JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

Pennsylvania
March 12-13, 2024

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THE NATIONAL ALLIANCE
for Insurance Education & Research

A Letter from William J. Hold, President/CEO

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Let's take the first step.

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

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James K. Ruble Seminar

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

Section 1

Solving Troublesome Liability Issues

Solving Troublesome Liability Issues

R. Bryan Tilden, CIC, C.P.C.U., CLU, ARM, SCLA
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I. Overview of the Presentation

A. What are small to middle market commercial accounts?

B. Many definitions

C. Measurement factors

1. Type of business

2. Number of employees

3. Financial (gross sales/payroll) – many brokers believe that middle market is $50 to $750 million revenue

4. Premium size – middle market $100,000 to $2.5 million premium

5. Number of policies

D. Liability coverage issues similar, but can be more complex

II. Understanding Occurrence versus Claims Made

A. Extended Reporting Periods

1. All claims made during an Extended Reporting Period will be deemed to have been received and recorded on the last day of the policy period

2. The insured is guaranteed the right to an Extended Reporting Period

- Guaranteed by policy
- Policy cancelled
- Renewed with restrictions
- Retroactive date advanced
- Replaced by occurrence form

> **1.** We will provide one or more Extended Reporting Periods, as described below, if:
>
> **a.** This Coverage Part is cancelled or not renewed; or
>
> **b.** We renew or replace this Coverage Part with insurance that:
>
> **(1)** Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
>
> **(2)** Does not apply to "bodily injury," "property damage," "personal and advertising injury" on a claims-made basis.

3. Reasons for wanting
   - **a) Policy cancelled**
   - **b) Retroactive date advanced**
   - **c) Replaced by occurrence form**
   - **d) Renewed with restrictions**

4. Basic Extended Reporting Period

- Free
- 5 years to make claim for BI and PD reported during policy
- 5 years to make claim for PI and AI reported during policy
- 60 days all others (Mini tail)

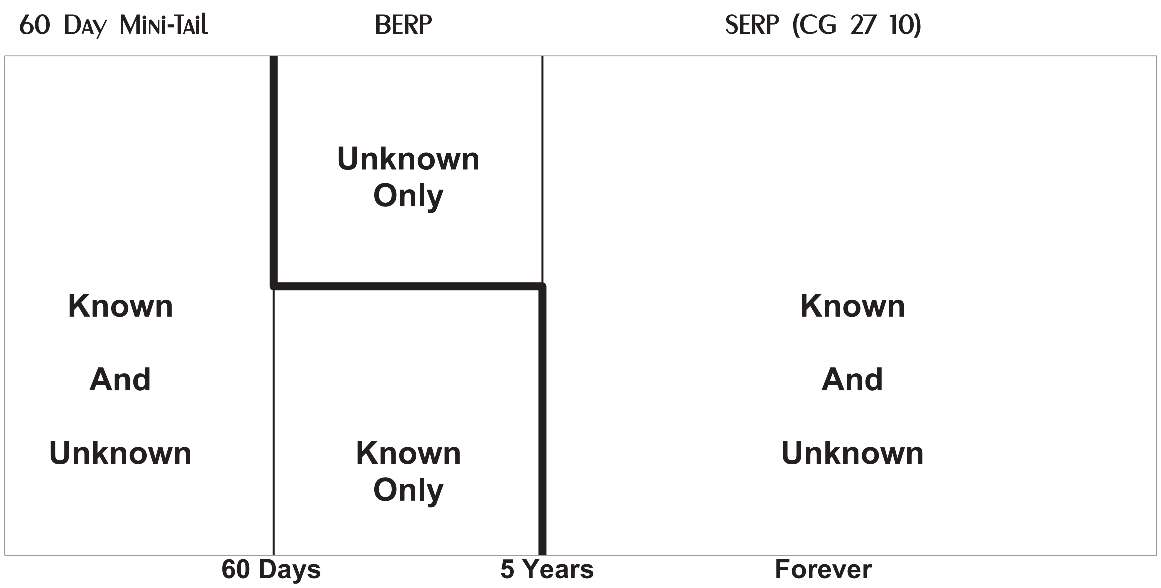
3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:

