution events

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Coverage A Insuring Agreement

- Known Loss Restriction / Loss in Progress
 - Denies coverage for injury or damage of which the insured is already aware prior to the policy inception
 - Eliminates multiple policies being called upon to pay for injury or damage **if known by an insured** that occurs over multiple policy periods
 - Standard CGL does not prohibit the triggering of PRIOR policies—just future ones.

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Known Loss Claim

- 1/1/22-23 CGL renewal
- 10/15/22 insured receives notice of claim
- Claim settled 7/23
- While 2023 policy will not respond at all; the known loss provision of the 2022 policy will not apply, since the insured was not aware of the claim at the beginning of the 2022 policy period
- Watch “first known” wording – limits coverage to one policy (non-standard)

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Introduction to Claims Made

- Until the 1970's all liability policies, including professional malpractice policies, were written on an Occurrence basis.
- Occurrence policies covered BI/PD/WA that occurred during their policy period, but imposed no time limit for reporting them. (pollution, asbestos, malpractice, etc)
- **Once the Occurrence happened, the carrier became perpetually obligated to indemnify the insured.**

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Why Change?

- Inability to accurately set rates
- Predict carrier liabilities/ profit better
- Determines which insurer is on the claim

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Setting Occurrence Rates

- Carrier's book has 100 Occurrence policies
- All have a 1/1/08 – 1/1/09 policy period
- All Policies set to renew 1/1/09
- Underwriter/Actuary attempting to set rates based upon loss history
- Facts:
 - 15 claims reported
 - Time Lag: The 15 claims made only represent about 25-30% of actual claims for the 1/1/08-09 policy period
 - Over time, this policy period will actually yield about 50-60 claims
- Carriers have a hard time determining the number and value of future claims (IBNR)
- **Carrier accepts a fixed price for an open ended promise to indemnify**
- Carriers have a hard time determining what their actual profit was for any given year

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Time Lags in Making Claims

- Time necessary for injuries/damages to manifest
 - Architect
- Time necessary for injuries/damages to be discovered
 - Title company
- Claimants don't seek immediate legal redress
 - Reluctance by some
 - Unaware of true severity
 - Unable to assess who caused injury
- Attorneys intentionally delay filing suit
 - Some Injuries worsen over time
 - CM policy limits increase
 - SOL, lack of witnesses, etc.
- Inflation
 - Medical Costs
 - Public Attitude toward Ins Co. / Claimant
 - Adequacy of Limits (Occ. vs. CM)

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Which Carrier is Responsible for the Pollution Claim ?

Company A	1/1/66—1/1/67	\$500,000 *
Company A	1/1/67—1/1/68	\$750,000 *
Company B	1/1/68—1/1/69	\$750,000 *
Company B	1/1/70—1/1/71	\$1,000,000 *
Company C	1/1/71—1/1/72	\$2,000,000 **
Company C	1/1/72—1/1/73	\$2,000,000

* Pollution begins and continues to worsen ** Lawsuit filed for cleanup
My Case- Dry Cleaner

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Theories of Allocation of Losses

Taken from a series of articles written
by
Craig Stanovich

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CGL Trigger

- Does an “occurrence” trigger an occurrence based CGL policy?
- “Occurrence” means an ACCIDENT, including continuous or repeated exposure to substantially the same general harmful conditions.
- This insurance applies to BI or PD only if:
 - The BI or PD is caused by an occurrence that takes place in the “coverage territory”
 - The BI or PD occurs during the policy period

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CGL Trigger

- Is the CGL in effect when the work is negligently performed the policy that is triggered ?
- ABC Construction installs a deck on Bob’s house today. The installation is done in a negligent manner – the deck was not fastened to the house. Two years later the deck collapses injuring Bob. He sues ABC for Bodily Injury.
- This insurance applies to BI and PD only if:
 - The BI or PD is caused by an occurrence that takes place in the coverage territory;
 - The BI or PD occurs during the policy period

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Coverage Trigger

- CGL in effect for ABC Construction
 - Today (Time deck is built) is Travelers
 - \$1,000,000 each Occurrence Limit
 - January 1 to January 1 effective dates
 - Two years later (When deck collapses) is Hartford
 - \$1,000,000 each Occurrence Limit
 - January 1 to January 1 effective dates
- This insurance applies to BI and PD only if:
 - The BI or PD is caused by an occurrence that takes place in the coverage territory;
 - The BI or PD occurs during the policy period

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Coverage Trigger

- Hartford must respond – Bodily Injury “occurred” during the Hartford CGL policy period
- *When the “occurrence” takes place is not the trigger of the CGL and therefore not relevant*
- **When the BI or PD OCCURS is relevant and the Trigger of an Occurrence CGL Policy**

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Travelers Ins Co v Eljer Mfg. Inc 757 N.E. 2d 481(Ill. 2001)

- ...under CGL policies covering “physical injury to tangible property”..... claims against the insured that it manufactured defective plumbing system were covered if the buildings in issue suffered water damage, due to leaks during the policy period, regardless of when the plumbing systems were installed, because the plain language of the policies state “that the insurable event which gives rise to the insurers obligation to provide coverage is the physical damage to tangible property.

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Millers Mut. Fire Ins Co. of Texas v. Ed Bailey Inc 647 p.2d 1249, 1250 (Idaho 1982)

- ...that where the insured installed foam in a building during the term of a CGL policy, and a fire allegedly caused by the foam occurred after the policy expired, the property damage claim was not covered because the policy defined property damage as “physical injury to or destruction of tangible property which occurs during the policy period”, and no actual physical damage to the structure in this case occurred within the policy period.

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CGL Trigger

- What if it is difficult to determine exactly when the BI or PD took place ?
 - BI or PD may happen over time (progressive, cumulative or continuous injury or damage)
 - Does this change the CGL policy trigger ?
- Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

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CGL Trigger Theories

- The courts will determine when the BI or PD took place, by using one of four “Trigger Theories”:
 - Exposure
 - Manifestation
 - Injury in Fact
 - Continuous Trigger

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Exposure Theory

- a/k/a Asbestos Theory
- ALL CGL policies are triggered if they are in effect during the exposure to injurious or harmful conditions. Primarily used in asbestos cases, this theory considers BI to begin when a person was first exposed to asbestos, usually at the first inhalation of asbestos fibers [even if they don't have the disease, they are considered to have the disease].

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Manifestation Theory

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

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Injury-in-Fact Theory

- ALL CGL policies are triggered if they are in effect during the time the injury or damage is shown to have actually taken place, even if the injury or damage continues over time.
- Most commonly used Trigger Theory
- Fits the policy wording that the BI or PD has to occur during the policy period

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Trigger of Coverage and Funeral Home Malpractice

Randy Maniloff
White and Williams
Coverage Opinions
July 10, 2019

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- At issue in *Zack v. Clock Funeral Home*, No. 343732 (Mich. Ct. App. June 11, 2019) was trigger of coverage for a unique scenario. An infant passed away in February 2015. The parents arranged for funeral and burial services with Clock Funeral Home of White Lake. The visitation and funeral services were conducted on February 16 and 17, 2015. Burial was delayed due to a required autopsy. The parents requested that their son be cremated and that his ashes be buried in an urn they provided to Clock. Clock conducted a burial service interring the urn on April 18, 2015. In January 2016, an employee of the funeral home discovered a box labeled as the ashes of the infant. The employee delivered the box to the parents. During an investigation, in March 2016, their son's grave was exhumed and the urn was empty.
- At the time of the funeral and burial, the funeral home was an insured under a commercial general liability policy issued by Westfield. The policy included an additional coverage part for acts and omissions arising out of services rendered or the failure to render services as a funeral director. The policy was cancelled on December 19, 2015 for nonpayment of premium.
- At issue was the potential for coverage under the policy for a claim against the funeral home. The overarching question was whether "bodily injury" took place during the policy period, as required to trigger coverage.

To summarize, the policy was on the risk at the time of the funeral and burial. However, it was no longer on the risk at the time that the grave was exhumed.

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- **The court concluded that "bodily injury" did not take place during the policy period: "Because plaintiffs did not learn that their son's ashes were not, in fact, buried until after the policy coverage had ended, they did not suffer their emotional, mental and physical injuries resulting from that negligent act until after the policy had terminated."**
- The court rejected the argument that the policy was triggered on the basis that, it was during the policy period, that the empty urn was buried. They argued that "interference with their right to control the final disposition of their son's remains" was the injury, and such injury was incurred when the empty urn was buried. "However," the court held that "the interference was simply the wrongful action Clock engaged in that resulted in injuries to plaintiffs."
- Not surprisingly, as often happens in cases involving trigger of coverage, the court turned to its environmental case law on the subject, to see what that has to say about it. The court addressed the Michigan Supreme Court's 1998 decision in *Gelman Sciences*, in which the court addressed four theories for when gradual property damage, caused by pollution, takes place.
- *Gelman Sciences* did not help the parents here in their pursuit of coverage: **"Our Supreme Court held that the policy language concerning when coverage was triggered was unambiguous and, according to the policies' explicit terms, actual injury must occur during the time the policy is in effect in order to be indemnifiable, i.e., the policies dictate an injury-in-fact approach.** The *Gelman* Court acknowledged that determining the precise timing of actual property damage is sometime difficult and while it appreciate[s] the difficulty of proof in this regard, this difficulty cannot justify redrafting unambiguous policy terms in the guise of judicial interpretation."

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Continuous Trigger Theory

- a/k/a Triple Trigger Theory
- NJ often uses for pollution claims
- ALL CGL policies are triggered if they are in effect during any of the following times:
 - Exposure to harmful conditions
 - Actual injury or damage, and
 - Upon manifestation of the injury or damage

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Actual Claim- Dry Cleaner

- 1954-2004 husband/wife owned and operated a dry cleaning business
- In 2004 they decided to sell the business and real estate for \$2.3mil
- Two weeks before the closing the bank decided to do some “soil sampling”, and discovered massive contamination, that would ultimately cost \$7.2mil to remediate
- Litigation ensued !
- When did the PD occur ?

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Dry Cleaner Claim-Cont'd.

- Carrier searches its current data base and finds 7 years of policies –not 60 years !
- Burden of proof shifts to the insured
- We supply all but 6 years of policies; carrier wants to pro-rate out those 6 years
- Pollution exclusion applicable (1973 and earlier ISO CGL editions = yes)
- J(1) exclusion for our property, but have to clean up third party property
- How much limit is available ? NJ= triple trigger

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Dry Cleaner Claim-Cont'd.

- What was the limit of a CGL policy in 1954 ?
- Three year policies issued – one limit for all three years or separate limits for each of the years in a three year policy ?
- When did umbrella policies become popular ?
- Years of arguing and experts– finally settled for \$7.2mil, including ongoing monitoring and testing

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Trigger Theories

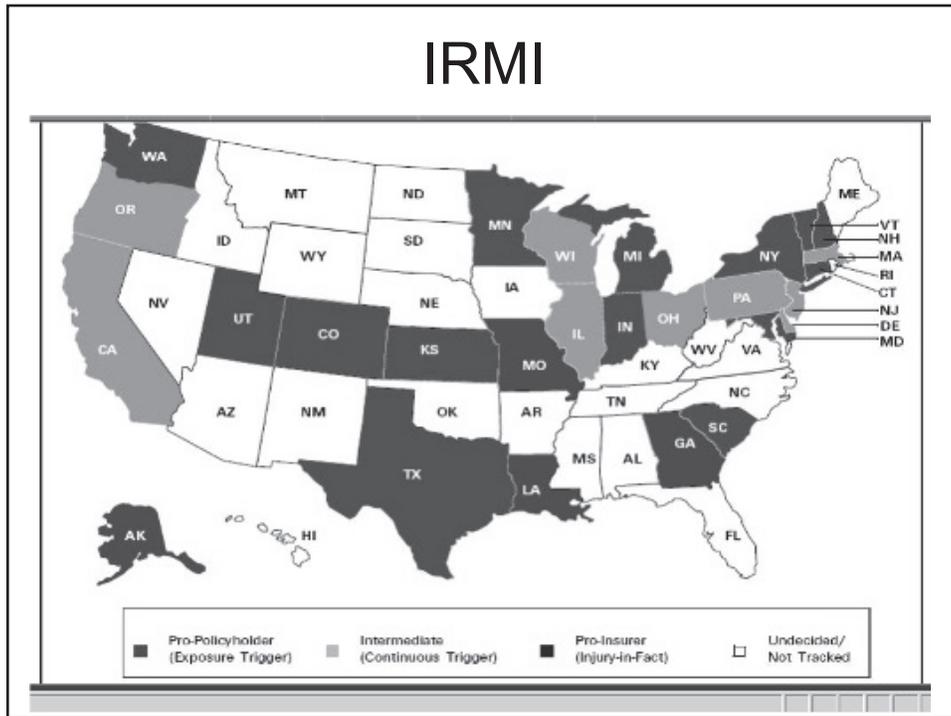
- States follow different theories, which may even differ within the state depending on the type of claim:
 - Asbestos (Exposure)
 - Pollution (Continuous)
 - Construction Defect (Injury in Fact)

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Examples of Theories by State

- Exposure – AL, AK, FL, LA*, MA, MD*, MN*, NC, TX, WI*
- Manifestation – LA, ME, MA, OH, NC, PA, RI *, TX
- Injury In Fact – CA, CO*, CT, FL, HI*, IL*, IN, KS, MD*, MI*, MN*, MO, NJ, NY, NC*, ND*, OR*, PA, SC*, TX*, UT, VT
- Continuous – CA*, DE, IL, IN*, KS*, MA, MN*, MS, NJ*, NY, OH, PA*, TX, WA, WV, WI
- State's highest court adopted this theory for certain claims

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One Beacon Ins Co v. Don's Bldg Supply 496 F.3d 361 (5th Circuit 2007)

- Texas Supreme Court

– QUESTION: What is the proper rule under Texas law for determining the time at which property damage occurs for the purposes of an occurrence based CGL policy?

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Texas Supreme Court

- ANSWER: We hold that property damage under this policy occurred when actual physical damage to the property occurred.
- The policy says as much, defining PD as “physical injury to tangible property” and explicitly stating that coverage is available if and only if “PD occurs during the policy period.”

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Texas Supreme Court

ANSWER- cont'd:

- So in this case, PD occurred when a home that is the subject of an underlying suit suffered wood rot or other physical damage.
- The date the physical damage is or could have been discovered is irrelevant under the policy [manifestation]. Many courts agree with the analysis we adopted today, sometimes called the “actual injury” or “injury-in-fact” approach.

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CGL Trigger

- Does cumulative, progressive or continuous BI or PD change the CGL trigger? NO !!
- Note in One Beacon v. Don's Bldg Supply, the 5th Circuit asked WHEN the PD took place, not if the CGL is TRIGGERED when the PD took place.

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Allocation of Loss Theories

- If more than one policy period is triggered due to “injury-in-fact” or “continuous trigger” type losses, how is the loss allocated among the insurers?

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Allocation of Loss Theories

- Illustration: ABC Construction improperly installs a roof on a new high school. After the work is completed, water intrusion begins to damage interior portions of the school over a period of three years before the PD is found and the roof fixed.
- ABC installed only the roof. Coverage is being sought for damage to property other than ABC's work (the roof) – the water damage to other portions of the school.

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Allocation of Loss Theories

- ABC Construction carried the following policies during the 3 years of property damage:
 - Year One: \$1mil CGL and \$4 mil XS with AIG
 - Year Two: \$1mil CGL and No XS with Zurich
 - Year Three: \$1mil CGL and No XS with ACE
- Property Damage is determined to be \$5mil that took place over the three years
- Is ABC fully covered ?
- Depends on allocation theory

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ALL SUMS THEORY

- When multiple policies are triggered, the **insured** may chose which triggered policies on which it will make its claim.
- Also known as the “joint and several” theory.
- Allows insured to go vertical at the insured’s choice

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ALL SUMS APPROACH

- Under this approach ABC is allowed to chose Year One- AIG and go vertical, and thus would be covered for the entire \$5mil judgment.
- Most favorable theory for insured
 - Year One: \$5mil paid by AIG – Limit is \$5 mil
 - Year Two: No claim against Zurich
 - Year Three: No claim against ACE
- AIG may have right of equitable contribution against Zurich and ACE for their proportionate share—but this does not affect the insured.

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PRO RATA APPROACH

- Insurers with policies that have been triggered respond in proportion to the loss –usually based on the “TIME ON RISK” – the amount of time each insurer provided coverage to the insured during the BI or PD.

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PRO RATA APPROACH

- Courts may allocate ABC loss by “Time on Risk”.
- Each insurer had one year out of three on the risk, each insurer is liable for 1/3 of \$5mil or \$1,666,666 each.
- Insurers pay: \$3,666,666
- ABC is NOT fully covered, and will be uninsured for \$1,333,332

- Year One - \$1,666,666 paid by AIG – Limit is \$ 5mil
- Year Two - \$1,000,000 paid by Zurich – Limit is \$1mil
(ABC uninsured for \$666,666 for year two)
- Year Three - \$1,000,000 paid by ACE – Limit is \$1mil
(ABC uninsured for \$666,666 for year three)

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Theories of Allocation by State

- **ALL SUMS** – AR, CA*, DE*, **DC**, IL*, IN*, MA, NY, OH*, OR, **PA***, TX, WA*, WV
- **PRO RATE** – AL, CA, CO*, **CT***, GA*, HI*, IL, KS*, KY*, IN*, **MD**, MI, MN*, MO, **NH***, **NJ***, **NY***, OH, OR, SC, TX

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WATCH OUT !!

- Insurers may use Non-ISO limitation or exclusionary endorsements such as:
 - Prior Work
 - Exclusion for progressive injury or damage
 - First manifestation endorsement
- This insurance does not apply to: any BI or PD that commenced in whole or in part prior to this policy period.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIOR WORK EXCLUSION

This endorsement modifies coverage provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

	Inception Date	Expiration Date
Endorsement Effective	Policy Number	
Named Insured	LOB# 75488	
	Authorized By:	

(Authorized Representative)

The following is added to SECTION 1 COVERAGES, COVERAGE, OCCIDENTAL INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions.

Prior Work

This insurance does not apply to "bodily injury" or "property damage" that arises out of "your work", that was completed prior to:

- (1) The inception date of the first policy in a series of uninterrupted renewal policies issued by us, or
- (2) The inception date of this policy.

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 job site has been completed; if your contract calls for work at more than one job site; or
- (3) When final 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.

This exclusion applies even if the "occurrence" continues during the policy period.

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WATCH OUT !!

- Effects of endorsements on ABC when Pro Rata allocation is used:
 - What if ACE and Zurich had exclusions for any injury or damage commencing prior to its policy period?
 - ABC is insured for only \$1,666,666 and uninsured for \$3,333,334
- Year One - \$1,666,666 paid by AIG- Limit is \$5mil
- Year Two - \$0 paid by Zurich – Limit is \$1mil
(ABC uninsured for \$1,666,666 –excluded as prior PD)
- Year Three- \$0 paid by ACE – Limit is \$1mil
(ABC uninsured for \$1,666,666 – excluded as prior PD)

– ALL SUMS WOULD STILL PROVIDE COMPLETE COVERAGE FOR ABC as they can go Vertical!

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Prior Work Exclusion and the Sunset Clause

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Known Injury or Damage Wording - Montrose

- No coverage provided if the BI or PD was KNOWN to certain insured's prior to the policy period.
- Meant to exclude "known loss" or "loss in progress" but ISO wording is known injury or damage, not known loss.
 - This insurance applies to BI and PD only if: Prior to the policy period, no insured listed under Paragraph 1 of Section II- Who is an Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the BI or PD had occurred in whole or in part.
 - If such listed insured or authorized "employee" knew, prior to the policy period, that the BI or PD occurred, then any continuation, change or resumption of such BI or PD during or after the policy period will be deemed to have been known prior to the policy period.

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Known Loss or Damage Illustration

- ABC Construction improperly installed a roof on a new high school. After the work is completed, water intrusion begins to damage interior portions of the school over a period of three years. PD is known to ABC in the second year (Year Two) but the roof is not fixed until year three.

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Known Loss or Damage Illustration

- ABC Construction's insurance is as follows: [new limits]
 - Year One: \$1mil CGL / No XS – AIG
 - Year Two: \$1mil CGL / No XS – Zurich
 - Year Three: \$1mil CGL / No XS – ACE
- Assume all policies have known injury or damage wording (Montrose Wording)

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Known Loss or Damage Illustration

- ABC Construction's president found out of the PD in Year Two (Zurich year). Same scenario of claim - \$5mil of PD takes place over three years.
- Who will pay ?

65

Known Loss or Damage Illustration

- \$1mil paid by AIG (policy limit)
- \$1mil paid by Zurich (policy limit)
- NO Payment by ACE
 - The ACE CGL policy is NOT triggered as PD was known by president PRIOR to the ACE policy period
- ABC must pay the remaining \$3mil regardless of trigger theory

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Who has to Know?

- Corporation
 - Executive Officers
 - Directors
- LLC
 - Manager
 - Member
- Risk Manager ?
- Not any employee

67

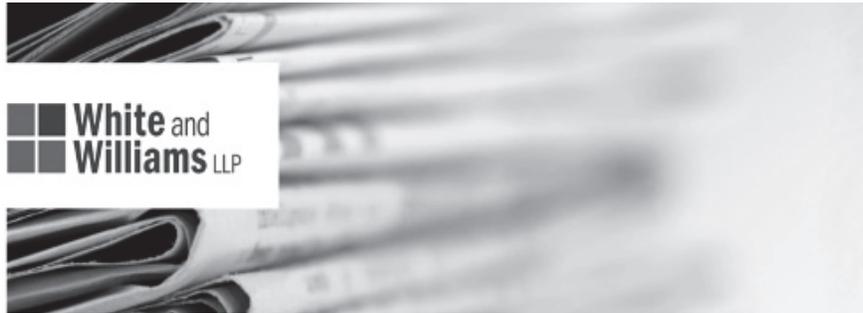
“Who has to have Knowledge” Endorsement

"NOTICE OF OCCURRENCE"

Add the following to Paragraph 2 of COMMERCIAL
GENERAL LIABILITY CONDITIONS (Section IV):

e. Knowledge of an "occurrence," claim, or "suit" by the agent, servant or employee of any insured shall not in itself constitute knowledge of the insured unless individuals in the following positions shall have received such notice from the agent, servant or employee:

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First Circuit: No Coverage, No Duty to Investigate Alleged Loss Prior to Policy Period

Insurance Coverage and Bad Faith Alert | April 3, 2020

By: Eric B. Hermanson and Austin D. Moody

On April 1, 2020, the First Circuit, applying Massachusetts law, issued a potentially useful decision addressing the Montrose "known loss" language in ISO Form CGL policies. In *Clarendon National Insurance Company v. Philadelphia Indemnity Insurance Company*,^[1] the court applied this language to allow denial of defense for claims of recurring water infiltration that began before the insurer's policy period, and it found an insurer had no duty to investigate whether the course of property damage might have been interrupted, or whether other property damage might have occurred during the policy period, so as to trigger coverage during a later policy.

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In the underlying dispute, a condominium owner (Doherty) asserted negligence claims against her association's property management company (Lundgren) stemming from alleged water infiltration into her condominium. The complaint said leaks developed in 2004 in the roof above Doherty's unit, and repairs were not made in a timely or appropriate manner. The following year, the complaint said, a Lundgren employee notified Doherty that the threshold leading to her condominium's deck was rotting. In February 2006, Doherty discovered a mushroom and water infiltration on the threshold and notified Lundgren. At that time, Lundgren asked its maintenance and repair contractor (CBD) to replace the rotting threshold. According to the complaint, CBD did not do this repair in a timely manner and left debris exposed in Doherty's bedroom.

In March 2006, the complaint said, a mold testing company hired by Lundgren found hazardous mold in Doherty's unit, caused by water intrusions and chronic dampness. Lundgren's attempts at remediation were ineffectual. In September 2008, Doherty's doctor ordered her to leave the condominium and not to return until the leaks were repaired and mold was eliminated.

In February 2009, Doherty filed suit. Lundgren tendered defense to two different insurers: Clarendon, which insured Lundgren from June 24, 2004, to June 24, 2005, and Philadelphia Indemnity (Philadelphia), which insured the company from September 1, 2007, to September 1, 2008. Clarendon agreed to defend under reservation of rights. Philadelphia declined to defend, based on the "known loss" provision in its CGL insuring agreement:

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

....

(3) Prior to the policy period, no insured listed . . . and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred,

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then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

After the underlying case settled, Lundgren assigned its rights to Clarendon, which sued Philadelphia. Clarendon argued that Doherty's complaint could be read to suggest that leaks prior to Philadelphia's policy period had been repaired. It argued that new leaks might have arisen during the period of Philadelphia's policy. At a minimum, Clarendon argued, Philadelphia had an obligation to investigate the underlying allegations before denying defense.

→ The District of Massachusetts rejected Clarendon's arguments. Clarendon appealed, and the First Circuit affirmed. It found the underlying complaint unambiguously alleged damage resulting from continuing leaks that began prior to the Philadelphia policy's inception, and it found nothing in the complaint was "reasonably susceptible" to an interpretation in which the original leaks were resolved prior to Philadelphia's policy inception.

Finally, and importantly, the First Circuit held that when an underlying complaint does not contain allegations that would implicate coverage, the insurer has no duty to investigate further. An insurer cannot ignore known facts extrinsic to the complaint, but it has no duty to go looking for such facts.

The First Circuit's decision provides helpful guidance for insurers faced with allegations of property damage prior to policy inception, and clarifies - importantly - that an insurer in this situation has no independent duty to investigate for damage during the policy period.

If you have any questions or need more information, contact Eric B. Hermanson (hermansone@whiteandwilliams.com; 617.748.5226), or Austin D. Moody (moodya@whiteandwilliams.com; 617.748.5206).

[1] No. 19-1212, 2020 U.S. App. LEXIS 10257 (1st Cir. Apr. 1, 2020).

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Strict Sameness

- When does the same damage become different damage?
- If PD is known in second year, but fixed in third year.
- If you go back and try to fix previous damage, at what point does it become different damage?
- Policy does not say. Let's go to the courts.

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Strict Sameness Test

- Developer H&H is building a residential subdivision when sued by neighbors Malone & Blair in 2004 for damage to the property of each caused by excessive storm water runoff, silt and sediment.
- H&H tenders claim to its insurer. Insurer denies coverage based on known damage limitation. Basis of denial is another homeowner had complained about H&H to the city and H&H in 2000, about drainage issues from the same subdivision.
- Does this constitute known PD for H&H ? Is this the same PD ?

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Strict Sameness Test

- Court found on Summary Judgment that unless it is the same damage, it is not known damage.
- No prior evidence that properties of Malone and Blair had prior damage known to H&H.
- Court applied the “strict sameness” test, concluding the same “type” of damage is not the “same” damage.
- Essex Ins Co v. H&H Land Developers 525F. Supp. 2d 1244 (M.D. Ga 2007)

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There's NOT just one type of Occurrence or Claims Made Form !

- Pure Occurrence Forms
- First Manifestation Occurrence Forms
- Pure Claims Made Forms
- Claims Made and Reported Forms
- Claims Sustained Form

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Coverage Form Comparison		
Occurrence Form	Manifestation Occurrence Form	Claims Made Form
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 IF:		
1	The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";	
2	The "bodily injury" or "property damage" first manifests and appears during the policy period; and	A claim for damages because of the "bodily injury" or "property damage" is first made against any insured during the policy period or any Extended Reporting Periods; and
3	Prior to the policy period, no insured knew that the "bodily injury" or property damage" had occurred, in whole or in part.	The "bodily injury" or "property damage" did not occur before the Retroactive Date or after the end of the policy period.
(Adapted from CG 00 01 04 13 and CG 00 02 04 13, ISO Properties, Inc.)		

Dwight Kealey, Esq.

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Manifestation Occurrence *

- 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 **IF**:
- The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”,
- The “bodily injury” or “property damage” **first manifests and appears** during the policy period; and
- Prior to the policy period, no insured knew that the “bodily injury” or “property damage” had occurred in whole or in part.
- *Some proprietary policies are not labeled as “Manifestation Occurrence” forms, but the definitions, conditions or endorsements added, in effect make them act as such. Claims can only “manifest” once.

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Claims “Sustained” Form

Prohibits any notice of a claim other than actual litigation

Not commonly used - hard market tool

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Changing Named Insured

- CGL: Steve Lyon T/A Lyon Contracting
- January 1, 2007 to January 1, 2016

- CGL: Lyon Contracting, LLC
- Effective April 12, 2016

- Claim is filed against LC in 2017 for injuries resulting from improper work performed in 2015

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Situation #2

- ABC Manufacturing, Inc. sold their assets (Asset Only Sale) to XYZ, Inc. effective 1/1/07. A claim was filed against ABC 6/1/07 for injuries arising out of a product they manufactured in 2004. Where's the coverage?

- Asset Only Sale- The Seller retains liability, needs Discontinued products /completed operations coverage.

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Situation #3

- ABC Manufacturing, Inc sold their business to XYZ, Inc. (Asset & Liabilities). A claim was filed against ABC on 6/1/07 for injuries arising out of a product they manufactured in 2004. Where's the coverage?
- Previous entity should be named on current CGL policy "forever".

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Situation #4

- Steve's Construction Inc. and Liz's Construction Inc. for a joint venture to build a Condominium complex in 2015.
- Steve & Liz's Excellent Joint venture is the named insured under a CGL policy.
- The project was completed in 2016, and the CGL policy canceled.
- Two years later a claim is filed for injuries or damages resulting from their work

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Situation #5

“Of Counsel” Attorneys ?

- Any problems meeting the definition of “insured” under the CGL policy ?
 - Are they the entity?
 - Are they a partner ?
 - Are they a manager and/or member ?
 - Are they a director of officer ?
- "Of counsel" originally described a semi-retired or retired partner who still kept a hand in the firm. Today, the designation "of counsel" is used to describe everything from a full-time outside lawyer providing expertise in a particular specialty, to a firm of the guy down the hall who is available to discuss cases over coffee. -- Nancy Kaufman October 2000
- Are they an Employee?

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Introduction to Claims Made

- Until the 1970's all liability policies, including professional malpractice policies, were written on an Occurrence basis.
- Occurrence policies covered BI/PD/WA that occurred during their policy period, but imposed no time limit for reporting them. (pollution, asbestos, malpractice, etc)
- **Once the Occurrence happened, the carrier became perpetually obligated to indemnify the insured.**

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Two Versions of CGL Form

- OCCURRENCE VERSION – CG 00 01
- CLAIMS MADE VERSION – CG 00 02

“Occurrence” Definition is the same for Occurrence and Claims Made Coverage Forms

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

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Coverage Form Comparison		
Occurrence Form	Manifestation Occurrence Form	Claims Made Form
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 IF:		
1	The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";	
2	The "bodily injury" or "property damage" first manifests and appears during the policy period; and	A claim for damages because of the "bodily injury" or "property damage" is first made against any insured during the policy period or any Extended Reporting Periods; and
3	Prior to the policy period, no insured knew that the "bodily injury" or property damage" had occurred, in whole or in part.	The "bodily injury" or "property damage" did not occur before the Retroactive Date or after the end of the policy period.
(Adapted from CG 00 01 04 13 and CG 00 02 04 13, ISO Properties, Inc.)		

Dwight Kealey, Esq.

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1. Differences in Claims Made vs. Occurrence Form Triggers

b. Occurrence Form Trigger (CG 00 01)

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

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

[2] The "bodily injury" or "property damage" occurs during the policy period;

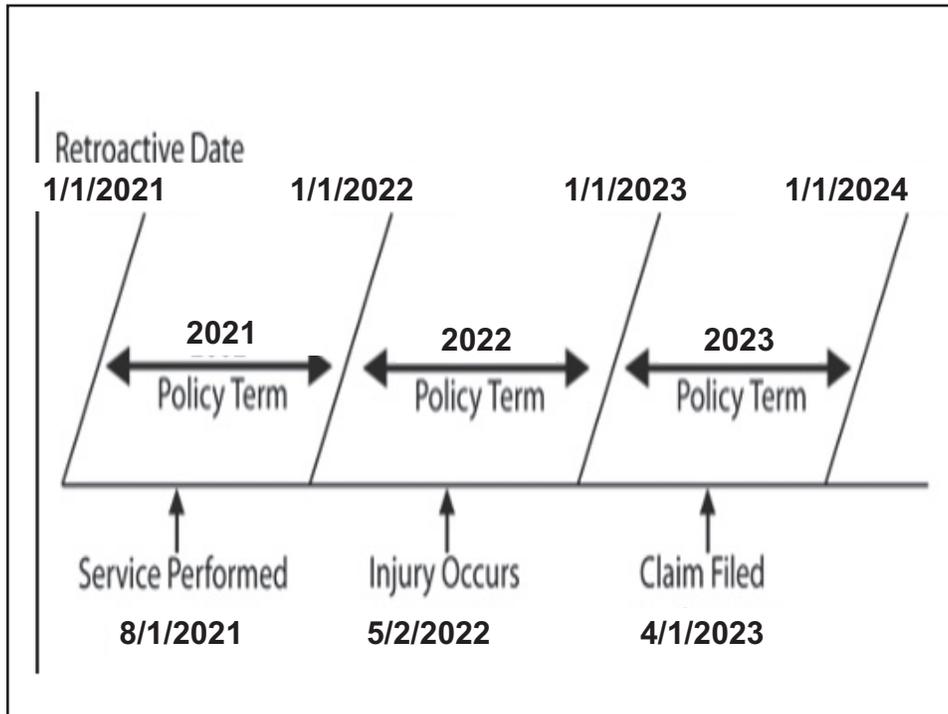
87

Claims-Made Policies (CG 00 02)

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."
- Claim must first be made during the policy period (or any extended reporting period), **and**
- Loss/Injury had to happen during the policy period (or on or after the retroactive date).

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Claims-Made Policies

- Effective 1/1/22-1/1/23, retro date 1/1/16

Covered? Not Covered?

- Claim filed 10/1/22 for loss that occurred 6/1/16
- Claim filed 6/15/22 for loss that occurred 5/15/17
- Claim filed 4/2/23 for loss that occurred 12/1/18
- Claim filed 3/20/22 for loss that occurred 12/3/15
- Claim filed 11/1/23 for loss that occurred 2/14/16

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Disadvantages / Advantages of a Claims Made Form

CARRIER

- Better Control
- Better Predictability
- One year protection
- Who is on the loss
- Retention of Insured
- Difficult to Understand

INSURED

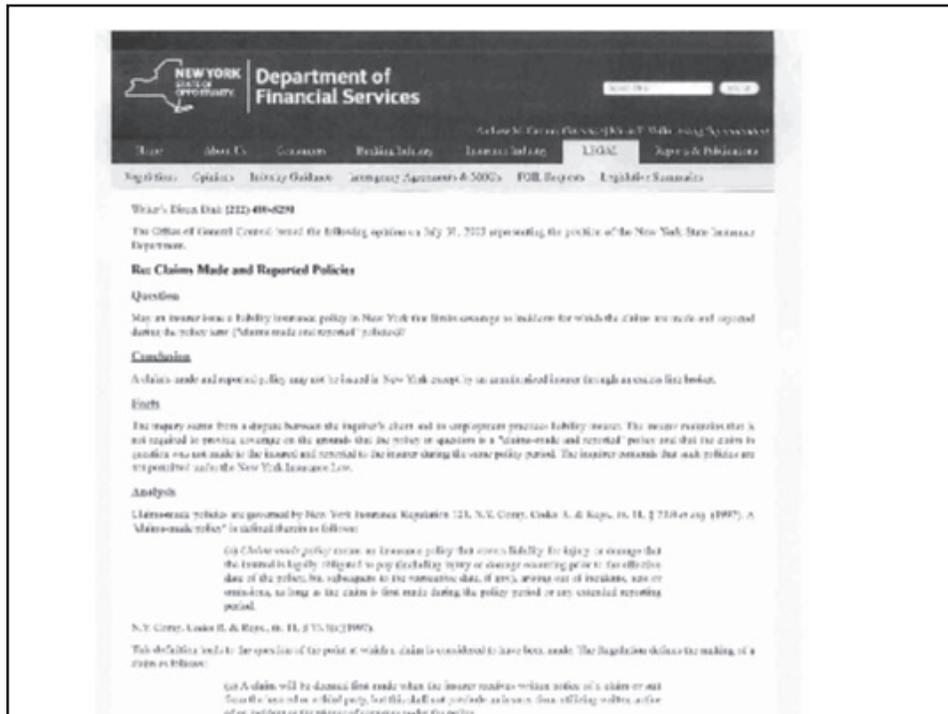
- Lower Premium (initially)
- Less Coverage
- Problems for ongoing operations or retirement
- Better Limits
- Difficult to Understand

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TWO TYPES OF CLAIMS MADE POLICIES

- PURE CLAIMS MADE (sometimes used with D&O)
- CLAIMS MADE and REPORTED * (widely used)
- CLAIMS SUSTAINED / "FIRST" MADE (attempt to avoid continuous trigger / stacking)

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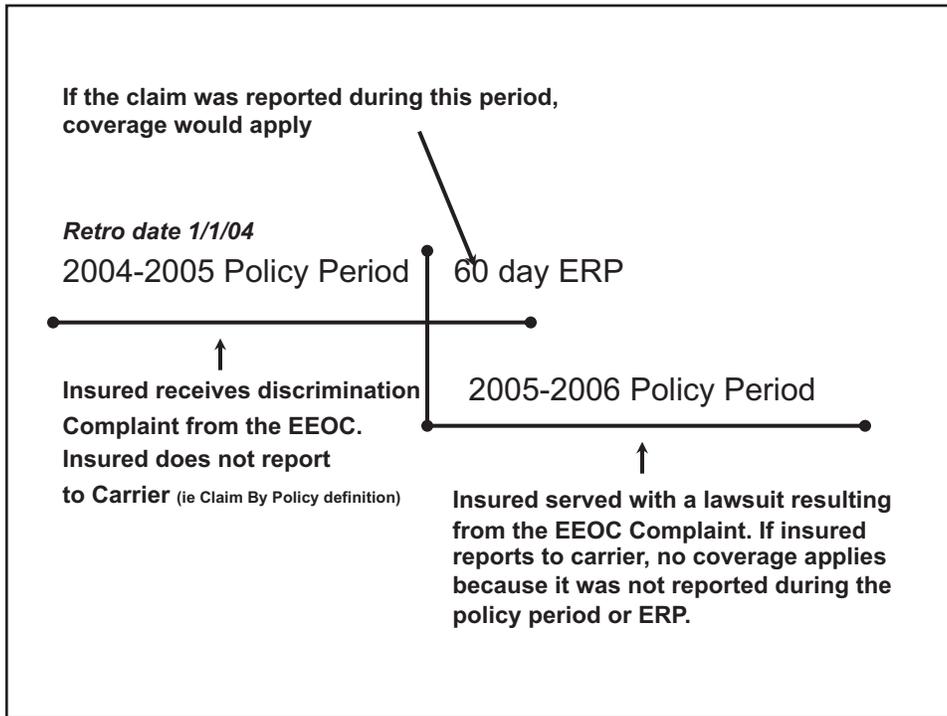


93

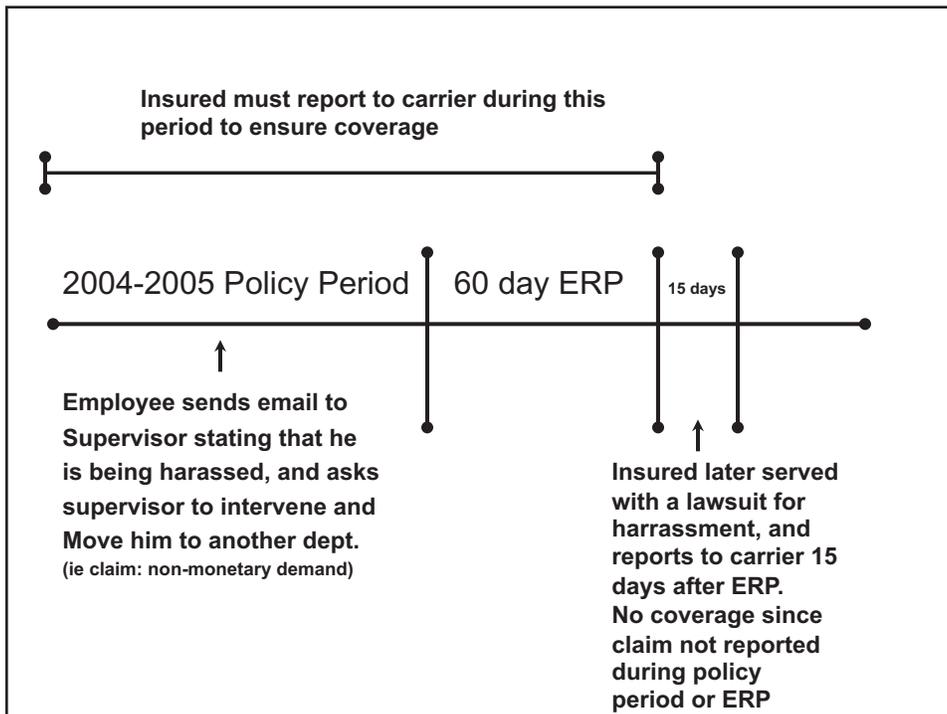
CLAIMS MADE and REPORTED

- Requires that the claim first be made during the policy period and reported during this same period (or any ERP), of the policy currently in force at the time.
- Loss/Injury/Wrongful Act had to happen during the policy period (or on or after the retroactive date).

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Example with Reporting Window

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

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Example without Reporting Window

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

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Potential Problems with Policies not Containing Reporting Windows

- Claims made late in policy period (no window)
 - December 30th summons is delivered to professionals office
 - Professional is on vacation for 2 weeks during Holidays
 - By the time she returns on January 6th, she has missed the policies reporting requirement
- Claim filed but not yet Served
 - Lawsuit filed against insured during policy term, but the insured is not served until after policy term
- 30 or 60 day reporting window needed at least [BERP]

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The Automatic Claim Reporting Extension and Renewal By: Frederick J. Fisher, J.D.

Most brokers expect a "claims made and reported form" to give the insured some limited amount of time following the end of the policy period to report a claim first made during the policy term (most commonly 30 or 60 days). The purpose of this provision was to not penalize an insured who, in good faith, found it next to impossible to comply with the requirement of reporting the claim during the policy period. The preferred language was akin to:

"...the Insureds shall, as a condition precedent to their rights to payment under this Policy, give to underwriters notice in writing of such Claim as soon as practicable provided all Claims must be reported no later than the end of the Policy Period, in accordance the requirements of the Optional Extension Period (if applicable), or sixty (60) days after the expiration date of the Policy Period."

While the above policy language is preferred and relatively unrestricted, new language is popping up with unusual and restrictive language; some is even illogical. New policy wording will only allow the reporting extension: "In the event of cancellation or non renewal of this Policy, by either the 'Named Insured' or the Company..."

If the policy is renewed, no last minute claims made against the insured are covered unless the claim is reported prior to expiration of policy. Neither will such claim be covered by the renewal policy since the claim wasn't first made in that policy term. This wording almost behooves the insured to renew elsewhere.

There are still some "claims made and reported" policies in use requiring the claim be first made and reported during the policy term - never allowing for a post-expiration claim report.

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SECTION VIII – EXTENDED REPORTING PERIOD

1) In the event of cancellation or non renewal of this Policy, by either the “Named Insured” or the Company, for reasons other than non-payment of premium or material misrepresentation in the Application, you shall have the right to an Extended Reporting Period as follows:

(a) Automatic Extended Reporting Period

Coverage as provided under this Policy shall automatically continue for a period of sixty (60) days following the effective date of such cancellation or non renewal, but only with respect to “Claims” and “Wrongful Acts” committed before the effective date of such cancellation or non renewal.

C. Extended Reporting Period:

1. If we or you cancel or refuse to renew this policy for reasons other than non-payment of premium; we will provide to you a 60 day Automatic Extension of the coverage granted by this policy, at no additional charge, for any claim first made against you and reported to us during the 60 day extension period but only as respects wrongful acts committed after the Retroactive Date (if any) stated in the Declarations and prior to the date of cancellation or non-renewal.

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The screenshot shows a Lexology article page. At the top, there is a navigation bar with 'LEXOLOGY.' and a search box. Below the navigation bar are tabs for 'Resources', 'Research', 'Learn', 'Experts', and 'My newsfeed'. The article title is '"Multiple Claims" Provisions on Contractor's Professional Liability Policy Creates a Trap for Policyholders' by Saxe Doernberger & Vita, P.C. The article is dated May 4, 2021. The main text of the article is circled in red. The text reads: 'In Berkley Assurance Company v. Hunt Construction Group, Inc., 465 F.Supp.3d 370 (S.D.N.Y., 2020), professional liability insurer Berkley sued its insured, Hunt, a construction management firm, seeking a declaration that it did not owe Hunt a duty to defend and indemnify against breach of contract claims. The United States District Court for the Southern District of New York granted Berkley's motion for summary judgment and denied Hunt's motion for partial summary judgment. Among other things, the court held that the policy's automatic extended reporting period did not apply to Hunt's first claim. The multiple claims provision barred Hunt's second claim because the claims were related. The court's holding creates a potential trap for policyholders who wait to see how a claim develops before reporting it to their insurance carrier. This case demonstrates that waiting to see how a claim develops can result in a loss of coverage. Policyholders need to be aware of this trap and report all claims and circumstances immediately.'

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Hunt's Subconsultant and the Owner Brought Separate Claims Against Hunt for Professional Negligence

Hunt purchased professional liability insurance policies insured by Berkley. The first policy had an effective period from June 15, 2016, to June 15, 2017, later extended to July 15, 2017, and the second policy had an effective period from July 15, 2017, to June 15, 2018. *Id.*, at 374. After the second policy expired, Berkley issued another renewal policy for the period July 15, 2017, to July 15, 2018. Each policy covered claims made and reported during the Policy Period. Each policy also contained a provision stating that multiple related claims would be treated as a single claim and covered under the policy covering the first such claim:

'Claims ... arising out of one or more acts, errors, omissions, incidents, events ... or a series thereof that are related (either causally or logically) will be considered a single Claim' – that is, 'first made on the date the earliest such Claim ... was first made and is covered 'only [by] a Policy providing coverage for the earliest such Claim.'

In 2014, Hunt was hired by South Florida Stadium, LLC (the "Owner") to be the construction manager for the renovation of the Hard Rock Stadium in Miami, Florida. In turn, Hunt hired Alberici Constructors, Inc., d/b/a Hillsdale Fabricators ("Hillsdale"), to perform "design and steel fabrication for the stadium's rooftop canopy structure." *Id.* On October 18, 2016, Hillsdale asserted a claim against Hunt that alleged Hillsdale had incurred additional and unforeseen costs "because Hunt performed design and construction services improperly" *Id.* Hunt and Hillsdale executed a "Memorandum of Understanding" whereby they agreed to complete the project, and deal with the cost increase issues later. Hunt finished the project in July 2016.

The parties failed to reach an agreement on the issues, and The Owner and Hunt sued Hillsdale in Florida state court seeking a declaratory judgment. *Id.* Hillsdale filed a claim, in part, against Hunt in federal court, before voluntarily dismissing that claim, and then, on March 30, 2017, filed a counterclaim against Hunt for, in pertinent part, breach of contract in state court. (Together, these actions constitute the "Hillsdale Claim"). Hunt reported the Hillsdale claim to Berkley two months later, on July 20, 2017. Hunt reported the claim five days into the 2017-2018 Policy period and nine months after Hillsdale first asserted its claim against Hunt.

Then, on May 21, 2018, the Owner demanded that Hunt indemnify and hold it harmless from any damages resulting from Hillsdale's counterclaim against the Owner. (The "Owner's Claim"). *Id.* at 375. Hunt reported the Owner's Claim to Berkley two weeks later.

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Berkley Denied Coverage for Both Claims Based on Hunt's Untimely Notice of the First Claim

Berkley denied coverage for both claims. Berkley asserted the Hillsdale claim was not covered because the policy period expired before Hunt brought the claim. As for the Owner's claim, Berkley alleged that the Owner's claim was not covered because it was related to the Hillsdale claim, which is not covered.

The District Court sided with Berkley, Granting its Motion for Summary Judgment

In granting Berkley's motion for summary judgment, the district court held that "the Hillsdale Claim is not covered by the 2016-2017 Policy, and Berkley has no duty to defend Hunt against it because Hunt failed to report that claim within the time allotted by the policy." The court refused to accept Hunt's argument that the claim, which was made five days after the 2016-2017 policy expired, was made within the sixty-day Automatic Extended Reporting Period. *Id.*, at 378. The Court acknowledged that the AERP only applies when Hunt or Berkley terminated or non-renewed the policy. The court also disagreed with Hunt's arguments that the policy is ambiguous. Berkley waived its right to argue that the claim was untimely when it originally only denied the Hillsdale claim on the basis of a Contractual Liability Exclusion; and that Berkley is estopped from asserting its timeliness argument.

The court also sided with Berkley with respect to the Owner's claim – holding it was not covered because it should be considered together with the Hillsdale claim as a single claim. The parties admitted the claims were related, but Hunt disputed "any legal conclusion that the relationship between the Hillsdale Claim" and the Owner's Claim" "allow[ed] Berkley to disclaim coverage for both Claims." *Id.* at 383. The court held that because the claims were a single claim made on the date of the earliest claim as per the policy, where the earliest claim was untimely, both claims were untimely and consequently not covered.

The parties reached an agreement before Hunt's appeal¹ could be decided.

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Implications for Contractors

The court's holding has serious implications for policyholders. By refusing to apply the 60-day AERP when the policy is renewed, or even acknowledging the ambiguity in the language, the court adopts Berkley's position that the policyholder is put in a worse position by paying the insurer more money and renewing the policy than by choosing to purchase insurance from another carrier. There is no question the AERP would have applied to Hunt's claims and required Berkley to cover them if Hunt had not renewed with Berkley.

Second, in adopting Berkley's interpretation of the Multiple Claims provision, the court has approved of Berkley's reliance on a policy allocation provision as a basis to deny coverage for an otherwise covered claim. It was clear in this case that neither Hunt nor Berkley knew at the time of the Hillsdale claim that, almost two years later, the Owner would make a claim against Hunt. Thus, there was no way Hunt could possibly give notice of the Owner's claim any earlier, and Hunt's notice of the Owner's claim was timely. Yet, because the court held that Hunt's notice of the Hillsdale was untimely and that the two claims were "related," Berkley did not have to cover the Owner's claim.

This means that now, when policyholders have a claim, they will not only have to consider coverage for that claim but must also consider that failing to give notice may jeopardize coverage for unknown future claims that may be deemed to be "related." Policyholders can no longer risk waiting to provide notice of a claim or potential claim, even if that claim may fall within a deductible or retention. To preserve coverage for future claims, policyholders must give notice of anything that may qualify as a claim.

Contractors should consider training for project teams to make sure that they understand what may qualify as a claim under their policy to ensure that risk managers and general counsel can make timely notice to insurance carriers.

To view all formatting for this article (eg, tables, footnotes), please access the original [here](#).

Saxe Doernberger & Vita, P.C. - Michael V. Pepe

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COMMON MISCONCEPTION

- Having continuous coverage with the same CM carrier means everything is OK
- Simply renewing with the same carrier does not circumvent the need to report the claim within the policy term or applicable ERP.
- It is often, incorrectly assumed, that if the insured renews with the same carrier, the reporting requirement continues into the next term.
- Watch CM and Reported Forms !

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Case Study

- An insurance agent is insured by Carrier A for policy period July 1, 2021 through July 1, 2022. On June 27, 2022, the agent is served with a lawsuit alleging that the agent failed to procure the appropriate coverage for her client. On July 1, 2022 the agent changes carriers and moves her coverage to Carrier B. On August 4, 2022, the agent reports the claim to Carrier A.