a. Five years for claims because of "bodily injury" and "property damage" arising out of an "occurrence" reported to us, not later than 60 days after the end of the policy period, in accordance with Paragraph **2.a.** of the Section **IV** – Duties In The Event of Occurrence, Offense, Claim Or Suit Condition;

b. Five years because of claims for "personal and "advertising injury" arising out of an offense reported to us, not later than 60 days after the end of the policy period, in accordance with Paragraph **2.a.** of the Section **IV** – Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition; and

c. Sixty days with respect to claims arising from "occurrences" or offenses not previously reported to us.

The Basic Extended Reporting Period does not apply to claims that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.



5. Supplemental Extended Reporting Period

- Forever
- Extra charge
- Begins when Basic ends
- Written request within 60 days
- Pay premium to go into effect
- 200% maximum charge
- SERP is excess

5. A Supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in paragraph **3.** above, ends.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

a. The exposures insured;

b. Previous types and amounts of insurance;

c. Limits of Insurance available under this Coverage Part for future payment of damages; and

d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage Part.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for claims first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

Summary of Final "Tail" Multipliers

Years in Program	Premises	Operations	Products
1	.20	.25	.33
2	.30	.39	.60
3	.36	.46	.79
4	.41	.52	.97
5	.46	.56	1.26

6. Effect on Limits of Insurance

a) Basic Extended Reporting Period

- No new limits

> **4.** The Basic Extended Reporting Period does not reinstate or increase the limits of insurance.

b) Supplemental Extended Reporting Period

- Reinstates aggregate
- Unknown and unreported occurrences
- Limits as of end of policy

> **6.** If the Supplemental Extended Reporting Period is in effect, we will provide the supplemental aggregate limits of insurance described below, but only for claims first received and recorded during the Supplemental Extended Reporting Period.
>
> The supplemental aggregate limits of insurance will be equal to the dollar amount shown in the Declarations in effect at the end of the policy period for such of the following limits of insurance for which a dollar amount has been entered:
>
> General Aggregate Limit
> Products-Completed Operations Aggregate Limit
>
> Paragraph **2.** and **3.** of Section **III** – Limits Of Insurance will be amended accordingly. The Personal and Advertising Injury Limit, the Each Occurrence Limit and Fire Damage Limit shown in the Declarations will then continue to apply, as set forth in paragraphs **4.**, **5.** And **6.** of that Section.

- **Basic Extended Reporting Period**
  - **Paid out of policy limits**
- **Supplemental Extended Reporting Period**
  - **Reinstates aggregates at expiration**
  - **Unknown and unreported occurrences only**

7. Coverage Under Extended Reporting Periods

- Do not extend policy
- Covers injuries *before* termination
- Claims made *after* termination
- May not be cancelled

2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to claims for:

a. "Bodily injury" or "property damage" that occurs before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations; or

b. "Personal and advertising injury" caused by an offense committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations

Once in effect, Extended Reporting Periods may not be cancelled.

8. Comparison of the Extended Reporting Periods

	60 Day Tail	**5 Year Tail**	**Supplemental Tail**
Automatic	Yes	Yes	Right to Purchase
Cost	Included	Included	Up to 200%
New Aggregate	No	No	Yes
All Occurrences	Yes	Reported Only	1st 5 Years *Unknown* After 5 Years *All*
Time Limitation	Yes	Yes	No
Limits Excess Over Other Policies	No	No	Yes

Source: Jerry M. Milton, CIC, with permission

B. Claims Made Retroactive Date

1. No coverage for "Bodily Injury" or "Property Damage" that occurred prior to the Retroactive Date, if any, shown in the policy

2. Retroactive Date Options

   a) Policy Inception Date

   (1) First time on claims made from an Occurrence policy

   (2) New claims made account from another carrier

   b) Earlier than policy inception date

   (1) Renewal of existing claims made policy

   (2) New claims made account from another carrier for competitive reasons

   c) None as a Retroactive Date

   (1) When the timing of the "Bodily Injury" or "Property Damage" is not useful

   (2) When a Specific Accident(s), Products, Work or Location(s) Endorsement is being used

3. Claims Made Pricing

   a) For claims made, the occurrence rates are modified by:

   (1) A discount to reflect the fact that claims made losses come earlier under the policy, and are therefore less affected by inflation

   (2) An additional discount during the first four years because fewer claims will be covered during the initial years

   b) Discount factors used to convert occurrence rates to "mature" claims made rates:

Premises	.96
Operations	.97
Products	.89

   c) Additional discount factors applied to "mature" claims made rates during the first four years:

Years in Program	**Premises**	**50000-59999 90000-99999**	**Products**
1	.70	.60	.56
2	.83	.74	.64
3	.89	.81	.79
4	.91	.84	.81
Mature	.95	.92	.89

4. Rules on advancing the retroactive date on a policy (Manual Rule)

a) **Written consent of the insured AND**

b) **One of the following allowable reasons for a company to advance the retroactive date:**

(1) Change in carriers

(2) Substantive change of risk

(3) Underwriting information withheld at inception

(4) Insured's request

c) **AND with written confirmation that an Extended Reporting Period has been offered**

C. Triggers of Coverage

1. Occurrence Version *CG 00 01*

> **b.** This insurance applies to "bodily injury" and "property damage" only if:
>
> **(1)** The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory," and
>
> **(2)** The "bodily injury" or "property damage" occurs during the policy period.

- During the policy period

a) **Based on the date injury or damage occurred**

b) **Date when claim made has no bearing**

2. Claims Made Version CG 00 02

a) Injury Must Occur

- Anytime after retroactive date
- See page 5
- Bodily Injury or Property Damage
- During policy period

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

(2) The "bodily injury" or "property damage" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and

(3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with paragraph **c.** below, during the policy period or any Extended Reporting Period we provide under Section **V** – Extended Reporting Periods.

b) When a Claim Is Made

- Claim made at earliest
- Notice received & recorded
- Company makes settlement
- All claims to same person
- Considered made at time first claim made

c. A claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

(1) When notice of such claim is received and recorded by any insured or by us, whichever comes first; or

(2) When we make settlement in accordance with paragraph **1. a.** above.

All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury", will be deemed to have been made at the time the first of those claims is made against any insured.

(1) Based on the date the claim is first made against an insured for injury or damage

(2) The occurrence of the injury or damage must occur after the retroactive date, if any, shown on the policy

III. Who Is An Insured

A. Three Types of Insured Under the CGL Policy

1. Named Insureds
2. Automatic Insureds, i.e., Directors, Officers, "Employees"
3. Non-automatic Additional Insureds Specifically Added by Endorsements

B. Reasons for Demanding Additional Insured Status

1. It can assure greater safety in a risk transfer - a "safety net" for a hold harmless agreement
2. It can give those parties who attempt to transfer potential risk direct rights under the other party's insurance
3. It may protect the party/ies who attempt the transfer of potential risk from subrogation
4. Provides the indemnitee with personal injury liability coverage

C. Why it is industry practice

1. Inducement to do business
2. Custom and practice
3. Lessen own exposure
4. Transfer control

D. How it is done

1. Indemnity clauses
2. Insurance policies
3. Financial guarantees
4. Combinations

E. Named insured defined

- Named insured
- Insured

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

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

The word <u>"Insured" means any person or organization qualifying</u> as such under **Who Is An Insured (Section II).**

Other words and phrases that appear in quotation marks have special meaning. Refer to **Definitions (Section IV).**

F. All named insureds are to be considered insureds. All insureds, however, will not be named insureds

- Spouses
- Partners
- Members
- managers
- Executive officers
- Directors
- trustees

1. If you are designated in the Declarations as:

a. An individual, <u>you and your spouse</u> 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, <u>your partners, and their spouses</u> are also insureds, but only with respect to the conduct of your business.

c. A limited liability company, you are an insured. Your <u>members are also insureds</u>, but only with respect to the conduct of your business. Your <u>managers are insureds</u>, 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 <u>"executive officers" and directors are insureds</u>, but only with respect to their duties as your officers or directors. Your <u>stockholders are also insureds</u>, but only with respect to their liability as stockholders.

e. A trust, you are an insured. Your <u>trustees are also insureds</u>, but only with respect to their duties as trustees.