What is the result?

- If the agent was insured by Carrier A on a **claims made and reported policy form, there is no coverage**. The claim was made during the policy period but not reported during the same policy period.
- What will Carrier B's position be if its policy is written on a Claims Made and Reported form as well? No coverage. Due to the fact that the claim was made during Carrier A's policy period, the claim was not made and reported during carrier B's policy period.

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Case Study

- What if the agent had renewed its claims made and reported coverage with Carrier A? No coverage. Claims Made and Reported forms do not typically provide continuous coverage and the reporting requirement is typically strictly enforced (i.e., that the claim be reported during the policy period in which the claim was made).
- If the agent's coverage through Carrier A was provided on a **claims made** basis, the claim is covered. There is coverage under the policy issued by Carrier A because the claim was made during that policy period and, for the purpose of this article, was reported promptly.

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Case Study

Lesson learned:

- **While the agent was continuously insured, there is still a gap in coverage under the claims made and reported form. Because of the less onerous reporting requirements under the claims made policy form, the claim can be reported after the policy period has ended without jeopardizing coverage as long as the claim was made within the policy period and reported promptly.**
- The distinctions between Claims Made and Claims Made and Reported policies do make a difference. While a Claims Made and Reported policy may cost less than a Claims Made policy in the short run, it is because the Claims Made and Reported is a more restrictive form of coverage. It's important to keep this in mind the next time you recommend or buy professional liability coverage, as the Claims Made and Reported form could end up costing you in the end.

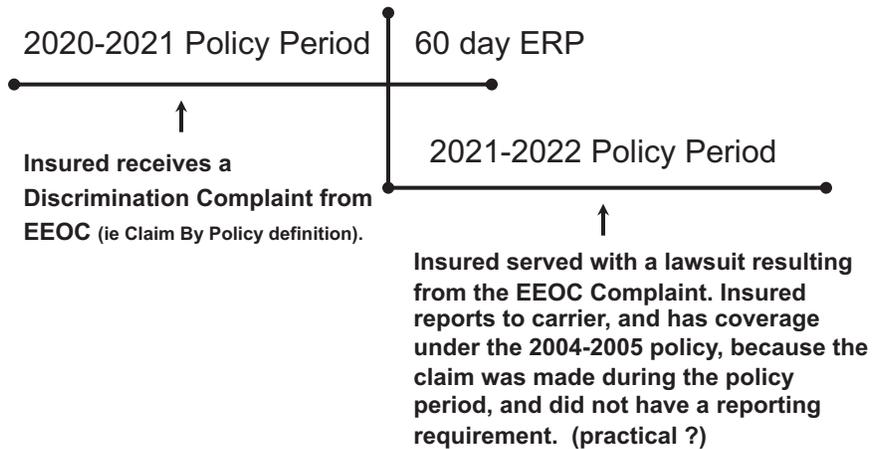
109

PURE CLAIMS MADE

- Requires that a claim first be made during the policy.
- However, the major distinction between “Pure CM” and “CM and Reported” is that the insured needs only report the claim as soon as practicable or promptly...
- Not necessarily during the policy term, which in essence can be anytime in the future
- Sometimes used with D&O policies

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PURE CLAIMS MADE



111

NJ Court Rules on timely notice for insurance claims

Claims Made vs. Occurrence

PIA Reporter
August 2014
Lachut

112

N.J. court rules on timely notice for insurance claims

In Templo Fuente De Vida Corp. v. National Union Fire Insurance Co. of Pittsburgh (N.J. App. Div. June 6, 2014), the New Jersey Appellate Division held that on a claims-made policy when a policyholder reports a late claim, the carrier may deny the claim based on late notice without a showing of prejudice, even if the notice is given during the policy period.

In the case, the policyholder (for whom Templo is serving as a stand in) had a directors and officers policy with National Union. The policyholder received a complaint by Templo on Feb. 21, 2006, but failed to notify National Union of the suit until six months later.

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National Union disclaimed coverage citing the notice provision of the insurance contract that required the policyholder to provide notice as soon as practicable. During the case, Templo conceded that the notice was late, but citing case law argued that National Union was required to show it was prejudiced by the late notice before disclaiming coverage.

The court disagreed relying on the differences between occurrence policies and claims-made policies. The court stated that though the policy was in effect at the time of notice, an insurer doesn't need to show prejudice on claims-made policies as it would if it was an occurrence policy.

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Given the uncertainty that this case creates, PIA recommends that you advise your clients to notify their carriers of a claim as soon as possible regardless of whether the policy is occurrence or claims made.—*Lachut*

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FIRST CIRCUIT HOLDS THAT NOTICE PROVISIONS IN CLAIMS MADE POLICIES MUST BE STRICTLY ENFORCED

By: Austin D. Moody
Insurance Coverage and Bad Faith
8.11.23 Share

In *President & Fellows of Harvard College v. Zurich Am. Ins. Co.*^[1] the United States Court of Appeals for the First Circuit ruled that Harvard was not entitled to coverage under an excess claims-made and reported policy issued by Zurich American Insurance Co. (Zurich) because it failed to comply with the notice provisions of the policy.

The ruling reinforces well-established Massachusetts law that an insured seeking coverage under a claims-made policy must strictly comply with the terms of the policy as they relate to notice. An insurer's actual notice of a claim or lawsuit through other means does not relieve an insured of this burden.

The coverage fight stemmed from Harvard's demand for coverage for legal costs related to the nearly decade-long fight between Harvard and Students for Fair Admissions, which recently culminated in the Supreme Court's ruling that Harvard's consideration of race in its admissions policies was unconstitutional.

Harvard was initially sued on November 17, 2014. On November 19, 2014, it gave notice to its primary insurer, American International Group, Inc. (AIG). However, it neglected to provide notice to Zurich until May 23, 2017. The excess policy issued by Zurich, which expired on November 1, 2015, required that notice be given within ninety days of the end of the policy period.

Harvard argued that Zurich had not been prejudiced by its failure to strictly adhere to the policy's terms regarding notice and that it should have an opportunity to show that Zurich had actual notice of the well-publicized lawsuit during the notice period provided by the policy. The court noted that the issue of notice under a claims-made policy has been addressed multiple times by both the Massachusetts Supreme Judicial Court and the First Circuit itself and wrote that it was "[s]taying within the borders of this well-beaten path" in "hold[ing] that the failure to give notice according to the policy's terms and conditions forfeits any right to coverage."^[2]

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Late Notice and Excess Coverage

D&O DIARY
Kevin LaCroix
March 16, 2016

117

Background

- During the policy period of October 1, 2010 through October 1, 2011, Ashland Hospital Corporation had a D&O insurance policy program that consisted of a primary \$15 million policy and an excess \$10 million policy. In July 2011, Ashland became involved in a U.S. Department of Justice investigation involving the company's billing practices. The company ultimately paid \$40.9 million to resolve the claim. On December 30, 2011, the final day on which notice of claim was permitted under the primary policy, Ashland provided notice of claim regarding the investigation to the primary carrier. However, Ashland did not provide the excess carrier with notice until June 29, 2012.
- The primary carrier ultimately paid its \$15 million policy limit, but the excess carrier denied coverage for the claim because of the late notice. Ashland filed a lawsuit against the excess carrier. The district court granted the excess carrier's motion for summary judgment. Ashland appealed.

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February 29, 2016 Opinion

- On appeal, Ashland conceded that notice to the excess insurer was late, but argued coverage was not precluded because the excess insurer had not shown that it was prejudiced by the late notice. Ashland relied on a Kentucky Supreme Court decision in which the court had held — with respect to an occurrence-based insurance policy— that an insurer must show prejudice in order to deny coverage based on late notice of claim.
- On February 29, 2016 unpublished *per curiam* decision, the Sixth Circuit affirmed the district court’s ruling. **The appellate court noted that the Kentucky Supreme Court had never addressed the question of whether or not the “notice-prejudice” rule applied to a claims-made insurance policy, like Ashland’s excess policy. However, the appellate court concluded that the Kentucky Supreme Court would not extend the notice-prejudice rule to a claims-made policy that contains unambiguous notice requirements as a condition precedent to coverage.**

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FIRST Made

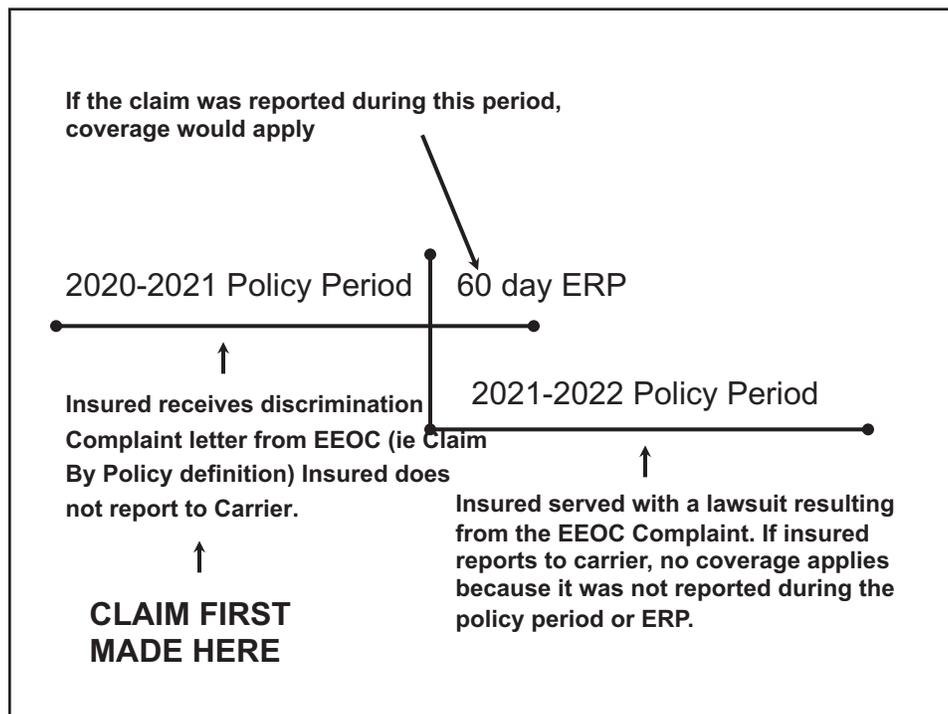
“ The Company shall pay on behalf of each of the Insured Persons, Loss which is not paid or indemnified by the Organization or other source and which the Insured Person becomes legally obligated to pay on account of any Claim **first made** against the Insured Person during the Policy Period, or if exercised, during the Extended Reporting Period, for a Wrongful Act committed, attempted, or allegedly committed or attempted by such Insured Person before or during the Policy Period.

120

Claim must be “First Made”

- Applies to both Pure CM and CM and reported forms
- No coverage under current policy if claim was previously made under prior policy (regardless of whether same carrier or different carrier)
- Implications:
 - Precludes coverage for claims that are rightfully the responsibility of a previous carrier
 - Prevents insured from obtaining coverage under a prior policy written by the same carrier with more favorable terms and conditions or limits.

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Late Notice Dooms Coverage for Harassment Claims under Claims-Made-and-Reported Policy

Form(s)

Underlying Facts and Coverage Dispute

123

Facts

- Employee hired in 2010 as a Temporary receptionist
- Began having an affair with the president of the company, who was married
- Affair was kept secret
- Employee broke off relationship
- President sent her a “resignation” letter to sign
- She refused, and began negotiating a severance package and release

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- On July 23, 2018 ----during the 2017 EPLI policy period– the president’s attorney sent a release agreement to sign
- She refused and Negotiations continued
- Negotiations fell through and employee retained legal counsel
- President contacted his EPLI carrier and requested to double the policy limits. Endorsement processed.
- The next day, August 14, 2018 the president received an attorney letter stating he was preparing a lawsuit on behalf of the employee

125

- At no time did the president provide notice of the potential claim to HCC under the August 19, 2017-2018 policy.
- On Sept 13, 2018 (after the inception of the 2018-2019 policy) the president and his company were sued.
- On Oct 15, 2018 –1 month after being sued– the president provided notice to HCC
- HCC denied based upon late notice
- HCC notice requirements and definition of a “claim” read as follows:

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a. You must see to it that we receive written notice of a "claim" as soon as practicable, but in no event later than sixty (60) days after your actual notice or receipt of the "claim," or thirty (30) days after the expiration, termination, or cancellation of the Policy or any Extended Reporting Period, whichever comes first.

HCC, Claims Made & Reported Coverage with Supplemental Reporting Period Endorsement none

A "claim" is defined as

2. "Claim" means a written demand received by the insured alleging damages or the filing of a "suit", or any administrative proceeding including but not limited to the Equal Employment Opportunity Commission, or any other state or federal agency or authority with jurisdiction over you. However, "claim" does not include (1) labor or grievance arbitration subject to a collective bargaining agreement or (2) criminal proceedings.

HCC, Employment Practices Liability Insurance Claims-Made Policy Form, at page 14 of 18, § IX. 2 none

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In denying coverage based on late notice, HCC asserted that the claim was first made on July 23, 2018, which was within the 2017 policy during the time the president and the former employee were negotiating a release. However, the insureds did not notify HCC about the "claim" until October 15, 2018. Because the notice was more than 60 days after it first received the "claim" and more than 30 days after the expiration of the 2017 policy, HCC stated that the insureds did not trigger the policy.

A coverage lawsuit was filed. The district court ruled in favor of HCC based on the insureds' failure to provide timely notice. The insureds appealed.

128

XI. Mixed Programs- Occur and CM

A. ISO Umbrella Policy is an OCCURRENCE based policy (as are most)

B. Problems

1. Occurrence over claims made
2. Claims made over occurrence

C. Solutions

1. Avoidance
2. If it cannot be avoided:
 - a. Try to confine "claims made" policies to upper layers
 - b. If umbrella is "claims made", buy the highest limits you can in the underlying
 - c. Keep all policies in a layer identical when a quota share arrangement exists
 - d. Try to keep retro dates consistent through all layers
 - e. Try to negotiate the guaranteed availability of a "supplemental extended reporting period" in the event of non-renewal.
 - f. Document in writing for all parties

129

Mixed Programs- Occur and CM

3. CU 27 00 – Underlying Claims-Made Coverage
 - Revises parts of the Umbrella form BI,PD,AI and PI insuring agreements, to clarify claims trigger and adds an Extended Reporting Period (CU 27 03)

D. Potential Causes of Claims Made Gaps

1. Retroactive Date Advancement
2. Cancellation by Insured or Insurer
3. Attachment of a "Laser" exclusions
4. Replacement with an Occurrence Policy

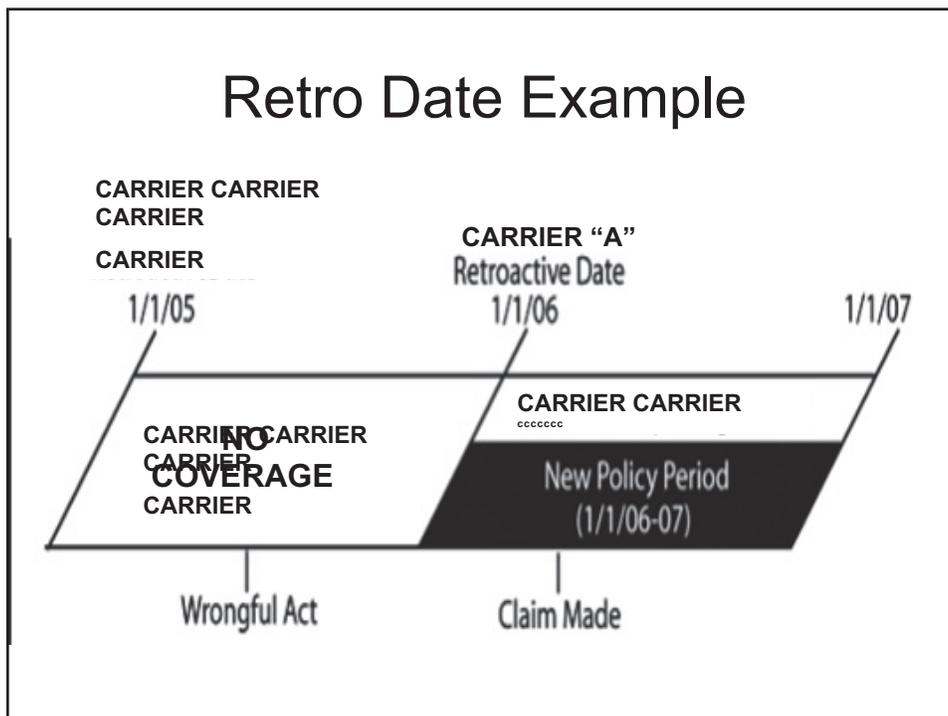
130

Retroactive Dates

- Wrongful Act, Error or Omission giving rise to the claim (covered act) must have taken place on or after the policy's Retroactive Date
- Purpose:
 - Eliminate coverage for situations or incidents known to insureds that have the potential to give rise to claims in the future;
 - Preclude coverage for “stale” claims that arise from events far in the past, even if such events were unknown to the insured.
- Retro Date is usually inception date of first policy
- Laser Beam Endorsement in lieu of Retro Date

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Retro Date Example



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Retro Date Example

- CM Policy written from 1/1/23-1/1/24, with a retro date of inception 1/1/23
- A claim is made against the insured on 5/16/23 because of a covered act that happened on 6/12/22
- Covered ? NO
- The claim was made during the policy period, but the covered act leading to the claim happened prior to the retro date

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RETRO DATES

- None – Preferred (a/k/a Full Prior Acts/Nose Coverage)
(watch awareness question)
- Retro Date should be as early as possible
- Usually Inception of Original policy
- Renewal / Replacement – no advancement
- No Retro Date but use Laser End't.

- Watch EBL Endt on CGL policy—moving BOP/CP from carrier to carrier—please hold original retro date !
- Add EBL CM endt to Occurrence CGL policy-
~~What about umbrella trigger !~~

134

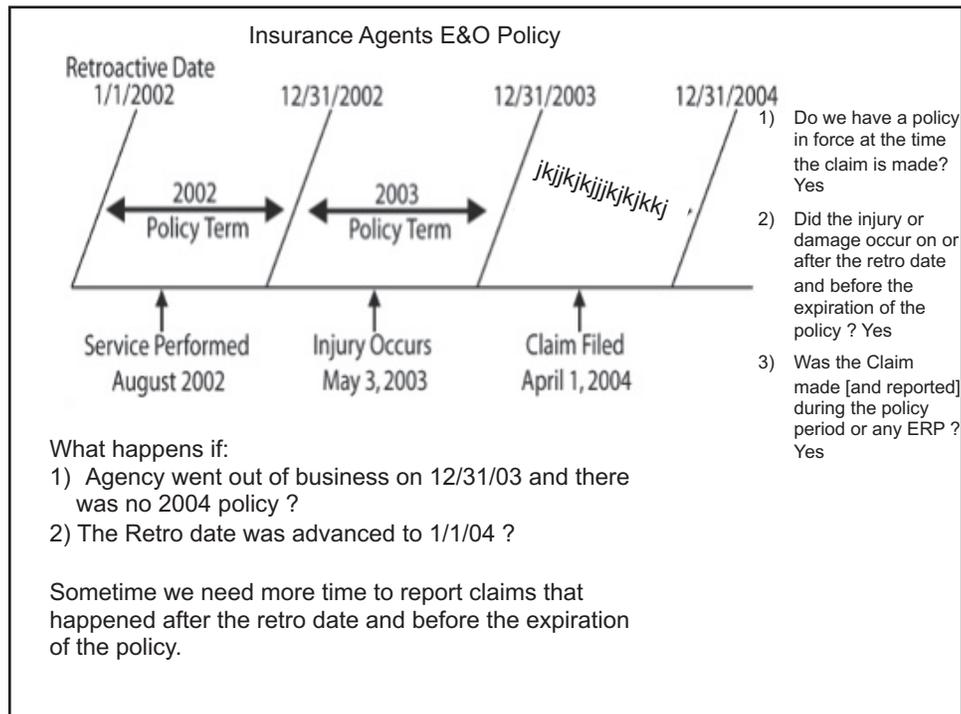
Conditions Precedent to Triggering a Claim:

- Retroactive Date Requirement
 - The act giving rise to the claim must have taken place on or after the policy's retro date

- Claims-Made Requirement
 - The claim must be first made against the insured prior to the policy's expiration date

- Reporting Requirements
 - The claim must be reported to the insurer with the reporting period of the policy.

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136

KNOWLEDGE DATE

(one more caveat)

- Even if a Retroactive is used, no claim will be covered if the Insured, prior to purchasing the policy, has knowledge that reasonably could be evidence of a claim.
- The policy will cover **claims** back to the Retroactive date provided that no knowledge of a circumstance or incident exists at the time coverage is placed in force.
- Knowledge Date: 1/1/23. If you have knowledge of a circumstance or incident prior to 1/1/23 no coverage.

137

What do you mean- “Knowledge” ? Subjective or Objective ?

Policy wording #1: “...coverage is precluded for known facts that “could” or “might” lead to a claim”

Policy wording#2 : “...coverage is precluded for known facts the will “likely” lead to a claim

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Applying Claims-Made Triggers

- Professional Liability policy
 - CM and Reported Form (60 day reporting window)
 - 1/1/2021 – 1/1/2022
 - Retro Date of 1/1/2021
- **For coverage to apply under this policy, the following must occur:**
 - Wrongful Act giving rise to a claim must have taken place on or after 1/1/2021;
 - The claim must have been made against the insured before the policy expired on 1/1/2022; and
 - The claim must be reported to the insurer no later than March 1, 2022 (60 day)
 - The Insured has no prior knowledge of incident
 - The service of the suit must occur **after** the prior and pending litigation date; even if the insured had no knowledge that it is coming. If the "P/P date" is the inception date, this could cause problems. [BERP]

139

PRIOR and PENDING LITIGATION DATE

- Usually the date of the insured's first claims made policy
- No coverage for claims that were first made against the insured prior to the PPL
- PPL date should be maintained on any renewal or replacement policy

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PPL Example

- ABC Co. had a CM policy for 4 years with Carrier X
- The policy had full prior acts and a PPL date of 1/1/2018
- In the fifth year, the insured moved coverage to Carrier Y, and the PPL date was advanced to 1/1/23
- Late in 2022 a client initiated a lawsuit, but the insured was not made aware of this until the complaint was served in early 2023
- Because the suit was pending prior to Carrier Y's policy PPL date, no coverage applies

141

Prior and Pending Litigation Directors & Officers Liability Exclusion

September 2014

The D & O Diary

142

D&O Insurance: Prior and Pending Litigation Exclusion Bars Coverage for Lawsuit Filed Years Before But Served During the Current Policy Period

By Kevin LaCroix on September 22, 2014



Under which claims made D&O insurance policy is there coverage for a claim that was filed under seal years ago but not served on the policyholder until the policy period of the current policy? If you find the answer "no policy" as unsatisfying as I do, read on. In a September 15, 2014 opinion ([here](#)), a three-judge panel of the Superior Court of Pennsylvania affirmed the trial court's grant of summary judgment holding that Amerisource Bergen's D&O insurance policy's prior and pending litigation exclusion precluded coverage for a False Claims Act lawsuit that was filed under seal in 2006 but not served on the company until 2010. In the discussion section below I try to sort out what happened here.

143

Prior Pending Litigation Date...a/k/a

Prior and pending litigation date is also known as the: "continuity date," "first coverage date," "P/P date" or "administrative proceeding" date - depending on the form and insurer.

Adopting this language into executive liability forms changed coverage requirements. Now:

1. The claim against the insured had to be first made during the policy term;
2. The first notice of litigation or possible litigation, in the form of a service of suit or administrative agency notification, must occur after the specified prior and pending litigation date (often found on the declarations page); and
3. If the policy contained a reporting requirement, the claim must be reported to the insurer during the policy term or any automatic basic extended reporting period.

146

Prior and Pending....

- Company A sues Company B – 1/1/21
- Company B sues Company C – 6/1/21
- Company C sues the insured – 5/2/22

- Company C's policy renews with a 1/1/22 PPL date
- Potentially no coverage, since the first two lawsuits were filed before the P&P date.
- The policy doesn't specify whether the insured has to be named in the original inter-related litigation

147

Management Liability Policy

Dangerous Notice Provisions

One Beacon

6/5/18

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VI. NOTICE

- (A) Any notice to the Underwriter with respect to any Coverage Section shall designate the Coverage Section under which notice is being given and shall be treated as notice only under the Coverage Section(s) so designated.
- (B) Notice to the Underwriter of a Claim or of circumstances which could give rise to a Claim under any Liability Coverage Section, or of an Occurrence under the Crime Coverage Section, shall be given in writing addressed to:

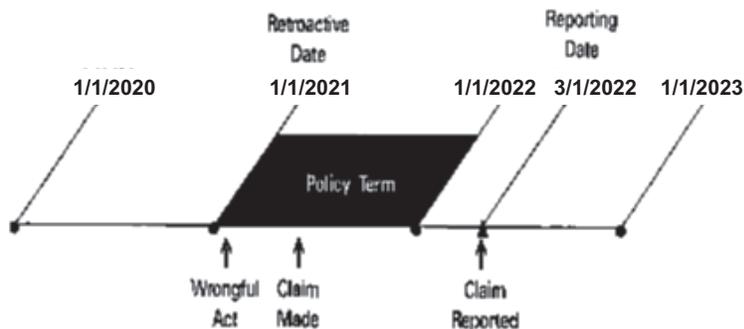
[Chief Claims Officer]
[OneBeacon Insurance Group]
[199 Scott Swamp Road]
[Farmington, CT 06032]
[obclaims@onebeacon.com]

- (C) All other notices to the Underwriter shall be given in writing addressed to:

[OneBeacon Insurance Group]
[199 Scott Swamp Road]
[Farmington, CT 06032]
[Attn: Underwriting]

149

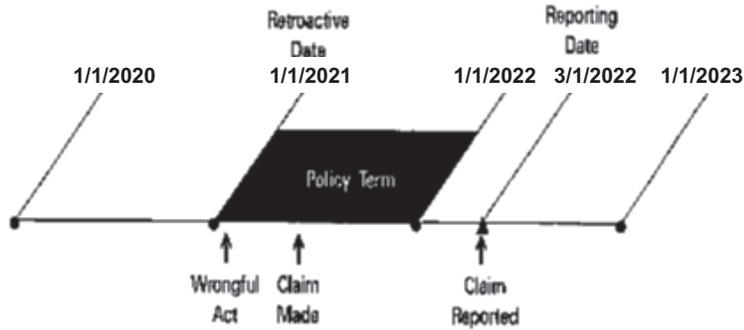
QUIZ #1



151

QUIZ # 1

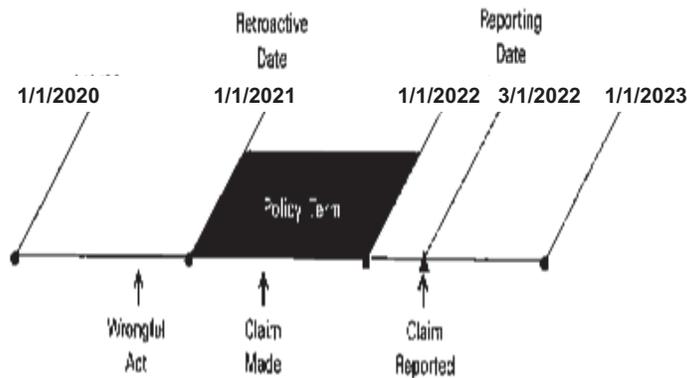
Case #1 (Coverage Applies)



The claim is covered because the wrongful act took place after the policy's retroactive date, the claim was made against the insured *during* the policy term, and the claim was reported to the insurer *within* 60 days of the policy expiration date.

152

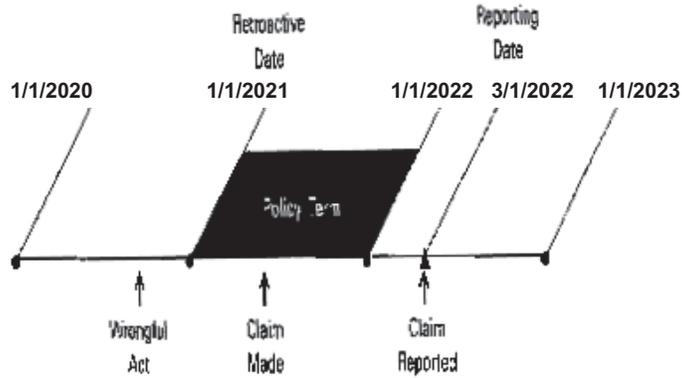
QUIZ # 2



153

QUIZ # 2

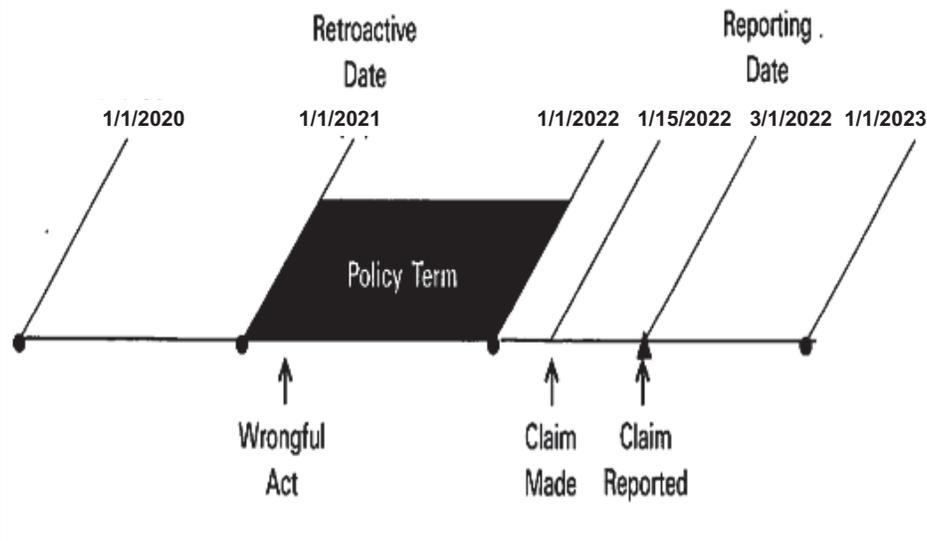
Case #2 (No Coverage Applies)



The claim is not covered because the wrongful act took place prior to the policy's retroactive date.

154

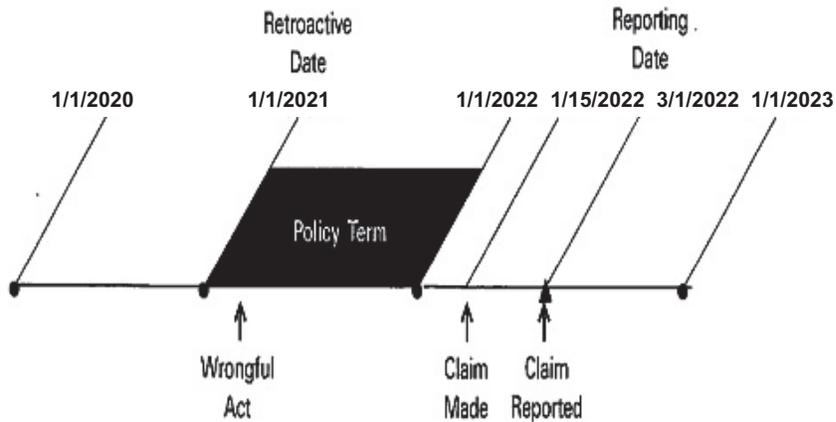
Quiz # 3



155

Quiz # 3

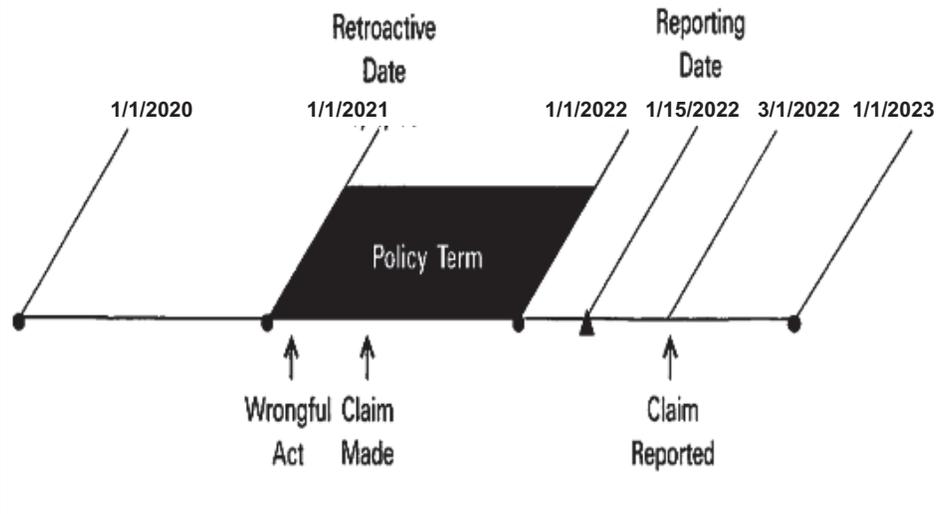
Case #3 (No Coverage Applies)



The claim is not covered because it was made after the policy expired.

156

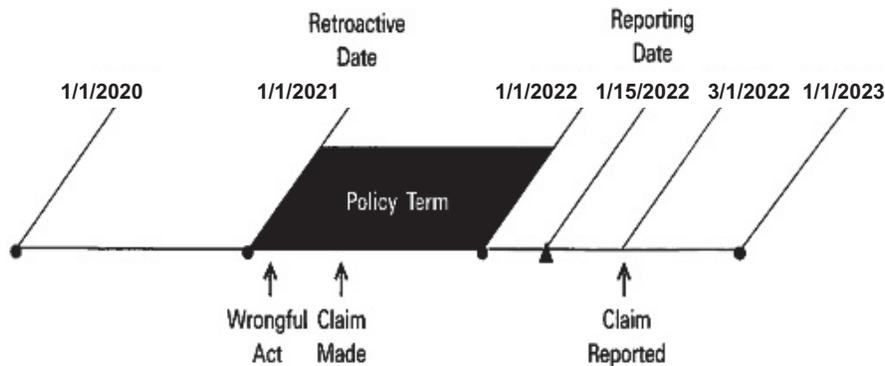
Quiz # 4



157

Quiz # 4

Case #4 (No Coverage Applies)



The claim is not covered because it was not *reported* within 60 days of the policy expiration date.

158

DISCOVERY PROVISION

[awareness provision or notice of potential claim]

- Problem for Insured:
 - Unless claim is made against the insured during the policy period, coverage will not be triggered
 - This is true even though the Wrongful act or error and omission was committed during the policy period, and a claim is virtually certain to result.
 - Most all Professional policies contain Discovery provisions, Awareness provisions, Notice or Potential Claim provisions

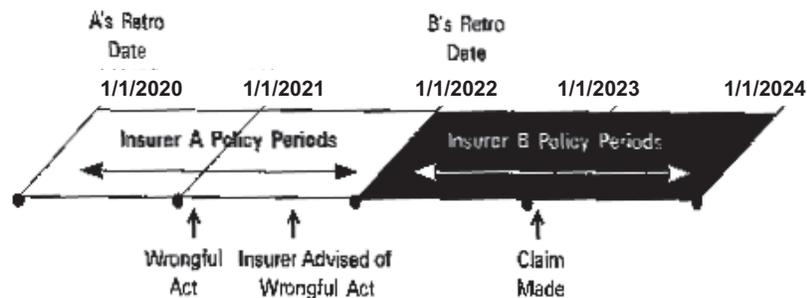
163

DISCOVERY PROVISIONS

- These provisions allow insured's to report for incidents or circumstances that may produce claims in the future.
- In effect, these provisions allow the insured to “lock in” coverage for such events so that coverage will apply under the current policy— regardless of how far in the future a claim is eventually made in conjunction with the incident that was reported.
- Notify insurer of any incidents or circumstances that could at some future time result in a claim, when changing carrier (or discontinuing coverage completely) to minimize any gaps.
- Watch trying to “Laundry List”

164

DISCOVERY PROVISIONS



Coverage applies under A's policy because notification of the incident was provided during the January 1, 2021/2022 policy term by means of that policy's discovery provision.

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WHEN TO USE DISCOVERY PROVISIONS

- Plan to switch insurers at renewal
- Intend to cancel policy mid-term
- Receive notice of cancellation/non-renewal
- Retires from or Sells Business
- Merges with another business
- Discovers an error in his/her work before client becomes aware of the mistake
- Confronts a client who is dissatisfied with your work, but has not yet threatened to sue
- Request from client to provide remedial services without charge, to correct alleged deficiencies in previously performed work

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Potential Advantages / Disadvantages of Laundry Listing

Disadvantages

- Higher Renewal Premiums
- Possible Cancellation /Non-Renewal
- Problems with Changing Insurers (must reveal to old and new carriers any incidents)
- Possible admission of Guilt
- Carrier rejects

Advantages

- Lock in coverage for future claims
- Non-Renewal: Carrier no longer writes coverage (new carrier more understanding of long listing)

167

Two Critical Factors in Claim Made Coverage

- WHEN IS A CLAIM MADE ?
- WHEN DOES THE WRONGFUL ACT TAKE PLACE?

168

WHEN IS A “CLAIM” MADE ?

Three different wordings.....

1. “Claim” is notice to the insurer, by the insured, of an incident that could give rise to a claim in the future
2. **“Claim” is a written demand for money or services**
- 2a. **“Claim” is a written demand for money or services, or non-monetary relief**
3. “Claim” is notification of a criminal, administrative, alternate dispute resolution proceeding, or EEOC proceeding

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2. “Claim” is a written demand for money or services

<u>Policy Term</u>	<u>Events</u>
• 1/1/15- 1/1/16	Surgery Performed
• 1/1/16- 1/1/17	Infection Develops
• 1/1/17- 1/1/18	Illness Develops, lawsuit threatened
• 1/1/18- 1/1/19	Dr served with Summons & Reports (2)
• 1/1/19- 1/1/20	Settlement Negotiations
• 1/1/20- 1/1/21	Settlement Negotiations
• 1/1/21- 1/1/22	Settlement Negotiations
• 1/1/22- 1/1/23	Claim Settled

170

1. “Claim” is notice to the insurer, by the insured, of an incident that could give rise to a claim in the future.

<u>Policy Term</u>	<u>Events</u>
• 1/1/15- 1/1/16	Surgery Performed (1)
• 1/1/16- 1/1/17	Infection Develops
• 1/1/17- 1/1/18	Illness Develops, lawsuit threatened
• 1/1/18- 1/1/19	Dr served with Summons
• 1/1/19- 1/1/20	Settlement Negotiations
• 1/1/20- 1/1/21	Settlement Negotiations
• 1/1/21- 1/1/22	Settlement Negotiations
• 1/1/22- 1/1/23	Claim Settled

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2. "Claim" is a written demand for money or services; or non-monetary relief

<u>Policy Term</u>	<u>Events</u>
• 1/1/15- 1/1/16	Surgery Performed
• 1/1/16- 1/1/17	Infection Develops and insured demands all fees paid be returned (2a)
• 1/1/17- 1/1/18	Illness Develops, lawsuit threatened
• 1/1/18- 1/1/19	Dr served with Summons & Reports
• 1/1/19- 1/1/20	Settlement Negotiations
• 1/1/20- 1/1/21	Settlement Negotiations
• 1/1/21- 1/1/22	Settlement Negotiations
• 1/1/22- 1/1/23	Claim Settled

172

AGENTS E&O CLAIM REPORTING

- An agent's client files suit against its carrier for declination of coverage. The client does not sue the agent. Either the client or the carrier's lawyer requests, via subpoena, to take the agent's deposition during the course of litigation.
- An agent receives a department of insurance notice to produce a copy of her file to a state regulatory agency.
- An agent procures coverage for his client. After the carrier denies coverage for the underlying loss, the carrier demands that the agent provide it with an oral/written statement regarding how the agent serviced the account.

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AGENTS E&O CLAIM REPORTING

- While no one has directly sued the agent in the instances above, the scenarios nevertheless constitute “claims” under most professional liability insurance policies.
- Agents should read their own errors & omissions policies to better understand how “claim” is specifically defined. It is noteworthy that many policies define “claim”:
 - as a request to take a recorded statement;
 - a demand for money or services; and/or
 - service of a summons, a subpoena or any other notice of legal process.
- Hence, many policies define claim in a much broader sense than a mere lawsuit filed against the agency in question.

174

Deer Oaks Office Park Owners Ass'n v. State Farm Lloyds

2012 U.S. Dist. LEXIS 19240
(W.D. Tex. Feb. 15, 2012),

175

- The insured, Office Park, was “an office park condo association which owns, maintains and regulates the 'common areas' between fifteen unconnected office condos” in San Antonio, Texas. In 2007, it sold one of the condominium units to a doctor who intended to convert the unit for use in his medical practice.
- The doctor advised that being able to install an elevator into the unit was an important aspect and condition of his purchase. After the sale, however, the doctor was unable to obtain a permission from building maintenance to install the elevator. He subsequently complained to Office Park, and later commenced a lawsuit in Texas state court.
- Office Park sought coverage for the suit under the directors and officers coverage of its policy with State Farm Lloyds, effective for claims first made during the period January 30, 2010 to January 30, 2011, which encompassed the period in which the doctor commenced suit.

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- The policy’s insuring agreement stated that coverage “applies to 'wrongful acts' committed before this optional coverage became effective **if the insured had no knowledge of a claim or suit at the effective date of this option** and there is no other applicable insurance.”
- State Farm Lloyds denied coverage for the suit on the basis that Office Park had knowledge of the doctor’s claim prior to the policy’s inception. Specifically, State Farm Lloyds relied on a September 23, 2009 letter from the doctor’s attorney that “traced [the doctor’s] multiple complaints about Office Park and attributed monetary losses to Office Park.”
- Office Park argued that the doctor’s letter did not constitute a “claim” or notice of a “claim,” because the letter did not specifically demand any monetary relief. In support of its position, Office Park pointed out that the State Farm Lloyds policy did not contain a definition of the term “claim,” and that as such, under the Fifth Circuit decision in *Int’l Ins. Co. v. RSR Corp.*, 426 F.3d 281 (5th Cir. 2005), the term “claim” must be narrowly construed as “a demand for money, property, or legal remedy.”

177

- Office Park contended that because the doctor's September 23, 2009 letter did not actually seek monetary relief, it could not constitute a "claim" for the purpose of the policy's "knowledge of a claim or suit" condition to coverage.
- The court disagreed with Office Park's restrictive reading of RSR Corp., finding that the term "claim" is not limited solely to demands for monetary relief, but instead encompasses any assertion of a legal right. Such an interpretation, the court explained, ordinarily is favorable to the insured, rather than the insurer, "because the construction gives the insured the right to seek coverage without waiting for the filing of a lawsuit."
- The court went on to conclude that the doctor's letter qualified as a "claim" because it clearly stated a legal demand for relief and advised of the potential for litigation should an accommodation not be made.

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- As the court explained: The only reasonable interpretation of the letter is that [the doctor] asserted a right to hold Office Park liable for all of the costs [he] had spent and lost because of Office Park's acts. The letter's bottom line was: If you do not comply with my demands, I will sue you. Under any construction, the letter constituted a claim.
- As such, the court concluded that State Farm Lloyd's denial of coverage was correct and that it had no duty to defend or indemnify the doctor in connection with the underlying matter.

179



The importance of understanding when a claim is a "claim"

Saxe Doernberger & Vita, P.C.

USA | November 14 2023

It is well known that insurance policies universally impose a requirement that a "claim" be timely submitted. Unfortunately, this basic coverage condition is so well known that policyholders often overlook what exactly constitutes a "claim" under their insurance policy. A decision rendered by the United States District Court for the Southern District of New York earlier this year is a reminder that policyholders must carefully read their insurance policies to understand exactly what constitutes a "claim" to avoid forfeiting coverage simply because of a misunderstanding of whether a claim as defined by the policy is a "claim."

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In *Pine Management, Inc. v. Colony Insurance Company*,¹ the parties disputed whether a July 17, 2018, letter (the "Letter") received by the insured, Pine Management, Inc. ("Pine"), constituted a "claim" under a claims-made and reported policy with a policy period of August 1, 2018, to December 1, 2019. The insurer, Colony Insurance Company ("Colony"), argued the Letter was a "claim" first made against Pine before the policy inception to avoid providing coverage for a related lawsuit filed against Pine on July 26, 2019.

The District Court began its analysis noting the policy defined a "claim" as "a written demand received by [Pine] for monetary, nonmonetary, or injunctive relief." Turning to the Letter itself, the District Court held that the Letter plainly met the definition of a "claim" under the policy. The District Court supported its holding by highlighting several aspects of the Letter:

1. The Letter "advised [P]ine of claims by the Schneider/Schwartz Group against Pine."
2. The Letter contended that "there are many serious issues arising from Pine's management . . . and such claims should survive a motion to dismiss and a motion for summary judgment."

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3. The Letter detailed numerous allegations, including that Pine “breached its fiduciary dut[ies],” “ha[d] not acted in good faith,” “breached provisions of the governing Operations Agreements,” “failed to disclose material facts,” was “involved in related party transactions,” and “failed to provide key documents.”
4. The Letter alleged that “Pine was paid \$622,742 in fees in 2017, despite the fact that Pine had ‘no authority to pay itself fees.’”
5. The Letter requested “non-monetary relief in the form of an accounting and demands ten categories of documents for inspection.”
6. The Letter “suggest[ed] that a meeting be scheduled to resolve the Schnieder/Schwartz Group’s concerns” in an effort to “bring amount a mutually satisfactory resolution of these claims without having to commence litigation that would be costly to all parties involved.”

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Pine attempted to overcome the Letter’s importance by advancing several unsuccessful arguments.

First, Pine contended that the Letter simply recited points of law and requested a review of documents. The District Court rejected this argument by relying on Second Circuit and New York case law holding that a letter demanding documents or that the insured rectify a problem was sufficient to constitute a claim under an insurance policy.²

Second, Pine argued the Letter used “precatory language” that failed to put Pine “on notice of the drastic legal repercussions that could result from noncompliance.” The District Court rejected this argument as well because the assertion contradicted the plain language of the Letter, which explicitly mentioned litigation that allegedly would survive pre-trial motion practice.

Finally, Pine tried to create a question of fact by arguing it was unclear from the Letter what the requested meeting would entail. The District Court rejected this argument citing to previous case law from the court holding that “[a]lthough counsel did not specifically state the purpose of meeting was to demand monetary damages or other relief, the implication is that counsel requested the meeting for this reason.”³

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In short, the District Court held the Letter was a “claim” predating the policy period and, therefore, Pine was barred from receiving coverage for the subsequent lawsuit filed against it. Under the District Court’s holding, if Pine had comparable coverage in place prior to the insurance policy in dispute, Pine would need to have tendered a claim under that earlier policy when it received the Letter.

The outcome in *Pine Management, Inc.* is a blunt reminder that policyholders must pay close attention to the definition of “claim” within their insurance policies to avoid forfeiting coverage that may otherwise be available but for failing to timely report a “claim.” Coverage counsel can assist policyholders with the assessment and reporting of claims to maximize coverage.

Saxe Doernberger & Vita, P.C. - Kyle A. Rudolph

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Professional Liability Insurance: Two Policies But No Coverage Due to Untimely Notice

*By Kevin LaCroix on January 12, 2015
Posted in D & O Insurance*

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Professional Liability Insurance: Two Policies But No Coverage Due to Untimely Notice

- In a January 9, 2015 opinion ([here](#)), the Eighth Circuit, applying Missouri law, held that there was no coverage under either of two successive professional liability insurance policies issued by the same insurer for a claim against its insured, LSi-Lowry Systems, because the claim was first made before the inception of the second policy and because LSi had not given timely notice of claim under the first policy.
- The appellate court rejected LSi's argument that its email exchange with a dissatisfied customer during the policy period of the first of the two policies did not constitute a claim.

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LSI sold Hodell-Natco Industries business software and software support services. The software went live on March 1, 2007 and software performance issues immediately emerged. In a lengthy series of emails that followed between the two companies, Hodell complained about the performance issues and demanded that LSi remedy the defects. Within days, Hodell threatened legal action. On April 27, 2007, Hodell sent emails asking "who will pay for damages" and advising that the company had retained legal counsel. On June 25, 2007, Hodell demanded that LSi correct the problems "or reimburse Hodell-Natco for the expense."

On July 24, 2007 Hodell's lawyer sent LSi a letter stating that the company is "compelled to declare [LSi] in material default of their agreements," advising that Hodell "will pursue all legal and equitable remedies available to us," and demanding that LSi have their attorneys contact Hodell's counsel in order to "discuss an amicable resolution to this matter." LSi acknowledge receipt of the letter, asking "You are asking for remedies (ie money?) Correct?"

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- On January 23, 2008, Hodell sent LSi an email stating “We are offering you the chance to resolve this situation by refunding the TOTAL funds we’ve paid to LSi,” adding “Don’t you carry professional liability insurance for this type of issue? ...In an effort to avoid a dragged-out lawsuit, we made a proposal to resolve this matter in a manner that gave us a small amount of relief, far short of our total cost.”
- On November 21, 2008, Hodell filed a lawsuit against LSi in the Northern District of Ohio asserting claims for fraud, breach of contract, negligence and negligent misrepresentation arising from the performance issues with the software. On December 8, 2008, LSi first notified its professional liability insurer of the Hodell’s claims.

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The January 9 Opinion

- On January 9, 2014, in an opinion by Judge Jane Louise Kelly for a unanimous three-judge panel, the Eighth Circuit affirmed the district court, holding that there was no coverage for the claim under either of the two professional liability insurance policies.
- The district court had concluded there was no coverage under the 2007 policy because LSi did not give notice of claim or potential claim to the insurer within the 2007 policy period. The appellate court said “We agree with the district court,” quoting the district court’s statement that “by the plain language of the 2007 policy, there is no coverage.”
- The district court also found that there was no coverage under the 2008 policy because it concluded that the email communications between LSi and Hodell during the period March 2007 and April 23, 2008, when the 2008 policy incepted, constituted a claim. The appellate court said, quoting with approval from the district court opinion, “We agree with the district court that the communications ‘show that Hodell blamed LSi for the functionality problems of the software, requested that LSi fix the issues, and expected LSi to pay the associated costs.’”

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- The appellate court also rejected LSi's argument that the district court had erred in relying on the definition of "claim" in the 2008 policy – which included "a demand for money or services" – but rather should have analyzed the question using the definition of "claim" in the 2007 policy, which defined a claim solely as "a demand for money." LSi argued that Hodell did not make a claim against LSi during the 2007 policy period because Hodell did not make a specific demand for money.
- The appellate court said "As an initial matter, we question whether the definition of a claim in the 2007 policy would apply when determining coverage under the 2008 policy." But, the court added, in any event, the term "claim" in both policies included a "demand for money" within the definition. The court reviewed the various statements in the email communications and concluded that "Regardless of which definition applies, the result is the same: The communications between Hodell and LSi prior to the date coverage began under the 2008 policy constituted a 'demand for money' and therefore amounted to a 'claim.'"

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Legal Malpractice Insurance: Policy Rescission for Application Misrepresentation Applies Even to Innocent Insured

By Kevin LaCroix on February 24, 2015
D& O Diary
Dandodiary.com

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Under the applicable Illinois statute, an insurer may seek to rescind a policy if it was procured by an application misrepresentation if the misrepresentation was “made with the actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company.” But even if rescission is otherwise warranted, may the insurer rescind the policy even as to an “innocent insured” who was unaware of the Application misrepresentation?

That was the question raised before the Illinois Supreme Court in *Illinois State Bar Association Mutual Insurance Company v. Law Offices of Tuzzolino and Terpinas*. In a February 20, 2015 opinion (here), the Court rejected the ruling of the intermediate appellate court, which had applied the “innocent insured” doctrine to preserve coverage for a law firm partner who was unaware of the a misrepresentation in the law firm’s legal malpractice insurance renewal application, and held that the insurer was entitled to rescind the policy as to all insured persons, even the innocent insured.

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- The Court rejected the applicability to the innocent insured doctrine to the rescission question in this case. The Court said that coverage cases applying the doctrine “usually involve the enforcement of policy exclusions” adding that “the innocent insured doctrine makes sense in that context because the insured’s innocence is relevant to whether an intentional act invokes an exclusion to coverage. But the innocent insured doctrine appears irrelevant to rescission, a recognized remedy for even innocent misrepresentations.”
- The Court said that “unlike in a rescission case, the innocence of an insured matters a great deal when another insured’s wrongdoing triggers a policy exclusion, and a dispute arises over whether the insured has a duty to defend the innocent insured under a policy that indisputably was in effect.” But the issues of insurance coverage governed by common law rules of policy language interpretation are “significantly different from the question of whether an insurance policy should be enforced in the first place.”

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Wrongful Act

- Not Defined in many policies, or defines certain acts, but doesn't help to arrive at the point in time it took place
- Not always easy to determine
 - Attorney cases- multiple conferences over 6 months
- ***Important for Retro Date issues***
- Generally accepted practice dictates using: when the professional service that ultimately causes the loss or damage is actually performed or should have been performed, but was not.
- As opposed to: a) the time at which the service ultimately causes loss or damage, b) when the professional discovers the loss or damage, or c) when the claimant discovers the loss or damage

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Wrongful Act Determination

- Engineer hired to design a roof structure for an office building
- 1/1/17 the plan for the roof is sealed and submitted
- 1/1/22 the roof collapses, from faulty design work (beams too small for load)
- When did Wrongful Act take place?
- 1/1/17
- Not always that clear cut. Ongoing professional services – insurance agent / attorney

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Wrongful Act and Non-Cumulation of Policy Limits

- January 1, 2019-2020 retro date 1/1/94 \$1,000,000
- January 1, 2020-2021 retro date 1/1/94 \$2,000,000
- January 1, 2021-2022 retro date 1/1/94 \$3,000,000

- Architect draws plans for a structure and seals the plans on 1/1/95 (WA). Construction is complete 2 years later 1/1/97. On 1/1/99 a portion of the building collapses and injures three people (INJURY), who file suit below:

Q: How much is available to pay these claims?

- Claim #1 made 1/31/19 (CM)
- Claim #2 made 1/31/20
- Claim #3 made 1/31/21

A: \$1,000,000 That was the year when the first claim arising from the original wrongful act took place (defective design)

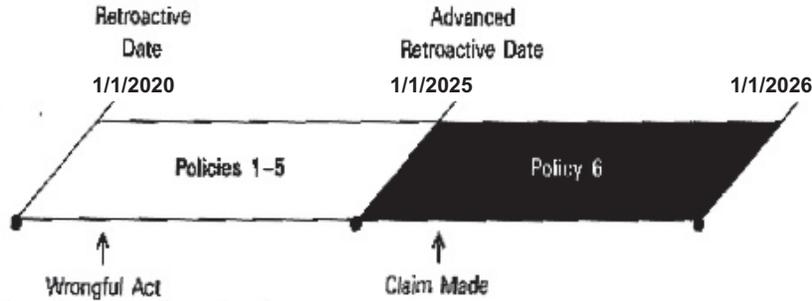
196

PROBLEM AREAS

- Retro Date advancement
- Cancellation or Non-Renewal by insurer or insured
- Replacement of Claims Made policy with Occurrence Policy

197

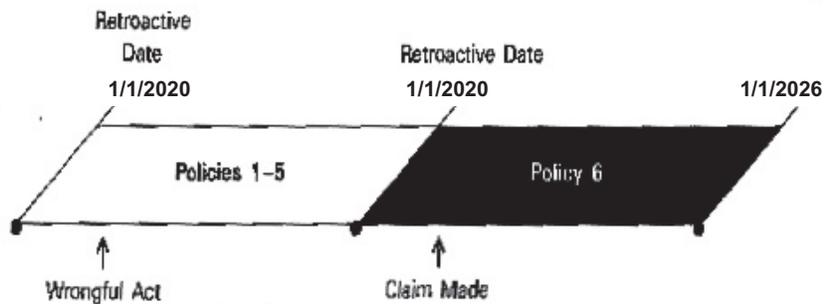
Retro Date Advancement



An insured had five consecutive, one-year policies written by XYZ insurance company from January 1, 2020 to January 1, 2021. All five of the policies in force during this time contained a January 1, 2020 retroactive date. On January 1, 2025 the insured decides to change insurers. The new insurer offers a policy with a January 1, 2025 to January 1, 2026 term that contains a January 1, 2025 retroactive date. The advanced retroactive date will preclude coverage for claims from wrongful acts that took place before January 1, 2025 (the new retroactive date), if claims produced by those acts are made during the January 1, 2025 to January 1, 2026 policy period.

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Retro Date Advancement

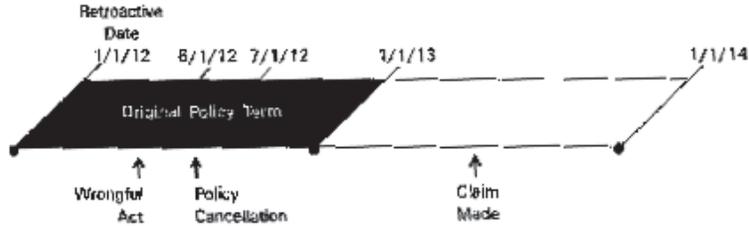


On the other hand, had the retroactive date remained at January 1, 2020 claims made during the new January 1, 2025-2026 policy period will be covered.

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Cancellation of Non-Renewal by insurer or insured

Original Policy Term: January 1, 2012/2013
Retroactive Date: January 1, 2012
Policy Cancellation Date: July 1, 2012

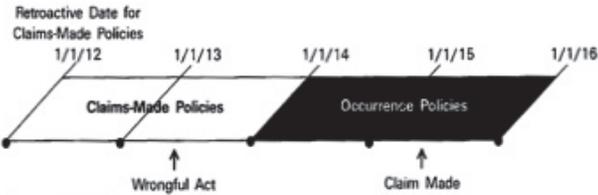


Note that there is no coverage for the claim because, although the wrongful act took place *before* the policy was canceled (and after the retroactive date), the claim was not made until *after* the policy had been canceled.

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Replacement of CM with Occur.

Policy Date	Retro Date	Coverage Trigger
January 1, 2012–January 1, 2013	January 1, 2012	Claims-made
January 1, 2013–January 1, 2014	January 1, 2012	Claims-made
January 1, 2014–January 1, 2015	N/A	Occurrence
January 1, 2015–January 1, 2016	N/A	Occurrence



None of the four policies noted in Exhibit VIII.D.4 would cover the claim for the following reasons.

- The January 1, 2013/2014 claims-made policy had expired on the date the claim was made. The fact that the wrongful act producing the claim took place during this time period is of no bearing in determining coverage.
- The January 1, 2015/2016 occurrence policy would not cover the claim because the wrongful act giving rise to the claim occurred before the inception of the policy.

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Potential Causes of Claims-Made Coverage Gaps	
Causes of Gaps	Explanation
Retroactive date advancement	This occurs when a policy's retroactive date is moved forward in time when it is renewed or replaced. Although it is rare for an incumbent insurer to offer a renewal policy with an advanced retroactive date, insurers replacing an existing policy sometimes offer a policy with an advanced retroactive date.
Cancellation or nonrenewal by the insurer or insured	If the insurance is not immediately replaced, the gap results because there will be no coverage for claims arising from wrongful acts that took place during the term of the now-expired/canceled policies that are made after the last policy has expired/been canceled.
Change to an occurrence policy	This gap occurs when an insured switches from a claims-made policy to an occurrence policy. This is because there is no coverage for claims that result from wrongful acts or injuries taking place <i>before</i> the inception of the occurrence policy, even though the claims are made <i>during</i> the term of the replacement occurrence policy.

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Closing Gaps in CM Policies

- TWO OPTIONS:
- Extended Reporting Periods
 - BERP's
 - SERP's
- Prior Acts Coverage
 - Full
 - Partial

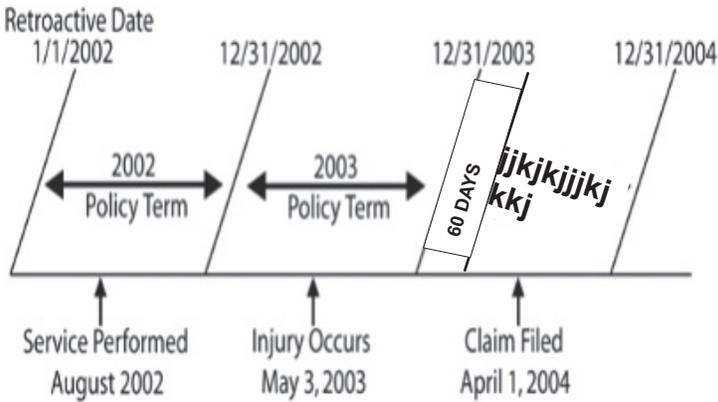
203

BERP / SERP's

- Extended REPORTING periods only extends the time period in which a claim may be reported. It does NOT provide any additional coverage. *The wrongful act or injury must have occurred during the policy.*
- Basic (BERP)– usually included with policy, 30-60 days / 5 year claim development
- Supplemental (SERP) – 1-5 years / extra premium

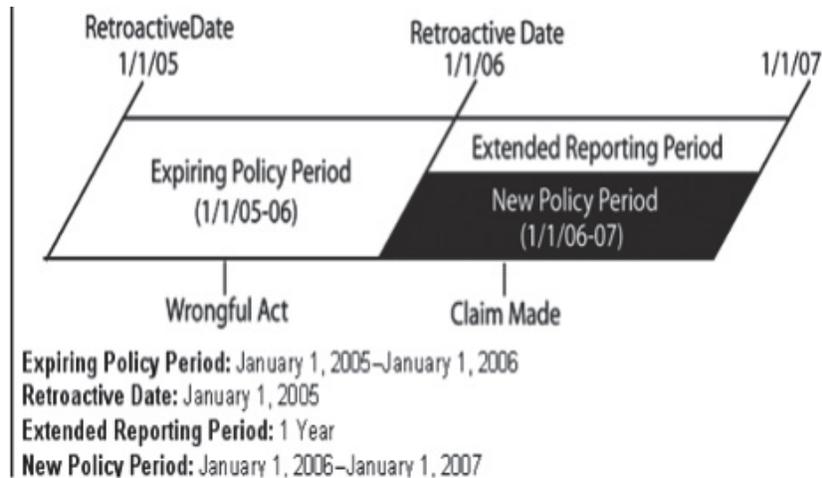
204

BERP



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Extended Reporting Period

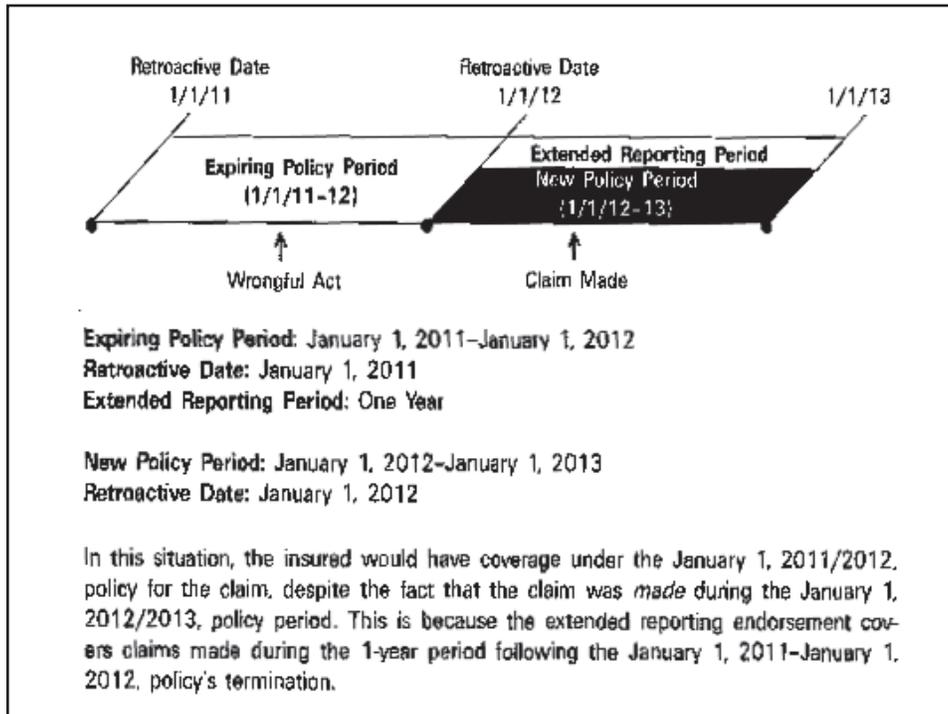


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Important SERP Terms

- The right to purchase an SERP
 - Two way
 - One way
- The duration of the SERP
 - One year
 - Other
- The price
 - Stated / Negotiated
 - TBD by company at the time of purchase
- Time period insured is allowed to purchase SERP
 - 30 days common
 - 60 days
- Reinstatement of Aggregate Limits
- Only extends RERPORTING time
 - Not for claims made during the SERP

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Awareness Question Warranty Question



Does any person who will be an Insured have knowledge or information of any act, error, or omission which might give rise to a claim under the proposed policy?



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The Application

- Be careful...
- Answer ALL questions HONESTLY and to the best of your knowledge
- The application and attachments will become a part of the policy and a warranty
- Carrier can use the information on the application to rescind the policy, if materially misrepresented
- The Awareness question: Think long, think hard and think deep !

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The Application

- How long will app and attachments be a part of the policy ?
- Do I need to complete a “long form” app on renewal or can we delete the awareness question ?
- If you are changing carriers, increasing limits, broadening coverage you will have to answer the Awareness question
- Who has to be aware of any incident ?

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Sample Polling Letter

BIG I – Virtual University
Westport Ins. Co. E&O Policy
Language

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Sample Claims Made Policy Polling Letter

Named Insured(s): ABC, Inc
Address: 123 Main St.
Any Town, USA
Insurance Carrier: Westport Insurance Corporation
Coverage Provided: Errors & Omissions Policy
Policy Number: ABC-EASY-AS-123
Effective Dates: January 1, 2020 to January 1, 2021

ABC, Inc's Errors and Omissions policy is written on a "claims made" basis. A "claims made" policy responds to defend and/or pay or indemnify only those claims made or filed against the named insured and other insureds during the policy period, subject to all policy's terms and conditions. Any "claim" or "potential claim" known to have been made or received during the policy period but not reported during the policy period or applicable extended reporting may result in severe coverage restrictions or the denial of coverage.

ABC, Inc's Errors and Omissions policy defines a "claim" to mean that: 1. an INSURED has received a summons, a subpoena, or any other notice of legal process; 2. an INSURED has received notice of any SUIT; or 3. an INSURED has received notice of a written demand, or a written demand for money or services.

A "potential claim" is defined to mean that an INSURED has become aware of a proceeding, event, or development, which could in the future result in the institution of a CLAIM against an INSURED.

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Sample Claims Made Policy Polling Letter

Are you aware of or have you received notification of any "claim" or "potential claim" as defined in **ABC, Inc's Errors and Omissions** for a "wrongful act" defined in the policy as:

1. any negligent act, error, or omission of an INSURED in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others;
2. any PERSONAL INJURY or ADVERTISING INJURY in rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES for others; or
3. any BREACH of PERSONAL DATA arising out of or in connection with the rendering of PROFESSIONAL SERVICES or OTHER RELATED SERVICES, but only if the INSURED has implemented current and commonly accepted technologies and methodologies designed to secure PERSONAL DATA and appropriate to the size and complexity of the agency and indecipherable to unauthorized individuals and which are in place at the time of the BREACH; provided, however, that any such technologies and methodologies



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Sample Claims Made Policy Polling Letter

must comply with privacy regulations found within the Health Insurance Portability and Accountability Act of 1996 or any other federal or state law or regulation, governing any industry in which the INSURED is rendering PROFESSIONAL SERVICES or OTHER RELATED SERVICES.

Yes

No

If "Yes," the carrier must be notified. Please describe: _____

The undersigned attests that the above information is true to the best of their knowledge. The undersigned also attests that completion of this document does not replace nor negate the insured's requirements to comply with all responsibilities and duties contained within the insurance policy referenced in this document.

Signed: _____

Print Name: _____

Position/Title: _____

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(Disclaimer: This is a sample using Westport Insurance policy language and an E&O policy. The language of each form and coverage type differs. This is intended only for an example.)

NOTE 1: This polling letter must be completed and signed by:

- If a Corporation: All officers and directors
- If an LLC: All members and managers
- If a partnership (LLP, GP or Other): All partners
- If a Sole Proprietor: The sole proprietor and any key managers

NOTE 2: Attach a copy of the policy definitions for the insured's reference.

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Additional Warranty Statements

The next three paragraphs of the application consist of warranty statements indicating that:

- Statements within the application are true and if any of the information in the application changes between the date of the application and the effective date of the insurance coverage offered, the signer of the application will notify the insurer of these changes and the insurer may withdraw or modify any outstanding quotations or agreements based on this new information.
- Signing the application does not bind the insurer to offer or the applicant to accept coverage, if offered, but if offered by the insurer and accepted by the applicant, it will form the basis of the coverage to be issued and the application will be attached to and become part of the policy.
- All statements within (a) the application, (b) materials provided with the application, and (c) materials to be attached to the application in the future are a part of the application.

International Risk Management Institute

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PRIOR ACTS and TAIL COVERAGE

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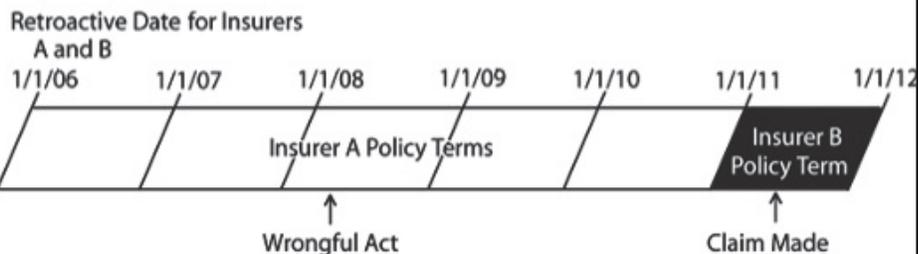
PRIOR ACTS

Assume that a professional was insured by Insurer A during the following periods:

- January 1, 2006–2007
- January 1, 2007–2008
- January 1, 2008–2009
- January 1, 2009–2010
- January 1, 2010–2011

and that the retroactive date for all five policies was January 1, 2006.

If Insurer B writes a policy with a January 1, 2011–2012, term, containing a January 1, 2006 retroactive date (the same as the policies written by Insurer A), no new coverage gaps are created (although the professional would still be without coverage for claims arising out of acts committed prior to January 1, 2006). This is because any claims arising out of wrongful acts that took place during Insurer A's policy will be covered under Insurer B's policy if they are reported during the January 2011 policy period.



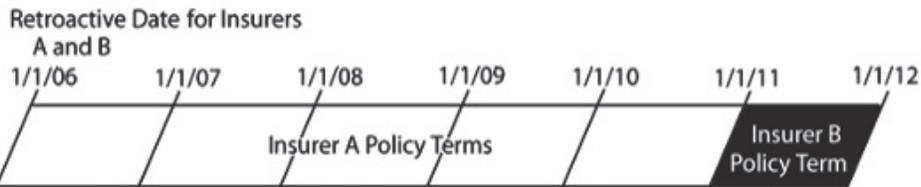
Coverage in this situation applies under B's policy because the wrongful act took place *after* the retroactive date in B's policy *and* the claim was made during the term of that policy as well.

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INSURER INSOLVENCY

– OCCURRENCE vs. CLAIMS MADE

- Occurrence has a permanent gap !
- CM can replace policy with prior acts for previous year to pick up insolvent carrier claims



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DEVELOPMENT of CM RATES

Year Reported	Percent Reported	Cumulative % Reported	CM policy \$	Occur policy \$
2000	30%	30%	\$ 30k	\$100k
2001	25%	55%	\$ 55k	\$100k
2002	15%	70%	\$ 70k	\$100k
2003	10%	80%	\$ 80k	\$100k
2004	10%	90%	\$ 90k	\$100k
2005	5%	95%	\$ 95k	\$100k
2006	5%	100%	\$100k	\$100k
Total			\$520k	\$700k
Retire	Tail	200% of last annual premium	\$200k	\$ -0-

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Premium Savings ?

- The principle economic benefit of a claims-made policy is that the premium during the first years of coverage is substantially less than a comparable occurrence policy. By switching from an occurrence to a claims-made policy, a physician could save as much as 75% of premium in the first year. Thereafter, claims-made premiums will increase by a fixed percentage in each of the next four years, reaching the same level as an occurrence policy in year five. For example, an occurrence policy that costs \$10,000 annually could be priced on a claims-made basis at \$2,500, \$4,500, \$8,500, \$9,500, and \$10,000 in years one to five. Some companies price the mature claims-made policy below the occurrence even after five years.
- **The savings that a physician can realize from a claims made policy should be invested annually into a "Tail Investment Account"**

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Limits of Liability

- Occurrence policies give you renewal Continuity and Perpetual protection....
-but only for the limits in effect at the time the claim occurred
- Claim occurred in 1960 = \$100,000; but reported in 2007
- CM provides the limits in effect at the time the eligible claim is made 2007 = \$1,000,000

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Occurrence Forms

- **Occurrence Advantages**
 - The "tail" is covered forever without additional premium charges
 - No added cost to change insurers
- **Occurrence Disadvantages**
 - Limits do not keep up with inflation
 - May be difficult to ascertain the date of occurrence
 - Must keep copies of all policies indefinitely
 - Occurrence carrier goes bankrupt / insolvent – Gaps!

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Claims Made Forms

- **Claims-Made Disadvantages**
 - Tail coverage may be needed in event of cancellation, nonrenewal, etc.
 - Can be expensive to change insurers
 - Extended reporting period option may be required on specific accidents
- **Claims-Made Advantages**
 - Limits updated with inflation
 - Date of claims easily ascertained
 - Retroactive liability insurance may be provided
 - Initially less expensive
 - Insurer insolvency risk may be reduced

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The Lowest Bidder

It is unwise to pay too much, but it is worse to pay too little. When you pay too much, you lose a little money—that is all. When you pay too little, you sometimes lose everything, because the thing you bought is incapable of doing what it was bought to do. The common law of business balance prohibits paying a little and getting a lot—it can't be done. If you deal with the lowest bidder, it is well to add something extra for the risk you run. And if you do that, you will have enough to pay for something better”

John Ruskin (1819-1900)

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James K. Ruble Seminar

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Section 3

Directors and Officers Liability



DIRECTORS AND OFFICERS LIABILITY

*R. BRYAN TILDEN, CIC, C.P.C.U., CLU, ARM, SCLA
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LEARNING OBJECTIVES

- To identify the sources of liability and defenses related to directors and officers. *(SEE PAGE 12)*
- To explain the difference between Directors and Officers coverage and Corporate Reimbursement coverage. *(SEE PAGE 24)*
- To explain the major provisions commonly found in Directors & Officers insurance policies. *(SEE PAGE 29)*
- To identify and understand key exclusions unique to Directors and Officers coverage. *(SEE PAGE 42)*

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tilden@mindspring.com

I. Introduction

A. Background

1. Purpose

a) To indemnify board members against claims

2. Is an “uncontrolled” line; policy is non-standard

B. The Directors and Officers exposure

1. Who – any person who serves on a board of directors for a company or organization

2. Why – factors leading to growing exposure

a) Litigious society

(1) D&O claims are increasing at 20% per year

(2) 50% of the directors and officers will have a claim filed against them

b) Increased level of mergers and acquisitions

c) Broader interpretation of federal statutes

(1) Securities Act of 1934

(a) Federal law that governs stock exchanges and over-the-counter trading

(b) Requires publication of information concerning stocks which are listed on the exchanges

(2) Banking Act of 1956

(3) The Racketeer-Influenced and Corrupt Organizations Act (RICO)

(a) Collection of treble damages

(b) Defendants do not have to be found guilty of a criminal action

(c) Complainants must show

(i) While conducting an “enterprise”

(ii) Engaged in two or more acts of “racketeering activity”

(iii) Over a period of up to 10 years, one since 1970

d) *More exposure through the passage of new laws*

- (1) Americans with Disabilities Act (ADA)
- (2) Comprehensive, Environmental Response, Compensation and Liability Act (CERCLA)
- (3) Sarbanes-Oxley Act of 2002

e) *Increase in claims by third parties*

- (1) Employment-related claims
- (2) Claims by creditors
- (3) Regulators
- (4) Customers

II. Forms of Governance in Business Entities

A. Proprietorship

- 1. Owned and controlled by a single person**
- 2. Commonly designated a “sole proprietorship” or D/B/A**

B. Partnership

- 1. Association of two or more persons to carry on a business purpose for profit**
- 2. Uniform Partnership Act**
- 3. Governed by partners**
- 4. Types**
 - a) *Full or general partnership*
 - b) *Limited partnership*

C. Limited Liability Company

- 1. Artificial legal entity created under the laws of a state**
 - a) Taxed like a partnership*
 - b) Immunity of a corporation*
- 2. Governed by members and the membership agreement**
 - a) Manager – responsible for the day-to-day operations*
 - b) Members – receive the financial benefits from the LLC*
- 3. Most states now permit an Individual LLC**

D. Corporation

- 1. Artificial person or legal entity created under the laws of a state or nation**
- 2. Law regards it as distinct from its individual members**
- 3. Has capacity of succession among members and is often perpetual**
- 4. Governed and directed by directors and officers**
 - a) Officers – persons charged with important functions of management, such as president, vice-president, secretary and treasurer*
 - b) Directors – persons appointed or elected according to law to manage and direct the affairs of the corporation*
- 5. Types**
 - a) By ownership*
 - (1) Stock corporation
 - (2) Private corporation
 - (3) Publicly traded corporation
 - (4) Non-stock (municipal) corporation

b) By purpose

- (1) For-profit
- (2) Not-for-profit

c) Special cases

- (1) Spiritual corporations
- (2) Professional corporations
- (3) Quasi-public corporations (utilities, public service)

E. Association

- 1. A number of persons united together for a special purpose or business**
- 2. Frequently, a vague term for a group joined together without a charter, but for a common purpose and through methods and forms used by incorporated bodies**
- 3. Governed similarly to corporations**

a) Types

- (1) For-profit association
- (2) Not-for-profit association

b) Special cases

- (1) Professional associations
- (2) Joint ventures
 - (a) Not continuous
 - (b) Treated as partnerships for tax purposes
- (3) Unions

III. The Corporate Board

A. Why select this form of governance

1. **Limited immunity from liability**
2. **Perpetual nature**
3. **Distinct nature**
4. **Flexibility**

B. The parts of the corporation

1. Entity

2. Shareholders (optional)

3. Officers

a) Through the exercise of discretion, shares day-to-day operational and management duties with other officers and managers

b) Elected or appointed by resolution by the board of directors

c) Responsibilities and scope of authority, whether executive or administrative, are provided by the by-laws or a resolution by the board of directors

d) In the discharge of duties, considered the agent of the corporation

e) Frequently serve in the dual capacity of corporate officer and board member

4. Directors

a) Elected to serve as a representative in acting as the corporation's governing body

b) Responsible for the overall management and has the authority to conduct corporate affairs to the extent granted by the shareholders

- c) *Inside director – one who is an employee, officer, or major stockholder of the corporation*
- d) *Outside director – one who has no interest, or only minimal direct interest in the corporation; one who is not an employee, officer, or major stockholder*
- e) *Interlocking director – one who is a director of more than one corporation having allied interests*
- f) *Outside director service – service by a director or officer, at the request of the corporation, on the board of another corporation*

5. Committees – bodies to whom others have delegated particular functions

C. Major Responsibilities and Duties of Directors and Officers

- 1. Establishing the corporation's basic goals and policies**
- 2. Electing or appointing corporate officers, advising them, approving their actions, and auditing their performance**
- 3. Safeguarding and approving changes in the corporation's assets**
- 4. Approving important financial matters and ensuring that proper annual and interim reports are given to stockholders**
- 5. Delegating special powers to others to sign contracts, open bank accounts, sign checks, issue stock, obtain loans, and conduct any activities that may require board approval**
- 6. Maintaining, revising, and enforcing the corporate charter and bylaws**
- 7. Perpetuating a competent board by conducting regular elections and filling interim vacancies with qualified persons**
- 8. Fulfilling their fiduciary duties to the corporation and its stockholders**
- 9. Sarbanes-Oxley, in Section 10A, requires that in the absence of an audit committee, the board of directors take immediate and appropriate action in the event of notification or finding of fraud**

IV. Policies that Provide Directors & Officers Coverage

A. Personal

1. Homeowners

a) *Business Exclusion*

- Non-profit is NOT excluded, AS LONG AS IT IS NOT YOUR "BUSINESS"

2. "Business"

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

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

- b. This exclusion **E.2.** does not apply to:

- (1) The rental or holding for rental of an "insured location";
- (a) On an occasional basis if used only as a residence;
 - (b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
 - (c) In part, as an office, school, studio or private garage; and
- (2) An "insured" under age 21 years involved in a part-time or occasional, self-employed "business" with no employees;

b) *Liability Loss Assessment*

D. Loss Assessment

1. We will pay up to \$2,000 for your share of loss assessment charged against you, as owner or tenant of the “residence premises”, during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
 - a. “Bodily injury” or “property damage” not excluded from coverage under Section II – Exclusions; or
 - b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - (1) Is elected by the members of a corporation or association of property owners; and
 - (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph I. Policy Period under Section II – Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of \$2,000 is the most we will pay for loss arising out of:
 - a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
 - b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

2. Umbrella

WHAT THIS POLICY COVERS

We will pay for *personal injury* or *property damage* for which a *covered person* becomes legally liable; that is, this insurance applies separately to each *covered person* for claims or suits brought against that person. This liability must arise from an *occurrence* which takes place during the policy period.

WHAT IS EXCLUDED

This policy does not cover:

9. any activities as an officer or member of a board of directors of any corporation or organization, unless it is a non-profit corporation or organization.

- NON-PROFIT NOT EXCLUDED

B. Commercial

1. Commercial General Liability

a) Perils Covered

(1) Coverage A – Bodily Injury and Property Damage

1. Insuring Agreement

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

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expense under Coverage C.

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

- PAY THOSE SUMS
- LEGALLY OBLIGATED TO PAY
- DEFEND
- INVESTIGATE
- DOES NOT INCLUDE COVERAGE FOR FAILURE TO PERFORM DUTIES

(2) Coverage B – Personal and Advertising Liability

- COMMITTED DURING THE POLICY PERIOD

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

b) Persons Covered

- INDIVIDUAL AND SPOUSE
- PARTNERSHIP, MEMBERS AND SPOUSE
- LIMITED LIABILITY COMPANIES
- CORPORATION OR ASSOCIATION
- OFFICERS & DIRECTORS
- TRUSTS AND TRUSTEES

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.

c) Executive Officer defined

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

2. Business Auto Policy

a) As A Driver

b) Directors and Officers are considered responsible for the acts of operators of vehicles

- RESPONSIBLE FOR THE CONDUCT

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

3. Workers Compensation

- NAMED INSURED
- INDIVIDUAL PARTNERS

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnerships' employees.

4. Excess Liability/Commercial Umbrella

- Contain the same exclusions as the primary policy*
- Exclude coverage for failure to act*

5. Professional Liability

- Physicians, Surgeons and Dentists Professional Liability Insurance*

EXCLUSIONS

This insurance does not apply:

(b) to injury for which the insured may be held liable as a proprietor, hospital administrator, officer, stockholder or member of the board of directors, trustees or governors of any hospital, sanitarium, clinic with bed and board facilities, nursing home, laboratory or other business enterprise.

- Lawyer's Professional Liability Policy*

EXCLUSIONS

This policy does not apply:

(f) to any claim arising out of any insured's activities as an officer or director of any employee trust, charitable organization, corporation, company or business other than that of the Named Insured;

National Union Fire Insurance Company 41650 (1/85)

c) *Insurance Agents & Brokers Professional Liability*

EXCLUSIONS

This policy does not apply:

- d) to any claim arising out of any Insured's activities as an officer or director of any employee trust, charitable organization, corporation, company or business other than that of the Named Insured;

National Union Fire Insurance Company 29934

d) *Accountants Professional Liability Insurance*

EXCLUSIONS

This Policy does not apply to:

- E) a claim made by an enterprise which one or more Insureds controls, operates, manages or owns;

Fremont Indemnity Company GP4 (7-82)

V. Legal Concepts for Directors and Officers Liability

LEARNING OBJECTIVE -- To identify the sources of liability and defenses related to directors and officers.

A. Duties of Directors and Officers

1. Duty of Due Care

a) *Also called the duty of "due diligence"*

b) *"Reasonable care" in relation to the "business judgment rule"*

(1) First recognized in *Percy v Millaudon*, 8 Mart. 68 (La. 1829)

(2) The court held that a director would not be liable "if the error was one into which a prudent man might have fallen."

c) *Most frequently claimed breach of duty*

d) *Directors are considered to have met their duty of care if they make decisions in line with three principles:*

(1) **Legality** – Generally, decisions by directors that violate the law is also a breach of care to the corporation

- (2) **Rational Business Purpose** – Directors must make decisions, particularly those committing resources of the corporation, based upon a rational business purpose. Most courts assume that decisions made by the directors are based upon a rational business purpose
- (3) **Informed Decision Making** – Managers must take reasonable steps to research or seek information about a situation before making a decision or taking action. An informed decision that harms the company will generally not result in liability for the director if not done recklessly or with the intention of harming the corporation.

e) *Model Business Corporation Act*

A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person would use in similar circumstances.

- f) *Directors and officers must keep themselves informed of facts*
- g) *At a minimum, they must attend board and committee meetings*
- h) *Examples:*
 - (1) Failing to adequately consider the costs and benefits of a business expansion or new venture
 - (2) Allowing a prospectus which contained errors to be distributed
 - (3) Failing to investigate the credentials of a business consultant advising the board
 - (4) Performing inadequate or inconclusive testing on a new product before putting it on the market

2. **Duty of Loyalty**

- a) *Also known as fiduciary duty*
- b) *Must act in the best interests of the corporation and must not act toward their individual interests*
- c) *Most commonly this duty arises from five concrete situations*
 - (1) **Corporate Opportunity Doctrine**, which states that a director may not take a business opportunity for his or her own
 - (a) The corporation must be financially able to exploit the opportunity
 - (b) The corporation must be financially able to undertake the

opportunity

- (c) The corporation must be interested in the opportunity
- (d) The director must be placed in a position that is hostile to the corporation if the director takes the opportunity for his or her own use

The duty of loyalty, on the other hand, requires that corporate directors devote themselves to corporate affairs with the view to promote the common interests and not only their own, and they cannot directly or indirectly utilize their position to obtain any personal profit or advantage other than that enjoyed by their fellow shareholders. *In re Main, Inc.* BR 281 (Bankr.E.D.Pa. 1999)

- d) *Directors have a fiduciary duty to disclose material information that is reasonably available to the corporation when the directors are seeking action*
- e) *Fiduciary issues arise in efforts to defeat a hostile takeover or to thwart shareholder efforts to change board membership*
- f) *The board must take a careful, systematic approach to determining officer compensation*
- g) *A director's reliance on ill prepared advisors can be a breach of fiduciary duty*
- h) *Examples:*
 - (1) Director or officer can't secretly seize a business opportunity that belongs to the corporation
 - (2) Director or officer can't compete with the corporation
 - (3) Director or officer can't provide goods or services to the corporation
 - (4) Can't use "insider information" to buy or sell stock of the corporation
 - (5) Can't abuse minority stockholders

3. Duty of Obedience

- a) *Obedience to state and federal law*
- b) *Directors and Officers must act within the authority of both their own position and that of the corporation operating within lawful limits*

- c) *A corporation is organized to accomplish some specific mission as stated in the articles of incorporation*
 - (1) Officers and Directors must act as fiduciaries in relation to this mission
 - (2) Officers and Directors must specifically accomplish the mission of the organization
- d) *Tax codes and statutes delineate the authority of Directors and Officers*
- e) *When a board exceeds the powers of the corporation, these are called **ultra vires** acts*
- f) *Examples:*
 - (1) Dividends declared in excess of statutory limitations
 - (2) Bank loans made in excess of mandated limits
 - (3) Violations of Medicare fraud and abuse provisions

B. Basis of Duties

1. Common Law

- a) *Usually involves fraud or a breach of fiduciary duties*
- b) *Business Judgment Rule – “due care and good faith”*

2. State Laws

- a) *Banking laws*
- b) *Pollution laws*
- c) *Securities laws*
- d) *Indemnification statutes*
- e) *Model Business Corporation Act*

3. Federal Laws

- a) *Clayton & Sherman Anti-Trust Acts*
 - (1) Price discrimination
 - (2) Tying and exclusive dealing contracts

(3) Mergers and interlocking directorates

b) The Employees Retirement and Income Security Act (ERISA)

(1) Applies to anyone who exercises discretionary control in the management of a benefit plan or its assets, or who gives investment advice

(a) Duty to act solely in the interest of plan participants

(b) Duty to exercise the care and skill that a prudent person would exercise

(c) Duty to observe sound and safe investment practices

(2) Any fiduciary who breaches a duty is personally liable

c) Internal Revenue Code

d) State and Federal Securities Laws

(1) Securities Act of 1933

(2) Securities Exchange Act of 1934

(3) State Uniform Securities Act

e) RICO (Racketeer-Influenced and Corruption Act)

C. Parties to whom duties are owed

1. Individual capacity

a) Generally speaking, an individual cannot sue an officer or director

b) The individual must have injuries specific to them that do not apply to other shareholders in general

c) Courts want to handle claims for shareholders at once, if possible

2. The corporation (direct action)

a) Board files against current or prior board member

b) Parties of the corporation file against members of the board

3. Shareholders

a) Derivative action - shareholders on behalf of corporation

- (1) Demanding that the board of directors file suit is normally required before a derivative suit can be filed
- (2) The demand screens potential lawsuits by enabling the board to settle the dispute short of litigation

b) Representative action - shareholder against corporation

c) In both, recovery goes to the corporation

d) Types of shareholder claims

- (1) Corporate action with resulting loss
- (2) Faulty Investments
- (3) Excessive or inadequate dividends
- (4) Short-swing profits in violation of Securities Exchange Act of 1934
- (5) Failure to report material information affecting securities transactions
- (6) Insider trading
- (7) Causing unnecessary tax liabilities
- (8) Corporate gifts or contributions
- (9) Excessive compensation
- (10) Loans from corporation to directors and officers
- (11) Permitting corporation to engage in illegal or improper activities
- (12) Wasting of corporate assets
- (13) Improper management
- (14) Inadequate insurance

4. Third parties

a) Employees

b) Creditors

c) Competitors

d) Regulatory bodies (government)

- (1) Securities and Exchange Commission
- (2) Department of Health and Human Services
- (3) Environmental Protection Agency
- (4) Equal Employment Opportunity Commission

e) Contractual relationships

- (1) Breach of contract
- (2) Tortious interference with contractual relationships

f) Types of third party claims

- (1) Antitrust violations (Sherman Antitrust Act)
- (2) Patent, copyright or trade mark infringement
- (3) Failure to disclose material facts
- (4) Filing false or inadequate financial records
- (5) Violation of state or federal regulations
- (6) Corporate debt and delinquencies
- (7) Conflicts of interest
- (8) Failure to qualify corporation

D. Defenses

1. Satisfactory performance

- a) Written documentation such as notes or correspondence*
- b) Opinions of outside experts*

2. The Business Judgment Rule

- a) *Allows reasonable judgement and activity and keeps normal business risk-taking from becoming a burden to Directors and Officers*

Business Judgment Rule Jurisdictions		
Alabama	Iowa	New York
Arizona	Maine	Ohio
California	Maryland	Oklahoma
Connecticut	Michigan	Pennsylvania
Delaware	Minnesota	Rhode Island
District of Columbia	Missouri	Tennessee
Florida	Nevada	Texas
Illinois	New Jersey	Wisconsin

- b) *In jurisdictions not listed, directors should be prepared to defend themselves for ordinary negligence suits*
- c) *Rule covers good faith mistakes, not fraud or other bad faith conduct*
- d) *Once raised, burden of proof is shifted to plaintiff*
- e) *Reasons we like the rule*
- (1) Allows for good faith errors
 - (2) Business decisions will be respected by the courts in the absence of an abuse of discretion
 - (3) Encourages directors to take reasonable risks
- f) *Elements necessary for the rule to apply*
- (1) Diligence and Due care
 - (a) Must ascertain all the information relevant to making an informed decision

- (b) Relying on advise of outside experts when available and appropriate
- (c) Delegation of authority to experts or committees is not a defense
- (2) Disinterestedness (cannot be on two boards and actively voting on an inter-dependent issue)
- (3) No abuse (must be able to prove that they supported the corporation)
- (4) No bad faith (no inter-dependents, no personal benefit)
- g) *If Directors and Officers go beyond the scope of their authority, it is not a business decision and may be subject to review by the courts*

3. Due diligence

- a) *Directors make reasonable investigations with a high degree of care*
- b) *Independent investigations, not merely accepting information provided by the officers*
- c) *The more the Directors and Officers know about the corporation, the greater the obligation to investigate matters which are material to the well-being of the corporation*

4. Concept of privity of contract

- a) *Parties who are not party to the contract cannot maintain an action against the corporation*
- b) *Weakened by statutory enactment's, strict liability and court decisions*

5. Shield Laws

- a) *Allows for corporate articles of incorporation to include provisions eliminating director liability for most breaches of fiduciary duty*

b) Each state has its own particular wording

States With Shield Laws		
Alaska	Louisiana	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Montana	Tennessee
Georgia	Nebraska	Texas
Hawaii	Nevada	Utah
Idaho	New Hampshire	Vermont
Iowa	New Jersey	Virginia
Kansas	New Mexico	Washington
Kentucky	New York	Wyoming
	North Carolina	

States With Self-Executing Statutes		
Florida	Indiana	Maine
Provides automatic immunity from most fiduciary claims.		

Self-Executing Statutes With “Opt-Out” Provisions	
Ohio	Wisconsin
Provides automatic immunity unless shareholders vote to restore director liability.	

6. Ratification of action by shareholders

- a) *Shareholders must be fully informed and taken the action voluntarily*
- b) *Majority must ratify*
- c) *Some cases require 100% ratification*

7. Governmental/Sovereign/Charitable Immunity

a) Common Law - Reasons

- (1) Trust Fund Theory
- (2) Quasi-Governmental Theory

b) Statutory

- (1) The Federal Tort Claims Act (1946) largely abrogated the Federal Government's immunity from tort liability
- (2) Most states now can be sued with respects to most torts
- (3) Examples of Modifications
 - (a) Varies widely by state, and depends on each statute
 - (b) Immunity from certain suits in Federal Courts is still granted by the Eleventh Amendment to the United States Constitution (1798)

c) Volunteer Protection Act of 1997

- (1) The federal law preempts inconsistent state volunteer protection laws
- (2) Covers volunteers of non-profit organizations and governmental entities
 - (a) Organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986
 - (b) Any not-for-profit organization organized and conducted primarily for charitable, civic, educational, religious, welfare, or health purposes
 - (c) The House Judiciary Committee report explains that trade and professional associations and other business leagues are covered
- (3) No immunity for the organization or paid employees of the organization
- (4) Volunteers (as individuals) are protected, if:

- (a) They are acting in the scope of the volunteer activity
 - (b) They are properly licensed, if applicable; **and**
 - (c) The action is not willful or criminal misconduct, gross negligence, or reckless conduct
- (5) Injuries resulting from the volunteer's operation of a motor vehicle is excluded
- (6) The law does not prohibit lawsuits from being filed

VI. Indemnity as Recovery for Loss

A. Originally prohibited or limited only to certain types of actions

1. Under common law, prohibited unless the Director or Officer was successful in their defense
2. Indemnity may have been prohibited unless proven that the litigation was beneficial to the corporation
3. Quite vague prior to the statutory enactments

B. Litigation became a deterrent to responsible business people accepting positions

1. Early 1940s
2. 1960s after the Carnation Case
3. 1980s statutory immunities were granted under certain circumstances

C. Model Business Corporation Act

D. Indemnification process

1. Mandatory indemnification – usually granted when a director or officer successfully defends himself
2. Permissive indemnification – allowed when the corporation's charter, bylaws, or board action (a resolution) specifically authorizes indemnification in some circumstances

3. If neither of the above two processes permits indemnification, the director or officer may petition the court, which takes the place of the corporation in deciding if indemnification is allowed

E. Problems with reliance on indemnification

1. Generally prohibited for claims based on failure to exercise diligence (care)
2. Generally prohibited for claims based on violation of duty of loyalty to the corporation
3. Usually prohibited as against public policy in derivative suits
4. Generally prohibited in allegations of misconduct by directors and officers
5. Antagonism between current board and former board members needing indemnification
6. Sometimes limited scope of indemnification through corporation's own description or through applicable statutes
7. Inoperative in the event of bankruptcy or insolvency

VII. Types of Insuring Agreements

LEARNING OBJECTIVE -- TO EXPLAIN THE DIFFERENCE BETWEEN DIRECTORS AND OFFICERS COVERAGE AND CORPORATE REIMBURSEMENT COVERAGE.

A. One combined single limit of insurance applies to all insuring agreements

B. Directors and Officers – Coverage A

1. Purchased by the corporation
2. Individual (personal) coverage

The Company will pay, on behalf of any Insured Person, Loss that is not indemnified by the Insured Organization and that the Insured Person becomes legally obligated to pay for any Claim first made against the Insured Person during the Policy Period, or any applicable Extended Reporting Period, or a Wrongful Act occurring before or during the Policy Period.

a) *Protects the Directors and Officers against loss due to a negligent act, error, omission, or breach of duty*

b) *Generally, no retention or a small retention*

c) *To avoid stacking, Coverage A is limited to losses for which the corporation does not or cannot provide indemnification to the director or officer, most often arising from:*

(1) When the corporation is not legally required to indemnify directors and officers for a specified claim

(2) When the defendant directors and officers must pay a settlement or judgment in a shareholder derivative lawsuit

(3) When the corporation lacks the financial capacity to indemnify the directors and officers

(a) Corporation is insolvent

(b) Assets are frozen, such as bankruptcy

d) *Corporate reimbursement retention applies when indemnification is permitted or required*

(1) Presumptive Indemnification Provision

The Company agrees, as a condition to the coverage afforded under this Policy, to provide indemnification and advancement to the Directors and Officers to the fullest extent permitted by law. The certificate of incorporation, charter, articles of association or other organizational documents of the Company, including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the Directors and Officers to the fullest extent permitted by law.

(2) Regardless of whether the corporation does, in fact, indemnify the directors, the insurance company will apply the corporate reimbursement retention

e) *Supports the legal doctrine holding individuals responsible for their actions which cause injury or loss to third parties*

C. Corporate Reimbursement or Indemnification Coverage – Coverage B

The Company shall pay, on behalf of an Organization, Loss on account of a Claim first made against an Insured Person during the Policy Period, to the extent the Organization pays or indemnifies such Loss.

- 1. Purchased by the corporation**
- 2. Reimburses the corporation if there is a formal agreement to indemnify the directors and officers for claims payments and defense costs from a wrongful act:**
 - a) Under the organization's charter or bylaws*
 - b) Individual agreements with a director or officer as a condition of employment*
 - c) State indemnification statutes*
 - d) Common law requirements in the state of incorporation*
- 3. Primary coverage, with retention applying if indemnification is permitted or required, even if loss is paid under Directors and Officers**
- 4. Necessary because of the legal doctrine holding corporations responsible for the acts of their Directors and Officers**
- 5. Not coverage for the corporation itself**
 - a) Reimbursement of the corporation*
 - b) Claims paid for individual directors and officers*

D. Entity Coverage – Coverage C

C. Organization Liability

The Insurer shall pay Loss on behalf of an Insured Organization resulting from a Securities Claim first made against such Insured Organization during the Policy Period or Extended Reporting Period, if applicable.

"Securities Claim" means any Claim:

1. for violation of any securities laws involving securities issued by an Insured Organization, including, without limitation, the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar law;
2. arising out of the purchase or sale, or an offer of solicitation or an offer to purchase or sell, any securities issued by an Insured Organization, regardless of whether such purchase, sale or offer occurs in the open market or in a transaction with such Insured Organization; or
3. brought by any securities holder of an Insured Organization, in their capacity as such, including a Derivative Suit.

1. **May be an insuring agreement or endorsement**
2. **Without Coverage C, the policy only pays the corporation for indemnification claims, not claims attributable to the entity's wrongful acts**
3. **Allocation of losses involving both the entity and the D&Os become complex without Coverage C**

If in any Claim the Insureds incur both Loss covered by this Policy and loss not covered by this Policy either because the Claim against the Insureds includes both covered and uncovered matters or because the Claim is made against Insureds, who are not afforded coverage for such Claim, the Insureds and the Insurer shall use their best efforts to allocate such amount between covered Loss and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters; provided however that one hundred percent (100%) of any such Defense Costs shall be allocated to covered Loss if and to the extent such Defense Costs are incurred by covered Insureds and are in part covered and in part not covered by this Policy solely because the Claim against the Insureds includes both covered and uncovered matters.

4. **Because of shared limits, Coverage C could erode the limits available to protect the D&Os**
5. **Bankruptcy courts sometimes hold that the D&O policy is an asset of the entity and no coverage is available for D&Os until all claims are resolved**

E. Derivative Investigation Coverage – Coverage D

The Company will pay, on behalf of the Insured Organization, Investigation Expense for any Shareholder Derivative Demand first made during the Policy Period, or any applicable Extended Reporting Period, for a Wrongful Act occurring before or during the Policy Period.

Investigation Expense means the reasonable costs, charges, fees (including attorneys' and experts' fees), and expenses, in connection with the investigation or evaluation of any Shareholder Derivative Demand covered under Insuring Agreement D incurred by: (1) the Insured Organization; (2) the board of directors or board of managers of the Insured Organization, or any functional equivalent board; or (3) any committee of such board.

Investigation Expense does not include regular or overtime wages, salaries, or fees of any director, officer, Manager, or employee of an Insured Organization or Outside Entity.

Shareholder Derivative Demand means any written demand on behalf of the Insured Organization brought and maintained by any shareholder of the Insured Organization and made upon the board of directors or board of managers of the Insured Organization, or any functional equivalent board, to bring a civil proceeding in a court of law against any Insured Person for a Wrongful Act committed by an Insured Person, but only if such demand is brought and maintained without the active solicitation, assistance, or participation of any Insured.

1. **Pays the cost of investigations that are required when a derivative claim is made against the insured corporation**
2. **No retention, and usually subject to \$250,000 sublimit**

VIII. Directors and Officers Liability Policy

LEARNING OBJECTIVE -- TO EXPLAIN THE MAJOR PROVISIONS COMMONLY FOUND IN DIRECTORS & OFFICERS INSURANCE POLICIES.