G. Newly acquired or formed organizations may qualify as named insureds

- No other insurance
- 90 days
- No BI or PD before acquired
- No PI or AI committed before acquired

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC INSURED STATUS FOR NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph **3.** Under **Section II– Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization.

However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

B. The last paragraph of **Section II – Who Is An Insured** is replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past:

1. Partnership or joint venture; or

2. Limited liability company, unless Paragraph **A.** above applies;

that is not shown as a Named Insured in the Declarations.

H. Which persons should be listed as Named Insureds

1. Sole Proprietors

a) All exposures

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED **Bubba Smith (a sole proprietorship)**

MAILING ADDRESS ________________

POLICY PERIOD: **From** ____________ **to** ____________
12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION ________________

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

b) Limited to a specific business

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED **Bubba Smith d/b/a Bubba's Bail Bonds (a sole proprietorship)**

MAILING ADDRESS ________________

POLICY PERIOD: **From** ____________ **to** ____________
12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION ________________

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

2. Partnerships and joint ventures

a) Name partners individually

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED **Bubba Smith and Me Maw Jones d/b/a Smith and Jones (a partnership)**

MAILING ADDRESS ____________________

POLICY PERIOD: **From** ______________**to**______________
12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION ____________________

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

b) Name partnership only

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED **Smith and Jones (a partnership)**

MAILING ADDRESS ____________________

POLICY PERIOD: **From** ______________**to**______________
12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION ____________________

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

c) **Past partnerships must be named**

- Past partnerships and joint ventures must be declared

> No person or organization is an insured with respect to the conduct of <u>any current or past partnership, joint venture or limited liability company</u> that is not shown as a Named Insured in the Declarations.

(1) Can create coverage gaps

(2) May need to maintain a policy for discontinued operations

(3) Maintain on each successor's policy

3. Limited liability company (LLC)

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED <u>Possum Palace (a limited liability company)</u>

MAILING ADDRESS ______________________________

____

POLICY PERIOD: **From** ______________ **to** ______________
12:01 A.M. Standard Time at your mailing address shown above.

BUSINESS DESCRIPTION ______________________________

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

a) **LLCs are hybrids of corporations and partnerships that attempt to combine the most favorable characteristics**

b) **Carefully organized LLCs are unincorporated associations that protect their members from the personal liability for the entity's debts and obligations while allowing the income, deductions and credits to pass through to the members**

c) **Care should be taken to make sure that insurance policies issued to the LLC actually recognize the LLC and its members as insureds**

4. Organization other than partnership, joint venture or limited liability company

COMMON POLICY DECLARATIONS

POLICY NUMBER. ________________

COMPANY NAME AREA	**PRODUCER NAME AREA**

NAMED INSURED	**Al's Garage, Inc. (a corporation)**
MAILING ADDRESS	
POLICY PERIOD:	**From** _______________**to**_______________ 12:01 A.M. Standard Time at your mailing address shown above.
BUSINESS DESCRIPTION	

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

a) **A division of a corporation is not normally a separate legal entity**

b) **CGL includes insurance protection of all divisions, even if separate protection is purchased for a specific division**