A. Claims Made Nature

1. **Almost without exception on a claims made basis**
2. **Most policies have a definition of claim that include the following requirements:**
 - a) *A demand against the insured*
 - b) *A request for some specific relief such as money or services*
 - c) *An allegation of wrongdoing such as negligence*
 - d) *Because most D&O policies are on a claims-made basis, the definition of claim is extremely important*
3. **Some claim definitions are not as inclusive**
 - a) *Could be limited to written demands for monetary damages and civil proceedings against the insured*
 - b) *Criminal proceedings are often not included in the definition and if included, limited to defense costs as public policy bars insurers from covering criminal penalties*
4. **It could be broader by including arbitration proceedings as well as civil, administrative or regulatory investigation**

5. Claim

Claim means:

1. a written demand against any Insured for monetary damages, non-monetary or injunctive relief, including a written demand that the Insured toll or waive a statute of limitations;
2. a civil proceeding against any Insured commenced by the service of a complaint or similar pleading;
3. a criminal proceeding against any Insured commenced by return of an indictment, information or similar document;
4. an administrative or regulatory proceeding against any Insured commenced by the filing of a notice of charges or similar document;
5. a civil, criminal, administrative or regulatory investigation of any Insured Person commenced by the service upon or other receipt by the Insured Person of a Wells notice, target letter or other written notice from the investigating authority identifying by name the Insured Person as an individual against whom a proceeding may be commenced;
6. an official request for the Extradition of any Insured Person or the execution of a warrant for the arrest of any Insured Person where such execution is an element of Extradition; or
7. an arbitration, mediation or any other alternative dispute resolution proceeding against any Insured;
8. solely with respect to INSURING AGREEMENT A., any request, demand or subpoena by a regulatory, administrative, governmental or similar authority to interview or depose an Insured Person, or for the production of documents by an Insured Person, in his or her capacity as such; or
9. solely with respect to INSURING AGREEMENT D., a Shareholder Derivative Demand.

B. Loss

E. "LOSS" shall mean any amount or any INSURED is legally obligated to pay or which the ENTITY shall be required or permitted by law to pay as indemnity to an INSURED, for any claim or claims made against them, for WRONGFUL ACTs, and shall include but not be limited to damages, judgments, settlements, cost of investigation, legal fees or other costs of defense of legal actions, claims or proceedings and appeals therefrom, cost of attachment or similar bonds; provided always, however, such LOSS shall not include the cost of salaries of the INSURED's, fines or penalties imposed by law, or matters which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

1. Typically defined to include all damages that the D&Os become legally obligated to pay, subject to certain exclusions and limitations
2. Loss is defined to include defense costs because of the extremely high costs that can be incurred defending against D&O claims
3. Typically excludes certain costs such as taxes, criminal or civil fines or penalties, punitive or exemplary damages, or the multiplied portion of any damages, such as treble damages under the Sherman Antitrust Act
4. If punitive damages are included, a "most-favorable jurisdiction" provision may be included

C. Wrongful Act

1. Usually very broad but is limited by exclusions or other limitations

Any error, misstatement, misleading statement, act, omission, neglect or breach of duty actually or allegedly committed or attempted by the directors and officers, individually or collectively, in their respective capacities as such, or any matter claimed against them solely by reason of their status as directors and officers.

2. The definition often includes a provision stating that all claims arising from the same or any related wrongful act will be treated as a single claim

(1) All related claims subject to one limit available to the insured

(2) Only one deductible would apply

3. If not found here, it could be in limits of insurance or another provision

All Claims which arise out of the same Wrongful Act and all Interrelated Wrongful Acts of Insureds shall be deemed one Claim, and such Claim shall be deemed to be first made on the date the earliest of such Claims is first made against any Insured, regardless of whether such date is before or during the Policy Period ... Interrelated Wrongful Acts means all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

D. Claims Made Provisions

1. Pure claims made

The Company shall pay, on behalf of each of the Insured Persons, Loss which is not paid or indemnified by the Organization or other source and which the Insured Person becomes legally obligated to pay on account of any Claim first made against the Insured Person during the Policy Period or, if exercised, during the Extended Reporting Period, for a Wrongful Act committed, attempted, or allegedly committed or attempted by such Insured Person before or during the Policy Period.

2. Claims made and reported

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

3. 30-day reporting window

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

E. Extended Reporting Periods

1. Generally available on a bilateral basis

- a) *May be available only if insurance company cancels or non-renews*

If the Insurer shall cancel or refuse to renew this policy the Insureds shall have the right . . .
--

- b) *Cost*

- (1) Generally stated at policy inception
- (2) 25% - 100% of expiring premium

- c) *Length of Extension*

- (1) Typically, very short (30- to 60-days) of automatic tail
- (2) Option to add 1 – 5 years of coverage after automatic tail
- (3) Possible separate limit for tail, with limits greater, less, or the same as coverage limits during the policy period

- d) *Time to exercise option*

- (1) 10 days after expiration or non-renewal common
- (2) May be up to 90 days
- (3) Premium may have to be paid up front

F. Retroactive Dates and Prior Acts Coverage

1. Full Unknown

- a) *Subject to an application warranty that none of the D&Os knew of any circumstance that might result in a claim*
- b) *Application usually includes current and prior applications with the **current** insurer*

c) It could include applications from **prior** insurers

“Application” means any:

(1) application for this Policy, including any materials or information submitted therewith or made available to the Insurer by the Insured during the underwriting process, which application shall be on file with the Insurer and deemed a part of this Policy and attached hereto;

(2) application for any policy in an uninterrupted series of policies issued by the Insurer or any insurance company controlling, controlled by or under common control with the Insurer of which this Policy is a renewal or replacement; and

(3) any publicly available information filed by an Entity within the preceding two years with the United States Securities and Exchange Commission.

2. Limited - Retro Date

a) Only acts after the retroactive date are covered

G. Reporting of Known Wrongful Acts

1. Discovery Provisions (“notice of potential claim” or “awareness provisions”)

If, during the Policy Period, an Insured first becomes aware of any acts, errors or omissions which may subsequently give rise to a Claim, and:

a. Gives the insurer written notice of such acts, errors or omissions with full particulars as soon as practicable thereafter, but in any event before the end of the Policy Period; and

b. Requests coverage under this Policy for any Claim subsequently arising from such reported acts, errors or omissions as soon as practicable after such Claim is made;

then any Claim subsequently made against the Insured arising out of such acts, errors or omissions shall, subject to Condition C. below, be treated as if it had been first made during the Policy Period. The full particulars required in any notice given under Condition B.2 must include, without limitation, a description of the acts, errors, or omissions, the identities of the potential claimants and involved Insureds, the injury or damages which have resulted and/or may result from such acts, errors or omissions, the manner in which the Insured first became aware of such acts, errors or omissions, and the reasons why the Insured believes a Claim is likely to be made. The Insured's conduct of internal loss control activities, without more, will not constitute reporting under Condition B.2.

2. Allows the insured to “lock-in” coverage for events so that coverage will apply under the current policy

3. This provision is independent of any tail coverage

H. Persons and Organizations Insured

1. Persons under Coverage A

a) *Past, present, and future directors and officers*

(F) “**Insured Persons**” shall mean only those individuals who did occupy, now occupy or shall occupy positions listed as Covered Positions of the Company in ITEM 10 of the Declarations;

b) Estates and heirs

(a) This policy shall cover loss arising from any claims made against the estates, heirs, legal representatives or assigns of deceased persons who were Directors or Officers of the Organization at the time of the Wrongful Act upon which such claims are based and the legal representatives or assigns of Directors or Officers in the event of their incompetency, insolvency or bankruptcy.

c) Spousal or marital assets coverage

The estates, heirs, legal representatives, assigns, spouses and Domestic Partners of Insured Persons shall be considered an Insured Person but only for a Claim arising solely out of their status as such and, in the case of a spouse or Domestic Partner, where such Claim seeks damages from marital community property, jointly held property or property transferred from the Insured Person to the spouse or Domestic Partner. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or Domestic Partner. All provisions in these General Terms and Conditions and the respective Insuring Agreement applicable to Loss incurred by the Insured Person shall also apply to loss incurred by such estates, heirs, legal representatives, assigns, spouses and Domestic Partners.

2. Organizations under Coverage B

a) The insured corporation or corporations named in the declarations

In consideration of an additional premium paid, it is understood and agreed that coverage is hereby extended to loss as defined in Clause III (D) of the policy arising from claim or claims made against the organization but only in respect of wrongful act done or allegedly done by the directors, officers and/or employees which are imputed to the organization as their principal.

- (1) Provides defense to the corporation
- (2) Provides coverage if only the corporation is named in the suit
- (3) If not covered, allocation issue
- (4) Over 77% of the suits name the corporation
- (5) Watch the policy territory for foreign exposures

b) *Subsidiary directors and officers*

(b) This policy may be extended to cover Directors and Officers of any subsidiaries acquired or created after the inception of this policy subject to written notice thereof being given to the Underwriters together with such information as the Underwriters may require as soon as practicable and the Organization shall pay as additional premium, if required by the Underwriters, based on such information.

- Definition of subsidiary DETERMINES if NEW ENTITY MEETS definition

A. Company means:

- (1)** the Parent Company, and
- (2)** any subsidiary

B. Parent Company means the entity named in Item A. of the Declarations.

- OWNED AT INCEPTION
- AUTOMATIC MUST FALL BELOW CERTAIN ASSET SIZE
- OTHER THAN AUTOMATIC REPORTING REQUIREMENT
- PREMIUM PAYMENT REQUIREMENT
- Subsidiary defined

Subsidiary means:

- (1) Any corporation of which Named Corporation owns on or before the inception of the Policy Period more than 50% of the issued and outstanding voting stock either directly, or indirectly through one or more of its subsidiaries;
- (2) Automatically any corporation whose assets total less than 10% of the total consolidated assets of the Corporation as of the inception date of this policy, which corporation becomes a Subsidiary during the policy period. The Named Corporation shall provide the Insurer with full particulars of the new Subsidiary before the end of the Policy Period;
- (3) Any corporation which becomes a Subsidiary during the Policy Period (other than a corporation described in paragraph (2) above) but only upon the condition that within 90 days of its becoming a Subsidiary the Named Corporation shall have provided the insurer with full particulars if the new Subsidiary and agree to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new Subsidiary.

A corporation becomes a Subsidiary when the Named Corporation owns more than 50% of the issued and outstanding and voting stock, either directly, or indirectly through one or more of its Subsidiaries. A corporation ceases to be a Subsidiary when the Named Corporation ceases to own more than 50% of the issued and outstanding voting stock, either directly, or indirectly through one or more of its Subsidiaries.

In all events, coverage as is afforded under this policy with respect to any Claim made against a Subsidiary or any Director or Officer thereof shall only apply to wrongful acts committed or allegedly committed after the effective date that such Subsidiary became a Subsidiary and prior to time that such Subsidiary ceased to be a Subsidiary.

c) May require payment of additional premium to activate coverage

- 90 day NOTIFICATION
- PAYMENT OF PREMIUM

(1) Any corporation which becomes a Subsidiary during the Policy Period (other than a corporation described in paragraph (2) above) but only upon the condition that within 90 days of its becoming a Subsidiary the Named Corporation shall have provided the insurer with full particulars of the new Subsidiary and agreed to pay any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Named Corporation paying when due any additional premium required by the Insurer relating to such new Subsidiary.

3. Change of Control or Adjustment Clauses

a) Definition of Corporate Takeover

Corporate Takeover means:

- (1) the acquisition by any person or entity of more than 50% of the outstanding securities of the Parent Company representing the present right to vote for the election of directors, or
- (2) the merger of the Parent Company into another such that the Parent Company is not the surviving entity, or
- (3) the consolidation of the Parent Company with another entity or the acquisition of substantially all of the assets of the Parent Company by another entity, or
- (4) the appointment of a conservator, receiver or administrator to manage the affairs of the Parent Company, or
- (5) the Parent Company ceasing to be publicly held.

b) *Change in Exposure*

- RUN-off COVERAGE
UNTIL policy
EXPIRATION

Acquisition of Parent Organization by another Organization if (i) the Parent Organization merges into or consolidates with another organization, or (ii) another organization or person or group of organizations and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the Parent Organization, coverage under this coverage section shall continue until termination of this coverage section, but only with respect to Claims or Wrongful Acts committed, attempted, or allegedly committed or attempted, by Insured Persons prior to such merger, consolidation or acquisition to the Company as soon as practicable together with such information as the Company may require.

c) *Some grant an affirmative run-off clause for the acquired company*

In the event of a Transaction, as defined in Clause 12, the Named Corporation shall have the right, within 30 days before the end of the Policy Period, to request an offer from the Insurer of a Discovery Period (with respect to Wrongful Acts occurring prior to the effective time of the Transaction) for a period of no less than three years or for such longer or shorter period as the Named Corporation may request. The Insurer shall offer such Discovery Period pursuant to such terms, conditions and premium as the Insurer may reasonably decide. In the event of a Transaction, the right to a Discovery Period shall not otherwise exist except as indicated in this paragraph.

The additional premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

d) *Some exclude claims based on acts subsequent to a corporate takeover*

Underwriters shall not be liable . . .

- J.** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving, any Wrongful Act actually or allegedly committed subsequent to a Corporate Takeover.

4. Who also needs and/or wants coverage

a) Employees

In consideration of an additional premium paid, it is hereby understood and agreed that coverage is hereby extended to include employees of the organization as additional assureds and wherever the term director and/or officer appears in the policy wording it shall be understood to mean director, officer and/or employee.

b) Outside directors

Outside Position Coverage

Subject to the provisions of this Policy, coverage shall apply to a Claim made against an Insured Person for a Wrongful Act while serving in an Outside Capacity. Such coverage shall be specifically excess of any indemnification and valid and collectible insurance available from or provided by the Outside Organization. Payment by the Insurer, or any insurance company controlling, controlled by or under common control with the Insurer, under any other insurance policy as a result of such Claim shall reduce, by the amount of such payment, the limit of liability available under this Policy for such Claim.

"Outside Capacity" means service by an Insured Person as a director, officer, trustee, regent, governor, board observer or equivalent executive of an Outside Organization with the knowledge and consent, or at the request, of an Insured Organization.

"Outside Organization" means any non-profit corporation, community chest, fund or foundation that is: (i) not an Insured Organization; and (ii) exempt from federal income tax as an entity described in Section 501(c) (3) or Section 527 of the Internal Revenue Code of 1986.

- (1) When serving at the board's request
- (2) Typically for a non-profit company
- (3) Extend this section to include spouse and estate also
- (4) Policy could be excess over any valid and collectible insurance carried by the other company

c) Managers/Supervisors/Administrators

- (1) Same duties as Directors and Officers
- (2) Not given a title

d) *Members*

(1) Association members

(2) Limited Liability Company members (and managers)

e) *Partnerships and/or joint ventures*

f) *Prior names*

g) *Volunteers/Donors*

It is hereby understood and agreed that Insured shall also include any other member of the organization while acting at the direction of any officer or the board of directors of the organization on behalf of the organization.

I. Exclusions

LEARNING OBJECTIVE -- To identify AND UNDERSTAND key EXCLUSIONS UNIQUE TO DIRECTORS AND OFFICERS COVERAGE.

1. Exclusions can be grouped into different categories

a) *Loss exposure better covered by another insurance policy*

b) *Claims covered or reported under prior policies*

c) *Failure to effect or maintain insurance*

d) *Insured-versus-insured exclusion*

e) *Loss exposures that are difficult to insure*

2. Definition of loss could exclude fines or penalties

3. Better Covered by Another Insurance Policy

a) *Personal and advertising injury, bodily injury, property damage*

- (1) Expansive version – “for” bodily injury or property damage

The Company shall not be liable for Loss on account of any Claim ... for bodily injury, violation of any right of privacy, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property, including loss of use thereof, whether or not it is damaged or destroyed; provided that this Exclusion (D) shall not apply to any invasion of privacy, mental anguish, humiliation or emotional distress for which a claimant seeks compensation in an employment-related claim.

- (2) Restrictive version – “arising out of” bodily injury or property damage

No coverage will be available under this Policy for Loss, including Defense Expenses, from Claims based on, arising out of, directly or indirectly resulting from, or in any way involving any ... actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, ... or damage to or destruction of any tangible property including loss of use thereof.

b) *Pollution – typically applies to Coverage B, Corporate Reimbursement*

- (1) Derivative actions

- (2) Expansive – “for” pollution

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured ... For the actual, alleged or threatened discharge, dispersal, release or escape of pollutants or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including but not limited to Claims alleging damage to the Insured Organization; provided, this EXCLUSION shall not apply to any Claim under SECTION I. - INSURING AGREEMENT A. of this policy.

(3) Restrictive – “arising out of or related to” pollution

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any Insured...based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving actual or alleged seepage, pollution, radiation, emission, contamination or irritant of any kind, including but not limited to smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, asbestos, chemicals or waste of any kind, provided, however, that this exclusion shall not apply to: (1) any Securities Claim, or (2) any coverage provided under Insuring Agreement I.A.

c) ERISA

The Insurer shall not be liable to pay any Loss resulting from any Claim against an Insured ... for an actual or alleged violation of the Employee Retirement Income Security Act of 1974 and its amendments or any rules, regulations or orders promulgated thereunder, or any similar provisions of any federal, state, local or statutory law or common law in connection with any profit sharing, pension, health and welfare or other employee benefit plan or trust established or maintained for the purpose of providing benefits to employees of the Company or the Outside Entity.

d) Employment Related Practices

4. Claims Covered or Reported Under Prior Policies

a) Prior and pending litigation

- PRIOR AND PENDING DATE SHOULD BE FIRST D&O policy ISSUED
- BETTER SOLUTION WOULD BE NOT HAVING THIS EXCLUSION IN A RENEWAL

The Insurer will not be liable under this Coverage Part to make any payment of Loss, including Costs of Defense, in connection with any Claim made against any Insured ... based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any prior and/or pending civil, criminal, administrative or investigative proceeding involving the Company, any Insured as of the Prior and Pending Date stated in ITEM 7 of the Declarations, or any fact, circumstance or situation underlying or alleged in such proceeding.

b) *Prior loss exclusion*

- REPORTED TO A PRIOR policy
- CURRENT INSURER OR PRIOR INSURER

The Insurer will not be liable under this Coverage Part to make any payment of Loss, including Costs of Defense, in connection with any Claim made against any Insured . . . based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any Wrongful Act or Related Wrongful Act or any fact, circumstance or situation which has been the subject of any notice given under any other policy of which this Coverage Part is a renewal or replacement.

5. Difficult to Insure

a) *Personal profit (e.g., use of inside information)*

The insurer shall not be liable for Loss on account of any Claim made against an insured . . . based upon, arising out of, or attributable to such insured gaining in fact any profit, remuneration or financial advantage to which such insured was not legally entitled.

b) *Fraudulent or Dishonest Acts – not permitted by public policy*

(1) "Final Adjudication" wording

The Insurer shall not pay Loss in connection with that portion of any Claim made against an Insured Executive for any Wrongful Act, or against the Company for a Securities Wrongful Act that is:

- (1) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by the Company or an Insured Executive;

provided that the acts or conduct underlying the foregoing exclusions in this Section III. D. are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying action establishes that such Insured Executive committed such act, omission or violation, or gained such profit or remuneration. These exclusions shall not be applicable to that part of Loss, which is comprised of Defense Expenses.

(2) "In Fact" wording

The Insurer shall not be liable to make any payment for Loss in connection with any Claim . . . Arising out of, based upon or attributable to the committing in fact of deliberate fraudulent, dishonest or criminal acts by the Directors or Officers, or by employees, agents or representatives of the Company.

c) *Violations of securities acts (e.g., Short Swing Profits)*

The Insurer shall not pay Loss in connection with that portion of any Claim made against an Insured Executive for any Wrongful Act, or against the Company for a Securities Wrongful Act that is ... for any "short swing" profit amounts in violation of Section 16 (b) of the Securities Exchange Act of 1934; provided that the acts or conduct underlying the foregoing exclusions in this Section III. D. are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying action establishes that such Insured Executive committed such act, omission or violation, or gained such profit or remuneration. These exclusions shall not be applicable to that part of Loss, which is comprised of Defense Expenses.

d) *Excess remuneration*

e) *Return of remuneration*

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against any insured:

1. Based upon, arising out of or attributable to any remuneration received by an insured, or the granting of any remuneration to any insured, with the previous approval of the stockholders or the Board of Directors, which remuneration is found to have been illegal; provided, this EXCLUSION shall not apply unless a judgment or other final adjudication adverse to any insured in the Claim shall establish that such insured received remuneration to which such insured was not legally entitled.

6. Common

a) *Nuclear*

7. Insured-versus-insured

a) No coverage intended for “infighting”

b) No insurer intent to recover for bad business decisions

- KEY EXCEPTION WORDING

- DERIVATIVE ACTIONS

- EMPLOYMENT RELATED PRACTICES

- CLAIMS FOR CONTRIBUTION OR INDEMNITY

- CLAIMS BY PREVIOUS INSURED

- CLAIMS BY BANKRUPTCY TRUSTEES

- CLAIMS BROUGHT OUTSIDE THE UNITED STATES

- WHISTLE-BLOWER CLAIMS

The Insurer shall not be liable for any Loss in connection with any Claim made against any Insured:

C. brought or maintained by or on behalf of the Company, any Insured Person (as defined in Section II.O.1.) in any capacity or by any past, present or future security holder, partner or member of the Company, provided this exclusion shall not apply to:

1. a Claim by or on behalf of a security holder, partner or member of the Company, whether direct or derivative, that is brought and maintained without the solicitation, assistance or participation of any Insured or Outside Entity;
2. a Claim for an Employment Practices Wrongful Act brought or maintained by any Insured Person;
3. a Claim brought or maintained by any Insured Person that is in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from, a Claim which is otherwise covered under the terms of this Policy;
4. a Claim brought by any Insured Person who has not served in such capacity for at least three (3) years prior to the date such Claim is first made and who brings and maintains such Claim without the solicitation or active assistance or participation of the Company or any other Insured Person who is serving or has served as an Insured Person within such three (3) year period;
5. a Claim brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, similar official or creditors committee for such Company, or any assignee of such trustee, examiner, receiver, or similar official or creditors committee;
6. a Claim brought by or on behalf of the Company against any Insured Person that is brought and maintained in any non-common law jurisdiction outside the United States; or
7. a Claim brought against an Insured Person based upon or arising out of any protected activity specified in any "whistleblower" protection pursuant to any foreign, federal, state or local law.

8. Others

a) *Failure to maintain insurance* - **remove**

The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against an Insured ... alleging, arising out of, based upon or attributable to any failure or omission on the part of any Insured to effect or maintain adequate insurance.

b) *Commissions or gratuities* - **remove**

c) *Regulatory agency* - **remove**

d) *Punitive damages*

(1) Specifically excluded

(2) Policy silent

e) *Captive insurance company* - **remove**

f) *Hostile takeover or greenmail* - **remove**

9. Severability of exclusions

a) *Specific severability provision appears after each specific exclusion*

The Insurer shall not be liable to pay any Loss resulting from any Claim against an Insured ... based upon, attributable to, or arising out of any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed by such Insured, if a final and non-appealable adjudication adverse to such Insured in any proceeding not brought by the Insurer establishes such a deliberately fraudulent act or omission or willful violation ... For the purpose of determining the applicability of any Exclusion in this policy, the Wrongful Act or knowledge of any Insured Person shall not be imputed to any other Insured Person, and under Coverage C, only the Wrongful Act or knowledge of an Executive Officer of a Company shall be imputed to such Company and its Subsidiaries.

b) *Blanket severability provision found at the end of the exclusion section*

No fact pertaining to, or knowledge possessed by, any Insured Person will be imputed to any other Insured Person for purposes of applying the exclusions set forth in section IV. EXCLUSIONS. Only facts pertaining to, or knowledge possessed by, an Executive Officer will be imputed to the Insured Organization for purposes of applying the exclusions set forth in section IV. EXCLUSIONS.

J. Other D&O Policy Provisions

1. Duty to Defend

a) *Privately held and nonprofit organizations use duty to defend language*

b) *Larger accounts typically select and pay the defense lawyers*

The Insured ... shall have the sole duty to defend Claims made against the Insured.

c) *Cooperation clauses*

- INSURANCE COMPANY HAS THE RIGHT TO ASSOCIATE

The Insurer shall have the right and shall be given the opportunity to effectively associate with the Insureds in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any Claim or Insured Inquiry that is or appears reasonably likely to be covered under this Policy.

d) *Covered defense cost items*

- SALARIES of INSURED NOT COVERED

"Costs of Defense" shall mean reasonable and necessary legal fees, costs and expenses incurred in the investigation or defense of any Claim including the costs of an appeal bond, attachment bond or similar bond (but without obligation on the part of the Insurer to apply for or furnish such bonds); provided, however, Costs of Defense shall not include salaries, wages, overhead or benefit expenses associated with any Insured Persons.

e) *Defense costs within limits*

C. Defense Costs are part of, and not in addition to, the Limit of Liability and the Insurer's payment of Defense Costs shall reduce and may exhaust the Limit of Liability.

(1) Incentive for insured to settle claims

(2) Difficulty in projecting defense costs

f) *Lack of coverage for first dollar defense*

- RETENTION APPLIES TO DEFENSE

The Insurer shall only pay Loss in excess of the Retention applicable to each Claim as specified in Item D of the Declarations. Defense Costs are applied against the Retention. The Retention shall be borne by the Insureds uninsured at the Insureds' own risk.

g) *Historically, reimbursement for defense costs made when the claim is completely resolved*

- (1) Insurer may advance defense costs

- SATISFY RETENTION
- COSTS ADVANCED REDUCE POLICY LIMITS
- IF INSURER HAS NO LIABILITY, REPAYMENT REQUIRED

The Insurer will advance Costs of Defense prior to the final disposition of any Claim covered by this Policy, on the condition that:

1. any applicable retention shall have been satisfied;
2. any amounts advanced by the Insurer will reduce the Insurer's applicable Limit of Liability under any applicable Coverage Part and under this Policy to the extent such amounts are not in fact repaid; and
3. in the event it is finally established that the Insurer has no liability under the Policy for Loss in connection with such Claim, the Insureds will repay the Insurer upon demand all Costs of Defense advanced to them or on their behalf.

- (2) This provision complicates the allocation between covered and non-covered elements of the loss

h) *Most policies make payments for defense as incurred*

2. Allocation of Loss

a) *In many suits the allegations include claims not covered*

b) *Courts have consistently held that an insurance company must defend the entire claim as long as any part falls within the policy*

c) *Because most D&O claims are settled before trial, insurers are in a better position to assert not all claims are covered*

d) *If defense costs advanced, repayment and/or consent to settle wording controls allocation*

3. Consent to Settle Claims

- CONSENT TO SETTLEMENT
- CONSENT NOT REQUIRED WITHIN RETENTION
- Will NOT BE UNREASONABLY WITHHELD

(A) The Insured:...

(2) agrees not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's prior written consent, subject to Paragraph **(A)(3)** below;

(3) may settle a **Claim** without the Company's prior consent if the **Claim** is reported pursuant to Section VI, Reporting, and the amount of such settlement and Defense Costs does not exceed the amount of the applicable Retention ...

(B) The Company: ...

(2) shall not be liable for any element of **Loss** incurred in excess of the amount of the applicable Retention, for any obligation assumed, or for any admission made, by any Insured without the Company's prior written consent, which the Company shall not unreasonably withhold.

a) Remove any "hammer clauses"

4. Severability of Interests

a) Material facts known by CEO or CFO are imputable to others

With respect to the statements, warranties and representations contained in the Application:

A. only knowledge possessed by a past, present or future: (i) chief executive officer or (ii) chief financial officer of the Named Entity shall be imputed to all Insureds; and

B. knowledge possessed by an Insured Person, other than a past, present or future: (i) chief executive officer or (ii) chief financial officer of the Named Entity shall not be imputed to any other Insured Person.

b) Material facts known by signer of application imputable to others

Except for knowledge or information possessed by, or facts or circumstances pertaining to the person or persons who signed the Application, no statement or representation in the Application or knowledge or information possessed by an Insured Person will be imputed to any other Insured Person for the purpose of determining the existence or availability of coverage under this policy.

c) *Full severability*

For the purpose of determining coverage:

1. the Application shall be construed as a separate application for coverage by each Insured;
2. knowledge possessed by any Insured Person shall not be imputed to any other Insured Person; and
3. only knowledge possessed by an Executive shall be imputed to an Insured Organization.

Except as described above, knowledge possessed by any Insured shall not be imputed to any other Insured.

5. Deductible and participation

a) *Separate deductibles or retentions apply per claim*

- (1) Coverage A, individual directors and officers and Coverage D, derivative investigation – often lower, sometimes significantly
- (2) Coverage B, corporate reimbursement, and Coverage C, entity securities are subject to a retention – often higher
- (3) Presumptive indemnification resolves which deductible applies

b) *Both indemnity and defense cost*

c) *Anti-stacking wording*

- RETENTION APPLIES PER WRONGFUL ACT, NOT CLAIMANT

All Claims arising out of the same Wrongful Act and all related wrongful Acts are deemed one Claim ... The Company's liability with respect to Loss for each Claim applies only to that portion of Loss that is excess of the applicable Retention set forth in ITEM 5 of the Declarations.

d) *For Coverage A, may apply per director with an aggregate deductible*

e) *May be a deductible only for Coverage B, no deductible for Coverage A*

f) *Participation*

- (1) 95% by the insurance company
- (2) 5% by the insured

g) Policy warrants that both the retention and the insured's participation must remain at the insured's risk and cannot be insured

- MUST REMAIN UNINSURED

The Insurer shall only pay Loss in excess of the Retention applicable to each Claim as specified in Item D of the Declarations. Defense Costs are applied against the Retention. The Retention shall be borne by the Insureds uninsured at the Insureds' own risk.

6. Insured's Duties to Report Claims

- IMMEDIATELY, AS SOON AS PRACTICABLE, AS SOON AS POSSIBLE

As a condition precedent to their rights under the policy, the Insureds' shall give written notice to the Underwriter of a Claim as soon as practicable after the Claim is first made against the Insureds but in no event later than ninety (90) days after the expiration of the Policy Period or after the Extended Reporting Period (if purchased).

7. Arbitration

The Insured(s) and the Insurer shall submit any dispute or controversy under this Policy to either non-binding mediation or binding arbitration as described in this Subsection (the "ADR process"). Either the Insured(s) or the Insurer may initiate the ADR process by sending written notice to the other party designating which type of ADR process is being elected. If within fourteen (14) days after such notice is given the parties disagree on the type of ADR process, the Insureds' preference shall control.

IX. Other Considerations

A. The Application

1. Usually attached to policy

2. Typically "warrants" information

- a) Treated as a part of the policy
- b) Requires signature to bind coverage
- c) Watch out for new application versus renewal application

3. Supplementary information

- a) Audited financial statements for two to five years
- b) List of all officers and directors

- c) *Organization chart of parent, subsidiaries, and affiliates*
- d) *Copy of bylaws*
- e) *10-Ks – publicly traded corporations*
- f) *Company Indemnification Agreement*
- g) *Laundry list of any matter that could give rise to later claims*

B. Changing companies

1. **Continuity**
2. **Wording of “incident” definition**

X. Non-profit Entities

A. Possible grounds for lawsuits

1. **Irregular attendance at board meetings**
2. **Mismanagement of funds**
3. **Conflicts of interest**
4. **Unwarranted salaries**
5. **Discriminatory practices**

B. Form

C. Coverages available

D. Eligible risks

1. **Churches**
2. **Country clubs**
3. **Foundations**
4. **Fund-raising organizations**
5. **Social service organizations**
6. **Trade associations**

Charitable Organization Liability

From: *State Liability Laws for Charitable Organizations and Volunteers, 4th Ed.*, © 2001, 2005, 2008, 2009

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Key to Abbreviations and Codes on Table Following

- x Exception to immunity granted to directors and officers
- o Exceptions inferred from wording of liability standard
- * State has more than one statute of this type; most protective law shown here

Type of Organization

- c Qualifying for tax exemption under any subsection of Internal Revenue Code Section 501(c) for nonprofit organizations
- c3 Qualifying for tax exemption under Internal Revenue Code Section 501(c)3 for charitable organizations
- c4 Qualifying for tax exemption under Internal Revenue Code Section 501(c)4 for social welfare organizations
- np Nonprofit organization as defined by state law
- npc Nonprofit corporation as defined by state law
- ch Charitable organization as defined by state law
- gv Governmental organization
- te Organization exempt from state tax
- oth Other, e.g., homeowners' associations, licensed medical facilities, organizations that would be exempt but for legislative or political activities
- + Organizations in addition to the type listed
- Subset of organizations of the type listed

Other

- i Operation of a motor vehicle
- i(b) Operation of a motor vehicle, but liability limited to insurance coverage
- l Miscellaneous
- m Certain actions by attorney general or other state official
- o Contract actions
- p Certain professional services
- q Knowing violation of the law
- t Physical injury or wrongful death caused by the volunteer

Scope

- ai Organization must amend articles to invoke the protection
- bf Protection narrowly limited to board functions
- vl Protection limited to vicarious liability
- vl@ Protection limited to vicarious liability and applies only to the negligence of the director
- vl+ Protection from vicarious liability is in addition to other type of protection

Notes

- a Organization must carry specified insurance
- b Liability limited to insurance coverage
- d Some organizations may amend articles or bylaws to further limit liability to the corporation or its members
- e More protection for volunteers of §501(c)3 organizations
- f Protection not applicable if corporate assets shifted to avoid judgments
- g Liability limited to director's compensation or other standard
- h Same statute as for volunteers generally
- x Liability rule approximates negligence standard
- y Applies only to specified liabilities in suits by an organization or its members

Exceptions										
State	Entity	Paid	Willful or Intentional	Recklessness	Gross Negligence	Fraud or Fiduciary	Suit by Organization	Other	Scope	Notes
Alabama*	c, gv, oth	n	x				x			h
Alaska	c3-, c4-, oth, vg	ok	o	o	x		x			d
Arizona*	npc, gv	ok	x	o	x		x			d
Arkansas	c-	ok	x	o	x				vl@	f, x
California*	np-	n	x	x	x	x		l, m	vl@	a, f
Colorado*	c+	ok	x							
Connecticut	c	n	x	x					bf	
Delaware	c-, gv	n	x	o	x			i(b)		h
D.C.	c3-, npc	n	x			x		q		a, h
Florida	c3, c4, oth	n	x	x		x		q	bf	
Georgia	ch, np, gv	n	x							h, u
Hawaii	npc	n	o	x						
Idaho	np	n	x			x		i, q		b, h
Illinois	c-	n	x						bf	
Indiana	gv, np	n	o	o	o				bf	
Iowa*	np	ok	x			x		q		h
Kansas	c	n	x				x	p	vl+	a, b, h
Kentucky*	c	n	x							h
Louisiana*	np	ok	x				x		bf	h
Maine	c3+, c4, oth	n	o	o	o				bl+	h
Maryland	c3, oth	n	x	o	x			m, o, p		a, d, h

State	Entity	Paid	Willful or Intentional	Recklessness	Gross Negligence	Fraud or Fiduciary	Suit by Organization	Other	Scope	Notes
Massachusetts	c3, oth	n	x		x			i, l		d
Michigan	npc	n	x	o	x	x		l, q	ai	e, y
Minnesota	te	n	x	x		x		o, t		h
Mississippi	npc	ok								
Missouri	c	n	x	o	x				bf	
Montana	c, te	ok	x							d, h
Nebraska	c3, c4, oth	n	x				x	i, l		
Nevada*	np	ok	x	o	o	x		q	bf	
New Hampshire	ch	n	x							
New Jersey	np, oth	ok		x					bf	
New Mexico	npc	ok	x	x					vl+	f
New York	c3	n	x	o	x		x	m, l		
North Carolina	npc	n	x	o	x	x		i, l		b, d
North Dakota*	c3, oth	n	x	o	x					
Ohio	ch, np	n	x						bf	h
Oklahoma*	c-	ok	x			x		l, q		y
Oregon	c+, gv, oth	n	x	o	x					d
Pennsylvania	c3	n	o	o	o					d
Rhode Island	c	n	x					i		h
South Carolina	c3, oth	ok	x	o	x					
South Dakota	c-, oth	n	x						bf	
Tennessee	c3-, c4-, oth	ok	x	o	x					
Texas	c3-, c4-, oth	ok	x	x		x		i(b), l		h
Utah*	npc	ok	x							y
Vermont	c	ok	x	o	x			i	vl+	
Virginia*	c-, oth	ok	x					q		g
Washington	npc	ok	o	o	x		x		bf	
West Virginia	oth	n	o	o	x			i	bf	
Wisconsin	npc	ok	x			x		m, q	bf	
Wyoming	npc, gv	ok	x					q		



James K. Ruble Seminar

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Section 4

Workers Compensation Issues and Trends



WORKERS COMPENSATION ISSUES AND TRENDS

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

OVERVIEW:

- I. Where are we now?
- II. The Aging Workforce
- III. Waiver of Subrogation
- IV. Independent Contractors
- V. Experience Modification Issues
- VI. Errors/Omissions and Coverage Issues
- VII. The Future of Workers Compensation

I. WHERE ARE WE NOW?

NCCI – Annual Issues Symposium: Posted May 25, 2018

A. Combined Loss & Expense Workers Compensation – Private Carriers

	Calendar Year	Accident Year	
2003	110.5	98	
2004	106.9	88	
2005	102.1	87	
2006	95.4	86	
2007	101.7	99	
2008	101.5	106	
2009	107.9	110	
2010	116.1	118	
2011	117.6	114	
2012	109.7	108	
2013	110.4	103	
2014	102.3	97	
2015	95.4	98	
2016	94.0	95	
2017	89.0	99	
2018	83.0	95	(86)
2019	85.0	99.0	(90)

What NCCI believes will be final combined for that accident year.

*P/C Industry net combined ratio – All Lines – 99

B. Premiums – Private Carriers and State Funds

1. 2017, totaled \$39.8 billion
2018, totaled \$48.6 billion
2019, totaled \$47.0 billion

2. Why premium change
 - a. Increase in WC carrier payroll – largest driver impacting growth, up 5.5% 2018 to 2019

 - b. Loss Cost changes, mix of business – down 9.3% 2018 to 2019

 - c. Carrier discounting – down .1% 2018 to 2019

 - d. Change in written premiums between private carrier and state funds, due to written premiums audits impact average experience mod deductible credits – down 1.3% 2018 to 2019

 - e. Change in average experience mod – new split points in full effect

 - f. Wages grew faster than employment 2018-2019

C. Combined Loss and Expense

Year	Private Carrier	State Funds
2003	110	103
2004	107	102
2005	103	102
2006	93	106
2007	101	115
2008	101	121
2009	110	129
2010	115	138
2011	115	133
2012	109	124
2013	102	115
2014	100	116
2015	94	107
2016	94	108
2017	88	115
2018	83	Not reported
2019	85	Not reported

NCCI – From “State of the Line” May 2020

D. Residual Markets – for NCCI Administered States

Year	Average Policy Size	Combined L/R	Premiums (in Millions of Dollars)
2001	4,407	112	465
2002	5,405	114	791
2003	5,419	109	997
2004	4,948	106	1015
2005	4,426	104	924
2006	3,822	106	781
2007	3,436	111	660
2008	3,024	113	501
2009	2,790	109	396
2010	2,675	113	344
2011	3,008	113	389
2012	4,194	106	580
2013	4,875	103	758
2014	4,775	104	808
2015	4,384	106	799
2016	3,948	98	
2017	3,769	106	
2018	No Info	Given	1,000
2019	No info	Given	900

E. Residual Markets – for NCCI Administered States

1. Residual Market Share of Total Market 8% (2013, 2014, 2015, 2016, 2017)
7.2% in 2018
7% in 2019

2. Top Class Codes – based upon written premium – 24% in 2017
 - a. 5645 – Carpentry – Construction of Residential Dwellings not exceeding three stories in height (8.5%)

 - b. 5551 – Roofing – All kinds and Drivers (6.1%)

 - c. 7228 – Local Trucking – Local Hauling Only – All Employees and Drivers (3.6%)

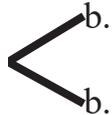
 - d. 5474 – Painting NOC & Shop Operations, Drivers (3.3%)

 - e. 7229 – Long-Haul Trucking – Long Distance Hauling Only – All Employees and Drivers (2.5%)

F. Deaths

1. 5,190 in 2016
5,147 in 2017
5,250 in 2018
2. The number is a 2% increase from 2017
3. Most dangerous occupations – based upon actual deaths per 100,000 of full-time employees in 2018
 - a. Loggers
 - b. Commercial fishing
 - c. Aircraft pilots and Flight Engineers
 - d. Roofers
 - e. Refuse and Recyclable material collectors
4. All industry average 3.6 deaths/100,000 workers
5. Causes
 - a. All transportation (including vehicle crashes)
 - b. Contacts with objects and equipment
 - b. Assaults and violence (incl. homicides)
 - d. Falls
 - e. Exposure to harmful substances or environments
 - f. Fires and Explosions

Tie



TOP NON-FATAL OCCUPATIONS WITH THE LARGEST NUMBER OF INJURIES AND ILLNESSES – 2018 (1)

Occupation (1)
Laborers (nonconstruction)
Truckdrivers, heavy
Janitors and cleaners
Nursing assistants
General Maintenance and repair workers
Retail salesperson
Stock clerks/order fillers
Police and Sheriff's patrol officers
Registered nurses
Light truck or delivery
Construction workers

(1) Nonfatal injuries and illnesses involving days off from work for private industries: excludes farms with fewer than 11 employees

Source: U.S. Department of Labor, Bureau of Labor Statistics.

II. THE AGING WORKFORCE

A. According to Bureau of Labor Statistics from 2018 to 2028 total labor force to increase by 9,000,000 workers

B. Age 2018-2028 Projected Percentages

16-24	Down 1.1%	over previous decade
25-44	Up 4.8%	over previous decade
45-64	Down .7%	over previous decade
65-older	Up 6.1%	over previous decade

C. Result of Projection of Labor Force Percentages

	2018	2028 – projected
65-older	6%	10%

Source: US Bureau of Labor Statistics

D. Self-Employed

1. Generally have higher household incomes than wage earners*
2. Generally less likely to have pensions or health insurance*
3. Where are they covered by Workers Compensation?

Source: *Growing Older in America*, US Department of Health and Human Services, p. 46

E. Why people stop working

1. Poor Health
 - a. Age Group 55-59 – 35%
 - b. Age Group 60-64 – 30%
 - c. Age Group 65-69 – 27%
 - d. Age Group 70-74 – 18%
 - e. Age Group 75-79 – 22%
 - f. Age Group 80+ – 10%
2. Most common reason – more time with family
 - a. At age 55-59 it equals Poor Health
 - b. 70% of people stop working for either Poor Health or more time with family at age 55-59

Source: *Growing Older in America*, US Department of Health and Human Services, p. 47

F. Effect of older workers on injury rates

1. Workers 65 or older more likely to be out two weeks than one
2. Workers 65 or older more likely to be out a month or more
3. Workers 65 or older median lost time is 75% greater than all workers (14 days vs. 8 days*)
*8 days median loss time **for all** workers
4. Types of Claims (Older workers)
 - a. Falls, Slips, Trips – about 50% of all claims for all older workers (17 days away)
 - b. Overexertion: has highest days away from work (20)
 - c. Contact injuries: 6 days away
4. Fatality rate for workers 65 and older is triple that of all workers
5. Workplace of future continues to readjust to accommodate the surge in older workers – EPL issue?

Source: US Bureau of Labor Statistics, US Department of Labor; Insurance Information Institute.

G. In the ten years 2018-2028

1. Baby Boomers will be 10% of the workforce (82-64)
2. Generation X will be 35% of the workforces – (63-48)
3. Millennials and Generation Z will be over 50% of the workforce - 1981 (47) and after

Source: Barry Lipton, FCAS, MAAA, Practice Leader & Senior Actuary NCCI
@ Annual Issues Symposium 2020.

H. Workers Compensation, Medicare and Social Security

1. Medical Law specifics
 - a. If Workers Compensation is available, Medicare will pay nothing (secondary payer)
 - b. Medicare will pay if costs remain after all medical benefits are exhausted
 - c. If Medicare does pay a bill, it has a right of recovery from the employer **or** Workers Compensation insurer
2. Medicare fear is that it will be “stuck” with costs shifted from those responsible for paying Workers Compensation costs. So, Workers Compensation Carriers **must** protect Medicare’s interest when settling claims otherwise.
3. Medicare response to issue is to gain ability to review, and perhaps disapprove, Workers Compensation settlements, if Medicare believes the settlement is insufficient money in settlement to pay future medical costs
4. Result of 3 is that Medicare may align with workers against employers and Workers Compensation insurers, which will increase Workers Compensation Administration costs
5. To prevent Medicare Set-Asides exist: Funds created by insurance carrier that help pay for future work-related injury costs that Medicare might otherwise pay
6. Social Security Retirement Income is not offset for Workers Compensation indemnity payments
7. Disable workers age 66 and over can collect both

Source: Title 42 Code of Federal Regulations, Section 411 et seq.

I. Workers Compensation and “Obesity”

1. Classes – by Body Mass Index

- | | | | |
|----|-----------------|-----|----------------|
| a. | Underweight | BMI | less than 18.5 |
| b. | Health weight | BMI | 18.5-24.9 |
| c. | Overweight | BMI | 25.0-29.9 |
| d. | Obese Class I | BMI | 30.0-34.9 |
| e. | Obese Class II | BMI | 35.0-39.9 |
| f. | Obese Class III | BMI | 40+ |

2. Body Mass Index Formula

- Your weight in kilograms divided by your height in meters(squared)
- 2.2064 pounds to the kilogram
39.37 inches to the meter

3. Claim Data

- Class III workers file twice as many Workers Compensation claims as healthy-weight workers
- Class III workers have 13 times more lost workdays than healthy-weight workers
- Indemnity costs are 11 times higher for Class III workers than healthy-weight workers

4. What is the workforce of your clients?

Source: Centers for Disease Control and Prevention

J. As per Center for Disease Control and Preventions, age 20 years and older

The Average American age 20 years and older is:

Male

Female

Height

Weight

Waist

Effective April 1, 1984

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

Schedule

Note:

1. Use this endorsement to waive the company's right of subrogation against named third parties who may be responsible for an injury.
2. The sentence in () is optional with the company. It limits the endorsement to apply only to specific jobs of the insured, and only to the extent that the insured is required to obtain this waiver.
3. The following entry must be added to the endorsement when used in Hawaii: "The premium charge for the endorsement is \$ _____."
4. The endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri statutes, a contractual provision purporting to waive subrogation rights is against public policy and void where one party to the contract is an employer in the construction group of code classifications.
5. In most states, including Florida, any associated premium charge must be filed and approved prior to use.
6. For New York, the company shall as applicable indicate a premium charge of 2% to 10% of the manual premium subject to a minimum charge of \$250 per policy for blanket coverage.
7. For New York, the company shall as applicable indicate a premium charge of 5% to 10% of the manual premium for each person or organization named above subject to a minimum charge of \$250 per policy for specific coverage.
8. In Oregon, the sentence in () must be excluded from the endorsement where the endorsement is applied in association with a construction agreement as defined by Oregon statute.
9. For Kansas, use of this endorsement is limited by the Kansas Fairness in Private Construction Contract Act (K.S.A. 16-1801 through 16-1807 and any amendments thereto) and the Kansas Fairness in Public Construction Contract Act (K.S.A. 16-1901 through 16-1908 and any amendments thereto). According to the Acts, a provision in a contract for private or public construction purporting to waive subrogation rights for losses or claims covered or paid by liability or workers compensation insurance shall be against public policy and shall be void and unenforceable except that, subject to the Acts, a contract may require waiver of subrogation for losses or claims paid by a consolidated or wrap-up insurance program.

1 of 1

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III. WAIVER OF SUBROGATION

A. There is **no** grant of permission for waiving subrogation prior to the loss in the Workers Compensation policy as there is in the Commercial General Liability and Business Auto Policy

B. The policy states this fact no fewer than four times

G. Recovery From Others

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

Page 2 of 6

H. Recovery From Others

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

Page 4 of 6

Part Four – Duties in the Event of a Loss

5. Do nothing after an injury occurs that would interfere with our right to recover from others.

Page 5 of 6

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

Page 6 of 6

C. Because of the lack of contractual liability the endorsement granting the waiver is more important on the Workers Compensation policy than the other liability forms, especially the CGL

D. Not allowed in Kansas, Kentucky, Missouri, New Hampshire, New Jersey, North Dakota, Ohio and Wyoming

IV. INDEPENDENT CONTRACTORS: PARTS 1 & 2

A. Defined by United States Internal Revenue Service

B. Revenue Ruling (87-41) – “The 20-Factor Test”

1. Used to determine “status”

a. Employee

OR

b. Independent Contractor

2. Answer “yes” to **any** question = employee

3. “Right to control” determining factor

C. The Test

1. Instructions
2. Training
3. Integration
4. Service rendered personally
5. Hiring, supervising and paying assistants
6. Continuing relationship
7. Set hours of work
8. Full time required
9. Location of work
10. Order of sequence of work

11. Oral or written reports
12. Payment by hour, week or month
13. Payment of business and/or traveling expense
14. Tools and materials
15. Significant investment
16. Profit or loss potential
17. Working for more than one firm
18. Making service available to the general public
19. Right to discharge
20. Right to terminate

D. The 20-Factor Test – Revised on three primary criteria

1. Behavior Control – The more control an employer has over a worker’s behavior, the greater the chances it will be considered an employer-employee relationship
2. Financial Control – This includes various factors which show whether a business has a right to control the business aspects of the worker’s job
3. Type of relationship – This appears to be the proverbial “catch-all” category. Some factors considered by the IRS in determining “type of relationship”

E. Behavior Control

1. Does the business have a right to direct and control how the worker does the task for which the worker is hired?

Generally, the more control, the greater likelihood that the worker is an employee rather than a contractor

2. Does the employer have the right to control how the work results are achieved?

If the business has the right to control the details of a worker’s performance, he or she is more likely an employee. For independent contractors, the employer has likely given up this right

3. How much, if any, instruction does the business provide the worker?

Employees are generally subject to business’s instructions about when, where, and how to work, including where to buy supplies and services, what equipment to use, and what order to follow when doing the work

4. How much training is provided?

Employees usually receive training to perform a certain job in a certain manner, but not independent contractors (in the eyes of the Uncle Sam)

F. Financial Control

1. Reimbursement of business expenses
2. Extent of worker's investment
3. Extent to which worker makes services available to the relevant market
4. How the business pays the worker
5. The extent to which the worker can realize a profit or loss (An independent contractor can make a profit or loss. An employee cannot)

G. Type of Relationship

1. Written Contracts describing relationship parties tend to create
2. Whether the business provides the worker with employee-type benefits such as insurance, a pension plan, vacation pay or sick pay
3. The expectation of permanency of the relationship – is the worker hired with the expectation that the relationship will continue indefinitely rather than for a specific project or period? If so, such expectation indicates an employer-employee relationship rather than independent contractor relationship

(In another revealing document, the IRS identifies “how long the person plans to work with your company” as “foremost” in the IRS’s determination of independent contractor status. Referring to independent contractors who are hired to do work previously performed by employees, the agency says, “If you expect to work together indefinitely the IRS believes that you’re creating what is really an employee relationship.”)
4. The extent to which services performed by the worker are considered a key aspect of the company’s regular business. The more important they are to the company business, the more likely (in the IRS’s view) the business will have the right to direct control of the worker’s activities, thus indicating an employer-employee relationship

V. EXPERIENCE MODIFICATION PROBLEMS/

A. What time is on the market clock?



1. Where are we now?

a. Hard Market

b. Soft Market

c. Somewhere in between

2. Where were we when the data was generated?

a. Hard Market

b. Soft Market

c. Somewhere in between

3. How does that make a difference?

a. Who did the audit?

b. Was an audit even done?

B. Why have this system?

1. To provide occupational health and safety
2. To give an individual employer some influence over their final premium
3. To provide an incentive for employers to develop loss prevention
4. To provide an incentive for a “back-to-work” program (loss control)
5. To refine the premium for the employer by using their own payroll and losses

C. What does the system do for the employer?

1. It focuses the final premium of an insured on the individual insured, rather than all insureds in the same class
2. Adds incentives for Loss Reduction by taking the average loss experience for a class of business and modify it on the insured’s own experience

D. Characteristics of the system

1. Recognizes the cost of an accident
2. Gives greater weight to frequency rather than severity even though it measures both
 - a. Accident Limitation
 - b. Split rating approach

E. Ownership/Combinability

1. Ownership change – carrier notified within 90 days
2. More than 50% Common Ownership – one modification

F. Essentials of the system

1. Mandatory for all insureds that meet premium eligibility
2. Formula measures how the performance of an individual employer differs “predictably” from similarly classified employers
3. Tailor the final cost of coverage to the particular employer

G. Basic Statistical Principles

1. The larger the premium, the more reliable the record in predicting future losses
2. The “cost” of an injury may vary over a large range. Or, said another way:

“Cost is less predictable than the fact the injury occurred”
3. Result of “B” – Primary and Excess components
4. New Split Point Value
 - a. Now \$15,000 +
 - b. Depending upon state, beginning January 1, 2013 or later in 2013

Year 1 – 5,000 to 10,000

Year 2 – 10,000 to 13,500

Year 3 – 13,500 to 15,000 – adjusted plus 2 years inflation

WORKERS COMPENSATION EXPERIENCE RATING

NAME Risk Ident. No. 123456789 Effective Date: 05/01/20
 OF
 RISK XYZ COMPANY State: ANY STATE

1 CODE	2 ELR	3 D- RATIO	4 PAYROLL	5 EXPECTED LOSSES	6 EXP PRIM LOSSES	7 CLAIM DATA	8. O INJ F	9. ACT INC LOSSES	10 ACT PRIM LOSSES
** CARRIER 99999 POLICY NUMBER 94 43 32 1 EFF DATE 05/01/17 EXP DATE 05/01/18									
3507	1.48	0.50	2,807,260	41,547	20,774	02-0024	1 O	20,000	5,000
7380	1.04	0.41	93,870	876	400	03-0006	5 F	12,497	5,000
8742	0.21	0.38	127,430	268	102			9,871	9,981
8810	0.08	0.47	425,480	340	160				
POLICY TOTAL			3,454,040	(SUBJECT PREMIUM = 110,529)				42,718	19,871
**CARRIER 99999 POLICY NUMBER 95 43 32 2 EFF DATE 05/01/18 EXP DATE 05/01/19									
3507	1.48	0.50	3,232,201	47,837	23,919	03-0027	5 O	9,477	5,000
7380	1.04	0.41	102,618	1,067	437	04-0034	5 F	3,600	3,600
8742	0.21	0.38	135,368	284	108			13,423	13,243
8810	0.08	0.47	462,375	370	174				
POLICY TOTAL			3,932,562	(SUBJECT PREMIUM = 125,842)				26,320	21,843
** CARRIER 99999 POLICY NUMBER 96 43 32 3 EFF DATE 05/01/19 EXP DATE 05/01/20									
3507	1.48	0.50	3,868,379	57,252	28,625	04-0001	2 O	62,500	5,000
7380	1.04	0.41	107,322	1,116	458	05-0002	2 F	4,826	4,826
8742	0.21	0.38	132,507	278	106			5,974	5,974
8810	0.08	0.47	502,408	402	189				
POLICY TOTAL			4,610,618	(SUBJECT PREMIUM = 142,008)				73,300	15,800
	(A)	(B)	(C) EXPECTED EXCESS (D-E)	(D)	(E)	(F) ACTUAL EXCESS (H-I)	(G)	(H)	(I)
	0.22		76,284	151,737	75,453	84,824	22,800	142,338	57,514

* Total by Policy Year of all cases \$2,000 or less
 # Limited Loss

	(11) PRIMARY LOSSES	(12) STABILIZING VALUE	(13) RATABLE EXCESS	(14) TOTALS	(15) EXP-MOD
PAGE NO.	(I) ACTUAL 57,514	(C)x(1-w)+(G) 62,302	(A) x (F) 18,061	(J) 158,477	
DATE	(E) EXPECTED 75,453	62,302	(A) x (C) 10,782	(K) 174,537	(J)/(K) 0.91

H. Worksheet Components

1. Columns 1-6 – Relate to type of business and payroll reported
 - a. Classification Code **
 - b. Expected Loss Rate – ELR
 - c. Discount Ratio – Expected **Primary** Losses (\$15,000+)
 - d. Payroll reported to insurer **
 - e. Expected Losses – Column 2 x Column 4
 - f. Expected Primary Losses – Column 5 x Column 3

** Most important Columns

WORKERS COMPENSATION EXPERIENCE RATING

NAME Risk Ident. No. 123456789 Effective Date: 05/01/20
 OF
 RISK XYZ COMPANY State: ANY STATE

1 CODE	2 ELR	3 D- RATIO	4 PAYROLL	5 EXPECTED LOSSES	6 EXP PRIM LOSSES	7 CLAIM DATA	8. O INJ F	9. ACT INC LOSSES	10 ACT PRIM LOSSES
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3507	1.48	0.50	2,807,260	41,547	20,774	02-0024	1 O	20,000	5,000
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DATE	(E) EXPECTED 75,453	62,302	(A) x (C) 10,782	(K) 174,537	(J)/(K) 0.91

2. Columns 7-10, Relates to specific claims
 - a. Column 7 – Claim Data
 - (1) By claim number if over \$2,000
 - (2) Bundled if under \$2,000
 - b. Column 8 – Injury Type/Claim Status
 - (1) Numerical System
 - (2) Open or Final
 - c. Column 9 – Actual Incurred Losses
 - (1) Could be dollars spent
 - (2) Could be reserve only
 - (3) Could be both (a) & (b)
 - d. Column 10 – Actual Primary Losses

Always relate Column 10 to Column 6
3. Columns 11-14 – A summary of Columns 1-10 and actuarial figures

I. Modification worksheet as marketing tool

Key Classifications:

1. Those with significant increases/decreases
2. If Manufacturer – the more payroll, the more product, the greater the Business Income issue
3. If Mercantile – the more payroll in sales, the more goods sold, the greater the Business Income issue
4. Look at driver payroll versus auto schedule
5. Transportation exposures – Drivers payroll, increases in manufacturers payroll or sales payroll
6. Large payroll increases could mean new equipment or locations – leased, owned or rented?

- J. Experience Modification Issues (COVID-19)
1. NCCI E-1407 – Exclusion of COVID-19 claims from Experience Rating.
What about your state?
 2. Payroll for Furloughed EEs (being paid)
What class maintain same (two classes, highest rate applies or do we split payroll?)
 3. Filing B – 1441 – Employees being paid, but not working.
Payments not to be used in calculation of premium
 4. Code 8871 – Clerical Telecommuter Employees
Employer continues to pay employees while working from home, rather than the office
 5. Specialty Cleaning Companies:
Code 9014 – Janitorial Services
Code 5473 – Asbestos Removal – full body suit, respirators, other personal protective equipment
 6. Physical Audit vs. Virtual Audit
 7. Claim Reporting – Accident Date December 1, 2019
Subsequent COVID-19 related
Extraordinary Loss Event
 8. Temporary Total vs. Sick Pay

INFORMATION PAGE

Blank Insurance Company

N.J. Employer Registration No.

NCCI Company No.

POLICY NO.
PRIOR POLICY NO.

1. The Insured:
 Mailing address: _____ Individual _____ Partnership
 Other workplaces not shown above: _____ Corporation or _____
2. The policy period is from _____ to _____ at the insured's mailing address.
3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states listed here:
 B. Employers Liability insurance: Part Two of the policy applies to work in each state listed in Item 3.A The limits of our liability under Part Two are:
 Bodily Injury by Accident \$ _____ each accident
 Bodily Injury by Disease \$ _____ policy limit
 Bodily Injury by Disease \$ _____ each employee
 C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:
 D. This policy includes these endorsements and schedules:
4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plan. All information required below is subject to verification and change by audit.

Classifications	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Annual Premium
-----------------	----------	---	--------------------------------------	--------------------------------

Premium for increased limits Part Two, if applicable
 Total premium subject to the experience modification
 Premium modified to reflect experience modification of _____
 Other premium charges
 Total Estimated Standard Premium

Premium Discount, if applicable
 Expense Constant Charge
 Total Estimated Premium
 Second Injury Fund Surcharge
 Uninsured Employers Fund Surcharge

Minimum Premium \$ _____ Total Estimated Cost \$ _____

Deposit Premium _____

Name of Producer _____ Countersigned by _____

Servicing Office _____ Date _____

© Compensation Rating and Inspection Bureau

VI. COVERAGE AND ERORRS & OMISSIONS ISSUES

A. Set the policy up correctly

1. THE INFORMATION PAGE

a. Item 1 – the Insured

- (1) Name
- (2) Address
- (3) Other Workplaces not shown
- (4) Legal status

b. Item 2 – Policy Period

- (1) Time frame of coverage
- (2) At insured's Mailing Address

c. Item 3 – Coverage

- (1) Item 3A – the trigger of coverage
 - (a) Known or expected exposure
 - (b) At inception date of policy
- (2) Item 3B – Employers Liability
 - (a) Triggered by Item 3A
 - (b) Limits
 - (i) Accident
 - (ii) Disease

- (3) Item 3C – Other States Insurance
 - (a) Unknown or unexpected – **but possible**
 - (b) Broadest Coverage
 - “All states except those in Item 3A and North Dakota, Ohio, Washington, Wyoming”
 - (c) No coverage – “None”

- (4) Item 3D – Endorsements and Schedules

- d. Item 4 – Premium Determination

- (1) Classifications
- (2) Remuneration
- (3) Rates
- (4) Item 4D

PART THREE

OTHER STATES INSURANCE

A. How this insurance applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have worked on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

B. Other State Insurance

1. Must be listed in Item 3C of the Information Page
2. Work begun
 - a. After the effective date
 - b. Treated as though in Item 3A
3. Reimbursement if required
4. 30-day requirement
5. Notice of commencement of work

C. Attorney Involvement

1. Increases in claim cost by 12-15%
2. On the average, actual involvement depending on the state average a low of 5% to a high of 10% for all workers compensation claims for that state
3. The higher the number of disputes, the more attorney involvement
4. The greater the severity of injury, higher than \$100,000 involvement. It could go as high as 33 1/3% (1 in 3)

D. Audit Issues

1. Problem – How are the insureds books organized?
2. Problem – Do they interchange labor?
3. Are they growing fast?
4. How do you know which state rates apply?

E. Solution – Solve the problem(s) before they happen...

1. Communicate to carrier
2. Communicate with State Comp Bureau

F. Employers Liability – Action Over Claims

1. Is it General Liability claim?
2. Is it Employers Liability?

VII. THE FUTURE OF WORKERS COMPENSATION

- A. Loss prevention
 - 1. Increased work place safety
 - 2. Credits for consulting services
 - 3. Mandatory Safety Committees
 - 4. Higher fines and penalties for violations

- B. Loss Control
 - 1. Back-to-work programs
 - 2. Managed care
 - 3. Limiting certain physicians and practices
 - 4. Redefining compensability
 - 5. Amending claims procedures

- C. Does national health care reform mean a national workers compensation law?
 - 1. Current problems with managed care
 - 2. An aging work force – “baby boomers”
 - 3. Medical Marijuana

NATIONAL ACADEMY OF SCIENCES, ENGINEERING, AND MEDICINE
January 2017 Conclusions

- A. Substantial evidence of benefit
 - 1. Chronic pain
 - 2. Nausea and vomiting due to chemotherapy

- B. Limited or Moderate Evidence for Benefit
 - 1. Anxiety symptoms
 - 2. Improving short-term sleep outcomes due to a variety of conditions
 - 3. Increasing appetite and decreasing weight loss with HIV/AIDS
 - 4. Spasticity due to multiple sclerosis
 - 5. Some symptom PTSD

- C. Other studies outside of NASEM have shown benefits for seizure control

Source: Medical Marijuana: The Move to Schedule II
Presentation by David Deitz, MD, PhD
@ NCCI's Annual Issues Symposium

The Health Effects of Cannabis and Cannabinoids: The Current
State of Evidence and Recommendations for Research

LEGAL MEDICAL MARIJUANA – 29 STATES AND DC

- | | | |
|--------|--------|--------|
| 1. AK | 12. MD | 23. OH |
| 2. AR | 13. ME | 24. OR |
| 3. AZ | 14. MI | 25. PA |
| 4. CA | 15. MN | 26. RI |
| 5. CO | 16. MT | 27. VT |
| 6. CT | 17. ND | 28. WA |
| 7. DE | 18. NH | 29. WV |
| 8. FL | 19. NJ | + DC |
| 9. HI | 20. NM | |
| 10. IL | 21. NV | |
| 11. MA | 22. NY | |

LEGAL MEDICAL AND RECREATIONAL – 9 STATES +DC

- | | | |
|-------|-------|-------|
| 1. AK | 5. ME | 9. WA |
| 2. CA | 6. NV | + DC |
| 3. CO | 7. OR | |
| 4. MA | 8. VT | |



James K. Ruble Seminar

a proud member of Risk & Insurance Education Alliance

Section 5

Advanced Inland Marine



ADVANCED INLAND MARINE COVERAGES

*R BRYAN TILDEN, CIC, C.P.C.U., CLU, ARM, ALCM, SCLA
TILDEN AND ASSOCIATES
PITTSBORO, NORTH CAROLINA*

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R. BRYAN TILDEN

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I. Introduction

A. Historical Development

B. Nation-Wide Marine Definition

1. Section 1. Purpose

- a) *The purpose of this instrument is to describe the kinds of risks and coverages which may be classified or identified under State Insurance Laws as Marine, Inland Marine or Transportation Insurance.*

2. Section 2. Applicability

- a) *Imports*
- b) *Exports*
- c) *Domestic shipments*
- d) *Bridges, tunnels and other instrumentalities of transportation and communication (Items that help products move)*
- e) *Floaters*
 - (1) Personal Property Floaters
 - (2) Commercial Property Floaters

C. Filed Versus Non-filed

1. Filed or Controlled Forms

- a) *Characteristics*
 - (1) Relative uniformity of exposures
 - (2) Firm consensus concerning appropriate coverage provisions, underwriting rules and rates
 - (3) Tend to be specialty coverages
- b) *Examples*
 - (1) Jeweler's block
 - (2) Physicians and surgeons equipment

c) *Outcome*

(1) Rates files

(2) Coverage forms filed

2. Non-filed or Unfiled Forms

a) *Characteristics*

(1) Exposures not uniform

(2) Exposures too unique or diverse to reasonably require insurers to insure them on other than a case-by-case basis

b) *Examples*

(1) Contractor's equipment

(2) Transportation policies

c) *Outcome*

(1) Rates not filed

(2) Coverage forms not filed

II. Builders Risk

A. Parties to construction contract

- 1. Project owner - party that owns building or is having building constructed**
- 2. Architect/engineers**
- 3. General contractor/contractors/sub-contractors**
- 4. Insurance agent or broker**
- 5. The construction contract itself**

B. Factors to Consider

- 1. Many different parties, as identified above, have insurable interests in the overall construction project.**
- 2. Materials and equipment on and off site may belong to the owner, general contractor (GC), or sub-contractors, and ownership is constantly shifting from contractors to the owner as the project progresses.**
- 3. To avoid creating gaps and overlaps in coverage, which are likely if each party were responsible for insuring their own property, one of the parties usually assumes responsibility for insuring the project on behalf of all parties.**
- 4. Responsibilities, including responsibility for obtaining insurance, is described in the construction contract**

C. Requirements of AIA and AGC documents

1. Key insurance provisions.

- a) *Construction projects almost always involve standard documents published by AIA or AGC. Both documents require project owners to furnish builders risk insurance for the project.*
- b) *Generally, the policy must provide:*
 - (1) all risks or open perils coverage
 - (2) replacement cost coverage
 - (3) insurance for all parties to the contract; owner, contractors, sub-contractors
 - (4) permit waivers of subrogation among the parties
 - (5) apply for the duration of the project
 - (6) cover material stored away from the site and while in transit

Sample AIA provisions:

**AMERICAN INSTITUTE OF ARCHITECTS
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
AIA DOCUMENT A201-1997**

The following text is a reproduction of the AIA's model construction contract that addresses builders' risk insurance requirements. This document was reproduced with the permission of the American Institute of Architects.

11.4 Property Insurance

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company of companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors, and Sub-subcontractors in the Project.

11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism,

malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 If the owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors, and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

11.4.2 Boiler and Machinery Insurance

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 Loss of Use Insurance

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the

terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

- 11.4.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions, and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 Waiver of Subrogation

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- 11.4.8** A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-contractors in similar manner.

- 11.4.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for property performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

- 11.4.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

c) *A project owner has options with regard to obtaining insurance. The owner may add the construction project to its regular commercial property policy and, in the process, make the parties to the contract additional insureds, incorporate the necessary waivers of subrogation, and make sure that building materials are covered off site as well as in transit.*

(1) The other option is for the owner to purchase separate builders risk coverage from its own property insurer, if that coverage is written by the insurer, or from another insurer that specializes in writing this coverage.

(2) Although standard commercial property insurance provides some builders risk coverage, why is it generally advisable for the insured to purchase a separate builders risk policy?

(3) The advantage to the builders risk approach is that the coverage provided in a builders risk policy is considerably broader than that provided in standard commercial property insurance. For example, many builders risk policies cover flood and earthquake, testing, and provide broader transit and off premises coverage. Typical builders risk policies also include fewer exclusions.

d) *The owner also has the option of not purchasing builders risk coverage, but rather delegating responsibility for obtaining insurance to the GC. This is fairly common with larger contractors because the latter may be more familiar with the needed coverage and market, and prefer to have some control over who the insurer of the project will be.*

e) ***It is important to note that if the owner does not intend to purchase the builders risk insurance, it must inform the GC in writing prior to the start of the project. The contractor may then obtain the necessary insurance, including protecting the interests of all parties, and charging the cost to the owner.***

(1) If the GC sustains a loss due to the neglect of the owner to obtain or maintain coverage, without notifying the GC, the owner will be responsible for all reasonable damages sustained by the GC.

2. Avoiding Errors and Omissions Exposure

a) *Producers (agents and brokers) are responsible for reading the construction contract, often in conjunction with the insured's*

legal counsel, so that they are aware of the insurance requirements.

- b) If a producer places builders risk coverage without reviewing the contract, and particularly the insurance requirements, it is unlikely the insurance will meet the contract requirements. In the event of a not covered loss, the producer could be exposed to an E&O claim or suit.*

3. Complying with, and modifying AIA and AGC requirements

- a) It may be necessary to negotiate changes in coverage to comply with contract requirements. In some instances, it may not be possible to obtain specific coverage, such as flood or earthquake, and a change in the construction contract may be necessary to delete such a requirement.*

D. Builders risk loss exposures/Underwriting Considerations

- 1. Underwriters must be confident that the builder or general contractor is qualified, and seek answers to the following questions:**
- 2. Is the contractor experienced in the type of construction required by the project?**
- 3. Does the contractor have sufficient financial resources to effectively complete the project?**
- 4. What is the contractor's loss/claim history?**
- 5. How skilled and stable is the contractor's work force?**

E. Loss Exposures

1. Fire

The potential for catastrophic fire damage is often greater during the course of construction than after a building is completed. The reason for the increased potential is that a building in the course of construction lacks the protection and construction features that are designed to contain the spread of fire or limit the extent of damage. Fire proofing may be incomplete, fire doors will not be installed, and standpipes and sprinklers will not be operating.

The following characteristics are inherent in a builders' risk and affect the hazard and control of fire:

a) Housekeeping

Scaffolding, wooden concrete forms, insulation materials, straw for curing, and packing material can create a large accumulation of combustibles. A jobsite should be organized so that construction materials are safely stored. Trash should not be allowed to accumulate.

b) Hotwork

Welding and cutting operations should be conducted away from combustible materials. A fire watch should be posted in the area during welding and cutting operations and for 30 minutes after hotwork is completed.

c) Flammable Liquids and Gases

Spare gas cylinders should be stored upright with valve cover in place and secured to prevent tipping. Fuel gases should be stored apart from oxidizing gases. Flammable liquids should be stored and dispensed from U.L. approved tanks, cans, and containers.

Flammable liquids should be stored where they cannot be damaged and away from sources of ignition.

d) Heating

Temporary heat should be provided by U.L. listed and properly installed gas, oil or electrical heaters. Bonfires and drum fires should not be used for heating at a jobsite.

e) Accessibility

Access roads to the jobsite should be completed prior to any construction above ground level. The jobsite should be accessible to the fire department.

f) Water Supply

A fully operable fire hydrant should be located within 500 feet of the building prior to any construction above ground level.

g) Fire Extinguisher

One 2A fire extinguisher should be located every 5000 square feet with a maximum of 75 feet travel distance from any point in

the building. Fire extinguishers should be located on each floor of a building under construction.

h) Telephone

A telephone should be located within 500 feet of the jobsite so the police and fire departments can be called during an emergency.

i) Sprinklers and Standpipes

Sprinklers and standpipes should not be operational until the building can be heated. Frozen pipes can burst, causing water damage.

2. Theft and Vandalism

An unoccupied structure under construction can be an attractive target for theft and vandalism. When a jobsite is also isolated, it becomes an even more attractive target. Plumbing supplies, electrical wiring, and bricks are often stolen from commercial structures. Appliances and heating and air conditioning units can be stolen from dwelling structures.

JOBSITES SHOULD BE FENCED or protected by a watchman in areas where theft and vandalism are a concern.

3. Collapse

Collapse may be caused by wind, faulty workmanship, or design error.

4. Wind

Long masonry walls are subject to collapse from strong winds before the roof or a floor is in place to tie down the walls. All masonry walls should be properly braced until they are tied down by the roof or a floor. Examples of structures that have long masonry walls include shopping centers or malls, warehouses, exposition halls or arenas, and supermarkets.

5. Faulty Workmanship

Partial or total collapse of a structure can result from faulty workmanship during the erection of the structure. Types of faulty workmanship that can result in a collapse are:

- a) *abnormal settling of the foundation because of unanticipated soft soil conditions and inadequate number or placement of piles or caissons;*
- b) *improperly erected structural supports including expansion joints, incorrect erection sequence, and inadequate temporary supports;*
- c) *loads being applied to floors before concrete is properly cured.*
- d) *General contractors and all subcontractors should have experience in erecting buildings that are similar to the builders' risk being covered.*

6. Error in Design

An unusual building design may require using a new construction technique, novel building materials or untested engineering calculations.

REVIEWING THE ARCHITECT'S CONCEPT DRAWING of the proposed building will usually reveal any design features that may raise questions about the risk. A loss control review should be conducted if a design feature raises a concern.

7. Earthquake and flood

Not necessarily a frequent cause of builders risk losses, but insureds sometimes specifically request these coverages.

F. Coverages Unique to builders risk/course of construction insurance

- 1. *Fraud and deceit* - fraudulently inducing an insured to part with covered property (aka trick and device).**
- 2. *Contract penalty* - penalty for non-completion of the contract assessed against the insured. Insured's inability to complete the contract according to its terms must be the direct result of a loss by a covered peril.**
- 3. *Expediting expenses* - pays expenses incurred by insured to expedite repairs, such as additional labor or overtime, transportation costs to rush delivery of needed parts, and expenses to rent additional equipment.**
- 4. *Ordinance or law* - insureds need coverage for the demolition of undamaged parts of buildings as well as for the increased**

cost to repair and the cost to demolish and clear the site.

5. **Testing** - covers loss to the building or structure caused by a covered peril that results from testing of materials, machinery, or equipment that will become a permanent part of the building or structure. New machinery and equipment (air conditioning, heating equipment, etc.) needs to be tested to make sure it works properly. Testing includes start-up, performance, stress, pressure or overload testing.
6. **Soft costs** - the term refers to coverage for additional expenses incurred by the insured when construction is delayed by a loss caused by a covered peril. These are costs "over and above" normal costs that would have been incurred had there been no delay. Examples include *additional* advertising expenses, attorneys or accountants fees, **additional** interest payments **with respect to construction loans**, **additional** architectural **and** engineering fees, **additional** insurance premiums, **and so on**.
7. **Property in transit** - during the project, property used in construction may be owned by various parties and may be in transit, on the premises, or in storage. The transit exposure needs to be covered in the builders risk form.
8. **Falsework** – Falsework is a temporary structure, often made of wood, but also of other materials, that serves as a support for a part of the permanent structure. A stone or brick archway is an example. Once the archway is strong enough to support itself, the falsework is removed.

BUILDERS' RISK COVERAGE SCHEDULED JOBSITE FORM

AGREEMENT

In return for "your" payment of the required premium, "we" provide the coverage described herein subject to all the "terms" of the Builders' Risk Coverage. This coverage is also subject to the "schedule of coverages" and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the "schedule of coverages".

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words "you" and "your" mean the persons or organizations named as the insured on the "schedule of coverages".
2. The words "we", "us", and "our" mean the company providing this coverage.
3. "Earth movement" means any movement or vibration of the earth's surface (other than "sinkhole collapse") including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence' or sinking, rising, or shifting of earth.
4. "Flood" means flood, surface water, waves, tidal water, or the overflow of a body of water whether driven by wind or not. This includes spray that results from these whether driven by wind or not.
5. "Jobsite" means any location, project, or work site where "you" are in the process of constructing, building, or fabricating a building or structure.
6. "Limit" means the amount of coverage that applies.
7. "Pollutant" means:
 - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
 - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
8. "Schedule of coverages" means:
 - a. all pages labeled schedule of coverages or schedules which pertain to this coverage; and
 - b. declarations or supplemental declarations which pertain to this coverage.
9. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.
10. "Specified perils" means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles' "volcanic action"; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to personal property in the open or to the interior of buildings or structures or personal property inside buildings or structures unless the exterior of the roof or walls are first damaged by a falling object.

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

11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
 12. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.
-

PROPERTY COVERED

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

"We" cover direct physical loss caused by a covered peril to buildings and structures at the "jobsite" described on the "schedule of coverages" while in the course of construction, building, or fabrication. This includes:

1. materials and supplies which will become a permanent part of the buildings or structures;
2. foundations, excavations, grading, filling, attachments, permanent fencing, and other permanent fixtures;
3. scaffolding, construction forms or temporary fencing at the described "jobsite"; and
4. temporary structures at the described "jobsite".

PROPERTY NOT COVERED

1. **Aircraft or Watercraft** – "We" do not cover aircraft or watercraft.
 2. **Automobiles** – "We" do not cover automobiles or any self-propelled vehicles that are designed for highway use.
 3. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
 4. **Existing Buildings or Structures** – "We" do not cover existing buildings or structures to which additions, alterations, improvements, or repairs are being made.
 5. **Land** – "We" do not cover land including land on which covered property is located.
 6. **Money and Securities** – "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
-

COVERAGE EXTENSIONS

Unless otherwise indicated the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The following Coverage Extensions indicate an applicable "limit". This "limit" may also be shown in the "schedule of coverages". If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

1. **Debris Removal** – "We" pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:
 - a. extract "pollutants" from land or water; or

- b. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

2. **Emergency Removal** – “We” pay for any direct physical loss to covered property while it is being moved or being stored to prevent a loss caused by a covered peril. This coverage applies for up to ten days after the property is first moved, but does not extend past the date on which this policy expires.
3. **Emergency Removal Expenses** – “We” pay up to \$10,000 for your expenses to move or store covered property to prevent a loss caused by a covered peril. This coverage applies for up to ten days after the property is first moved, but does not extend past the date on which this policy expires.
4. **Fraud and Deceit** – “We” pay up to \$50,000 in any one occurrence for theft of covered property when “you”, “your” agents, customers, or consignees are fraudulently induced to part with the covered property:
- to persons who falsely represent themselves as the proper persons to receive the property;
 - by the acceptance of fraudulent bills of lading or shipping receipts; or

- c. as a result of or directly related to the use of any electronic data processing hardware or software.

5. **Waterborne Property** – “We” pay for direct physical loss caused by a covered peril to covered property while waterborne.

The most “we” pay for loss to waterborne property in any one occurrence is \$10,000.

SUPPLEMENTAL COVERAGES

Unless otherwise indicated the coverages provided below are separate from and not part of nor in addition to the applicable “limit” for coverage described under Property Covered.

The following Supplemental Coverages indicate an applicable “limit”. This “limit” may also be shown in the “schedule of coverages”. If a different “limit” is indicated on the “schedule of coverages”, that “limit” will apply instead of the “limit” shown below.

1. **Contract Penalty** – “We” pay for the cost of contractual penalties for non-completion that “you” are assessed or are required to pay because “you” are unable to complete construction of a covered building or structure in accordance with contract terms or conditions. “Your” inability to complete construction on time must be as a direct result of a loss by a covered peril to a covered building or structure.

The most “we” pay for all contractual penalties in any one occurrence is \$10,000.

2. **Expediting Expenses** – When a covered peril occurs to a covered building or structure, “we” pay for reasonable expediting expenses necessary to complete construction or installation within the time frame specified in the construction contract.

Expediting expenses include additional labor or overtime, transportation costs, storage expense, and the expense to rent additional equipment.

The most “we” pay for all expediting expenses in any one occurrence is \$10,000.

3. **Fire Department Service Charges** – “We” pay up to \$1,000 to cover “your” liability, assumed by contract or agreement prior to the loss, for fire department service charges.

This coverage is limited to charges incurred when the fire department is called to save or protect covered property from a covered peril.

No deductible applies.

4. **Ordinance or Law, Demolition of Undamaged Parts of Buildings** – When a covered peril occurs to a covered building or structure, “we” cover loss caused by the enforcement of any ordinance, law, or decree that:

- a. requires the demolition of undamaged parts of a covered building or structure that are damaged or destroyed by a covered peril;
- b. regulates the construction or repair of a building or structure, or establishes building, zoning, or land use requirements at the “jobsite”; and
- c. is in force at the time of loss.

“We” do not cover the costs associated with the enforcement of any ordinance, law, or decree that requires “you” or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of “pollutants”.

Coverage for Ordinance or Law, Demolition of Undamaged Parts of Buildings is part of and not in addition to the applicable “limit” for coverage described under Property Covered.

5. **Ordinance or Law, Increased Cost to Repair and Cost to Demolish and Clear Site** – When a covered peril occurs to a covered building or structure, “we” cover:

- a. the increased cost to repair, rebuild, or construct a covered building or structure as a result of the enforcement of building, zoning or land use ordinance, law, or decree. If a covered building or structure is repaired or rebuilt, it must be intended for similar occupancy as the current property, unless otherwise required by building, zoning or land use ordinance, law, or decree.
- b. the cost to demolish and clear the site of undamaged parts of a covered building or structure that are damaged or destroyed by a covered peril as a result of the enforcement of the building, zoning or land use ordinance, law, or decree.

“We” do not cover the costs associated with the enforcement of any ordinance, law, or decree that requires “you” or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of “pollutants”.

“We” do not cover the increased cost of construction until the covered building or structure is actually repaired or replaced and unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.

If the covered building or structure is repaired or replaced, “we” pay the lesser of:

- a. the amount “you” actually spend to demolish and clear the site, plus the amount “you” actually spend to repair, rebuild, or construct the property but not for more than a building or structure of the same height, floor area, and style; or

b. \$50,000.

If the covered building or structure is not repaired or replaced, "we" pay the lesser of:

a. the amount "you" actually spend to demolish and clear the site, plus the cost to replace the damaged or destroyed property with other property:

- 1) of like kind, and quality;
- 2) of the same height, floor area, and style; and
- 3) used for the same purpose; or

b. \$50,000

6. **Personal Property** – "We" cover direct physical loss caused by a covered peril to business personal property while being installed or stored in a covered building or structure but which will not become a permanent part of the building or structure.

The most "we" pay for loss to personal property in any one occurrence is \$10,000.

7. **Pollutant Cleanup and Removal** – "We" pay "your" expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to "us" in writing within 180 days from the date the covered peril occurs.

"We" do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of "pollutants". However, "we" pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.

The most "we" pay for any one "jobsite" or location is \$25,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

8. **Rewards** – "We" pay up to \$1,000 as a reward for information that leads to a conviction for arson, theft, or vandalism. The conviction must involve a covered loss caused by arson, theft, or vandalism.

The amount "we" pay is not increased by the number of persons involved in providing the information.

9. **Sewer Backup and Water Below the Surface** – "We" cover direct physical loss to a covered building or structure caused by:

- a. water that backs up through a sewer or drain; or
- b. water below the surface of the ground including water that exerts pressure on or flows, seeps, or leaks through or into a covered building or structure.

The most "we" will pay for loss caused by sewer backup and water below the surface in any one occurrence is \$10,000.

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

- a. materials and supplies which will become a permanent part of a covered building or structure in the course of construction, building, or fabrication; or
- b. business personal property as described under Personal Property, Supplemental Coverages; and
- c. trees, shrubs, plants and lawns as described under Trees, Shrubs and Plants, Supplemental Coverages;

while they are at a storage location.

The most "we" pay for loss to property at a storage location in any one occurrence is \$10,000.

11. **Testing** – “We” cover direct physical loss to a covered building or structure caused by a covered peril that results from testing. Testing includes start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered building or structure.

The most “we” pay for loss resulting from testing in any one occurrence is \$10,000.

12. **Transit** – “We” cover direct physical loss caused by a covered peril to:
- materials and supplies which will become a permanent part of a covered building or structure in the course of construction, building, or fabrication; or
 - business personal property as described under Personal Property, Supplemental Coverages; and
 - trees, shrubs, plant and lawns as described under Trees, Shrubs and Plants, Supplemental Coverages;
- while they are in transit.

The most “we” pay for loss to property in transit in any one occurrence is \$10,000.

13. **Trees, Shrubs, and Plants** – “We” cover direct physical loss including debris removal expenses, to outdoor trees, shrubs, plants, and lawns at the covered “jobsite” and that are a part of “your” construction, building or fabrication project. “We” only cover loss caused by:
- fire;
 - lightning;
 - explosion;
 - riot or civil commotion;
 - falling objects; or

- vandalism.

The most “we” pay for loss to trees, shrubs and plants in any one occurrence is \$10,000.

PERILS COVERED

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

PERILS EXCLUDED

- “We” do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

- Civil Authority** – “We” do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

“We” do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

- Earth Movement or Volcanic Eruption** – “We” do not pay for loss caused by any “earth movement” (other than “sinkhole collapse”) or caused by eruption, explosion, or effusion of a volcano.

“We” do pay for direct loss by fire, explosion, or “volcanic action” resulting from either “earth movement” or eruption, explosion, or effusion of a volcano.

G. Potential coverage issues/deficiencies

1. Negligence of contractors/waiver of subrogation

Damage caused by the negligence of a contractor can lead to claims or lawsuits between parties involved in the construction project. A comprehensive builders risk policy, including provisions for waivers of subrogation, would reduce or eliminate the potential for such claims or lawsuits. In other words, first party coverage would be available to all parties, if named as insureds under the policy, and pressing a liability claim would not be necessary.

2. All risks coverage vs. named perils

Recall that all risks coverage is required by AIA and AGC documents. All risks builders risk coverage is usually available and is the preferred form of coverage.

3. Replacement cost vs. actual cash value

AIA and AGC documents also require replacement cost coverage. The term "actual cash value" usually is not defined in the policy and may be subject to various meanings, depending upon the state in which the loss occurs. Replacement cost coverage should be sought, whenever possible.

Keep in mind also, that sublimits are ordinarily imposed on many of the additional or supplemental coverages provided in builders risk forms, such as testing, ordinance or law, transit, etc. When sublimits apply, the requirement of full replacement cost coverage is not met. It may be necessary, under such circumstances, to amend the AIA or AGC document to change this requirement.

4. Earthquake, flood, collapse

Builders risk insurers will occasionally provide earthquake and flood coverage for an additional premium, and with substantially higher deductibles than those applying to other coverages in the policy. The each occurrence limit may be considerably less than the general policy limit. It may not be possible to obtain earthquake insurance for the full replacement cost of the project. In certain areas, like California, coverage will be extremely expensive, if available at all.

If a project is located in a flood-prone area, flood insurance may not be available through private insurers, but may be available from the National Flood Insurance Program.

Collapse coverage availability, including the scope of coverage, will vary among insurers. The AIA and AGC documents require collapse coverage. Some forms include sublimits for collapse coverage, so complying with AIA and AGC requirements for full replacement cost may require negotiations with the insurer, or special amendments to the documents. Exposure to loss by collapse is greater with a building or structure in the course of construction than a completed building or structure. Faulty construction or windstorm could lead to a collapse loss of a partially completed building or structure.

5. Debris removal

Builders risk policies usually cover debris removal, but may exclude pollution cleanup. Both should be covered in the builders risk form. Again, however, sublimits usually apply.

6. Time Element Coverage

Loss of revenue, loss of rents, and extra expense coverage, separate from soft costs coverage for delayed opening, may be needed by the insured. Such coverage is often available as an endorsement for an additional premium charge. Producers should make it a point to become familiar with the endorsements available with a particular builders risk policy.

SOFT COST AND RENTAL INCOME ENDORSEMENT

ADDITIONAL DEFINITION

"Delay" means a delay in the construction, building, or fabrication of covered property.

COVERAGE

1. **Soft Costs** – When a "limit" is indicated for soft costs, "we" pay for soft cost expenses that arise out of a "delay" caused by a covered peril. Soft cost expenses means the necessary expenses relating to the construction, building, or fabrication of covered property that are over and above those costs which would have been incurred had there been no "delay". These costs consist of:
 - a. **Advertising** – Additional advertising and promotional expenses.
 - b. **Fees** – Additional fees for architects, engineers, consultants, attorneys, and accountants.
 - a. **Interest** – Additional interest on money borrowed to finance construction, remodeling, renovation, or repair.
 - b. **Leases** – The cost of administrative expenses and commissions which result from the re-negotiation of leases.
 - c. **Realty Taxes** – Additional realty taxes and other assessments which "you" incur for the period of time that construction has been extended beyond the projected completion date.

2. **Rental Income** – When a "limit" is indicated for rental income, "we" pay for actual loss of rental income that arises out of a "delay" caused by a covered peril. Expenses that do not necessarily continue because of a "delay" will be deducted from the loss of rental income.
-

ADDITIONAL EXCLUSIONS

1. **Additional Time** – "We" do not pay for any increase in loss resulting from additional time that would be required to replace or repair any part of the covered property due to:
 - a. ordinances or laws requiring the use of construction materials or equipment that are different from the property that is destroyed;
 - b. ordinances or laws requiring "you" to test, evaluate, observe, or record the existence, level, or effects of pollutants;
 - a. adverse weather conditions; or
 - b. improvements necessary to correct deficiencies of original construction, building or fabrication.
2. **Consequential Loss** – "We" do not pay for any increase in loss resulting from any other consequential loss.
3. **Leases, Licenses, Contracts, or Orders** – "We" do not cover any increase in loss due to the suspension, lapse, or cancellation of leases, licenses, contracts, or orders.
4. **Strikes and Other Interference** – "We" do not cover any increase in loss due to interference by strikers or other persons. This applies to interference with repairing or replacing the covered property or with resuming construction of the covered property.

COVERAGE EXTENSIONS

1. **Expense To Reduce Loss** – “We” extend “you” the coverages under this endorsement to include necessary expenses incurred to reduce the amount of soft cost expenses or loss of rental income. Expenses paid under this coverage extension will not increase the applicable “limit”. “We” do not pay for:
 - a. expenses to extinguish a fire; or
 - b. expenses that exceed the amount by which a loss is reduced.
2. **Interruption By Civil Authority** – “We” extend coverage for soft cost expenses to include loss while access to covered property is specifically denied by an order of civil authority. This order must be a result of damage to property other than at “your” “jobsite” and caused by a covered peril. This extension is limited to two consecutive weeks from the date of the order. This coverage extension does not increase the “limit” for Soft Costs or Rental Income.

WHAT MUST BE DONE IN CASE OF LOSS

Other “terms” relating to What Must Be Done In Case Of Loss may also apply. These are shown in the Builders’ Risk Coverage.

1. **Due Diligence** – “We” only pay for soft cost expenses or loss of rental income during the period of time that would be required with due diligence and dispatch to rebuild or restore the damaged covered property with materials of like kind and quality. “You” must do everything reasonably possible to minimize soft cost expenses or loss of rental income.

2. **Interference and Access** – “You” must minimize any interference with the construction schedule to avoid or reduce any resulting “delay”.

“You” must also allow “us” access to the covered property so that “we” can negotiate with the contractors, sub-contractors, manufacturers, suppliers, or other involved parties so “we” can:

- a. establish the cause and extent of the loss to covered property, soft cost expenses, or loss of rental income;
- b. determine and suggest methods to minimize or avoid the delay in construction, repairing, remodeling, or renovation.

HOW MUCH WE PAY

Other “terms” relating to How Much We Pay may also apply. These are shown in the Builders’ Risk Coverage.

1. **Expenses And Income** – “We” pay for the soft cost expenses and loss of rental income after the loss to covered buildings and structures. The most “we” pay for loss in any one occurrence is the “limit” indicated for Soft Cost and Rental Income.
2. **Soft Cost And Rental Income Deductible** – “We” pay only that part of “your” soft cost expenses or loss of rental income that “you” incur after the number of days indicated on the “schedule of coverages” have passed.

ADDITIONAL CONDITIONS

Appraisal – If “you” and “we” do not agree on the amount of the soft cost expenses or loss of rental income, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, "you" or "we" can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will then determine and state separately the amount of each loss.

The appraisers will also determine the incurred soft cost expenses or loss or rental income, if requested.

The appraisers will also determine the value of covered property items at the time of loss, if requested.

If the appraisers submit a written report of any agreement to "us", the amount agreed upon will be the agreed amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three sets the amount of the loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by "you" and "us".

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REHABILITATION AND RENOVATION ENDORSEMENT

(The information required below may be indicated
on the "schedule of coverages".)

Valuation (check one)

Actual Cash Value

Agreed Amount

PROPERTY COVERED

Rehabilitation and Renovation – "We" cover direct physical loss caused by a covered peril to buildings and structures described on the "schedule of coverages" while in the course of rehabilitation including additions, alterations, improvements, or repairs. This includes materials and supplies which will become a permanent part of the buildings and structures, attachments, and permanent fixtures.

PROPERTY NOT COVERED

The exclusion for existing building or structures under Property Not Covered is deleted and replaced by the following:

Excavations, Grading, Filling, Pipes, Flues, and Drains – "We" do not cover:

1. the cost of excavations, grading, or filling; and
2. underground pipes; flues; and drains.

VALUATION

One of the following provisions is added under Valuation.

1. **Actual Cash Value** – If actual cash value is indicated on the "schedule of coverages", the value of existing buildings or structures that are in the course of rehabilitation or renovation will be based on the actual cash value at the time of loss (with a deduction for depreciation).
2. **Agreed Value** – If agreed value is indicated on the "schedule of coverages", the value of existing buildings or structures that are in the course of rehabilitation or renovation will be valued at the "limit" indicated for the described property.

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SOFT COST, EXTRA EXPENSE, AND RENTAL INCOME ENDORSEMENT

ADDITIONAL DEFINITION

“Delay” means a delay in the construction, building, or fabrication of covered property.

COVERAGE

1. **Soft Costs** – When a “limit” is indicated for soft costs, “we” pay for soft cost expenses that arise out of a “delay” caused by a covered peril. Soft cost expenses means the necessary expenses relating to the construction, building, or fabrication of covered property that are over and above those costs which would have been incurred had there been no “delay”. These costs consist of:
 - a. **Advertising** – Additional advertising and promotional expenses.
 - b. **Design Fees** – Additional fees for architects, interior designers, consultants, and other technical advisors, and engineers.
 - c. **Professional Fees** – Additional fees for accountants and attorneys.
 - d. **Financing** – Additional cost of financing:
 - 1) additional interest payments on money borrowed to finance construction, remodeling, renovation, or repair including increased interest rates; and
 - 2) additional fees for letters of credit and trusts; and
 - 3) additional commissions and loan fees incurred in rearranging financing for the project.
- e. **Lease Administration** – The cost of administrative expenses and commissions which result from the renegotiation of leases.
- f. **General Administration** – The cost of general administrative and overhead expenses for additional clerical personnel, additional security costs and other similar expenses.
- g. **Lease Expenses** – The additional cost to extend leases for construction equipment and temporary office space.
- h. **Realty Taxes** – Additional realty taxes and other assessments which “you” incur for the period of time that construction has been extended beyond the projected completion date.
- i. **Permit Fees** – Additional fees for renewing or replacing construction permits or other licenses and permits necessary to continue construction.
- j. **Insurance Premium** – Additional cost of insurance premiums necessary to renew or extend insurance coverage.
2. **Extra Expense** – When a “limit” is indicated for extra expense, “we” cover the necessary extra expenses that are incurred to resume or continue construction of a covered building or structure as nearly as practicable.

“We” cover only the extra expenses that are necessary during construction of a covered building or structure.

“We” cover extra expenses to repair, replace, or restore any property, but only to the extent that they reduce the loss otherwise payable under this endorsement.

“We” cover extra expenses to research, replace, or restore information on damaged valuable papers and records, but only to the extent that they reduce the loss otherwise payable under this endorsement. Valuable papers and records means inscribed, printed, or written documents; manuscripts; or records. This includes abstracts, books, deeds, drawings, films, maps, or mortgages.

3. **Rental Income** – When a “limit” is indicated for rental income, “we” pay for actual loss of rental income that arises out of a “delay” caused by a covered peril. Expenses that do not necessarily continue because of a “delay” will be deducted from the loss of rental income.
-

COVERAGE EXTENSIONS

1. **Ordinance or Law** – Coverage under this endorsement is extended for the increased time of “delay” caused by the enforcement of any ordinance, law, or decree that:
 - a. regulates the construction, use, or repair of a covered building or structure; or
 - b. requires the demolition of a covered building or structure, in part or in whole, not damaged by a covered peril.

The ordinance, law, or decree must be in force at the time of loss.

Coverage is not extended to include “delay” caused by the enforcement of any ordinance, law, or decree that regulates the testing, evaluating, observing, or recording the existence, level, or effects of “pollutants”.

2. **Interruption By Civil Authority** – Coverage under this endorsement is extended to include soft cost expenses, extra expenses, or loss of rental income while access to a covered building or structure is specifically denied by an order of civil authority. This order must be a result of damage to property other than at “your” jobsite and caused by a covered peril. This extension is limited to two consecutive weeks from the date of the order.
-

ADDITIONAL EXCLUSIONS

1. **Additional Time** – “We” do not pay for any increase in loss resulting from additional time that would be required to replace or repair any part of the covered property due to:
 - a. adverse weather conditions; or
 - b. improvements necessary to correct deficiencies of original construction, building or fabrication.
2. **Consequential Loss** – “We” do not pay for any increase in loss resulting from any other consequential loss.
3. **Leases, Licenses, Contracts, or Orders** – “We” do not cover any increase in loss due to the suspension, lapse, or cancellation of leases, licenses, contracts, or orders.

However, “we” do cover loss if the suspension, lapse, or cancellation results directly from a covered “delay”.
4. **Strikes and Other Interference** – “We” do not cover any increase in loss due to interference by strikers or other persons. This applies to interference with repairing or replacing the covered property or with resuming construction of the covered property.

5. **Fire Extinguishment** – “We” do not cover expenses to put out a fire.
 6. **Unnecessary Expenses** – “We” do not cover any expenses that:
 - a. are not necessary during construction of the covered building or structure; and
 - b. exceed the amount by which a loss is reduced.
-

WHAT MUST BE DONE IN CASE OF LOSS

Other “terms” relating to What Must Be Done In Case Of Loss may also apply. These are shown in the Builders’ Risk Coverage.

1. **Due Diligence** – “We” only pay for soft costs, extra expenses and rental income during the period of time that would be required with due diligence and dispatch to rebuild or restore the damaged covered property with materials of like kind and quality. “You” must do everything reasonably possible to minimize soft cost expenses, extra expenses, or loss of rental income.
2. **Interference and Access** – “You” must minimize any interference with the construction schedule to avoid or reduce any resulting “delay”.

“You” must also allow “us” access to the covered property so that “we” can negotiate with the contractors, sub-contractors, manufacturers, suppliers, or other involved parties so “we” can:

- a. establish the cause and extent of the loss to covered property, soft cost expenses, or loss of rental income;
- b. determine and suggest methods to minimize or avoid the delay in construction, repairing, remodeling, or renovation.

HOW MUCH WE PAY

Other “terms” relating to How Much We Pay may also apply. These are shown in the Builders’ Risk Coverage.

1. **Expenses And Income** – “We” pay for the soft cost expenses, extra expenses, and loss of rental income after the loss to a covered buildings and structure. The most “we” pay for loss in any one occurrence is the “limit” indicated for Soft Cost, Extra Expense, and Rental Income.
 2. **Soft Cost And Rental Income Deductible** – “We” pay only that part of “your” soft cost expenses, extra expenses, or loss of rental income that “you” incur after the number of days indicated on the “schedule of coverages” have passed.
-

ADDITIONAL CONDITIONS

Appraisal – If “you” and “we” do not agree on the amount of the soft cost expenses, extra expenses, or loss of rental income, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser’s identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, “you” or “we” can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will then determine and state separately the amount of each loss.

The appraisers will also determine the incurred soft cost expenses or loss or rental income, if requested.

The appraisers will also determine the value of covered property items at the time of loss, if requested.

If the appraisers submit a written report of any agreement to “us”, the amount agreed upon will be the agreed amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three sets the amount of the loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by “you” and “us”.

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FREEZING EXCLUSION ENDORSEMENT

PERILS EXCLUDED

The following exclusion is added to Perils Excluded:

Freezing – “We” do not pay for loss caused by water; other liquids; powder; or molten material that leaks or flows from plumbing, heating, air-conditioning systems, or appliances other than fire protective systems caused by freezing. This does not apply if “you” use reasonable care to maintain heat in the building or structure; or “you” drain the equipment and turn off the supply if the heat is not maintained.

EQUIPMENT BREAKDOWN ENDORSEMENT

(The information required below may be indicated
on the "schedule of coverages".)

Check if applicable:

- Explosion, Rupture, or Bursting
 Mechanical Breakdown
 Electrical Currents

SUPPLEMENTAL COVERAGES

The coverages provided below are part of
and not in addition to the applicable "limit"
for coverage described under Property
Covered.

Equipment Breakdown – If indicated in the
"schedule of coverages", "we" pay for any
direct physical loss to covered property
caused by:

- a. **Explosion, Rupture, or Bursting-**
Explosion, rupture, or bursting of steam
boilers, steam or gas turbines, steam
pipes, or steam engines. This
Supplemental Coverage applies only to
loss or damage to the steam boilers,
steam or gas turbines, steam pipes, or
steam engines in which the loss
occurred.

- b. **Mechanical Breakdown** – Mechanical
breakdown includes centrifugal force.
c. **Electrical Currents** – arching or by
electrical currents other than lightning.
-

PERILS EXCLUDED

The exclusion for Explosion, Rupture, or
Bursting; Mechanical Breakdown; and
Electrical Currents under Perils Excluded
are deleted.

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BUILDERS RISK CHECKLIST

Policy Form/Provisions	Included	Recommended	Rejected
Completed Value Form			
Reporting Form (Monthly, Quarterly, Annually)			
Blanket			
Scheduled Location			
PERILS COVERED			
All Risks/Open Perils			
Named Perils			
Direct Physical Loss or Damage			
Theft of Building Materials			
Ordinance or Law			
Deductible			
Flood \$ _____			
Earthquake \$ _____			
Boiler Explosion			
Mechanical Breakdown			
Electrical Breakdown			
Full Collapse Coverage			
Employee Dishonesty			
Faulty Workmanship			
Error or Omission in Design (Resultant Damage)			
Deductible			
Testing \$ _____			
Temperature Extremes			

COVERED PROPERTY	Included	Recommended	Rejected
Building or Structure			
Fixtures			
Materials and Supplies			
Machinery and Equipment to be Installed			
Scaffolding/Falsework			
Fences			

Temporary Structures			
Foundations			
Underground Work			
Site Work - Landscaping, Lawn, Trees, Shrubs, Plants			
Sidewalks and Paved Surfaces			
Off-Site Storage Locations Limit \$ _____			
Property in Transit Limit \$ _____			
Soft Costs Limit \$ _____ (Delayed Opening)			
Damage to Existing Structure (Renovation or Remodeling Work)			
Debris Removal			
Pollutant Cleanup			
OTHER CONSIDERATIONS			
Fraud and Deceit			
Contract Penalty			
Expediting Expense			
Ordinance or Law - Demolition of Undamaged Parts of Building			
Waterborne Property			
Personal Property			
Rewards			
Sewer Backup and Sub- Surface Water			
Fire Dept. Service Charge			
Contingent Coverage			
DIC Coverage			
Performance Bond			
VALUATION	Included	Recommended	Rejected
Replacement Cost			
Actual Cash Value			
Coinsurance			
TIME ELEMENT COVERAGE			
Loss of Revenue			
Loss of Rents			

Extra Expense			
Other			
OTHER PROVISIONS			
Deductible \$ _____ (All Perils except) Flood \$ _____ Earthquake \$ _____ Other \$ _____			
Named Insureds: Owner Contractor Sub-Contractor(s) Sub-Sub-Contractor(s)			
Waivers of Subrogation Owner and Contractor Waive All Rights (1) Each other and any of their sub-contractors, etc. and (2) Architect, Consultants and Separate Contractors Read specific contract as some builders risk policies can be void unless subrogation waiver agreed to by underwriter			
Partial Occupancy			
When Does Coverage Cease? (1) Completion of Work (2) Acceptance by owner (3) Interest of contractors ceases (4) Upon final payment for work Watch policy forms carefully on this point			
Notice of Cancellation/Non- Renewal _____ Days			
See Declarations/Schedule for (1) Named Insured (2) Location (3) Deductible			

III. Installation Floater

A. Introduction

1. Comparison to Builders Risk

A *builders risk* policy covers buildings and structures while they are being constructed, including building materials and equipment that are intended to become a part of the building or structure. Coverage applies at the building site, while covered property is in transit, and while in storage at another location or locations.

An *installation floater* generally covers machinery and equipment that will be installed in a building or structure, such as electrical, heating, air-conditioning, or plumbing equipment. An installation floater can be viewed as a builders risk policy that covers a specific type of property or equipment during its installation. It is usually purchased by a sub-contractor whose job it is to install machinery, etc.

2. Use/Purpose

B. Who can be the Insured

C. Why use an Installation Floater

If a comprehensive builders risk policy is in force, that includes all contractors as insureds, separate installation floaters may not be necessary. Many insurers use the same form to provide both builders risk and installation floater coverage. One of the AAIS forms included in the forms comparison provides a combination of builders risk and installation floater coverage.

D. Exposures to Loss

INSTALLATION FLOATER COVERAGE

AGREEMENT

In return for “your” payment of the required premium, “we” provide the coverage described herein subject to all the “terms” of the Installation Floater Coverage. This coverage is also subject to the “declarations” and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the “declarations”.

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words “you” and “your” mean the persons or organizations named as the insured on the “schedule of coverages”.
2. The words “we”, “us”, and “our” mean the company providing this coverage.
3. “Declarations” means all pages labeled Declarations, Supplemental Declarations, or Schedules, which pertain to this coverage.
4. “Earth movement” means any movement or vibration of the earth’s surface (other than “sinkhole collapse”) including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence’ or sinking, rising, or shifting of earth.
5. “Flood” means flood, surface water, waves, tidal water, or the overflow of a body of water whether driven by wind or not. This includes spray that results from these whether driven by wind or not.
6. “Ground water” means:
 - a. water that backs up through a sewer or drain; or
 - b. water below the surface of the ground. This includes water that exerts pressure on or flows, seeps, or leaks through or into a building, sidewalk, driveway, foundation, swimming pool, or other structure.
7. “Limit” means the amount of coverage that applies.
8. “Pollutant” means:
 - a. any solid, liquid, gaseous, or thermal irritant or contaminant;
 - b. electromagnetic (visible or invisible) or sound emission; or
 - c. waste, including materials to be disposed of as well as recycled, reclaimed, or reconditioned.
9. “Sinkhole collapse” means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.
10. “Specified perils” means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; “sinkhole collapse”; smoke; sonic boom; vandalism; vehicles’ “volcanic action”; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to personal property in the open or to the interior of buildings or structures or personal property inside buildings or structures unless the exterior of the roof or walls are first damaged by a falling object.

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

11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
12. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.

PROPERTY COVERED

"We" cover direct physical loss to covered property caused by a covered peril while at a site of installation, fabrication, or erection described on the "declarations".

Covered Property consists of:

1. "Your" materials, supplies, machinery, fixtures, and equipment; and
2. similar property of others that is in "your" care, custody, and control

which will become a permanent part of "your" installation, fabrication, or erection project.

PROPERTY NOT COVERED

1. **Airborne** – "We" do not cover property while airborne except while in transit on a regularly scheduled airline flight.
2. **Buildings, Structures, and Land** – "We" do not cover buildings, structures, or land. However, "we" do cover property that "you" install, fabricate, or erect in connection with any building or structure.
3. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Machinery, Tools, Equipment** – "We" do not cover machinery, tools, equipment, or similar property which will not become a permanent part of "your" installation, fabrication, or erection project.
5. **Money and Securities** – "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
6. **Trees, Shrubs and Plants** – "We" do not cover trees, shrubs, plants, and lawns.
7. **Waterborne Property** – "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

ADDITIONAL COVERAGES

1. **Transit and Storage Locations** – "We" cover direct physical loss to covered property by a covered peril while:
 - a. in transit; or
 - b. at an unscheduled storage location awaiting installation, fabrication, or erection.

The most “we” pay under this coverage is \$2,500 plus the “limit” shown on the “declarations”.

2. **Debris Removal** – “We” pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:
 - a. extract “pollutants” from land or water; or
 - b. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay up to an additional amount of debris removal expense up to \$5,000 when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

3. **Emergency Removal** – “We” pay for loss to covered property while it is being moved or being stored to prevent a loss caused by a covered peril. “We” pay for any direct physical loss caused by a peril that is not excluded. This coverage applies for up to ten days after the property is first moved, but does not extend past the date on which this policy expires.
4. **Pollutant Cleanup and Removal** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are

reported to “us” in writing within 180 days from the date the covered peril occurs.

“We” do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of “pollutants”. However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

The most “we” pay for each site or location is \$15,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

This is an additional “limit”.

PERILS COVERED

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

PERILS EXCLUDED

1. “We” do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

- a. **Civil Authority** – “We” do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

“We” do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

TESTING COVERAGE ENDORSEMENT

ADDITIONAL DEFINITIONS

1. “Cold testing” means the checking of the component parts of equipment or machinery by mechanical, electrical, hydrostatic, or other forms of testing under dry run conditions. “Cold testing” does not include:
 - a. the firing of furnaces or any application of direct or indirect heat;
 - b. the use of feedstock or other materials for processing; or
 - c. the connection of electrical generating, transforming, converting, or rectifying equipment to a power grid or other load circuit.
2. “Hot testing” means the checking of the component parts of equipment or machinery under load or operational conditions. “Hot testing” includes:
 - a. the firing of furnaces or any application of direct or indirect heat;
 - b. the use of feedstock or other materials for processing or other means to simulate working conditions; or
 - c. the connection of electrical generating, transforming, converting, or rectifying equipment to a power grid or other load circuit for the purposes of checking the equipment or machinery.
3. “Commissioning” means the operation of equipment or machinery with feedstock or other materials for processing under production conditions for the purposes of attaining specification requirements or for training operational personnel.

ADDITIONAL COVERAGES

Testing Coverage – “We” cover direct physical loss to covered property caused by or resulting from “cold testing”, “hot testing”, or “commissioning.”

“We” only cover loss:

1. to covered property that is part of an installation project described on the Testing Coverage Schedule; and
2. caused by or resulting from the type of testing indicated on the Testing Coverage Schedule.

After testing begins it must be completed within the number of days indicated as the testing period on the Testing Coverage Schedule. “We” do not cover loss caused by or resulting from testing if the loss occurs after the testing period.

The most “we” pay for loss caused by or resulting from testing is the “limit” indicated on the Testing Coverage Schedule.

“We” only pay that part of “your” testing loss over the deductible amount indicated on the Testing Coverage Schedule in any one occurrence.

ADDITIONAL CONDITIONS

Protective Safeguards – “You” are required to maintain the protective safeguards described on the Testing Coverage Schedule.

“We” do not pay for loss caused by or resulting from testing if, prior to the loss, “you”:

1. had knowledge of any suspension or impairment in any protective safeguard described on the schedule and “you” did not notify “us”; or
2. failed to maintain:
 - a. any described supervision service;
or

- b. in complete working order any described protective device which “you” control.
-

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American Association of Insurance Services

IV. Contractors Equipment Coverage

A. Scope of Coverage

- 1. The commercial insured engaged in building construction projects purchases commercial *auto* insurance to cover damage to his or her automobiles and trucks. However, equipment such as bulldozers, fork lifts, mobile tools, etc. is not covered by auto insurance because the equipment is not designed or licensed for road use. Furthermore, *commercial property* policies are limited in the coverage they provide for contractors equipment, as we shall see shortly.**
- 2. Like builders risk insurance, contractors equipment coverage is an integral part of any construction project. Contractors equipment insurance provides coverage for damage to mobile equipment, including tools and machinery, used by contractors to construct a building or structure.**

***Builders risk* policies ordinarily do not cover such equipment, unless it is intended to be made a part of the building or structure.**

- 3. Contractors equipment coverage is not restricted to a location, so coverage applies at job sites, other locations, and while in transit.**
- 4. The perils of flood and earthquake are usually covered in contractors equipment forms.**
- 5. Endorsements are often added to provide coverage for time element losses resulting from damage to covered equipment. A related coverage, *Rental Reimbursement*, pays for the cost of renting substitute equipment when the insured's regular equipment has been damaged by a covered peril.**
- 6. Keep in mind that there is no standard contractors equipment policy, so each form must be reviewed carefully.**

B. Examples of contractors equipment by contractor/key hazards/underwriting considerations

1. Street and Road Construction/Street and Road Paving

a) *Equipment*

Tractors, graders, backhoes, loaders, rollers and scrapers

b) Key Hazards

Theft and vandalism because of the isolation of many job sites and the versatility of the equipment.

c) Underwriting Considerations

(1) Job site security

(2) Storage of equipment when not at job site

(3) Maintenance of equipment

(4) Exposure to natural disaster

A good risk will secure a job site by fencing or adding anti-vandalism devices, immobilizing equipment during non-business hours, keeping a record of equipment maintenance, keeping a job site clear of brush and trees and having a plan to evacuate the equipment in case of an uncontrolled fire, controlling all adverse property fire considerations in storage buildings and securing the storage yard.

2. Quarries

a) Equipment

Power shovels, front-end loaders, stone crushing plants, drilling rigs and off-highway trucks

b) Key Hazards

Collisions and overturns because equipment will be operated over rough terrain, on steep inclines and around sharp turns. Landslides are also a hazard because equipment is operated near unsupported earth and stone walls, which can collapse.

c) Underwriting Considerations

(1) Operator experience

(2) Blasting controls

(3) Exposure to and contingency plans for flooding

An acceptable risk will have operators with an average length of employment from 5 to 10 years, with low turnover. Blasting will be subcontracted out and the blasting contractor will provide a certificate of insurance. If the insureds do their own blasting, a formal safety program will be in place and safety meetings will be held regularly. All

blasters should be certified. The loss experience of the risk should be clear of any loss frequency from collisions or overturns.

3. Junk Dealers/Metal Scrap Dealers/Garbage or Refuse Dumps

a) Equipment

Shredders, compactors, cranes with magnets and track-type loaders

b) Key Hazards

Fire and explosion. A fire can occur when debris accumulates in the undercarriage of equipment and is ignited by the high engine temperatures. A fire loss can also occur when a dump has an uncontrolled fire and equipment is not removed. Scrap and refuse can contain aerosol, gasoline or other combustible materials in containers. When these materials are shredded or compacted they can explode. A car with gasoline in its tank can explode when being shredded.

c) Underwriting Considerations

- (1) Preloading or sorting procedures for shredders and compactors
- (2) Fire extinguishers mounted on all equipment
- (3) Regular removal of debris from undercarriages

An acceptable risk in this hazardous inland marine class will have fire extinguishers mounted on all equipment. Loss control would verify that there is no debris accumulation on the equipment. The policy would have a minimum deductible of \$2,500 to control claim frequency.

4. Bridge/Elevated Highway Construction

a) Equipment

Cranes, loaders and backhoes

b) Key Hazards

Theft and vandalism. Overturning is another key hazard, because equipment is often operated on embankments. Boom collapse is a key hazard to cranes. Boom collapse can result from operator error, soil settlement or improper outrigger bracing of the equipment. When bridge work is done over water, cranes may be used on barges. Sinking is a key hazard when equipment is operated on a barge.

c) *Underwriting Considerations*

- (1) Operator experience
- (2) Job site security
- (3) Condition of barges

5. **Building Contractors**

a) *Equipment*

Pile drivers, tower cranes, mobile cranes, derricks and excavators.

b) *Key Hazards*

Fire, vandalism, windstorm, collision of crane booms, collapse of crane booms, upset of excavating equipment and cranes.

c) *Underwriting Considerations*

- (1) Job site security
- (2) Storage of equipment when not at job site
- (3) Maintenance of equipment
- (4) Fire extinguishers mounted on equipment

C. Inadequacies of commercial property coverage for contractors equipment

Commercial property policies usually provide some coverage for contractors equipment, but there are two serious limitations to that coverage:

- 1. *Transit* coverage is ordinarily limited or nonexistent; and**
- 2. Coverage for *property away from premises* is limited or nonexistent.**

AAIS Contractors Equipment Program

Four coverage forms are offered, with varying levels of coverage. Two forms provide blanket coverage while two cover on a scheduled basis. One form is specifically designed to cover small tools owned by the insured and the tools of employees (and coverage is on a blanket basis). Optional endorsements are available, including Trailers and Spare Parts, Income Coverage, Agreed Amount Valuation, to name a few. Note that losses by flood or earthquake are NOT excluded.

CONTRACTORS' EQUIPMENT COVERAGE

AGREEMENT

In return for "your" payment of the required premium, "we" provide the coverage described herein subject to all the "terms" of the Contractors' Equipment Coverage. This coverage is also subject to the "schedule of coverages" and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the "schedule of coverages".

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words "you" and "your" mean the persons or organizations named as the insured on the "schedule of coverages".
2. The words "we", "us", and "our" mean the company providing this coverage.
3. "Contractors' equipment" means machinery, equipment, and tools of a mobile nature that "you" use in "your" contracting, installation, erection, repair, or moving operations or projects. "Contractors equipment" does not mean:
 - a. self-propelled vehicles designed and used primarily to carry mounted equipment; or
 - b. vehicles designed for highway use that are unlicensed and not operated on public roads.

4. "Equipment schedule" means a schedule of "contractors equipment" that is attached to this policy and that describes each piece of covered equipment.
5. "Jobsite" means any location, project, or work site where "you" are in the process of constructing, building, or fabricating a building or structure.
6. "Limit" means the amount of coverage that applies.
7. "Pollutant" means:
 - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
 - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
8. "Schedule of coverages" means:
 - a. all pages labeled schedule of coverages or schedules which pertain to this coverage; and
 - b. declarations or supplemental declarations which pertain to this coverage.
9. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.

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

Falling objects does not include loss to personal property in the open or to the interior of buildings or structures or personal property inside buildings or structures unless the exterior of the roof or walls are first damaged by a falling object.

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

11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
12. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.
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PROPERTY COVERED

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

Scheduled Equipment – "We" over direct physical loss caused by a covered peril to:

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

described on the equipment schedule.

PROPERTY NOT COVERED

1. **Aircraft or Watercraft** – "We" do not cover aircraft or watercraft.
 2. **Automobiles and Trucks** – "We" do not cover automobiles, motor trucks, tractors, trailers, and similar conveyances designed for highway use.
 3. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
 4. **Leased or Rented Property** – "We" do not cover property that "you" lease or rent to others.
 5. **Loaned Property** – "We" do not cover property that "you" loan to others.
 6. **Underground Mining Operations** – "We" do not cover property while stored or operated underground in connection with any mining operations.
 7. **Waterborne Property** – "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.
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COVERAGE EXTENSION

Unless otherwise indicated the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The following Coverage Extension indicates an applicable "limit". This "limit" may also be shown in the "schedule of coverages". If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

Debris Removal – “We” pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:

1. extract “pollutants” from land or water;
or
2. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

SUPPLEMENTAL COVERAGES

Unless otherwise indicated the coverages provided below are separate from and not part of nor in addition to the applicable “limit” for coverage described under Property Covered.

The following Supplemental Coverages indicate an applicable “limit”. This “limit” may also be shown in the “schedule of coverages”. If a different “limit” is indicated on the “schedule of coverages”, that “limit” will apply instead of the “limit” shown below.

1. **Newly Purchased Equipment** – In the event that “you” purchase additional “contractors’ equipment” during the policy period, “we” extend coverage to the additional purchased equipment for up to 30 days.

The most that “we” pay for any one loss under this Supplemental Coverage is the lesser of:

- a. the actual cash value of the newly purchased equipment; or
- b. the “limit” for newly purchased equipment indicated on the “schedule of coverages”. If no “limit” is indicated, then 30% of the Catastrophe Limit indicated on the “schedule of coverages” applies to this Supplemental Coverage.

This Supplemental Coverage will end when any of the following first occur:

- a. this policy expires;
- b. 30 days expire after “you” purchase the equipment; or
- c. “you” report the newly purchased equipment to “us”.

2. **Pollutant Cleanup and Removal** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to “us” in writing within 180 days from the date the covered peril occurs.

“We” do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of “pollutants”. However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

The most “we” pay for any one “jobsite” or location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

PERILS COVERED

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

PERILS EXCLUDED

1. "We" do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
 - a. **Civil Authority** – "We" do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

"We" do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.
 - b. **Nuclear Hazard** – "We" do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion or smoke. "We" do pay for direct loss by fire resulting from the nuclear hazard.
 - a. **War** – "We" do not pay for loss caused by war. This means:
 - 1) declared war, undeclared war, civil war, insurrection, rebellion, or revolution;

- 2) a warlike act by a military force or by military personnel;
- 3) the destruction, seizure, or use of the property for a military purpose; or
- 4) the discharge of a nuclear weapon even if it is accidental.

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

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

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

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

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

- b. **Contamination or Deterioration** – "We" do not pay for loss caused by contamination or deterioration including corrosion, decay, fungus, mildew, mold, rot, rust, or any quality, fault, or weakness in the covered property that causes it to damage or destroy itself.
- c. **Loss of Use** – "We" do not pay for loss caused by or resulting from loss of use, business interruption delay, or loss of market.

- d. **Missing Property** – “We” do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property. This exclusion does not apply to covered property in the custody of a carrier for hire.
 - e. **Pollutants** – “We” do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of “pollutants” unless the release, discharge, seepage, migration, dispersal, or escape is caused by a “specified perils”. “We” do pay for any resulting loss caused by a “specified peril”.
 - f. **Puncture, Blowout, and Road Damage** – “We” do not pay for loss caused by puncture, blowout, and road damage to tires and tubes mounted on vehicles. However, “we” do pay for puncture, blowout, or road damage caused by a “specified peril”.
 - a. **Temperature/Humidity** – “We” do not pay for loss caused by dampness, dryness, or changes in or extremes of temperature.
 - b. **Weight of Load** – “We” do not pay for loss caused by the weight of a load which, under the operating conditions at the time of loss, exceeds the registered lifting capacity of any equipment or machine.
 - c. **Voluntary Parting** – “We” do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
3. “We” do not pay for loss or damage if one or more of the following exclusions apply to the loss. But if loss by a

covered peril results “we” do pay for the resulting loss.

- a. **Mechanical Breakdown** – “We” do not pay for loss caused by mechanical breakdown including centrifugal force.

However, this exclusion does not apply to loss resulting from testing.

- b. **Wear and Tear** – “We” do not pay for loss caused by wear and tear, marring, or scratching.
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WHAT MUST BE DONE IN CASE OF LOSS

1. **Notice** – In case of a loss, “you” must:
 - a. give “us” or “our” agent prompt notice including a description of the property involved (“we” may request written notice); and
 - b. give notice to the police when the act that causes the loss is a crime.
2. **Protect Property** – “You” must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. “We” will pay the reasonable costs incurred by “you” for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. “You” must keep an accurate record of such cost. However, “we” do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against. This does not increase “our” limit.
3. **Proof of Loss** – “You” must send “us” within 60 days after “our” request, a signed, sworn proof of loss. This must include the following information:
 - a. the time, place, and circumstances of the loss;

- b. other policies of insurance that may cover the loss;
 - c. “your” interest and the interests of all others in the property involved, including all mortgages and liens;
 - d. changes in title of the covered property during the policy period; and
 - e. estimates, specifications, inventories, and other reasonable information that “we” may require to settle the loss.
4. **Examination** – “You” must submit to examination under oath in matters connected with the loss as often as “we” reasonably request and give “us” sworn statements of the answers. If more than one person is examined, “we” have the right to examine and receive statements separately and not in the presence of others.
 5. **Records** – “You” must produce records, including tax returns and bank microfilms of all cancelled checks, relating to value, loss, and expense and permit copies and extracts to be made of them as often as “we” reasonably request.
 6. **Damaged Property** – “You” must exhibit the damaged and undamaged property as often as “we” reasonably request and allow “us” to inspect or take samples of the property.
 7. **Volunteer Payments** – “You” must not, except at “your” own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.
 8. **Abandonment** – “You” may not abandon the property to “us” without “our” written consent.
 9. **Cooperation** – “You” must cooperate with “us” in performing all acts required by this policy.

VALUATION

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

HOW MUCH WE PAY

1. **Insurable Interest** – “We” do not cover more than “your” insurable interest in any property.
2. **Deductible** – “We” pay only that part of “your” loss over the deductible amount indicated on the “schedule of coverages” in any one occurrence.
3. **Loss Settlement Terms** – Subject to paragraph 1., 2., 4., 5., and 6. under How Much We Pay, “we” pay the lesser of:
 - a. the amount determined under Valuation;
 - b. the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable; or
 - c. the “limit” that applies to the covered property. However, the most “we” pay for loss in any one occurrence is the Catastrophe Limit indicated on the “schedule of coverages”.

4. **Coinsurance** – “We” only pay a part of the loss if the “limit” is less than the percentage of the value of covered property that is indicated on the “schedule of coverages”. “Our” part of the loss is determined using the following steps:
- multiply the percent indicated on the “schedule of coverages” by the value of the covered property at the time of loss. If no percentage is indicated on the “schedule of coverages”, the applicable coinsurance percentage will be 80%.
 - divide the “limit” for covered property by the result determined in 4.a. above;
 - multiply the total amount of loss, after the application of any deductible, by the result determined in 4.b. above.

The most “we” pay is the amount determined in 4.c. above or the “limit”, whichever is less. “We” do not pay any remaining part of the loss.

If there is more than one “limit” indicated on the “schedule of coverages” for this coverage part, this procedure applies separately to each “limit”.

If there is only one “limit” indicated on the “schedule of coverages” for this coverage, this procedure applies to the total of all covered property to which the “limit” applies.

The coinsurance provisions described above do not apply to the coverages provided under the Coverage Extension and the Supplemental Coverages.

5. **Insurance Under More Than One Coverage** – If more than one coverage of this policy insures the same loss, “we” pay no more than the actual claim, loss, or damage sustained.

6. **Insurance Under More Than One Policy** – “You” may have another policy subject to the same “terms” as this policy. If “you” do, “we” pay “our” share of the covered loss. “Our” share is the proportion that the applicable “limit” under this policy bears to the “limit” of all policies covering on the same basis.

If there is another policy covering the same loss, other than that described above, “we” pay only for the amount of covered loss in excess of the amount due from that other policy, whether “you” can collect on it or not. But “we” do not pay more than the applicable “limit”.

LOSS PAYMENT

1. **Our Options** – “We” have the following options:
- pay the value of the loss;
 - pay the cost of repairing or replacing the loss;
 - rebuild, repair, or replace with property of equivalent kind and quality, to the extent practicable, within a reasonable time;
 - take all or any part of the damaged property at the agreed or appraised value.
- “We” must give “you” notice of “our” intent to rebuild, repair, or replace within 30 days after receipt of a duly executed proof of loss.
2. **Your Losses** – “We” adjust all losses with “you”. Payment will be made to “you” unless another loss payee is named in the policy. An insured loss will be payable 30 days after a satisfactory proof of loss is received, and the amount of the loss has been established either by written agreement with “you” or the filing of an appraisal award with “us”.

AAIS Contractors Equipment Forms Comparison

Coverage Form	IM 7002 08 99	IM 7000 08 99	IM 7001 08 99
Schedule Of Coverages	IM 7007 07 99	IM 7005 07 99	IM 7006 07 99
Equipment Schedule	Not Applicable	IM 7030 07 99 or IM 7031 07 99	IM 7030 07 99 or IM 7031 07 99
Property Covered			
Owned and Non-Owned Equipment	Blanket Coverage On All Equipment	-- Equipment Schedule -- Schedule on File With Company	-- Equipment Schedule
Additional Property Coverages			
Debris Removal	\$5,000	\$5,000	\$5,000
Pollutant Cleanup	\$25,000	\$25,000	\$10,000
Newly Purchased Equipment	Not Applicable (Blanket)	30% of Cat. Limit	30% of Cat. Limit
Equipment Leased or Rented From Others	Not Applicable (Blanket)	\$25,000	End. IM 7012 07 99
Employee Tools	\$10,000	\$5,000	End. IM 7015 07 99
Rental Reimbursement	\$5,000	\$5,000	End. IM 7014 07 99
Spare Parts and Fuel	\$10,000	\$5,000	End. IM 7024 07 99
Fraud and Deceit	\$50,000	End. IM 7025 08 99	End. IM 7025 08 99
Equipment Leased or Rented to Others	\$50,000	End. IM 7013 07 99	End. IM 7013 07 99
Equipment Loaned to Others	\$50,000	End. IM 7023 07 99	End. IM 7023 07 99
Waterborne Equipment	\$50,000	End. IM 7019 07 99	End. IM 7019 07 99
Fire Department Service Charge	\$1,000	Not Available	Not Available
Construction Trailers	\$10,000 Any One Trailer \$50,000 Any One Loss	End. IM 7024 07 99	End. IM 7024 07 99
Recharge Of Fire Extinguishing Equipment	\$1,000	End. IM 7025 08 99	End. IM 7025 08 99
Reward for Recovery of Stolen Equipment	\$1,000	End. IM 7025 08 99	End. IM 7025 08 99

Coverage Form	IM 7002 08 99	IM 7000 08 99	IM 7001 08 99
Valuation			
Actual Cash Value	Included	Included	Included
Replacement Cost	Included	Included	End. IM 7020 07 99
Agreed Amount	End. IM 7026 07 99 and Schedule IM 7033 07 99	End. IM 7026 07 99 and Schedule IM 7031 07 99 or Schedule IM 7033 07 99	End. IM 7026 07 99 and Schedule IM 7031 07 99 or Schedule IM 7033 07 99
Deductible			
Flat Deductible	Included	included	Included
Percentage Deductible	Included	Included	End. IM 7018 07 99
Split Deductible	End. IM 7021 07 99	End. IM 7021 07 99	End. IM 7021 07 99
Coinsurance	Not Applicable	80%-90%-100%-Other	80%-90%-100%-Other
Excluded Perils Concurrent Causation	a. Civil Authority b. Nuclear Hazard c. War	a. Civil Authority b. Nuclear Hazard c. War	a. Civil Authority b. Nuclear Hazard c. War
Excluded Perils Excluded If One or More Apply	a. Criminal, Fraudulent or Dishonest Act b. Loss of Use c. Missing Property d. Pollutants	a. Criminal, Fraudulent or Dishonest Act b. Loss of Use c. Missing Property d. Pollutants e. Voluntary Parting	a. Criminal, Fraudulent or Dishonest Act b. Contamination or Deterioration c. Loss of Use d. Missing Property e. Pollutants f. Puncture, Blowout and Road Damage g. Temperature/ Humidity h. Weight of Load i. Voluntary Parting
Excluded Perils Resulting Loss Covered	a. Mechanical Breakdown b. Contamination or Deterioration c. Temperature/ Humidity d. Wear and Tear	a. Mechanical Breakdown b. Contamination or Deterioration c. Temperature/ Humidity d. Wear and Tear	a. Mechanical Breakdown b. Wear and Tear

Contractors Equipment Checklist

PROPERTY COVERED *Recommendations*

<input type="checkbox"/> Scheduled items only	
<input type="checkbox"/> Owned equipment	
<input type="checkbox"/> Equipment owned by others in insured's CCC	
<input type="checkbox"/> Tools and spare parts	
<input type="checkbox"/> Newly acquired equipment	
<input type="checkbox"/> Equipment loaned or rented to others	
<input type="checkbox"/> Vehicles to which equipment is permanently attached	
<input type="checkbox"/> Crane or derrick boom	
<input type="checkbox"/> Waterborne equipment	
<input type="checkbox"/> Debris removal	

COVERED LOCATIONS

<input type="checkbox"/> Blanket	
<input type="checkbox"/> Scheduled	

LIMITS OF INSURANCE

<input type="checkbox"/> Scheduled per item limits (attach schedule)	
<input type="checkbox"/> Unscheduled equipment \$ _____ per item	
<input type="checkbox"/> Newly acquired equipment \$ _____ per item	
<input type="checkbox"/> Blanket for all equipment \$ _____ <div style="margin-left: 20px;"> <input type="checkbox"/> per item sublimit \$ _____ <input type="checkbox"/> per location sublimit \$ _____ </div>	

<input type="checkbox"/> Debris removal \$ _____	
<input type="checkbox"/> Catastrophe sublimit \$ _____	
<input type="checkbox"/> Flood sublimit \$ _____	
<input type="checkbox"/> Earthquake sublimit \$ _____	

DEDUCTIBLE

<input type="checkbox"/> \$ _____ per occurrence	
<input type="checkbox"/> _____ percent of value	
<input type="checkbox"/> _____ percent of loss	
<input type="checkbox"/> \$ _____ annual aggregate deductible	

VALUATION

<input type="checkbox"/> Actual cash value	
<input type="checkbox"/> Replacement cost	
<input type="checkbox"/> Coinsurance	
<input type="checkbox"/> Agreed amount applies	
<input type="checkbox"/> Reporting form	

PERILS COVERED

<input type="checkbox"/> Named perils (list)	
<input type="checkbox"/> All risks	
<input type="checkbox"/> Repair or maintenance	
<input type="checkbox"/> Weight of load	
<input type="checkbox"/> Missing property/mysterious disappearance	
<input type="checkbox"/> Crane boom restriction exclusion (may be excluded in policy or via exclusionary endorsement)	

OPTIONAL ENDORSEMENTS

<input type="checkbox"/> Equipment leased from others \$ _____ per unit	
<input type="checkbox"/> Equipment borrowed from others \$ _____ per unit	
<input type="checkbox"/> Rental reimbursement \$ _____ per day \$ _____ aggregate Deductible _____ hours	
<input type="checkbox"/> Employees' tools \$ _____ per employee \$ _____ per occurrence	
<input type="checkbox"/> Income coverage	
<input type="checkbox"/> \$ _____ limit	
___ Additional coverages <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	

CANCELLATION

<input type="checkbox"/> Notice of cancellation _____ days	
<input type="checkbox"/> _____ Days for nonpayment	
<input type="checkbox"/> Notice of nonrenewal _____ days	
<input type="checkbox"/> Notice of material change in coverage _____ days	

EQUIPMENT LEASED OR RENTED FROM OTHERS ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule or coverages".)

Limit

The most "we" pay for equipment leased or rented from others is: \$ _____

Reporting Conditions

Rate	\$ _____
Deposit Premium	\$ _____
Minimum Premium	\$ _____

Reporting Conditions Do Not Apply

SUPPLEMENTAL COVERAGES

Property Leased or Rented From Others

– "We" cover direct physical loss caused by a covered peril to "contractors' equipment" that "you" have leased or rented from others.

REPORTING CONDITIONS

Reporting Conditions – Within 30 days after the end of the policy period, "you" must report to "us" the total amount of "your" expenditures for "contractors' equipment" that "you" lease or rent from others.

"We" will compute the premium using the rate indicated for Equipment Leased or Rented From Others multiplied, per \$100, by the expenditures that "you" report to "us".

"We" will compare the total computed premium to the deposit premium. If it is more than the deposit premium, "you" will pay "us" the difference. If it is less than the deposit premium "we" will pay "you" the difference, subject to the described minimum premium.

If this coverage is canceled, "you" must report the total amount of expenditures up to and including the date of cancellation.

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EQUIPMENT LEASED OR RENTED TO OTHERS ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule or coverages".)

Limit

The most "we" pay for equipment leased or rented to others is: \$ _____

Reporting Conditions

Rate	\$ _____
Deposit Premium	\$ _____
Minimum Premium	\$ _____

Reporting Conditions Do Not Apply

SUPPLEMENTAL COVERAGES

Property Leased or Rented to Others –
"We" cover direct physical loss caused by a covered peril to your "contractors' equipment" that "you" rent or lease to others.

REPORTING CONDITIONS

Equipment Leased or Rented to Others –
Within 30 days after the end of the policy period, "you" must report to "us" the total amount of collected or uncollected receipts that "you" have earned from the leasing or renting of "your" "contractors' equipment".

"We" will compute the premium using the rate indicated for Equipment Leased or Rented to Others multiplied, per \$100, by the expenditures that "you" report to "us".

"We" will compare the total computed premium to the deposit premium. If it is more than the deposit premium, "you" will pay "us" the difference. If it is less than the deposit premium "we" will pay "you" the difference, subject to the described minimum premium.

If this coverage is canceled, "you" must report the total amount of expenditures up to and including the date of cancellation.

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RENTAL REIMBURSEMENT ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule of coverages".)

Limit

The most "we" pay for rental reimbursement expenses is: \$ _____

Waiting Period _____

SUPPLEMENTAL COVERAGES

Rental Reimbursement – In the event of a loss by a covered peril to "your" "contractors equipment", "we" reimburse "you" for "your" expense to rent similar equipment while "your" equipment is inoperable.

"We" will continue to reimburse "you" for the rental of equipment after the expiration date of this coverage, provided the loss occurred before the expiration date.

"We" will not reimburse "you":

1. for the rental of equipment until after the described waiting period has passed since "your" "contractors' equipment" was rendered inoperable. If no waiting period is indicated, then a 72 hour waiting period applies.
2. if "you" can continue or resume "your" operations with similar equipment that is available to "you" at no additional expense to "you".
3. for the rental expense of any equipment unless "you" make every reasonable effort to repair, replace, or rebuild the inoperable equipment after the covered loss occurs.

The deductible amount indicated in the "schedule of coverages" does not apply to rental reimbursement expenses.

SMALL TOOLS ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule or coverages".)

Limit

1. Your Tools --

- a. The most "we" pay for loss to any one "tool" is: \$ _____
- b. The most "we" pay for loss to "your" "tools" is: \$ _____

2. Employee Tools --

- a. The most "we" pay for loss to any one "tool" is: \$ _____
- b. The most "we" pay for loss to "your" employees "tools" is: \$ _____

Deductible

Deductible Amount \$ _____

ADDITIONAL DEFINITIONS

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

SUPPLEMENTAL COVERAGES

1. **Your Tools** – "We" cover direct physical loss caused by a covered peril to "your" "tools".

2. **Employee Tools** – "We" cover direct physical loss caused by a covered peril to "tools" owned by "your" employees at a premises that "you" own or operate or at a "jobsite".
-

HOW MUCH WE PAY

Small Tools Deductible – "We" pay only that part of "your" loss over the deductible amount indicated for "tools".

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BOOM RESTRICTION ENDORSEMENT

PROPERTY NOT COVERED

The following exclusion is added to Property Not Covered:

Booms – “We” do not cover crane booms that exceed 25 feet in length.

However, “we” do cover booms over 25 feet in length when the loss is caused by a “specified peril” while the equipment is in transit.

WEIGHT OF LOAD EXCLUSION ENDORSEMENT

PERILS EXCLUDED

The following exclusion is added to Perils Excluded:

Weight of Load – “We” do not pay for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of the covered property.

PERCENTAGE DEDUCTIBLE ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule of coverages".)

Deductible

Percentage Deductible _____ %

Maximum Deductible Amount \$ _____

Minimum Deductible Amount \$ _____

HOW MUCH WE PAY

The deductible provision under How Much We Pay is deleted and replaced by the following:

Percentage Deductible – "We" pay only that part of "your" loss over the deductible amount. The deductible amount is determined by applying the percentage indicated on the "schedule of coverages" to the value of the covered property that is involved in the loss. The value is determined by the provisions described under the Valuation section of this policy. If a loss involves two or more items, the percentage indicated on the "schedule of coverages" will apply only to the covered property with the highest "limit".

The percentage deductible will not exceed the Maximum Deductible amount and will not be less than the Minimum Deductible amount indicated on the "schedule of coverages".

The deductible amount indicated in the "schedule of coverages" does not apply to rental reimbursement expenses.

WATERBORNE ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule of coverages".)

Limit

The most "we" pay for loss to covered property while waterborne is:
\$ _____

Deductible

Deductible Amount \$ _____

COVERAGE EXTENSION

Waterborne Property – "We" cover direct physical loss caused by a covered peril to covered property while waterborne.

PROPERTY NOT COVERED

The exclusion for Waterborne Property is deleted.

HOW MUCH WE PAY

The following deductible provision applies to waterborne property:

Waterborne Deductible – "We" pay only that part of "your" loss over the deductible amount indicated on the "schedule of coverages" in any one occurrence.

REPLACEMENT COST ENDORSEMENT

VALUATION

The Actual Cash Value provision under Valuation is replaced by the following:

Replacement Cost – The value of covered property will be based on the replacement cost at the time of the loss without any deduction for depreciation.

The replacement cost is limited to the cost of repair or replacement with similar equipment and used for the same purpose. The payment shall not exceed the amount “you” spend to repair or replace the damaged or destroyed property.

Replacement cost valuation does not apply until the damaged or destroyed property is repaired or replaced. “You” may make a claim for actual cash value before repair or replacement takes place, and later for the replacement cost if “you” notify “us” of “your” intent within 180 days after the loss.

The replacement cost provision does not apply to the conditions described in Pair Or Set and Loss To Parts under Valuation.

SPLIT DEDUCTIBLE ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule of coverages".)

Deductible

A. Covered Peril(s) _____

Deductible Amount \$ _____

B. All Other Covered Perils

Deductible Amount \$ _____

HOW MUCH WE PAY

The deductible provision under How Much We Pay is replaced by the following:

Split Deductible – When a loss is caused by the described covered peril "we" pay only that part of "your" loss over the deductible amount indicated on the "schedule of coverages".

When a loss is caused by any other covered peril "we" pay only that part of "your" loss that is over the deductible amount indicated for all other covered perils.

PROPERTY LOANED TO OTHERS SCHEDULED CONTRACTORS

(The information required below may be indicated on the "schedule of coverages".)

PROPERTY LOANED TO OTHERS

Limit

The most "we" pay for loss to covered property that "you" loan to others is: \$ _____

Description of contractors and individuals that "you" loan equipment to:

- 1.
 - 2.
 - 3.
 - 4.
-

COVERAGE EXTENSION

Property Loaned to Others – "We" cover direct physical loss caused by a covered peril to covered property that "you" loan to contractors or individuals described in the Property Loaned to Others Schedule.

PROPERTY LOANED TO OTHERS JOBSITE COVERAGE

(The information required below may be indicated on the "schedule of coverages".)

PROPERTY LOANED TO OTHERS SCHEDULE

Limit

The most "we" pay for loss to covered property that "you" loan to others is: \$ _____

COVERAGE EXTENSION

Property Loaned to Others – "We" cover direct physical loss caused by a covered peril to covered property that "you" loan to other contractors or individuals. "We" only cover loss to covered property that "you" loan to others while the property is at a "jobsite" where "you" also operate.

TRAILERS AND SPARE PARTS ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule or coverages".)

Limit

Construction Trailers

The most "we" pay for any one "construction trailer" and the contents in the trailer is:

\$ _____

The most "we" pay for any one loss for all "construction trailers" and the contents in the trailer is:

\$ _____

Spare Parts and Fuel

The most "we" pay for loss to spare parts and accessories is:

\$ _____

Deductible

Deductible Amount \$ _____

ADDITIONAL DEFINITIONS

"Construction trailer" means "your" transportable trailer or transportable trailer of others in "your" care, custody, or control used at "jobsites" as an office or for storage.

ADDITIONAL SUPPLEMENTAL COVERAGES

1. **Construction Trailers** – "We" pay for direct physical loss caused by a covered peril to "construction trailers" and the contents within the trailers while the trailers are:
 - a. at a "jobsite";
 - b. in storage; or
 - c. in transit between a "jobsite" and storage.
2. **Spare Parts and Fuel** – "We" pay for direct physical loss caused by a covered peril to spare parts and accessories for "contractors' equipment" and fluids for vehicles and "contractors' equipment". Fluids includes gasoline, oil, and hydraulic fluid.

HOW MUCH WE PAY

Trailer and Spare Parts Deductible – "We" pay only that part of "your" loss over the deductible amount indicated for trailers and spare parts.

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ADDITIONAL COVERAGES ENDORSEMENT

SCHEDULE

(The information required below may be indicated on the "schedule or coverages".)

Limit

Fraud and Deceit

The most "we" pay for any one loss for theft resulting from fraud and deceit is:

\$ _____

Recharge of Fire Extinguishing Equipment

The most "we" pay for "your" recharge expenses is:

\$ _____

Reward For Recovery of Stolen Equipment

The most "we" pay for reward for information that leads to the recovery of property is:

\$ _____

ADDITIONAL COVERAGE EXTENSIONS

Fraud and Deceit – "We" pay for theft of covered property when "you", "your" agents, customers, or consignees are fraudulently induced to part with the covered property:

1. to persons who falsely represent themselves as the proper persons to receive property;
2. by the acceptance of fraudulent bills of lading or shipping receipts; or
3. as a result of or directly related to the use of any electronic data processing hardware or software.

automatic fire extinguishing equipment or hand held fire extinguishing equipment. "We" only cover "your" recharge expenses:

- a. for extinguishing equipment that is mounted or installed on covered property; and
 - b. when the extinguishing equipment is discharged to fight a fire or as a result of a covered peril.
2. **Reward For Recovery of Stolen Equipment** – "We" pay for information that leads to the recovery of covered property that was stolen. The recovery must involve a covered theft loss. The amount "we" pay is not increased by the number of persons involved in providing the information.

ADDITIONAL SUPPLEMENTAL COVERAGES

1. **Recharge of Fire Extinguishing Equipment** – "We" pay for "your" incurred expenses to recharge

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AGREED AMOUNT ENDORSEMENT

VALUATION

The Valuation provisions are deleted and replaced by the following:

Agreed Amount – Covered property described on the Agreed Amount Schedule or described and indicated on the “equipment schedule” will be valued at the “limit indicated for the described property.”

The replacement cost provision does not apply to the conditions described in Pair Or Set and Loss To Parts under Valuation.

CONTRACTORS' EQUIPMENT – INCOME COVERAGE

ADDITIONAL DEFINITIONS

1. "Business" means normal business activities involving covered "contractors' equipment".
2. "Restoration period" means the time it should reasonably take to resume "your" "business" starting from the date of loss to covered "contractors' equipment" caused by a covered peril, and ending on the date the property should be repaired or replaced. This is not limited by the expiration date of the policy.

This does not include any increase in time due to the enforcement of any ordinance, law, or decree that:

- a. regulates the use or repair of any equipment; or
- b. requires the testing, evaluation, observing, or recording the existence, level, or effects of "pollutants".

COVERAGE

"We" provide the coverage described below during the "restoration period" when "your" "business" is necessarily interrupted by loss to covered "contractors' equipment" as a result of a covered peril.

Covered "contractors' equipment" under this coverage form means:

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

described on the Contractors' Equipment Income Coverage Schedule or described and indicated on the "equipment schedule".

EARNINGS

"We" cover "your" actual loss of net income (net profit or loss before income taxes), payroll expense, interest, and other continuing operating expenses normally earned or incurred by "your" "business".

"We" cover only the expenses that are necessary during the "restoration period". Consideration is given to continuation of payroll and other expenses to the extent necessary to resume "your" "business" to the same level of operation that existed before the loss.

EXCLUSIONS AND LIMITATIONS

1. **Finished Stock** – "We" do not cover loss of earnings caused by loss to stock manufactured by "you" which is ready to ship or sell. This does not apply to stock manufactured for retail outlets that "you" own.
2. **Fire Extinguishment** – "We" do not cover expenses to put out a fire.
3. **Leases, Licenses, Contracts, or Orders** – "We" do not cover any increase in loss due to the suspension, lapse, or cancellation of leases, licenses, contracts, or orders.

However, "we" do cover loss during the "restoration period" if the suspension, lapse, or cancellation results directly from the interruption of "your" business".
4. **Strikes, Protests, and Other Interference** – "We" do not cover any increase in loss due to interference by strikers or other persons. This applies to interference with repairing or replacing the equipment or with resuming "your" "business".
5. **Unnecessary Expenses** – "We" do not cover any expenses that are not necessary during the "restoration period".

COVERAGE EXTENSIONS

Interruption by Civil Authority – “We” extend “your” coverage for earnings to include loss while access to covered “contractors’ equipment” is specifically denied by an order of civil authority. This order must be a result of damage to property other than to covered “contractors’ equipment” and caused by a covered peril. This extension is limited to two consecutive weeks from the date of the order. This does not increase the limit.

PERILS COVERED

Refer to the Contractors’ Equipment Coverage form.

WHAT MUST BE DONE IN CASE OF LOSS

Other “terms” relating to What Must Be Done In Case Of Loss may also apply. These are shown in the Contractors’ Equipment Coverage form.

1. **Notice** – In case of a loss, “you” must:
 - a. give “us” or “our” agent prompt notice including a description of the equipment involved (“we” may request written notice); and
 - b. give notice to the police when the act that causes the loss is a crime.
2. **Proof of Loss** – “You” must send “us” proof of loss (under oath, if requested) within 60 days after the loss. This must include the time, place, and circumstances of the loss; and other information “we” request to investigate the loss.

3. **Intent to Continue Business** – If “you” intend to continue “your” “business”, “you” must resume all or part of “your” “business” as soon as possible.
-

VALUATION

In determining a loss. “we” consider the experience of “your” “business” before the loss and the probable experience had no loss occurred.

“We” do not pay for any increase in loss due to “your” failure to use reasonable efforts to resume all or part of “your” “business”. This includes making use of other equipment to reduce the loss.

If “your” “business” is not resumed as soon as possible, or if it is not resumed at all, the value of loss payment is based on the period of time it would have otherwise taken to resume “your” “business” as soon as possible.

HOW MUCH WE PAY

Other “terms” relating to How Much We Pay may also apply. These are shown in the Contractors’ Equipment Coverage form.

“We” pay for the loss of earnings after the loss to covered “contractors’ equipment”. The most “we” pay for loss in any one occurrence is the “limit” indicated for Income Coverage.

LOSS PAYMENT

Refer to the Contractors’ Equipment Coverage form.

OTHER CONDITIONS

The following condition applies as it relates to this Coverage Part. Other "terms" may also apply. These are shown in the Contractors' Equipment Coverage form.

Appraisal – If "you" and "we" do not agree on the amount of net income (net profit or loss before income taxes), payroll expense, interest, and operating expenses, or the amount of loss, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, "you" or "we" can ask a judge of a court of record in the state where the appraisal is pending to make the selection.

The appraisers will then determine and state separately the amount of loss.

A written agreement is binding on all parties. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three sets the amount of the loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by "you" and "us".

If there is an appraisal, "we" retain "our" right to deny the claim.

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V. Inland Marine Dealers Policies

A. Types of Risks Covered

- 1. Camera dealers**
- 2. Coin dealers**
- 3. Fine arts dealers**
- 4. Furriers**
- 5. Jewelers**
- 6. Mobile equipment dealers**
- 7. Musical instrument dealers**
- 8. Stamp dealers**

B. Scope of Coverage

C. Significance of Proposal for Coverage

- 1. Part of policy**
- 2. Warranty**

D. Integration with the BOP

JEWELRY DEALERS COVERAGE

AGREEMENT

In return for “your” payment of the required premium, “we” provide the coverage described herein subject to all the “terms” of the Jewelry Dealers Coverage. This coverage is also subject to the “declarations” and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the “declarations”.

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words “you” and “your” mean the persons or organizations named as the insured on the “declarations”.
2. The words “we”, “us”, and “our” mean the company providing this coverage.
3. “Declarations” means all pages labeled Declarations, Supplemental Declarations, or Schedules, which pertain to this coverage.
4. “Earth movement” means any movement or vibration of the earth’s surface (other than “sinkhole collapse”) including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence; or sinking, rising, or shifting of earth.

5. “Flood” means flood, surface water, waves, tidal water, or the overflow of a body of water whether driven by wind or not. This includes spray that results from these whether driven by wind or not.
6. “Ground water” means:
 - a. water that backs up through a sewer or drain; or
 - b. water below the surface of the ground. This includes water that exerts pressure on or flows, seeps, or leaks through or into a building, sidewalk, driveway, foundation, swimming pool, or other structure.
7. “Limit” means the amount of coverage that applies.
8. “Proposal” means the application “you” signed and dated to secure this coverage. “You” warrant that each statement made by “you” is true.
9. “Sinkhole collapse” means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.
10. “Specified perils” means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; “sinkhole collapse”; smoke; sonic boom; vandalism; vehicles’ “volcanic action”; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to personal property in the open or to the interior of buildings or structures or personal property inside buildings or structures unless the exterior of the roof or walls are first damaged by a falling object.

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

11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
12. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.

- c. in the custody of a sales representative;
- d. in "your" custody or in the custody of a principal officer or "your" employee away from the described premises;
- e. in transit by registered mail; armored car messenger service; private paid delivery service; or common or contract carrier for hire; or
- f. at a location or in transit other than as described in items a. through e., above.

PROPERTY COVERED

1. "We" cover direct physical loss caused by a covered peril to:
 - a. "your" inventory of stock held for sale that consists of jewels, jewelry, precious and semi-precious stones, precious metals and alloys, and other inventory held for sale that is usual to "your" business while on premises described on the "declarations"; and
 - b. similar property of others which has been delivered or entrusted to "you" while on premises described on the "declarations". However, the business property of others is covered only for the amount that "you" have paid on the property or for which "you" are legally responsible because of loss or damage.
2. When the applicable "limit" is shown on the "declarations", "we" also cover direct physical loss caused by a covered peril to "your" stock and similar property of others away from premises described on the "declarations" while:
 - a. in the safe or vault of a bank, trust, or safe deposit company;
 - b. on the premises of another jewelry dealer;

PROPERTY NOT COVERED

1. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
2. **Displayed in Show Windows or Showcases** – "We" do not cover property while displayed in a show window or showcase that is not on the premises described on the "declarations".
3. **Property at Exhibition** – "We" do not cover property while at any exhibition promoted or financially assisted by a public authority or trade association.
4. **Property Sent C.O.D.** – "We" do not cover property sent Cash On Delivery if the receiver has the right to open and inspect the property before accepting delivery.
5. **Sold Property** – "We" do not cover property that has been sold, including property sold on an installment sales plan, once it leaves "your" custody or the custody of a carrier for hire who is delivering the property for "you".
6. **Watch Dealers Warehouse and Storage Property** – "We" do not cover property of a watch dealer that is in a warehouse or other place of storage away from premises described on the "declarations".

7. **Worn Property** – “We” do not cover property while being worn by “you” or by others. However, “we” do cover watches that are worn while being serviced.
 8. **Property Excluded** – “We” do not cover those classes of property described on the “declarations” under Property Excluded.
-

ADDITIONAL COVERAGES

Theft Damage To Building --

1. “We” cover direct physical loss caused by thieves to:
 - a. the part of the building containing “you” covered property; and
 - b. equipment within the building used for maintenance and service of the building.

“You” must own the building or be legally liable to the owner for this damage, and the covered property must be in premises described on the “declarations”.
2. “We” do not cover:
 - a. damage caused by fire; or
 - b. damage to glass, including lettering or decoration that is on the glass.

This coverage does not increase the “limit” for covered property.

OPTIONAL COVERAGES

The following Optional Coverages apply only if coverage is shown on the Jewelry Dealers Supplemental Declarations Page. The Optional Coverages are subject to the “terms” of the policy, except as provided below.

1. **Damage To or Theft of Safes** – When the applicable “limit” is shown on the “declarations” for Damage To or Theft of Safes, “we” cover loss to safes or vaults described under Part 15 of the Jewelry Dealers Proposal, while on premises described on the “declarations”, caused by or resulting from:
 - a. theft or attempted theft of covered property;
 - b. vandalism; or
 - c. theft of the entire safe or vault.

The most that “we” pay for a loss is the “limit” shown on the “declarations” for Damage To or Theft of Safes.

2. **Peak Season** – When the applicable “limit” is shown on the “declarations” for Peak Season, the “limit” for the specified premises is replaced by the Peak Season “limit” during the Peak Season period. The Peak Season “limit” applies only from the first day of the Peak Season period to the last day of the Peak Season period shown on the “declarations”.
3. **Show Window or Showcase Theft Coverage** – When the applicable “limit” is shown on the “declarations” for Show Windows, “we” cover loss caused by theft following the smashing or cutting of a show window or outside showcase at premises described on the “declarations” under Show Windows.

Item 2.I. under Perils Excluded, Show Window or Showcase Theft, does not apply to the location described on the “declarations” for this coverage.

The most that “we” will pay for a loss is the “limit” shown on the “declarations” for Show Windows.

PERILS COVERED

"We" cover external risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

OTHER COVERAGES - COLLAPSE

"We" pay for loss caused by direct physical loss involving collapse of a building or structure, or any part of a building or structure caused only by one or more of the following:

1. "specified perils";
2. hidden decay;
3. hidden insect or vermin damage;
4. weight of people or personal property;
5. weight of rain that collects on a roof, or
6. the use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling, or renovation.

This coverage does not increase the "limit" for covered property.

PERILS EXCLUDED

1. "We" do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

- a. **Civil Authority** – "We" do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

"We" do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

- b. **Earth Movement or Volcanic Eruption** – "We" do not pay for loss caused by any "earth movement" (other than "sinkhole collapse") or caused by eruption, explosion, or effusion of a volcano.

"We" do pay for direct loss by fire, explosion, or "volcanic action" resulting from either "earth movement" or eruption, explosion, or effusion of a volcano.

All "volcanic action" that occurs within a 168 jour period constitutes a single occurrence.

This exclusion applies only to property at a premises specifically described on the "declarations".

- c. **Nuclear Hazard** – "We" do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion, or smoke. "We" do pay for loss caused by fire resulting from the nuclear hazard.

- d. **War** – "We" do not pay for loss caused by war. This means:

- 1) declared war, undeclared war, civil war, insurrection, rebellion, or revolution;

- 2) a warlike act by a military force or by military personnel;
 - 3) the destruction, seizure, or use of the property for a military purpose; or
 - 5) the discharge of a nuclear weapon even if it is accidental.
- e. **Water** – “We” do not pay for loss caused by water. This means:
- 1) “flood”; or
 - 2) “ground water”.
- If fire, explosion, or sprinkler leakage results, “we” do pay for the resulting loss.
- This exclusion applies only to property at a premises specifically described on the “declarations”.
2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
- a. **Acts or Decisions** – “We” do not pay for loss caused by or resulting from the act or decision of any person, group, organization, or governmental body. This includes the failure to act or decide.

“We” do pay for any resulting loss caused by a covered peril unless the resulting loss itself is excluded.
 - b. **Breakage of Fragile Items** – “We” do not pay for loss caused by breakage of fragile items. However, “we” do pay for breakage caused by “specified perils”, theft, or attempted theft.
 - c. **Collapse** – “We” do not pay for loss caused by collapse, except as provided under Other Coverages – Collapse. “We” do pay for any resulting loss caused by a covered peril unless the resulting loss itself is excluded.
 - d. **Contamination or Deterioration** – “We” do not pay for loss caused by contamination or deterioration including corrosion, decay, fungus, mildew, mold, rot, rust, or any quality, fault, or weakness in the covered property that causes it to damage or destroy itself.
 - e. **Criminal, Fraudulent or Dishonest Acts** –
 - 1) “We” do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts alone or in collusion with another by:
 - 1) “you”;
 - 2) others who have an interest in the property;
 - 3) others to whom “you” entrust the property;
 - 4) “your” partners, officers, directors, trustees, joint adventurers; or
 - 5) the employees or agents of 1), 2), 3) or 4) above, whether or not they are at work.

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

 - 2) “We” do pay for loss caused by dishonest acts by:
 - a) the United States Postal Service;
 - b) an armored car service;
 - c) a private paid delivery service;
 - d) any other common or contract carriers for hire; or
 - e) others whom “you” hire as helpers but who are not on “your” payroll.
 - f. **Fault, Defect, or Error** – “We” do not pay for loss caused by or resulting from a fault, defect, or error, negligent or not, in:
 - 1) planning, zoning, surveying, siting, grading, compacting, land use, or development; or

- 2) the design, blueprint, specification, workmanship, construction, maintenance, installation, renovation, remodeling, or repair of property, including the materials used in the construction, remodeling, or repair.

These apply whether or not the property is covered by this policy.

“We” do pay for any resulting loss caused by a covered peril unless the loss itself is excluded.

- g. **Inadequate or Defective Packing** – “We” do not pay for loss caused by inadequate or defective packing.
- h. **Insects, Vermin, or Rodents** – “We” do not pay for loss caused by insects, vermin, or rodents.
- i. **Loss of Use** – “We” do not pay for loss caused by or resulting from loss of use, business interruption, delay, or loss of market.
- j. **Missing Property** – “We” do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property. This exclusion does not apply to covered property in the custody of a carrier for hire.
- k. **Process to Repair, Adjust, Service, or Maintain** – “We” do not pay for loss caused by a process to repair, adjust, service, or maintain the covered property. If loss by fire or explosion results, “we” do pay for the resulting loss.
- l. **Show Windows or Showcase Theft** – “We” do not pay for loss caused by theft or attempted theft that follows the smashing or cutting of a show window or an outside showcase located at a premises described on the “declarations”.
- m. **Shortage From A Package** – “We” do not pay for loss that is a result of a shortage from a package received by the consignee in visually good condition with unbroken seals.
- n. **Theft From Vehicle** – “We” do not pay for loss by theft from a vehicle in which “you”, “your” employee, or a person whose sole duty is to attend the vehicle, are not in or upon the vehicle at the time of loss.

This exclusion does not apply to property in the custody of the U.S. Postal Service or any carriers for hire.
- o. **Unauthorized Instructions** – “We” do not pay for loss caused by an unauthorized instruction to transfer property to any person or place.
- p. **Voluntary Parting** – “We” do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
- q. **Weather** – “We” do not pay for loss caused by weather conditions if the weather conditions contribute in any way with a cause or event excluded in item 1. above.

VI. The Commercial Output Policy

A. Stand-alone vs. package approach

1. We have seen that separate inland marine policies are available to write builders risk and contractors equipment insurance. A trend today, however, is packaging commercial property and inland marine coverages in one policy. The COP is a good example of this.
2. Output policies are a fast-growing alternative for insuring commercial property of medium-to-large size insureds with multiple locations. Approximately 100 major property/casualty companies offer some sort of output coverage, and more than 80 of them -- including Kemper, Liberty Mutual, Hanover, Cincinnati, and Safeco -- base their programs on the AAIS COP Program.
3. What is an Output policy?

First, What the COP Is Not:

It is not a Police Professional Liability Policy . . . and it is not a liability policy. Commercial liability coverage can be obtained through an AAIS commercial liability policy or an ISO CGL policy

Basically, the COP is an expansive, pumped up commercial property policy with a significant number of inland marine coverages built in, in one policy.

Concept originated in 1950s as the Manufacturers Output (MOP) Policy, which was developed to insure damage to stock (or output, hence the name) during the manufacturing process and while in transit from one location to another within the manufacturing process.

Over time, eligibility and coverage were expanded, and MOP renamed the COP in 1993.

- a) *A comprehensive policy, combining commercial property and inland marine coverages in one form. Reduces potential for coverage gaps -- when commercial property forms are packaged with inland marine floaters.*

Provides coverage for:

- ❖ *property in transit*
- ❖ *EDP equip.*
- ❖ *contractors equip.*
- ❖ *builders risk and installation risks*

- b) Optional coverages available for time element, equip. breakdown (B&M), and crime exposures. Additional endorsements avail. to add even more versatility to program.*
- c) Blanket coverage -- buildings and business personal property covered on a blanket basis; single amount of insurance applies to all insured property at all locations.*
- d) Higher sublimits on most built-in coverages than typically found in standard commercial property insurance.*
- e) No coinsurance clause, but companies may elect to include one, if desired.*

B. Eligibility -- Who Is It For?

1. manufacturing, industrial, institutional & commercial risks, medium to large in scope -- with multiple locations and transit exposures.

2. Ineligible:

- ❖ *natural gas companies*
- ❖ *electrical generating stations*
- ❖ *businesses whose principal activity is housing or agriculture (although companies may modify their filings to included either housing or agricultural risks.)*

3. Target Market?

- a) According to a Rough Notes survey of companies writing Output coverage (taken a few years ago), the target market is a company with 10 plus employees and over \$10,000,000 in sales or revenues; said to be a good entry level target.*
- b) However, AAIS knows of companies that are writing the COP for risks smaller than this.*

4. Some examples of eligible risks

- a) *Lumberyards, country clubs, broadcast outlets, and municipal departments;*
- b) *Eligibility quite broad.*
- c) *Nothing to prevent a company from writing **contractors**, but AAIS recommends its Contractors and Developers Output (DOP) Policy (discussed later) as more appropriate for contractors.*
- d) *Coverage may be written for individuals, partnerships, corporations, or separate divisions of an entity (if the entity is eligible and divisions are separated geographically).*

IF PROSPECTIVE ACCOUNT ANSWERS "YES" TO ANY OF THE FOLLOWING QUESTIONS, CONSIDER THE COP:
--

- Property travels between buildings or to or from other processors in course of manufacture?
- Install or repair machines of equip. for others?
- Building designed with special machine foundations or constructed adaptations?
- A contractor who builds/renovates commercial property? (but also consider DOP)
- A commercial HVAC, plumb., elec. or other specialty trade contractor? (or DOP?)
- A college or private school with 100 or more students?
- A municipality?
- A retailer with many stores, or many stores with a central warehouse?
- Does risk manufacture any of the goods it retails or wholesales?
- Is the risk a "super retailer" or wholesaler with at least one large location, or a stock of expensive merchandise?
- Does risk have a large fluctuation in inventory, or purchase or frequently sell real property during the course of the year?

C. Overview of Coverages

1. **Mobile equip. covered on and away from premises**
2. **Auto fleet physical damage coverage an option**
3. **Equipment breakdown (Boiler & Machinery) option avail.**
4. **No coinsurance, but option to add it. (Since coverage can be provided on a blanket basis and because coverage is so extensive in the property covered, it would be difficult to gauge, at any given time, total property values)**
5. **Coverage for property awaiting installation on site and while in**

temporary storage

- 6. Building glass fully covered, as to limits and perils**
- 7. Fences, attached & detached signs, antennas, satellite dishes fully covered**
- 8. Broad coverage for computers**
- 9. Personal property of others covered at RC and theft included**
- 10. Difference in Conditions feature (flood & EQ avail. by endorsement)**
- 11. Flexibility in combining blanket & scheduled coverage:**
 - a) write complete blanket or scheduled coverage*
 - b) write blanket locations with scheduled limits*
 - c) write scheduled locations with a blanket limit*
 - d) write scheduled coverage for key locations and blanket coverage for all others*
 - e) write buildings on a scheduled or blanket basis, and business personal property on a blanket basis*

D. Property Covered

1. Buildings, including:

- ❖ *completed additions*
- ❖ *permanent fixtures, machinery & equipment*
- ❖ *outdoor fixtures*
- ❖ *maintenance prop., e.g. air conditioning, fire extinguishers, appliances,*
- ❖ *floor coverings*
- ❖ *buildings under construction, incl. Materials*
- ❖ *building glass*
- ❖ *radio & TV towers, antennas, satellite dishes, awnings & fences*
- ❖ *signs*

2. Business personal property, including:

- ❖ *tenant improvements*
- ❖ *leased property (contractually responsible to insure)*
- ❖ *insured's interest in property of others*
- ❖ *computers*
- ❖ *installation projects; at site or in temporary storage*
- ❖ *mobile equip. (contractors equip.)*
- ❖ *personal property of others*

COMMERCIAL OUTPUT PROGRAM -- DECLARATIONS

POLICY NUMBER PRODUCER NAME AND NO. INSURANCE IS PROVIDED By THE COMPANY DESIGNATED BELOW:

NAMED INSURED & MAILING ADDRESS:

Policy Period: From: To:

This Policy becomes effective and expires at 12:01 a.m. Standard Time at Your Mailing Address Shown Above

BUILDING PROPERTY AND BUSINESS PERSONAL PROPERTY COVERAGES

- Property Covered at any one location \$ _____
- Refer to Scheduled Locations Endorsement
- Replacement Cost applies

TIME ELEMENT COVERAGES

- Blanket Total Income Coverage Limit \$ _____
- Extra Expense Coverage \$ _____
- Refer to Schedule of Locations Endorsement

INCOME COVERAGE OPTIONS (check one)

- Earnings, rents and extra expense
- Earnings and extra expense
- Rents and extra expense

Period of Loss Extension
Total Days

DEDUCTIBLE AMOUNT \$

OTHER

OTHER ENDORSEMENTS MADE A PART OF THIS POLICY AT TIME OF ISSUE

MORTGAGE HOLDER NAME AND MAILING ADDRESS

LOCATION

PREMIUM PAYABLE AT INCEPTION \$

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American Association of Insurance Services

Excerpts From COP Policy

(Please note that the following are "excerpts," not necessarily complete policy provisions. There are many exceptions to various exclusions, which means coverage is provided for the exceptions. Exceptions are highlighted (shaded) for your convenience.)

PROPERTY NOT COVERED

1. **Airborne or Waterborne Property** -- "We" do not cover airborne or waterborne personal property unless the property is being transported by regularly scheduled airlines or ferry service.
2. **Aircraft or Watercraft** -- "We" do not cover aircraft or watercraft (including their motors, equipment, and accessories) that are operated principally away from "covered locations". However, "we" do cover:
 - a. aircraft or watercraft (including their motors, equipment, and accessories) that "you" manufacture, process, warehouse, or hold for sale; and
 - b. rowboats or canoes out of water at "covered locations".
3. **Animals** -- "We" do not cover animals, including birds and fish, unless owned by others and boarded by "you". "We" do cover animals "you" own and hold for sale.
4. **Automobiles and Vehicles** -- "We" do not cover automobiles, motor trucks, tractors, trailers, and similar conveyances designed and used for over-the-road transportation of people or cargo.

"We" do cover:

 - a. "mobile equipment" described as Business Personal Property; and
 - b. automobiles and vehicles that "you" manufacture, process, or warehouse. However, "we" do not cover automobiles or vehicles held for sale.
5. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
6. **Crops** -- "We" do not cover grain, hay, straw, or other crops when outdoors.
7. **Exports and Imports** -- "We" do not cover exported or imported property that is covered under any ocean marine cargo insurance policy or any similar policy that anyone has obtained covering exports and imports.
8. **Land, Water, or Cost of Excavation** -- "We" do not cover:
 - a. land, including land on which the covered property is located;
 - b. underground or surface water; or

- c. cost of excavations, grading, or filling.
- 9. **Money and Securities** -- "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
- 10. **Property More Specifically Insured** -- "We" do not cover property which is more specifically insured in whole or in part by any other insurance. "We" do cover the amount in excess of the amount due from the more specific insurance.
- 11. **Property of Others** -- "We" do not cover property of others for which "you" are responsible as:
 - a. a carrier for hire; or
 - b. an arranger of transportation. This includes carloaders, consolidators, brokers, freight forwarders, or shipping associations.
- 12. **Property You Have Sold** -- "We" do not cover property that "you" have sold after it has been delivered. This does not include property which "you" have sold under an installation agreement.

ADDITIONAL COVERAGES

- 1. **Debris Removal** -- "We" pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:
 - a. extract "pollutants" from land or water; or
 - b. remove, restore, or replace polluted land or water.

"We" will not pay any more under this coverage than 25% of the amount "we" pay for the direct loss. "We" will not pay more for loss to property and debris removal combined than the "limit" for the damaged property.

However, "we" pay an additional amount of debris removal expense up to \$5,000 when the debris removal expense exceeds 25% of the amount "we" pay for direct loss or when the loss to property and debris removal combined exceeds the "limit" for the damaged property.

"We" do not pay any expenses unless they are reported to "us" in writing within 180 days from the date of direct physical loss to covered property.

- 2. **Emergency Removal** -- "We" pay for loss to covered property while it is moved or being moved to prevent a loss caused by a covered peril. "We" will pay for any direct physical loss caused by a peril that is not excluded. This coverage applies for up to ten days after the property is first moved, but does not extend past the date on which this policy expires.
- 3. **Fire Department Service Charges** -- "We" pay up to \$5,000 to cover "your" liability, assumed by contract or agreement prior to the loss, for fire department service charges.

This coverage is limited to charges incurred when the fire department is called to save or protect covered property from a covered peril.

No deductible applies.

4. **Pollutant Cleanup and Removal** -- "We" pay "your" expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to "us" in writing within 180 days from the date the covered peril occurs.

"We" do not pay the cost of testing, evaluating, observing, or recording the existence, level, or effects of "pollutants". However, "we" pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.

The most "we" pay for each site or location is \$25,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

5. **Recharge of Fire Protection Equipment** -- "We" pay up to \$10,000 to cover "your" incurred expenses to recharge automatic fire protection equipment when the equipment is discharged to fight a fire or as a result of a covered peril.

SUPPLEMENTAL COVERAGES

"We" provide the following supplemental coverages and unless otherwise stated, each supplemental coverage:

- a. applies to loss caused by a covered peril;
 - b. applies to covered property in or on buildings or structures at "covered locations" or in the open (or in vehicles) within 1,000 feet of the "covered locations"; and
 - c. is not subject to and not considered in applying coinsurance when coinsurance conditions are added to this coverage.
1. **Arson Reward** -- "We" pay up to \$5,000 as reward for information that leads to an arson conviction. The conviction must be for a covered fire loss. The amount "we" pay is not increased by the number of persons involved in providing the information.
 2. **Brands or Labels Expense** -- If covered business personal property is damaged, "we" have the option to take all or any part of the damaged business personal property at the agreed or appraised value. "You" may stamp salvage or remove any brands or labels from the property or its containers. "You" must not damage the property or containers when "you" remove the brands or labels. "You" must relabel the merchandise or its containers if required by law.

"We" pay up to \$50,000 for "your" expenses for stamping or removing brands or labels.

3. **Consequential Loss** -- "We" pay up to \$10,000 for the consequential loss of undamaged business personal property. Consequential loss means the loss of value of an undamaged part or parts of a product which becomes unmarketable. It must be unmarketable due to a physical loss to another part or parts of the product caused by a covered peril.
4. **Foundations of Buildings, Pilings, and Underground Pipes** -- "We" pay up to \$250,000 or 10% of the "limit" shown on the "declarations" for covered property at any one "covered location", whichever is less for loss to:
 - a. 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;
- b. pilings, piers, wharves, docks, or retaining walls;
- c. underground pipes, flues, or drains.
5. **Inventory and Appraisals Expenses** -- "We" pay up to \$50,000 for reasonable expenses, for the taking of inventory and appraisals, incurred by "you" at "our" request to assist "us" in the determination of the amount of a covered loss.

"We" do not pay for:

- a. any expenses incurred under the Other Conditions, Appraisal section of this coverage; or
 - b. any public adjusters' fees.
6. **Newly Acquired Buildings** -- When the Locations and Scheduled Locations Endorsements are attached to this coverage, "we" cover "your" buildings or structures being built or that "you" acquire during the policy period.

This coverage applies for 90 days from the date "you" acquire or begin to construct the building or structure or until "you" report the newly acquired property to "us", whichever occurs first. This coverage does not go beyond the end of the policy period.

"You" must pay additional premium due from the date construction is started or "you" acquire the property.

"We" pay up to \$500,000 for loss to each building or structure in any one occurrence.

7. **Ordinance or Law** -- When a covered peril occurs to covered buildings or structures, "we" cover:
- a. loss caused by the enforcement of any ordinance, law, or decree that:
 - 1) requires the demolition of undamaged parts of covered buildings or structures that are damaged or destroyed by a covered peril;
 - 2) regulates the construction or repair of buildings or structures, or establishes building, zoning, or land use requirements at "covered locations"; and
 - 3) is in force at the time of loss.
 - b. the increased cost to repair, rebuild, or construct covered buildings or structures as a result of the enforcement of building, zoning or land use ordinance, law, or decree. If covered buildings or structures are repaired or rebuilt, they must be intended for similar occupancy as the current property, unless otherwise required by building, zoning or land use ordinance, law, or decree.
 - c. the cost to demolish and clear the site of undamaged parts of covered buildings or structures that are damaged or destroyed by a covered peril as a result of the enforcement of the building, zoning or land use ordinance, law, or decree.

"We" do not cover the costs associated with the enforcement of any ordinance, law, or decree that requires "you" or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of "pollutants".

"We" do not cover the increased cost of construction until the covered building or structure is actually repaired or replaced and unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.

If the covered building or structure is repaired or replaced, "we" pay the lesser of:

- a. the amount "you" actually spend to demolish and clear the site, plus the amount "you" actually spend to repair, rebuild, or construct the property but not for more than buildings or structures of the same height, floor area, and style; or
- b. \$50,000.

If the covered building or structure is not repaired or replaced, "we" pay the lesser of:

- a. the amount "you" actually spend to demolish and clear the site, plus the cost to replace the damaged or destroyed property with other property:
 - 1) of like kind, and quality;
 - 2) of the same height, floor area, and style; and
 - 3) used for the same purpose; or
- b. \$50,000.

8. **Personal Effects** -- "We" pay up to \$10,000 at each "covered location" for personal effects owned by "you", "your" officers, "your" partners, or "your" employees.

9. **Personal Property - Acquired Locations**

-- When the Locations and Scheduled Locations Endorsements are attached to this coverage, "we" cover "your" business personal property at locations that "you" acquire during the policy period. "We" do not cover personal property at fairs or exhibitions except as provided under Property On Exhibition.

This coverage applies for 90 days from the date "you" acquire the location or until "you" report the acquired location to "us" whichever occurs first. This coverage does not go beyond the end of the policy period.

"You" must pay any additional premium due from the date "you" acquire the location.

"We" pay up to \$250,000 for loss to business personal property at acquired locations in any one occurrence.

10. **Trees, Shrubs, and Plants** -- "We" pay up to \$50,000 including debris removal expenses, for "your" outdoor trees, shrubs, plants, and lawns except for those held for sale. "We" only cover loss caused by:
 - a. fire;
 - b. lightning;
 - c. explosion;
 - d. riot or civil commotion; or
 - e. falling objects.

SUPPLEMENTAL MARINE COVERAGES

"We" provide the following Supplemental Marine Coverages and unless otherwise stated, each supplemental marine coverage:

- a. applies to loss caused by a covered peril; and
 - b. is not subject to and not considered in applying coinsurance when coinsurance conditions are added to this coverage.
1. **Accounts Receivable** -- "We" pay up to \$50,000 to cover losses and expenses that "you" incur as a result of loss or damage to "your" records of accounts receivable.

Losses and expenses under this coverage means:

- a. all sums due "you" from customers, provided "you" are unable to effect collection;
 - b. interest charges on any loan used to offset impaired collections pending prepayment of such sums made uncollectible by loss or damage;
 - c. collection expenses in excess of normal collection costs made necessary because of loss or damage;
 - d. other reasonable expenses incurred by "you" in recreating records of accounts receivable following such loss or damage.
2. **Fine Arts** -- "We" pay up to \$50,000 for "your" "fine arts" at "covered locations".
 3. **Property on Exhibition** -- "We" pay up to \$50,000 for covered business personal property while temporarily on display or exhibit at locations "you" do not regularly occupy.
 4. **Property in Transit** -- "We" pay up to \$50,000 in any one occurrence for covered business personal property (other than property in the care, custody, or control of "your" sales representatives) while in transit, regardless if the loss involves one or more vehicles, conveyances, containers, trailers, or any combination of these.
 5. **Sales Representative Samples** -- "We" pay up to \$50,000 for samples of "your" stock in trade (including containers) and similar property of others.

"We" cover samples of "your" stock in trade while the property is:

- a. in the custody of "your" sales representatives and agents;
 - b. in "your" custody while acting as a sales representative; or
 - c. in transit between "your" "covered locations" and "your" sales representatives.
6. **Valuable Papers and Records - Cost of Research** -- "We" pay up to \$50,000 for the cost of research or other expenses necessary to reproduce, replace, or restore lost information on lost or damaged "valuable papers and records". This includes those "valuable papers and records" which exist on electronic or magnetic media for which duplicates do not exist.

PERILS COVERED

"We" cover external risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

PERILS EXCLUDED

1. "We" do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

- a. **Ordinance or Law** -- Except as provided under Supplemental Coverages
- c. **Civil Authority**
- d. **Nuclear Hazard** --
- e. **Utility Failure**

This exclusion does not apply to "computers", "mobile equipment", and the Supplemental Marine Coverages.

- f. **War**
- g. **Water**

This exclusion does not apply to "computers", "mobile equipment", and the Supplemental Marine Coverages.

2. "We" do not pay for loss or damage if one or more of the following exclusions apply to the loss.

- a. **Animals** -- "We" do not pay for loss caused by animals, including birds, insects, or vermin. "We" do cover any resulting loss caused by a "specified peril" or breakage of building glass.
- b. **Collapse** -- "We" do not pay for loss caused by collapse, except as provided under the Other Coverages, Collapse. If loss caused by a covered peril results at the "covered locations" "we" will pay for that resulting loss.

This exclusion does not apply to "computers", "mobile equipment", and the Supplemental Marine Coverages.

- c. **Contamination or Deterioration**

However, "we" do cover loss caused by corrosion, decay, fungus, mildew, mold, rot, or rust to "computers" that results from direct physical damage by a covered peril to the air conditioning system that services "your" "computers".

- d. **Criminal, Fraudulent, or Dishonest Acts**

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

e. **Defects, Errors, and Omissions**

f. **Electrical Currents**

"We" do cover the direct loss by a covered peril which occurs at "covered locations" as a result of any power interruption or other utility services.

- g. **Explosion** -- "We" do not pay for loss caused by explosion of steam boilers, steam pipes, steam turbines, or steam engines that "you" own or lease or that are operated under "your" control. If a fire or combustion explosion results, "we" do cover the resulting loss. "We" also cover loss caused by the explosion of gas or fuel in a firebox, combustion chamber, or flue.
- h. **Freezing** -- "We" do not pay for loss caused by water; other liquids; powder; or molten material that leaks or flows from plumbing, heating, air-conditioning systems, or appliances other than fire protective systems caused by freezing. This does not apply if "you" use reasonable care to maintain heat in the building or structure; or "you" drain the equipment and turn off the supply if the heat is not maintained.
- i. **Increased Hazard** -- "We" do not pay for loss occurring while the hazard has been materially increased by any means within "your" knowledge or "your" control.
- j. **Loss of Use** -- "We" do not pay for loss caused by loss of use, business interruption, delay, or loss of market.
- k. **Mechanical Breakdown** -- "We" do not pay for loss caused by mechanical breakdown or rupturing or bursting of moving parts of machinery caused by centrifugal force. "We" do cover any resulting loss caused by a "specified peril", breakage of building glass, or elevator collision.

This exclusion does not apply to "computers".

l. **Neglect**

- m. **Pollutants** -- "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants" unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril". "We" do pay for any resulting loss caused by a "specified peril".

n. **Seepage**

o. **Settling, Cracking, Shrinking, Bulging, or Expanding**

"We" do cover any resulting loss caused by a "specified peril" or breakage of building glass.

This exclusion does not apply to "computers" and "mobile equipment".

p. **Smog, Smoke, Vapor, or Gas**

This exclusion does not apply to "computers" and "mobile equipment".

q. **Temperature/Humidity**

"We" will cover any resulting loss caused by "specified perils" or breakage of building glass.

However, "we" do pay for loss to "computers" that results from direct physical damage by a covered peril to the air conditioning system that services "your" "computers".

r. **Voluntary Parting** -- "We" do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.

s. **Wear and Tear**

"We" do pay for any resulting loss caused by a "specified peril" or breakage of building glass.

t. **Weather** -- "We" do not pay for loss caused by weather conditions if the weather conditions contribute in any way with a cause or event excluded in paragraph 1. above.

"We" do pay for any resulting loss caused by a covered peril unless the resulting loss itself is excluded.

Coverage Comparison: COP and Commercial Property forms

Coverage Features	Commercial Output Program	Commercial Property Forms
Locations Covered	Blanket coverage	Described premises
Coinsurance	None	Coinsurance penalty clause
Building Property		
Building Glass	Replacement cost	\$100 per pane/\$500 per location
Signs	On and off premises	\$1,000 detached; limited perils
Radio & TV Towers	Within 1,000 feet of building	\$1,000; limited perils
Building Personal Property		
In the Open	Within 1,000 feet of building	Within 100 feet of building
Computers	Includes mechanical breakdown	No mechanical breakdown
Mobile Equipment	On and off premises	Within 100 feet of premises
Patterns and Dies	Covered	\$2,500 limit
Additional Coverages		
Accounts Receivable	\$50,000	No coverage
Arson Reward	\$5,000	No coverage
Brand or Labels Expense	\$50,000	No coverage
Consequential Loss	\$10,000	No coverage
Debris Removal	25% of loss plus \$5,000	25% of loss plus \$10,000
Fine Arts	\$50,000	No coverage
Fire Department Service Charge	\$5,000	\$1,000
Foundations of Buildings, Pilings, and Underground Pipes	\$250,000 or 10% of policy limit	No coverage
Inventory or Appraisal Expense	\$50,000	No coverage
Ordinance or Law	\$50,000	No coverage
Pollutant Clean Up and Removal	\$25,000	\$10,000
Property in Transit	\$50,000	\$1,000
Property on Exhibition	\$50,000	No coverage
Sales Representative Samples	\$50,000	No coverage
Valuable Papers and Records - Research Cost	\$50,000	\$2,500
Rating Methodology	Risk-sensitive rating reflecting individual risk exposures; three-step rating process	Each peril and coverage rated separately; little latitude for individual risk characteristics

Figure 1 shows the standard features in the COP-100 in comparison with Commercial Property forms. Many features that are included in the COP-100 can be endorsed to a commercial property policy for an additional premium charge.

COVERAGE COMPARISON: DOP, COP, AND INLAND MARINE

	Contractors & Developers Output Policy	Commercial Output Policy	Standard Marine or Property Form
Location			
Locations Covered	Blanket, including construction sites	Blanket	Builders Risk, Contractors Equipment
Coinsurance	None in basic policy	None in basic policy	Varies
Building Property			
Completed Additions	Covered in basic policy	Covered in basic policy	Standard Commercial Property Form
Permanent Fixtures	Covered in basic policy	Covered in basic policy	" "
Building Glass	Covered in basic policy	Covered in basic policy	" "
Signs	Covered in basic policy	Covered in basic policy	Sign Floater
Business Personal Property			
Tenants Improvements	Covered in basic policy	Covered in basic policy	Property policy
Leased Property	Covered in basic policy	Covered in basic policy	Property policy
Computers	Covered in basic policy	Covered in basic policy	EDP Floater
Interest in Property of others	Covered in basic policy	Covered in basic policy	Property policy
Property in the Course of Construction			
Buildings under construction	Covered in basic policy	Limited coverage	Builders Risk
Building materials and supplies	Covered in basic policy	Covered in basic policy	Builders Risk
Costs of grading, filling, or excavation	Covered in basic policy	Not covered	Builders Risk-coverage varies
Temporary structures	Covered in basic policy	Not covered	Builders Risk-coverage varies
Scaffolding and construction forms	Covered in basic policy	Not covered	Builders Risk-coverage varies
Supplemental Coverages			
Contract Penalty	Covered up to \$10,000	Not covered	Builders Risk-coverage varies
Employee Tools	Covered up to \$10,000	Not covered	Contractors Equipment
Expediting Expenses	Covered up to \$10,000	Not covered	Not standard marine
Ordinance or Law - Buildings under construction	Covered up to \$50,000	Not covered	Not standard marine
Rental Reimbursement	Covered up to \$10,000	Not covered	Contractors Equipment
Testing	Covered up to \$10,000	Not covered	Builders Risk
Spare Parts and Fuel	Covered up to \$10,000	Not covered	Not standard marine
Waterborne Property	Covered up to \$10,000 for Mobile Equipment	Not covered	Contractors Equipment or Builders Risk
Available by Endorsement			
Time Element-Mobile Equipment	Included in time element coverage	No coverage	Not standard marine
Soft Costs	Coverage available	No coverage	Builders Risk
Equipment leased to others	Coverage available	No coverage	Contractors Equipment
Equipment leased from others	Coverage available	No coverage	Contractors Equipment

VII. Warehouse Operators Legal Liability

A. Scope of Coverage

1. Warehouse operators are in the business of storing property of others for a fee. As a bailee, a warehouse operator can be held legally liable for loss to customer property caused by its own negligence. The insurance only covers losses for which the insured (warehouse operator) is legally liable. It does not provide the so-called goodwill coverage found in bailees' customer policies such as a drycleaner or laundry operation.

2. Sample insuring agreement from AAIS Form IM-7650:

"We cover your legal liability for loss to covered property while under your care, custody, and control. Loss which you become legally obligated to pay as a warehouse operator under a warehouse receipt issued by you."

3. The policy covers direct physical loss caused by a covered peril to property of others described in the warehouse receipt while stored at a covered location. Coverage is on an "open perils" or "risks not excluded" basis. The property being stored can consist of just about anything; e.g. tires, dog food, computers, hair spray, etc. Property is covered only if it is described in the warehouse receipt and stored at a warehouse scheduled in the policy.

4. The warehouse receipt is the storage agreement between the warehouse operator and owner of the property. The receipt provides the basis for the liability that the operator assumes for loss or damage to property stored with them. The receipt is also used by the warehouse operator to limit the amount for which it is liable. A warehouse operator can also extend its liability.

WAREHOUSE OPERATORS LEGAL LIABILITY COVERAGE

AGREEMENT

In return for “your” payment of the required premium, “we” provide the coverage described herein subject to all the “terms” of the Warehouse Operators Legal Liability Coverage. This coverage is also subject to the “declarations” and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the “declarations”.

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words “we”, “us”, and “our” mean the company providing this coverage.
2. The words “you” and “your” mean the persons or organizations named as the insured on the “declarations”.
3. “Covered location” means a location or premises described on the “declarations”.
4. “Declarations” means all pages labeled Declarations, Supplemental Declarations, or Schedules, which pertain to this coverage.
5. “Earth movement” means any movement or vibration of the earth’s surface (other than “sinkhole collapse”) including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence; or sinking, rising, or shifting, of earth.
6. “Flood” means flood, surface water, waves, tidal water, or the overflow of a body of water all whether driven by wind or nor. This includes spray that results from these whether driven by wind or not.
7. “Ground water” means:
 - a. water that backs up through a sewer or drain; or
 - b. water below the surface of the ground. This includes water that exerts pressure on or flows, seeps, or leaks through or into a building, sidewalk, driveway, foundation, swimming pool, or other structure.
8. “Limit” means the amount of coverage that applies.
9. “Pollutant” means:
 - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned.
 - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
10. “Sinkhole collapse” means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.
11. “Specified perils” means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; “sinkhole collapse”; smoke; sonic boom; vandalism; vehicles; “volcanic action”; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to personal property in the open or to the interior of buildings or structures or personal property inside buildings or structures unless the exterior of the roof or walls are first damaged by a falling object.

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

12. "Suit" means a judicial proceeding that has been set up to determine liability and damages for loss to covered property. Judicial proceedings also includes arbitration proceedings that "you" may be required to submit.
 13. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
 14. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.
 15. "Warehouse receipt" means the receipt issued by "you" to "your" customer acknowledging that property is being stored at "your" warehouse and includes:
 - a. a description of the property;
 - b. the weight or number of units being stored; and
 - c. the limited liability assumed by "you".
-

COVERAGE

"We" cover "your" legal liability for loss to covered property while under "your" care, custody, and control. Loss which "you" become legally obligated to pay as a warehouse operator under a "warehouse receipt" issued by "you".

Defense Costs – "We" have the right and duty to defend any "suit" brought against "you" because of loss to covered property. "We" may investigate and settle a claim or "suit". "We" do not have to provide a defense after "we" have paid the "limit" as a result of a judgment or written settlement.

"You" must not admit liability for a loss, settle a claim, or incur expense without "our" written consent. "You" must not interfere with "our" negotiation for a settlement.

PROPERTY COVERED

"We" cover direct physical loss caused by a covered peril to property of others described in "your" "warehouse receipt" while stored at a "covered location".

PROPERTY NOT COVERED

1. **Accounts** – "We" do not cover accounts, bills, deeds, or evidence of debt.
2. **Aircraft or Watercraft** – "We" do not cover aircraft or watercraft.
3. **Art** – "We" do not cover objects of art including paintings and statuary.
4. **Assumed Liability** – "We" do not cover property for which "you" have assumed liability beyond the liability imposed on "you" by law.
5. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
6. **Jewelry, Stones, Metals, and Furs** – "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys; furs or garments trimmed in fur.

7. **Live Animals** – “We” do not cover live animals.
8. **Money and Securities** – “We” do not cover money, securities, currency, coins, bank notes, money orders, travelers checks, and bullion.
9. **Owned Property** – “We” do not cover property that belongs to “you”.
10. **Property In Transit**– “We” do not cover property in transit. This includes property that is held as storage-in-transit under a bill of lading.
11. **Property In Storage Space** – “We” do not cover property for which “you” are acting as a lessor of storage space.
12. **Property Not Under a Warehouse Receipt** – “We” do not cover property for which no warehouse receipt has been issued.
13. **Refrigeration** – “We” do not cover property which requires refrigeration or an artificially controlled temperature.

ADDITIONAL COVERAGES

1. **Additional Expenses** – “We” will pay the following additional expenses associated with any loss to covered property or any “suit” we defend:
 - a. Expenses which “we” incur while investigating and defending the “suit”.
 - b. Actual loss of “your” salary for “your” time spent away from work at “our” request.
 - c. Expenses that “you” incur at “our” request.
 - d. Interest that accrues after entry of a judgment, until “we” tender, deposit in court, or pay “our” part of the judgment.

- e. Cost of appeal bond or a bond for the release of attachments. “We” are not required to furnish a bond itself.

No deductible applies.

Additional expenses under this provision are in addition to the “limit” for “covered location” indicated in the “declarations”.

2. **Debris Removal** – “We” pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:
 - a. extract “pollutants” from land or water; or
 - b. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

3. **Emergency Removal** – “We” pay for any direct physical loss to covered property while it is moved or being moved to prevent a loss caused by a covered peril. This coverage applies for up to ten days after the property is first move, but does not extend past the date on which this policy expires.

4. **Pollutant Cleanup and Removal** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to “us” in writing within 180 days from the date the covered peril occurs.

“We” do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of “pollutants”. However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

The most “we” pay for any one “jobsite” or location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

5. **Earned Warehouse Charges** – “We” pay earned warehouse charges that are due “you” which becomes uncollectible because of a direct loss to covered property caused by a covered peril.

The most “we” pay for uncollectible earned warehouse charges is the “limit” indicated on the “declarations” for earned warehouse charges. If no “limit” is indicated, the most “we” pay for earned warehouse charges is \$5,000.

PERILS COVERED

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

PERILS EXCLUDED

1. “We” do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
 - a. **Civil Authority** – “We” do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

“We” do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.
 - b. **Nuclear Hazard** – “We” do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion or smoke. “We” do pay for direct loss by fire resulting from the nuclear hazard.
 - e. **War** – “We” do not pay for loss caused by war. This means:
 - 1) declared war, undeclared war, civil war, insurrection, rebellion, or revolution;
 - 2) a warlike act by a military force or by military personnel;
 - 3) the destruction, seizure, or use of the property for a military purpose; or
 - 4) the discharge of a nuclear weapon even if it is accidental.

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

- a. **Contamination or Deterioration** – "We" do not pay for loss caused by contamination or deterioration including corrosion; decay; fungus; mildew; mold; rot; rust; or any quality, fault, or weakness in the covered property that caused it to damage or destroy itself.
- b. **Criminal, Fraudulent or Dishonest Acts** – "We" do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts alone or in collusion with another by:
 - 1) "you";
 - 2) others who have an interest in the property;
 - 3) others to whom "you" entrust the property;
 - 4) "your" partners, officers, directors, trustees, joint adventurers; or
 - 5) the employees or agents of 1), 2), 3) or 4) above, whether or not they are at work.

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

- c. **Loss of Use and Cancellation of Lease** – "We" do not pay for loss caused by or resulting from loss of use; business interruption; delay; loss of market; or cancellation, suspension, or lapse of any lease, contract or order.
- d. **Missing Property** – "We" do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property.

- e. **Pollutants** – "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants" unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified perils". "We" do pay for any resulting loss caused by a "specified peril".
- f. **Processing, Work, and Packaging** – "We" do not pay for loss caused by processing of or work upon the covered property including packaging or repackaging.
- k. **Spoilage, Animals, and Fumigation** – "We" do not pay for loss caused by or resulting from spoilage; insects, rodents, and other animals; bacteria; and fumigation.
- l. **Temperature/Humidity** – "We" do not pay for loss caused by humidity, dampness, dryness, or changes in or extremes of temperature.
- m. **Voluntary Parting** – "We" do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
- n. **Wear and Tear** – "We" do not pay for loss caused by wear and tear.

WHAT MUST BE DONE IN CASE OF LOSS

- 1. **Notice** – In case of a loss or "suit" against "you", "you" must:
 - a. give "us" or "our" agent prompt notice including a description of the property involved ("we" may request written notice); and

- b. give notice to the police when the act that causes the loss is a crime.
 2. **Protect Property** – “You” must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. “We” will pay the reasonable costs incurred by “you” for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. “You” must keep an accurate record of such cost. However, “we” do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against. This does not increase “our” limit.
 3. **Proof of Loss** – “You” must send “us” within 60 days after “our” request, a signed, sworn proof of loss. This must include the following information:
 - a. the time, place, and circumstances of the loss;
 - b. other policies of insurance that may cover the loss;
 - c. “your” interest and the interests of all others in the property involved, including all mortgages and liens;
 - d. estimates, specifications, inventories, and other reasonable information that “we” may require to settle the loss.
 4. **Examination** – “You” must submit to examination under oath in matters connected with the loss as often as “we” reasonably request and give “us” sworn statements of the answers. If more than one person is examined, “we” have the right to examine and receive statements separately and not in the presence of others.
 5. **Warehouse Receipt** – “You” must provide “us” with “your” copy of the “warehouse receipt” that “you” issued for the property that was involved in the loss.
 6. **Records** – “You” must produce records, including tax returns and bank microfilms of all cancelled checks, relating to value, loss, and expense and permit copies and extracts to be made of them as often as “we” reasonably request.
 7. **Damaged Property** – If the damaged property is in “your” care, custody, and control “you” must exhibit the damaged and undamaged property as often as “we” reasonably request and allow “us” to inspect or take samples of the property.
 8. **Volunteer Payments** – “You” must not, except at “your” own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.
 9. **Abandonment** – “You” may not abandon the property to “us” without “our” written consent.
 10. **Cooperation** – “You” must cooperate with “us” in performing all acts required by this policy.
-

VALUATION

Actual Cash Value – The value of covered property will be based on the actual cash value at the time of loss (with a deduction for depreciation).

HOW MUCH WE PAY

1. **Legal Liability** – “We” do not pay for the amount of a loss that is in excess of the legal liability imposed on “you” as a warehouse operator and for which “you” have contractually assumed liability.

B. Warehouse Receipt

- 1. A number of provisions in the Uniform Commercial Code (UCC) relate directly to warehousing and the liability of warehouse operators. Section 7-202 of the UCC (1990) identifies nine required items of information that should be included in a warehouse receipt. If the information is not included, the warehouse operator becomes liable for loss related to any error or omission. Each warehouse receipt should include:**
 - a) location of warehouse where goods are stored*
 - b) date the receipt is issued to bailor*
 - c) receipt number showing a consecutive numbering of all receipts issued by the warehouse operator*
 - d) identity of to whom the goods will be delivered at the end of the storage period*
 - e) rate of storage and handling charges*
 - f) description of goods or their packages*
 - g) warehouse operator's (or authorized rep's) signature*
 - h) statement of ownership if the warehouse operator is owner or partial owner of goods being stored*
 - i) statement indicating the amount of any advances made or liabilities incurred for which the warehouse operator claims a security interest.*

- 2. The warehouse receipt provides a limitation on the amount of the operator's liability for loss to its customer's property and is an essential document in the handling of the claim. Typically, the limitation is expressed as a multiple of the monthly storage charge. However, it can sometimes be stated as a dollar amount per pound, box, or cubic footage. The amount that the operator is legally liable for in case of loss indicates the amount of risk assumed by the underwriter.**

C. Types of Warehouses

1. **Public warehouses are in the business of storing the property of others for a fee. This is the type of warehouse operation with which the WOLL and this Guide are concerned. There are three other commonly referred to warehouse operations:**
 - a) *Private Warehouses -- those that are owned or controlled by manufacturers, distributors, retailers, or other enterprises and are used to store their own property.*
 - b) *Bonded Warehouses -- are used to store imported property pending payment of import duties and taxes. Since the duty is due only when the property is released, an importer can withdraw the goods as they are needed, and duty fees can be stretched over a more manageable period. This type of warehouse is operated jointly by the U.S Customs authorities and a warehouse operator.*
 - c) *Contract Warehouses -- have elements of both public warehouses and private warehouses. Typically, the contract warehouse has a small number of customers with long term contracts, as opposed to a larger number with monthly agreements commonly used by a public warehouse. This type of operation usually does more handling and processing of merchandise than a public warehouse.*

D. Defense Costs

1. **The company has the right and duty to defend any suit brought against the insured. It may investigate and settle a claim or suit if it deems it practical. It does not have to provide a defense after it has paid the limit as a result of a judgment or settlement.**
2. **Defense costs are paid in addition to the policy limit. However, endorsements are available to include defense costs within limits, or to establish a separate limit for defense costs.**

E. Logistics -- the changing nature of warehouse operations

- 1. There is a trend today for warehouse operators to take on additional tasks relating to the production and distribution of customers' goods. Many warehouse operators consider themselves to be in the "logistics" business; getting things to the right place at the right time using the most efficient methods. As a result, some operators are engaged in assembly, packaging, and labeling. It is possible that the warehouse receipt may not identify goods accepted for processing, creating gaps in coverage because only goods identified on a storage receipt are covered under warehouse operators legal liability policies.**
- 2. It is also true that some warehouse operators transport customers' goods as carriers. Keep in mind that the storage coverage provided by motor truck cargo policies is ordinarily confined to storage incidental to transit. Such operators should maintain two policies, a motor truck cargo policy to cover property held over during transit, and a warehouse operators legal liability policy to cover the pure warehousing risk.**
- 3. Does a warehouse operator need a commercial liability policy?**
 - a) The answer is yes, if the operator is also providing assembly and packaging services! The commercial liability policy will cover bodily injury or property damage arising out of its assembly and packaging services (including products and completed operations). The warehouse operators legal liability policy will pick up coverage for damage to property in the insured's care -- an exposure which is excluded in commercial liability policies.*

4. What is meant by the terms "cross docking" and "pooling" in conjunction with warehouse operations?

- a) *"Cross docking" refers to the process of accepting goods from the customer and holding them for just a few hours before they are picked up by another party.*
- b) *"Pooling" means accepting from several customers less than a full truckload of goods, each with a common or compatible destination, and "pooling" them in a single truck to minimize transportation costs for the customers.*
- c) *This broadening of the operator's normal operations makes it more difficult to anticipate an operator's potential liability for damage to the property of its customers. Many of these services are performed under contract, and the terms of the contract will determine the operator's liability. In its traditional role as providing storage, a warehouse operator is considered a bailee. Generally, bailees are liable for the loss or damage to goods in their care, only when damage is due to their negligence.*
- d) *Furthermore, as a transporter of customers' goods, they become carriers, and are virtually considered guarantors of the safe delivery of those goods. Here it is a case of strict liability, where they are responsible regardless of negligence, with only a few exceptions (act of God, negligence of the shipper, inherent vice, etc.).*
- e) *Warehouse operators that transport goods need motor truck cargo insurance in addition to warehouse operators legal liability coverage*

F. Key Hazards

1. What do you think are the key hazards facing warehouse operators?

- a) ***Fire** poses the greatest threat to a warehouse operation. Construction, occupancy (operation), protection, and exposure characteristics of the warehouse location should be closely checked. Damage caused by a fire of unknown origin may be presumed to have been caused by the operator's negligence.*

(1) Protective devices such as sprinkler systems, premises alarms, and smoke and heat detectors/alarms can be highly effective loss control features. However, these protective devices are only effective if they are properly maintained and monitored. These protective devices and their alarms should be inspected and tested on a regular basis.

(2) It is also important that protective devices are designed to address

the exposures that are inherent in the property being stored. Stored property may include flammable and/or explosive goods as well as property that requires stacking or storage in shelves. High stacking can reduce the effectiveness of a sprinkler system and shelves can prevent water from reaching combustible goods. It should be noted that the storage of aerosol products can present an explosion and flammable projectile hazard.

- (3) Control of flammable and/or explosive property can be controlled by storing these goods in a separate fire resistive room, in a separate building or segregating them with a fire wall. The hazard created by stacking can be addressed by enforcement of clearance standards and the installation of sprinklers in shelves.
- (4) The age and condition of wiring and heating units should be established. Old wiring may be corroded and loose, and the insulation may not meet current codes. A furnace or boiler that has been allowed to deteriorate could also pose a fire hazard.
- (5) Finally, smoking should be forbidden in the storage area of a warehouse, and restricted to designated places.

b) Theft

- (1) Depending on the types of commodities stored at a warehouse, theft can be a serious problem. It is important to understand the security measures that the warehouse operator has taken to protect the property stored inside.
- (2) Entry and exit of customers and employees should be monitored. Customers should be instructed to register at a front office and should be accompanied to their property by a warehouse employee. Employees should punch a time clock or at least sign in when they report to work. Employees should not visit coworkers at the warehouse during time off.
- (3) If possible, underwriters should examine the hiring practices of the warehouse operator. Prospective employees should be checked for criminal records as well as employment history. Ideally, the operation will be staffed by long term employees and will have a low turnover of its work force.
- (4) The underwriter should be aware of target commodities that are stored at the location and the measures that the warehouse has taken to protect them. Inventories of consumer electronics, finished tobacco products, alcoholic beverages, and personal computer components can increase the exposure to theft.

- (5) Underwriters should verify that appropriate protective devices are in place if target commodities are stored. These might include security patrols on the premises, central station premises alarms, lights, and segregated and secured storage areas for target commodities. In lieu of these security measures, underwriters may want to provide a sublimit for these commodities or exclude them from the policy.

c) Other Underwriting Considerations

(1) Management

- (a) The quality of the management of a warehouse is a key component to underwriting a risk. A warehouse operation's hiring practices, training programs, safety program, and attention to detail has a significant impact on whether a risk will be a profitable.
- (b) The potential for shortage or damage to goods stored in a warehouse is directly affected by the quality and training of the insured's employees. Their duties may include strapping goods to pallets, moving the pallets with forklifts, placing pallets on racks and retrieving property for shipment. The storage configuration of a warehouse usually involves various levels of racks. Property may have to be placed on or retrieved from racks which are ten to 12 feet high.

(2) Water Damage

- (a) Underwriters should make sure that the warehouse building is in sound condition. The warehouse operator could be held liable for water damage losses that result from leaks in the roof or walls, sewers that back up, and chronic seepage problems.

(3) Earth Movement and Flood

- (a) Earth movement and flood are not excluded perils under the WOLL policy. However, because the WOLL is a legal liability policy, earth movement and flood are not generally considered major perils. However, there may be special circumstances under which the warehouse operator could be found to be legally liable for flood or water damage. A warehouse near a river which floods regularly or causes water backup through sewers should have safeguards to protect against water damage.

G. Loss Control

- 1. The following is a list of possible questions that can be addressed during a loss control survey.**
- 2. This list is NOT intended to represent a comprehensive and exhaustive treatment of loss control issues that relate to warehouse operators legal liability. UNDERWRITERS SHOULD CONSIDER additional questions that address concerns about specific types of operations and/or individual risks.**

- 3. Loss Control Survey – As well as verifying the information that the underwriter has obtained, the loss control survey should verify the following:**
- a) condition of the building, and the condition of plumbing and electrical systems;*
 - b) floor area, height in stories, and total area used for storage;*
 - c) adequacy of storage areas for target commodities and flammable goods;*
 - d) comment on the height and condition of storage racks, and whether there is enough space between the highest racks and the ceiling for sprinklers to be effective;*
 - e) house keeping of the warehouse. Is the storage area neat and orderly, and free of unused pallets, debris, and refuse; and*
 - f) protective systems cited in the application are in place and functional.*

H. Cold Storage Warehousing

- 1. Cold storage refers to property that must be kept in a storage area where the temperature is controlled. Food and food additives make up the bulk property in cold storage. However, there are warehouses that store chemicals, cleaning supplies, paint, and other non-food items which are temperature sensitive.**
- 2. Cold storage operations may be part of a greater warehousing operation or may be a completely separate operation. In either case, cold storage is a type of warehousing and from an insurance standpoint holds most of its coverage needs in common with "dry" warehousing.**
- 3. Risk Selection - Cold Storage**
 - a) The following information should be obtained to evaluate the condition and adequacy of a cooling system:*
 - (1) age of the system and upgrades;
 - (2) installation of temperature alarms;
 - (3) inspection and maintenance schedule, the system should be inspected at least twice a year.
 - (4) There should be a contingency plan in the event of a cooling

system breakdown. A large cold storage operation should have an auxiliary cooling system or generators and employees who are properly trained to use them. The plan should also include telephone or beeper numbers of warehouse supervisors, repair personnel and emergency repair companies.

I. Endorsements

1. Inventory Shortage Endorsement

Includes legal liability coverage for the disappearance of covered property when such disappearance is discovered upon taking a scheduled inventory (modifies the Missing Property exclusion). If this endorsement is used, the underwriter should pay close attention to the warehouse's inventory tracking system. The system should be modern, efficient, and preferably computerized.

2. Defense Cost Endorsement

This endorsement provides a sublimit for defense costs. Defense costs can become very expensive and in some cases they can exceed the policy limit. By instituting a sublimit, the underwriter knows the maximum amount that these costs will reach. This limit is in addition to the location limit and these costs are not subject to a deductible.

3. Location and Defense Limit Endorsement

This endorsement includes defense costs as part of the location limit. As a result, defense costs and the settlement amount (if any) added together cannot exceed the location limit. These costs are not subject to a deductible.

4. Flood and Earth Movement Exclusion Endorsement

This endorsement excludes coverage for loss or damage due to these perils.

5. Reporting Conditions Endorsement

This endorsement adds reporting conditions to the WOLL form. Reporting and premium adjustment can be monthly, quarterly, or annual.

6. Reporting Conditions Schedule

This endorsement shows reporting periods and premiums.

7. Leakage of Refrigerant Exclusion Endorsement

This endorsement excludes coverage for loss due to the leakage of refrigerant from the cooling system. This exclusion is usually used with Cold Storage coverage.

8. Cold Storage Endorsement

This endorsement provides coverage for a warehouse operator's liability for covered property that requires storage in a refrigerated or temperature controlled environment. The Cold Storage endorsement is subject to the terms and conditions of this policy. This endorsement must be issued in conjunction with the WOLL policy; it is not a stand alone coverage form.

INVENTORY SHORTAGE ENDORSEMENT

ADDITIONAL COVERAGES

The following is added to Additional Coverages:

Inventory Shortage – “We” cover “your” legal liability for the disappearance of covered property when such disappearance is discovered upon taking a scheduled inventory. “We” only cover property that is described in the “warehouse receipt”.

No coverage applies to disappearance of property discovered upon an unscheduled inventory or while retrieving property for discharge.

PERILS EXCLUDED

The exclusion for Missing Property under Perils Excluded is deleted and replaced by:

Missing Property – “We” do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered upon taking an unscheduled inventory, or other instance where there is no physical evidence to show what happened to the covered property.

DEFENSE LIMIT ENDORSEMENT

The most "we" pay for Defense Costs related to a loss to covered property and Additional Expenses associated with any loss to covered property is:

\$ _____

The "limit" for Defense Costs and Additional Expenses is in addition to the "limit" for "covered location" indicated on the "declarations".

No deductible applies.

LOCATION AND DEFENSE LIMIT ENDORSEMENT

The most "we" pay for loss to covered property, including Defense Costs related to a loss and Additional Expenses associated with any loss, is the "limit for "covered location".

No deductible applies to Defense Costs and Additional Expenses.

FLOOD AND EARTH MOVEMENT EXCLUSION ENDORSEMENT

ADDITIONAL PERILS EXCLUDED

“We” do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.

1. **Flood** – “We” do not pay for loss caused by “flood” or “ground water” but if fire, explosion, or theft results “we” do cover the loss caused by the fire, explosion, or theft.
2. **Earth Movement or Volcanic Eruption** – “We” do not pay for loss caused by any “earth movement” or eruption, explosion, or effusion of a volcano.

“We” do pay for direct loss by fire, explosion, or “volcanic action” resulting from either “earth movement” or eruption, explosion, or effusion of a volcano.

All “volcanic action” that occurs within a 168 hour period will be considered a single loss.

REPORTING CONDITIONS

ADDITIONAL CONDITIONS

Reporting Conditions- The following reporting conditions apply.

1. **Premium Computation and Adjustment –**
The premium will be adjusted as of each adjustment period indicated on the “declarations” or reporting schedule and will be computed using the indicated rate.

When an annual adjustment period is indicated, “we” will compare the total computed premium to the deposit premium. If it is more than the deposit premium, “you” will pay “us” the difference. If it is less than the deposit premium, “we” will pay “you” the difference subject to the minimum premium indicated on the “declarations” or reporting schedule.

When any other premium adjustment period is indicated, “we” will apply the computed premium to the deposit premium until it is exhausted. “You” will pay “us” all premiums that exceed the deposit premium. At the end of the policy period, if the computed premium is less than the deposit premium, “we” will pay “you” the difference subject to the minimum premium indicated on the “declarations” or reporting schedule.

If “your” coverage is cancelled, “you” must report the total earned receipts for storage and handling services up to an including the date of cancellation and pay any additional premium due.

2. **Reports –** The following provisions apply to reports that are submitted and may affect How Much We Pay:
 - a. within 30 days after the end of each reporting period indicated on the “declarations” or reporting schedule, “you” must report to “us” the total earned receipts for storage and handling services (collected and uncollected) from “you” operations as a warehouse operator during the indicated reporting period;
 - b. if “you” have failed to submit the required reports as of the time of loss, “we” will not pay “you” more than the amount included in “your” last report, if no report has been submitted, the most “we” will pay is 90% of the “limit”; and
 - c. “we” will not pay more than the applicable “limit” regardless of any reported value or receipts used in computing the premium.

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REPORTING CONDITIONS SCHEDULE

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

REPORTING CONDITIONS

Reporting Period – (check one)

- Monthly
- Quarterly
- Annual
- Non-reporting

Adjustment Period – (check one)

- Monthly
- Quarterly
- Annual

Rates
(per \$100 of receipts)

Deposit Premium

Minimum Premium

Premium

\$_____ Warehousing

\$_____ Handling

\$_____ Other

\$_____

\$_____

LEAKAGE OF REFRIGERANT EXCLUSION ENDORSEMENT

PERILS EXCLUDED

The following exclusion is added to Perils Excluded:

Leakage of Refrigerant – “We” do not pay for loss caused by humidity, dampness, dryness, or changes in or extremes of temperature caused by leakage of liquid or gas refrigerant.

COLD STORAGE ENDORSEMENT

PROPERTY NOT COVERED

The exclusion for Refrigeration is deleted.

PERILS EXCLUDED

The exclusion for Temperature/Humidity is deleted and replaced by:

Temperature/Humidity – “We” do not pay for loss caused by humidity, dampness, dryness, or changes in or extremes of temperature, unless caused by:

1. breakdown or malfunction of refrigeration equipment;
2. error in maintaining the temperature of the cold storage area; or
3. incorrect usage of the refrigeration equipment.

VIII. Miscellaneous Bailee – Processor Floater

A. Scope of Coverage

1. Property of others in the insured's care for processing is covered if the property is described on the declarations page. Processing includes finishing, repairing, restoring, adjusting, or other work upon the property. Separate limits apply to described premises, unscheduled premises, and property in transit.

MISCELLANEOUS BAILEE – PROCESSOR FLOATER COVERAGE

AGREEMENT

In return for “your” payment of the required premium, “we” provide the coverage described herein subject to all the “terms” of the Miscellaneous Bailee – Processor Floater Coverage. This coverage is also subject to the “declarations” and additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the “declarations”.

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words “you” and “your” mean the persons or organizations named as the insured on the “declarations”.
2. The words “we”, “us”, and “our” mean the company providing this coverage.
3. “Declarations” means all pages labeled Declarations, Supplemental Declarations, or Schedules, which pertain to this coverage.
4. “Earth movement” means any movement or vibration of the earth’s surface (other than “sinkhole collapse”) including but not limited to earthquake; landslide; mudflow; mudslide; mine subsidence; or sinking, rising, or shifting, of earth.
5. “Flood” means flood, surface water, waves, tidal water, or the overflow of a body of water all whether driven by wind or nor. This includes spray that results from these whether driven by wind or not.
6. “Ground water” means:
 - a. water that backs up through a sewer or drain; or
 - b. water below the surface of the ground. This includes water that exerts pressure on or flows, seeps, or leaks through or into a building, sidewalk, driveway, foundation, swimming pool, or other structure.
7. “Limit” means the amount of coverage that applies.
8. “Pollutant” means:
 - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned.
 - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
9. “Sinkhole collapse” means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.

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

Falling objects does not include loss to:

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

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

11. "Terms" means all provisions, limitations, exclusions, conditions, and definitions that apply.
 12. "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust, or particulate matter; or lava flow. It does not include the cost to remove ash, dust, or particulate matter that does not cause direct physical loss to the covered property.
-

PROPERTY COVERED

"We" cover direct physical loss caused by a covered peril to property of others described on the "declarations" and that is in "your" care, custody, and control for processing. Processing includes finishing, repairing, restoring, adjusting, or other work upon the

property. When a "limit" is indicated on the "declarations", "we" cover described property of others while:

1. in a premises described on the "declarations";
 2. temporarily at a premises not described on the "declarations"; or
 3. in transit.
-

PROPERTY NOT COVERED

1. **Aircraft or Watercraft** – "We" do not cover aircraft or watercraft.
2. **Automobiles** – "We" do not cover automobiles or any self-propelled vehicles that are designed for highway use.
3. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Furs** – "We" do not cover furs or fur trimmed garments.
5. **Jewelry, Stones and Metals** – "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys.
6. **Money and Securities** – "We" do not cover accounts, bills, currency, food stamps, or evidences of debt, lottery tickets not held for sale, money, notes, or securities.
7. **No Charge For Service** – "We" do not cover property of others that "you" accept without charging for "your" service as a processor.
8. **Waterborne Property** – "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

ADDITIONAL COVERAGES

1. **Debris Removal** – “We” pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:

- a. extract “pollutants” from land or water; or
- b. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

2. **Pollutant Cleanup and Removal** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to “us” in writing within 180 days from the date the covered peril occurs.

“We” do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of “pollutants”. However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

The most “we” pay for any one “jobsite” or location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

3. **Storage** – “We” pay for direct physical loss caused by a covered peril to covered property that “you” store after processing. “We” only cover property in storage at premises described in the “declarations”.

“We” do not cover property in storage if “you”:

- a. accept the property for storage without performing any processing work upon the property; or
- b. have not issued a storage receipt.

The most “we” pay for property in storage is the “limit” indicated on the “declarations” for earned warehouse charges. If no storage “limit” is indicated, the most “we” pay for property in storage is \$5,000.

PERILS COVERED

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

PERILS EXCLUDED

1. "We" do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
 - a. **Civil Authority** – "We" do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

"We" do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.
 - b. **Earth Movement or Volcanic Eruption** – "We" do not pay for loss caused by any "earth movement" (other than "sinkhole collapse") or caused by eruption, explosion, or effusion of a volcano.

"We" do pay for direct loss by fire, explosion, or "volcanic action" resulting from either "earth movement" or eruption, explosion, or effusion of a volcano.

All volcanic eruptions that occur within a 168 hour period shall be considered a single loss.
 - c. **Nuclear Hazard** – "We" do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion or smoke. "We" do pay for direct loss by fire resulting from the nuclear hazard.
 - d. **Water** – "We" do not pay for loss caused by water. This means:
 - a. "flood"; or
 - b. "ground water."

If fire, explosion, or sprinkler leakage results, "we" do pay for the resulting loss.
 - e. **War** – "We" do not pay for loss caused by war. This means:
 - 1) declared war, undeclared war, civil war, insurrection, rebellion, or revolution;
 - 2) a warlike act by a military force or by military personnel;
 - 3) the destruction, seizure, or use of the property for a military purpose; or
 - 4) the discharge of a nuclear weapon even if it is accidental.
2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:
 - a. **Contamination or Deterioration** – "We" do not pay for loss caused by contamination or deterioration including corrosion; decay; fungus; mildew; mold; rot; rust; or any quality, fault, or weakness in the covered property that caused it to damage or destroy itself.

- b. **Criminal, Fraudulent or Dishonest Acts** – “We” do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts alone or in collusion with another by:

- 1) “you”;
- 2) others who have an interest in the property;
- 3) others to whom “you” entrust the property;
- 4) “your” partners, officers, directors, trustees, joint adventurers; or
- 5) the employees or agents of 1), 2), 3) or 4) above, whether or not they are at work.

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

- c. **Electrical Currents** – “We” do not pay for loss caused by artificially generated electrical currents that damage electrical apparatus or wiring within the covered property. If loss by fire or explosion results, “we” do pay for the resulting loss.

This exclusion applies only to the property artificially generating the current or property that the current passes through.

- d. **Loss of Use** – “We” do not pay for loss caused by or resulting from loss of use; business interruption; delay; or loss of market.

- e. **Mechanical Breakdown** – “We” do not pay for loss caused by any:

- 1) structural or mechanical process; or
- 2) structural, mechanical, or electrical breakdown or malfunction.

If loss by fire or explosion results, “we” do pay for the resulting loss.

- f. **Missing Property** – “We” do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property.

- g. **Pollutants** – “We” do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of “pollutants” unless the release, discharge, seepage, migration, dispersal, or escape is caused by a “specified perils”. “We” do pay for any resulting loss caused by a “specified peril”.

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

If loss by fire or explosion results, “we” do pay for the resulting loss.

- i. **Temperature/Humidity** – “We” do not pay for loss caused by humidity, dampness, dryness, or changes in or extremes of temperature.

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

- o. **Voluntary Parting** – “We” do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
 - p. **Wear and Tear** – “We” do not pay for loss caused by wear and tear, marring or scratching.
- b. other policies of insurance that may cover the loss;
 - c. “your” interest and the interests of all others in the property involved, including all mortgages and liens;
 - d. changes in title of the covered property during the policy period; and
 - e. estimates, specifications, inventories, and other reasonable information that “we” may require to settle the loss.

WHAT MUST BE DONE IN CASE OF LOSS

1. **Notice** – In case of a loss or “suit” against “you”, “you” must:
 - a. give “us” or “our” agent prompt notice including a description of the property involved (“we” may request written notice); and
 - b. give notice to the police when the act that causes the loss is a crime.
2. **Protect Property** – “You” must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. “We” will pay the reasonable costs incurred by “you” for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. “You” must keep an accurate record of such cost. However, “we” do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against. This does not increase “our” limit.
3. **Proof of Loss** – “You” must send “us” within 60 days after “our” request, a signed, sworn proof of loss. This must include the following information:
 - a. the time, place, and circumstances of the loss;
4. **Examination** – “You” must submit to examination under oath in matters connected with the loss as often as “we” reasonably request and give “us” sworn statements of the answers. If more than one person is examined, “we” have the right to examine and receive statements separately and not in the presence of others.
5. **Records** – “You” must produce records, including tax returns and bank microfilms of all cancelled checks, relating to value, loss, and expense and permit copies and extracts to be made of them as often as “we” reasonably request.
6. **Damaged Property** – “You” must exhibit the damaged and undamaged property as often as “we” reasonably request and allow “us” to inspect or take samples of the property.
7. **Volunteer Payments** – “You” must not, except at “your” own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.
8. **Abandonment** – “You” may not abandon the property to “us” without “our” written consent.
9. **Cooperation** – “You” must cooperate with “us” in performing all acts required by this policy.

VALUATION

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

HOW MUCH WE PAY

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

c. the “limit” that applies to the covered property.

4. **Insurance Under More Than One Coverage** – If more than one coverage of this policy insured the same loss, “we” pay no more than the actual claim, loss, or damage sustained.
5. **Insurance Under More Than One Policy** – “You” may have another policy subject to the same “terms” as this policy. If “you” do, “we” will pay “our” share of the covered loss. “Our” share is the proportion that the applicable “limit” under this policy bears to the “limit” of all policies covering on the same basis.

If there is another policy covering the same loss, other than that described above, “we” pay only for the amount of covered loss in excess of the amount due from that other policy, whether “you” can collect on it or not. But “we” do not pay more than the applicable limit.

LOSS PAYMENT

1. **Our Options** – “We” have the following options:
 - a. pay the value of the loss;
 - b. pay the cost of repairing or replacing the loss;
 - c. rebuild, repair, or replace with property of like kind and quality, to the extent practicable, within a reasonable time;
 - d. take all or any part of the damaged property at the agreed or appraised value.

“We” must give “you” notice of “our” intent to rebuild, repair, or replace within 30 days after receipt of a duly executed proof of loss.

IX. Transportation

A. Loss Exposures

- 1. Transportation by way of trucks, trains, boats, and airplanes**
- 2. Perils affecting property in transit**
 - a) Hazards of transportation*
 - b) Theft*
- 3. Need for insurance**
 - a) Dollar limitations on liability of carriers*
 - b) Delay in collecting benefits*
 - c) State and/or federal regulatory limits may apply*
 - d) Carriers not liable for all losses*

B. Types of Carriers

- 1. Common Carrier**
 - a) Defined – holds itself out to the general public as being able and willing to haul goods over certain routes for a fee*
 - b) Liability of Common Carrier*
 - (1) Liable for all losses due to negligence or not\
 - (2) Exceptions to common carrier liability
 - (a) Acts of God
 - (b) Acts of public enemy
 - (c) Exercise of public authority
 - (d) Fault or neglect on part of shipper
 - (e) Inherent vice

c) *Limitations on Common Carrier Responsibility*

(1) Functions of a Bill of Lading

- (a) Receipt
- (b) Delivery Instructions/Responsibility
- (c) Establish Ownership of Goods

(2) Released Bill of Lading

(3) Shipper's weight, load and count

2. Contract Carrier

- a) *Defined – operates for specific businesses, using a written contract*
- b) *Liability of contract carrier established in writing between the two contracting parties*

3. Private Carrier – hauls only their own goods

C. Annual Transit Policy

1. Purpose

2. Use

D. Trip Transit Policy

1. Purpose

2. Use

E. Air Cargo Policy

1. Purpose

2. Use

F. Motor Truck Cargo Policy

1. Purpose

2. Use

TRANSPORTATION COVERAGE

AGREEMENT

In return for “your” payment of the required premium, “we” provide the coverage described herein subject to all the “terms” of the Transportation Coverage. This coverage is also subject to the “declarations” and the additional policy conditions relating to assignment or transfer of rights or duties, cancellation, changes or modifications, inspections, and examination of books and records.

Endorsements and schedules may also apply. They are identified on the “declarations”.

Refer to Definitions for words and phrases that have special meaning. These words and phrases are shown in quotation marks or bold type.

DEFINITIONS

1. The words “you” and “your” mean the persons or organizations named as the insured on the “declarations”.
2. The words “we”, “us”, and “our” mean the company providing this coverage.
3. “Any one aircraft” means any one aircraft, airplane, helicopter, dirigible, or any machine capable of flight.
4. “Any one carrier for hire” means any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit operated by a carrier for hire.
5. “Any one owned vehicle” means any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit owned by “you” or leased by “you” and that is operated by “you”.

6. “Any one railroad car” means any one railroad car, boxcar, tank car, flat car, or similar rolling stock including any railroad car transporting property in or on one or more trucks, trailers, semitrailers, or other containers.
 7. “Declarations” means all pages labeled Declarations, Supplemental Declarations, or Schedules, which pertain to this coverage.
 8. “Limit” means the amount of coverage that applies.
 9. “Pollutant” means:
 - a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
 - b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.
 10. “Specified perils” means fire; lightning; windstorm; hail; collision; overturn, or derailment of a transporting conveyance; collapse of a bridge culvert; and theft.
 11. “Terms” means all provisions, limitations, exclusions, conditions, and definitions that apply.
-

PROPERTY COVERED

1. “We” cover direct physical loss caused by a covered peril to property described on the “declarations”. When a “limit” for a mode of transportation is indicated on the “declarations” “we” cover described property while in due course of transit on or in:

- a. "any one aircraft";
 - b. "any one owned vehicle";
 - c. "any one carrier for hire"; or
 - d. "any one railroad car".
2. When a "limit" is indicated for a terminal location, "we" cover direct physical loss caused by a covered peril to described property while at a terminal location described on the "declarations" or within 100 feet of the described terminal.
- "We" only cover property at a terminal location if the covered property is in due course of transit.
3. If covered property includes property of others "we" only cover such property to the extent of "your" legal liability for direct physical loss caused by a covered peril.

PROPERTY NOT COVERED

1. **Art, Antiques and Fur** – "We" do not cover objects of art, antiques, or fur garments.
2. **Carrier For Hire** – "We" do not cover property of others that "you" are responsible for as a:
 - a. carrier for hire; or
 - b. as an arranger of transportation; this includes carloader, consolidator, broker, freight forwarder, or shipping association.
3. **Contraband** – "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Exports and Imports** – "We" do not cover exported or imported property:

- a. that is covered under any ocean marine cargo policy that anyone has obtained covering exports or imports; or
 - b. while on an ocean or air conveyance.
5. **Jewelry, Stones and Metals** – "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys.
6. **Lease Agreement** – "We" do not cover property for which "you" are contractually liable under a lease agreement with any transportation carrier.
7. **Live Animals** – "We" do not cover animals including cattle or poultry unless death is caused or made necessary by a "specified peril".
8. **Mail** – "We" do not cover mail shipments in the custody of the U.S. Postal Service.
9. **Money and Securities** – "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
10. **Samples** – "We" do not cover samples while in the custody of a sales representative.
11. **Storage** – "We" do not cover property held in storage.

ADDITIONAL COVERAGES

1. **Debris Removal** – "We" pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:
 - a. extract "pollutants" from land or water; or

- b. remove, restore, or replace polluted land or water.

“We” do not pay any more under this coverage than 25% of the amount “we” pay for the direct loss. “We” do not pay more for loss to property and debris removal combined than the “limit” for the damaged property.

However, “we” pay an additional amount of debris removal expense up to \$5,000 when the debris removal expense exceeds 25% of the amount “we” pay for direct loss or when the loss to property and debris removal combined exceeds the “limit” for the damaged property.

“We” do not pay any expenses unless they are reported to “us” in writing within 180 days from the date of direct physical loss to covered property.

- 2. **Emergency Removal** – “We” pay for loss to covered property while it is moved or being moved to prevent a loss caused by a covered peril. “We” pay for any direct physical loss caused by a peril that is not excluded. This coverage applies for up to ten days after the property is first moved, but does not extend past the date on which this policy expires.

- 3. **Pollutant Cleanup and Removal** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period. The expenses are paid only if they are reported to “us” in writing within 180 days from the date the covered peril occurs.

“We” do not pay the cost of testing, evaluating, observing, or recording the existence, level or effects of “pollutants”. However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

The most “we” pay for each site or location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

- 4. **Rejected Shipments** – “We” pay for loss caused by a covered peril to outgoing shipments of covered property that have been rejected by the consignee, including shipments that are not deliverable. “We” cover rejected shipments while:

- a. in due course of transit back to “you”; or
- b. awaiting return shipment to “you”.

This additional coverage will end ten days after delivery has been attempted or made to the consignee unless the covered property is in due course of transit back to “you”.

PERILS COVERED

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

PERILS EXCLUDED

- 1. “We” do not pay for loss if one or more of the following exclusions apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
 - c. **Civil Authority** – “We” do not pay for loss caused by order of any civil authority, including seizure, confiscation, destruction, or quarantine of property.

- “We” do pay for loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.
- b. **Nuclear Hazard** – “We” do not pay for loss caused by or resulting from a nuclear reaction, nuclear radiation, or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental, or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion or smoke. “We” do pay for direct loss by fire resulting from the nuclear hazard.
- c. **War** – “We” do not pay for loss caused by war. This means:
- 1) declared war, undeclared war, civil war, insurrection, rebellion, or revolution;
 - 2) a warlike act by a military force or by military personnel;
 - 3) the destruction, seizure, or use of the property for a military purpose; or
 - 4) the discharge of a nuclear weapon even if it is accidental.
2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
- a. **Criminal, Fraudulent or Dishonest Acts** – “We” do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts alone or in collusion with another by:
- 1) “you”;
 - 2) others who have an interest in the property;
 - 3) others to whom “you” entrust the property;
 - 4) “your” partners, officers, directors, trustees, joint adventurers; or
- 5) the employees or agents of 1), 2), 3) or 4) above, whether or not they are at work.
- This exclusion does not apply to acts of destruction by “your” employees, but “we” do not pay for theft by employees.
- This exclusion does not apply to covered property in the custody of a carrier for hire.
- b. **Loss of Use** – “We” do not pay for loss caused by or resulting from loss of use, business interruption, delay, or loss of market.
- c. **Missing Property** – “We” do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property. This exclusion does not apply to covered property in the custody of a carrier for hire.
- d. **Pollutants** – “We” do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of “pollutants” unless the release, discharge, seepage, migration, dispersal, or escape is caused by a “specified perils”. “We” do pay for any resulting loss caused by a “specified peril”.
- e. **Voluntary Parting** – “We” do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
- “We” do cover loss to covered property caused by false bills of lading or shipping receipts that “you” accept in good faith.

3. "We" do not pay for loss or damage if one or more of the following exclusions apply to the loss. But if loss by a covered peril results "we" do pay for the resulting loss.
 - a. **Contamination or Deterioration** – "We" do not pay for loss caused by contamination or deterioration including corrosion, decay, fungus, mildew, mold, rot, rust, or any quality, fault, or weakness in the covered property that causes it to damage or destroy itself.
 - b. **Temperature/Humidity** – "We" do not pay for loss caused by humidity, dampness, dryness, or changes in or extremes of temperature.
 - c. **Wear and Tear** – "We" do not pay for loss caused by wear and tear.

WHAT MUST BE DONE IN CASE OF LOSS

1. **Notice** – In case of a loss, "you" must:
 - a. give "us" or "our" agent prompt notice including a description of the property involved ("we" may request written notice); and
 - b. give notice to the police when the act that causes the loss is a crime.
2. **Protect Property** – "You" must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss. "We" will pay the reasonable costs incurred by "you" for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. "You" must keep an accurate record of such cost.

However, "we" do not pay for such repairs or emergency measures performed on property which has not been damaged by a peril insured against. This does not increase "our" limit.

3. **Proof of Loss** – "You" must send "us" within 60 days after "our" request, a signed, sworn proof of loss. This must include the following information:
 - a. the time, place, and circumstances of the loss;
 - b. other policies of insurance that may cover the loss;
 - c. "your" interest and the interests of all others in the property involved, including all mortgages and liens;
 - d. changes in title of the covered property during the policy period; and
 - e. estimates, specifications, inventories, and other reasonable information that "we" may require to settle the loss.
4. **Examination** – "You" must submit to examination under oath in matters connected with the loss as often as "we" reasonably request and give "us" sworn statements of the answers. If more than one person is examined, "we" have the right to examine and receive statements separately and not in the presence of others.
5. **Records** – "You" must produce records, including tax returns and bank microfilms of all cancelled checks, relating to value, loss, and expense and permit copies and extracts to be made of them as often as "we" reasonably request.
6. **Damaged Property** – "You" must exhibit the damaged and undamaged property as often as "we" reasonably request and allow "us" to inspect or take samples of the property.

7. **Volunteer Payments** – “You” must not, except at “your” own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.
 8. **Abandonment** – “You” may not abandon the property to “us” without “our” written consent.
 9. **Cooperation** – “You” must cooperate with “us” in performing all acts required by this policy.
-

VALUATION

1. **Invoice, Actual Cash Value** – The value of covered property will be based on the invoice amount plus accrued costs, pre-paid charges, and charges since shipment.

In the absence of an invoice the value of covered property will be based on the actual cash value at the time of loss (with a deduction for depreciation) except as provided in paragraphs 2. and 3. under Valuation.
2. **Pair or Set** – The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss to Parts** – The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

HOW MUCH WE PAY

1. **Insurable Interest** – “We” do not cover more than “your” insurable interest in any property.
2. **Deductible** – “We” pay only that part of “your” loss over the deductible amount indicated on the “schedule of coverages” in any one occurrence.
3. **Loss Settlement Terms** – Subject to paragraph 1., 2., 4., and 5. under How Much We Pay, “we” pay the lesser of:
 - a. the amount determined under Valuation;
 - b. the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable; or
 - c. the “limit” that applies to the mode of transportation or terminal location indicated on the “declarations”. In no event will “we” pay more than the catastrophe “limit” indicated on the “declarations” regardless if a loss involves:
 - 1) one or more modes of transportation;
 - 2) one or more terminal locations; or
 - 3) any combination of modes of transportation or terminal locations.

When a railroad car is transporting a truck, trailer, or semitrailer, the “limit” for a railroad car applies. In no event will “we” combine the “limit” for “any one owned vehicle” or the “limit” for “any one carrier for hire” with the “limit” for “any one railroad car”.

When a truck, trailer, or semitrailer is situated within a terminal building or within 100 feet of a terminal building, the “limit” for

REFRIGERATION BREAKDOWN ENDORSEMENT

SCHEDULE

(The entries required to complete this endorsement
will be shown below, or on the "declarations".)

Limit for refrigeration breakdown:

any one conveyance	\$ _____
any one catastrophe	\$ _____
Refrigeration Deductible	\$ _____

ADDITIONAL COVERAGES

Refrigeration Breakdown – When the refrigeration or heating unit of a vehicle transporting covered property has a sudden or accidental breakdown or malfunction, "we" cover direct physical loss to covered property caused by spoilage or contamination including decay, fungus, mildew, mold, or rot.

"We" do not pay for loss caused by breakdown or malfunction that results from the failure to maintain adequate fuel levels for the refrigeration or heating unit.

ADDITIONAL CONDITIONS

Inspection and Records – This coverage is void if "you" or a service representative do not inspect a vehicle's refrigeration or heating unit at least once each month. "You" must maintain a record of each inspection and retain the records for at least one year. "You" must provide "us" with all records that relate to a loss and permit copies and abstracts to be made from them.

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LOADING AND UNLOADING ENDORSEMENT

ADDITIONAL COVERAGES

Loading and Unloading – “We” pay for loss caused by a covered peril to covered property while it is being loaded or unloaded from a mode of transportation indicated on the “declarations”. “We” only provide coverage under this provision if the covered property is loaded from or unloaded onto a sidewalk, street, loading dock, or similar area that is adjacent to the indicated mode of transportation.

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1976 NATION-WIDE MARINE DEFINITION

The purpose of this instrument is to describe the kinds of risks and coverages which may be classified or identified under State Insurance Laws as Marine, Inland Marine or Transportation insurance, but does not include all of the kinds of risks and coverages which may be written, classified or identified under Marine, Inland Marine or Transportation insuring powers, nor shall it be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances.

This instrument shall not be construed to restrict or limit in any way the exercise of any insuring power granted under charters and license whether used separately, in combination or otherwise.

I. Marine and/or transportation policies may cover under the following conditions:

A. IMPORTS

1. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States; and shall be deemed to have been completed when such property has been:

- a) sold and delivered by the importer, factor or consignee; or
- b) removed from place of storage and placed on sale as part of importer's stock in trade at a point of sale-distribution; or
- c) delivered for manufacture, processing or change in form to premises of the importer or of another used for any such purposes.

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B. EXPORTS

Exports may be covered wherever the property may be without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this Ruling respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e.g., cotton.

C. DOMESTIC SHIPMENTS

1. Domestic shipments on consignment (provided the coverage of the issuing companies includes hazards of transportation) for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided that in no event shall the policy cover on premises owned, leased or operated by the consignor.
2. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by Assured or purchaser.

D. BRIDGES, TUNNELS AND OTHER INSTRUMENTALITIES OF TRANSPORTATION AND COMMUNICATION (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage.)

The foregoing includes:

1. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.
2. Piers, wharves, docks, slips, dry docks and marine railways.

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3. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.
 4. Power transmission and Telephone and Telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.
 5. Radio and Television Communication Equipment in use as such including towers and antennae with auxiliary equipment an appurtenant electrical operating and control apparatus.
 6. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.
- E. PERSONAL PROPERTY FLOATER RISKS covering individuals or generally.
1. Personal Effects Floater Policies.
 2. The Personal Property Floater.
 3. Government Service Floaters.
 4. Personal Fur Floaters.
 5. Personal Jewelry Floaters.
 6. Wedding Present Floaters for not exceeding 90 (ninety) days after the day of the wedding.
 7. Silverware Floaters.
 8. Fine Arts Floaters covering paintings, etchings, pictures, tapestries, art glass windows, and other bonafide works of art of rarity, historical value or artistic merit.
 9. Stamp and Coin Floaters.
 10. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.

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11. Mobile Articles, Machinery and Equipment Floaters (excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use) covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
 12. Installment Sales and Leased Property Policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not be extended beyond the termination of the seller's or lessor's interest.
 13. Live Animal Floaters.
- F. COMMERCIAL PROPERTY FLOATER RISKS covering property pertaining to a business, profession or occupation.
1. Radium Floaters.
 2. Physicians' and Surgeons' Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant Assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the Assured in the practice of his profession.
 3. Pattern and Die Floaters.
 4. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
 5. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
 6. Salesmen's Samples Floaters.

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7. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
8. Live Animal Floaters.
9. Builders' Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.

Such coverage shall be limited to Builders' Risks or Installation Risks where perils in addition to Fire and Extended Coverage are to be insured.

If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.

10. Mobile Articles, Machinery and Equipment Floaters, (excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use) covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.

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12. Installment Sales and Leased Property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest. This section is not intended to include machinery and equipment under certain "lease-back" contracts.
13. Garment Contractors Floaters.
14. Furriers or Fur Storer's Customer's Policies (i.e., policies under which certificates or receipts are issued by furriers or fur storers) covering specified articles the property of customers.
15. Accounts Receivable Policies, Valuable Papers and Records Policies.
16. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
 - (1) Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
 - (2) The dealer's right to sell or otherwise dispose of such merchandise is conditional upon its being released from encumbrance by the bank or lending institution.
 - (3) That such policies cover in transit and do not extend beyond the termination of the dealer's interest.

Provided that such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
17. Signs and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.

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18. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bonafide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
19. Policies covering personal property which, when sold to the ultimate purchaser, may be covered specifically, by the owner, under Inland Marine Policies including:
 - (a) Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
 - (b) Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
 - (c) Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
 - (d) Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.
 - (e) Stamp and Coin Dealers covering property of philatelic and numismatic nature.
 - (f) Jewelers' Block Policies.
 - (g) Fine Arts Dealers.

Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies, and tenant insured's interest in improvements of buildings.

20. Wool Growers Floaters.
21. Domestic Bulk Liquids Policies covering tanks and domestic bulk liquids stored therein.

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- 22. Difference in Conditions Coverage excluding fire and extended coverage perils.
 - 23. Electronic Data Processing Policies.
- II. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:
- A. Storage of Assured's merchandise, except as hereinbefore provided.
 - B. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
 - C. Furniture and fixtures and improvements and betterments to buildings.
 - D. Monies and/or securities in safes, vaults, safety deposit vaults, banks or Assured's premises, except while in the course of transportation.



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Section 6

Contractual Risk Transfer



**CONTRACTUAL RISK
TRANSFER:
HOW TO TRY
TO GIVE OTHER PEOPLE
YOUR PROBLEMS!**

**PATRICK A. DEEM, SR., CIC, CRSM
AUSTIN, TX**

Overview

- I. Risk Management
- II. Factors on Risk Transfer
- III. Guidelines for agreement for Transfer/Assumption of Risk
- IV. Contractual Liability – One Party
- V. Types of Loss Transfer
- VI. Myths of Indemnity/Hold Harmless Agreements
- VII. Insurance Requirements
- VIII. Coverage and Gaps
- IX. Summary and Conclusion

I. RISK MANAGEMENT

A. Risk Management defined

An organized approach to evaluating and managing risk

B. Reasons for using Risk Management

1. Identify exposures to the organization, whether insurable or not
2. Protect the economic well being of the organization
3. Protect the stockholder(s)/owner(s) from financial loss
4. Protect and provide for employee safety
5. Manage governmental regulatory requirement
6. Minimize cost of risk and positively impact profitability

C. Goal of Risk Management

An organized approach for the conservation of the firm's assets

D. Risk Management Process

1. Risk Identification
2. Risk Analysis and Measurement
3. Risk Handling: Risk Control
4. Risk Handling: Risk Financing
5. Risk Administration
 - a. Selection and implementation of Risk Management Plan
 - b. Monitoring and changing plan, as required, to meet established goals

E. Techniques for Handling Risk

1. Risk control techniques

a. Avoidance

b. Prevention

c. Reduction

d. Segregation

(1) Separation

(2) Duplication

2. Risk financing techniques

a. Retention

b. Transfer

(1) Contractual

(2) Insurance

c. Combination of Retention and Transfer

II. FACTORS ON RISK TRANSFER

- A. Who is in the best position to control the risk?
- B. Who has the financial ability to assume the risk?
- C. Who will receive the most benefit from the transfer?

III. GUIDELINES FOR AGREEMENT FOR TRANSFER/ASSUMPTION OF RISK

- A. What do I “really want”?
- B. What will I accept if I cannot have “A.”?
- C. What will make me “walk away”?

IV. CONTRACTUAL LIABILITY – ONE PARTY

A. Why is it done?

Risk Management – transfer of risk

B. Parties commonly involved

1. Lessor – Lessee
2. Owner – Contractor
3. Contractor – Subcontractor
4. Distributor – Manufacturer
5. Seller – Buyer
6. Principal – Agent

C. Types of Contractual Risk Transfer

1. Hold Harmless/Indemnity Agreements
2. Exculpatory Clauses or Agreements
3. Waivers of Subrogation
4. Limitation of Liability Provisions
5. Insurance Requirements

Hold Harmless Agreements

A contractual agreement whereby one party assumes the liability inherent in a situation, thereby relieving the other party of responsibility.

Limited

Indemnification of the indemnitee for "situations" arising from the indemnitor's "operations." Relates to liability caused by acts or omission indemnitor *solely*.

Intermediate

Indemnification of the indemnitee for "situations" arising from the indemnitor's "operations." Relates to liability caused by acts or omission of the indemnitor or the indemnitee's liability for the indemnitee and indemnitor's joint negligence.

Broad

Indemnification of the indemnitee for "situations" arising from the indemnitor's "operations." Relates to liability caused by acts or omission of the indemnitor or the indemnitee's liability for the indemnitee and indemnitor's joint negligence or indemnitee's liability for indemnitee's sole negligence.

V. TYPES OF LOSS TRANSFER

A. Hold Harmless Agreements

1. Definition – Someone agrees to be **responsible** for someone else
2. Effect on Liability
3. Types of Hold Harmless Agreements
 - a. Limited – “I did it” – I pay
 - b. Intermediate – “I did it” or “We did it” – I pay
We is our insured and the indemnitee
 - c. Broad – “I did it” or “We did it” or “You did it” – I still pay
You is the indemnitee
4. Enforceability of Assumption of Indemnitee’s Liability
 - a. Treatment by courts – ECC Rule
 - (1) **E**xpress – Broad Form Indemnity must be stated in clear and plain language
 - (2) **C**onspicuous – part containing Broad Form Indemnity must be bold, highlighted and/or large print
 - (3) **C**onsideration – identifiable financial payment supporting assumption of liability
 - b. Treatment by statutes – Anti-Indemnification statutes
 - c. Insurance Policy

- ### B. Indemnification Agreements – Someone agrees to **pay** for (pay on behalf of) or to **repay** someone else

VI. MYTHS OF INDEMNITY/HOLD HARMLESS AGREEMENTS

A. “The indemnity agreement relieves the indemnitee of liability to the injured third party”

1. No, it does not

2. Indemnitee is still responsible for loss/damage of injured party whether indemnitor responds or not

B. “The contractual transfer of risk is assumed by insurance coverage of indemnification”

1. No, it is not

2. The insurance contract is a separate agreement and not “governed” by the contractual acceptance of risk

3. Example – Additional Insured never endorsed on policy when required by contract

VII. INSURANCE REQUIREMENTS

A. Who purchases what coverage?

1. Coverage on Building – if Tenant
2. Coverage for improvements and betterments
3. Coverage for Premises rented/leased
4. Coverage for equipment rented/leased
5. Builders Risk
6. Installation Floater
7. General Liability
8. Auto Liability
9. Workers Compensation
10. Commercial Umbrella
11. Professional Liability – Design/Build

B. Who is covered where and how?

1. Named Insured – on which policy, yours or mine?
2. Automatic Insured – on which policy, yours or mine?
3. Additional Insured – on which policy, yours or mine?
4. As Their Interests May Appear (ATIMA) – on which policy, yours or mine?
5. Uninsured Indemnitee on yours

- C. For how much
 - 1. Minimum acceptable limit for Liability/Property
 - 2. Valuation – Actual Cash Value (ACV), Replacement Cost (RC) or Reconstruction Cost
- D. How Broad is the Insurance Coverage
 - 1. Named Peril – Direct Physical Loss unless – Excluded
 - 2. Products-Completed Operations – Included/Excluded
 - 3. Damage to Work – Yours or Others
- E. How long should Insurance coverage exist?
 - 1. Length of project
 - 2. Years after completion – How many?
 - 3. Warranty of work
 - 4. Length of lease Agreement
 - 5. Length of Statute of Repose
- F. Who Pays First?
 - 1. Indemnitor
 - 2. Indemnatee

G. Deductibles

1. Property – subject to maximum?
2. Liability
3. Are they mentioned at all?

H. Waiver of Subrogation

1. In favor of whom?
2. Which policies
3. Why would require? See item B.3.
4. Does waiver apply to Named Insureds' work or the entire project?

I. Other Issues

1. Any insurance company acceptable?
2. How is evidence of compliance required?
Accord 25 – Liability
Accord 24/28 – Property

VIII. COVERAGE AND GAPS

A. Myth – “You have Blanket Contractual Liability Coverage” on your Commercial General Liability Policy (CGL)

1. No, you do not, and you never did

“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.**”

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2. How do I become “legally obligated”?

a. Direct action – “I did it”

b. Vicariously – “I didn’t do it, **but someone I control did.**”

c. By Contract – “I **agree** to be legally obligated”

3. What does “to which this insurance applies” really mean?

a. The policy will provide full coverage unless the legal obligation is excluded

b. The policy will limit the coverage for the legal obligation by an exclusion

4. The CGL provides Contractual Liability Coverage under Coverage A (Bodily Injury or Property Damage) only

b. Contractual Liability

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

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

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9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

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- B. What Contractual Coverage do I have on a CGL?
1. Definition of insured contract – What it is
 - a. Lease of premises
 - b. Sidetrack agreement
 - c. Easement agreement – except in connection with operations within 50 feet of a railroad
 - d. Indemnification of a municipality by ordinance – except with work for the municipality
 - e. Elevator maintenance
 - f. Any other contract or agreement pertaining to your business
 2. Definition of Insured Contract – What it is not
 - a. Indemnification of railroad for operations within 50 feet of railroad
 - b. Indemnification of architect, engineer or surveyor for damage arising from their professional liability exposures
 - c. Assumption of liability by insured architect, engineer, or surveyor for failure to render professional services

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

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

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

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

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT
CAREFULLY.****CONTRACTUAL LIABILITY – RAILROADS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:	Designated Job Site:

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

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

9. "Insured Contract" means:

- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b.** A sidetrack agreement;
- c.** Any easement or license agreement;
- d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e.** An elevator maintenance agreement;
- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

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

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

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

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

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

**Primary And Noncontributory
Insurance**

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

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS FOR OTHER
PARTIES WHEN REQUIRED IN WRITTEN
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

2. Available under the applicable limits of insurance;
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

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.

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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".

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;
- 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.

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C. What about the Auto Policy?

Who is an Insured?

1. You for any covered auto
2. Anyone else using with your permission a covered “auto” you own, hire, or borrow except:
 - a. 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
 - b. Your employee – If the covered “auto” is owned by the employee or a member of his or her household
 - c. 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
 - d. Anyone other than your employees, partners, a lessee or borrower, or any of their employees while moving property to and from a covered “auto”
 - e. A partner of yours for a covered “auto” owned by him or her or a member of his or her household
3. Anyone liable for the conduct of an “insured” but only to the extent of that liability

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

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 this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

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

<p>Named Insured:</p> <p>Endorsement Effective Date:</p>
--

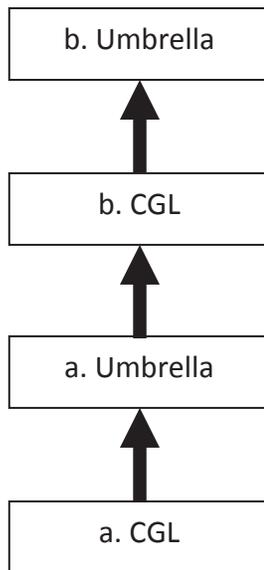
SCHEDULE

<p>Name Of Person(s) Or Organization(s):</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

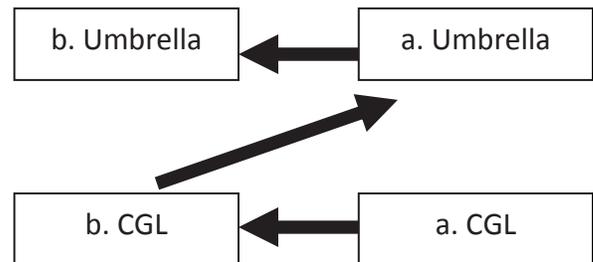
(Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

Vertical or Horizontal Indemnification?

Vertical
a. Indemnitor – our insured
b. Indemnitee – the other guy



Horizontal
a. Indemnitor – our insured
b. Indemnitee – the other guy



Do not confuse the Additional Insured status with the “Other Insurance Clause”.

D. What about the Umbrella Policy?

1. Company specific
2. You have got to read them

OR

3. Ask the underwriter
4. Watch out for follow form

“We shall provide coverage over those policies listed in the Schedule of Underlying Insurance, **except** where we differ in Definitions, Insuring Agreements, Conditions and Exclusions.”

E. What about Worker Compensation/Employers Liability Policy?

There is **NO** Contractual Coverage

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.

CP 00 10 10 12. Page 1 of 16.

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 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.

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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.

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F. What about the Commercial Property Policy

1. Insuring Agreement
2. Loss Payment Provisions
3. Additional Insured Status?

IX. SUMMARY AND CONCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE PROVISIONS

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

SCHEDULE

Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Premises Number:		Building Number:		Applicable Clause (Enter C., D., E., or F.):	
Description Of Property:					
Loss Payee Name:					
Loss Payee Address:					
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.					

- 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.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.
- C.** The following is added to the **Loss Payment** Loss Condition, as indicated in the Declarations or in the Schedule:
- 1. Loss Payable Clause**
For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:
 - a.** Adjust losses with you; and
 - b.** Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear
 - 2. Lender's Loss Payable Clause**
 - a.** The Loss Payee shown in the Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
 - (1)** Warehouse receipts;
 - (2)** A contract for deed;
 - (3)** Bills of lading;
 - (4)** Financing statements; or
 - (5)** Mortgages, deeds of trust, or security agreements.
 - b.** For Covered Property in which both you and a Loss Payee have an insurable interest:
 - (1)** We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
 - (2)** The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
 - (3)** If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
 - (a)** Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (b)** Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (c)** Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Coverage Part will then apply directly to the Loss Payee.
 - (4)** If we pay the Loss Payee 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:
 - (a)** The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
 - (b)** The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.
 - c.** If we cancel this policy, we will give written notice to the Loss Payee 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.
 - d.** If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

3. Contract Of Sale Clause

- a. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered into a contract with for the sale of Covered Property.
- b. For Covered Property in which both you and the Loss Payee have an insurable interest, we will:
 - (1) Adjust losses with you; and
 - (2) Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
- c. The following is added to the **Other Insurance** Condition:

For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

4. Building Owner Loss Payable Clause

- a. The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building in which you are a tenant.
- b. We will adjust losses to the described building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
- c. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – BUILDING OWNER

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number:	Building Number:
Building Description:	
Building Owner Name:	
Building Owner Address:	
Premises Number:	Building Number:
Building Description:	
Building Owner Name:	
Building Owner Address:	
Premises Number:	Building Number:
Building Description:	
Building Owner Name:	
Building Owner Address:	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

The building owner identified in this endorsement is a Named Insured, but only with respect to the coverage provided under this Coverage Part or Policy for direct physical loss or damage to the building(s) described in the Schedule.