5. Broad named insured wording

a) **Consider what is intended to be included**

b) **"Any subsidiary organizations now existing or hereafter created"**

(1) Would preclude newly acquired subsidiaries

(2) Newly created are more often involved in similar or related activities than are newly acquired

c) **Institutions may need to have a broad named insured clause written to include organizations which are related but not necessarily owned or controlled**

d) **If a broad named insured clause is used and coverage is automatically afforded for all entities and all locations, any entities or locations not intended to be covered must be excluded**

e) **Listing of all individual entities may establish a precedent that implies a need to report**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION (FOR USE WHEN CONTRACTUAL LIABILITY COVERAGE IS NOT PROVIDED TO YOU IN THIS POLICY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<tr><td colspan="2">Name of Person or Organization (Additional Insured):</td><td colspan="2">Location Of Covered Operations</td></tr>
<tr><td>Bodily Injury And Property Damage Liability</td><td>Premium Basis Cost</td><td>Rates (Per $1000 Of Cost)</td><td>Advance Premium</td></tr>
<tr><td></td><td></td><td></td><td>$</td></tr>
<tr><td colspan="3" align="right">Total Advance Premium</td><td>$</td></tr>
</table>

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

A. **Who Is An Insured (Section II)** is amended to include as an insured the person or organization (called "additional insured") shown in the Schedule but only with respect to liability arising out of:

1. Your ongoing operations performed for the additional insured(s) at the location designated above; or

2. Acts or omissions of the additional insured(s) in connection with their general supervision of such operations.

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

1. Exclusions **b., c., g., h.(1), j., k., l.** and **n.** under **Coverage A – Bodily Injury And Property Damage Liability (Section I – Coverages)** do not apply.

2. **Additional Exclusions**

This insurance does not apply to:

a. "Bodily injury" or "property damage" for which the additional insured(s) are obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the additional insured(s) would have in the absence of the contract or agreement.

b. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

c. "Bodily injury" or "property damage" arising out of any act or omission of the additional insured(s) or any of their "employees", other than the general supervision by the additional insured(s) of your ongoing operations performed for the additional insured(s).

d. "Property damage" to:

(1) Property owned, used or occupied by or rented to the additional insured(s);

(2) Property in the care, custody, or control of the additional insured(s) or over which the additional insured(s) are for any purpose exercising physical control; or

(3) Any work, including materials, parts or equipment furnished in connection with such work, which is performed for the additional insured(s) by you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

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

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf.

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

However:

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

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

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

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

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of covered operations has been completed; or

2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN A WRITTEN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or

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

in the performance of your ongoing operations for the additional insured.

However the insurance afforded to such additional insured:

1. Only to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others, by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional,, architectural, engineering or surveying services.

2. “Bodily injury” or “property damage” occurring after:

   (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of covered operations has been completed; or

   (2) That portion of “your work” out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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 or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

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 described in Paragraph **1.** or **2.** above.

However the insurance afforded to such additional insured:

a. Only 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 that additional insured are completed.

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

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others, by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional,, architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

b. 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 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT WITH YOU (COMPLETED OPERATIONS)

This endorsement modifies insurance provided under the following:

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

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization for whom you have performed operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” performed for that additional insured and included in the “products-completed operations hazard.

However the insurance afforded to such additional insured:

1. Only to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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

This insurance does not apply to:

“Bodily injury” or “property damage” arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others, by that insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved the rendering of or the failure to render any professional,, architectural, engineering or surveying services.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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 WITH YOU (COMPLETED OPERATIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS 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 have performed 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" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured described in Paragraph **1.** or **2.** and included in the "products-completed operations hazard.

However the insurance afforded to such additional insured:

a. Only 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.

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

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

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

2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others, by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional,, architectural, engineering or surveying services.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS SUBJECT TO THE GENERAL AGGREGATE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule of this endorsement, but only with respect to liability for:

1. "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(s) at the location(s) shown and described in the Schedule of this endorsement; or

2. "Bodily injury" or "property damage" caused, in whole or in part, by "your work", other than that described in **A.1.,** at the location(s) shown and described in the Schedule of this endorsement performed for the additional insured(s).

However:

(1) The insurance afforded to such additional insured only applies to the extent permitted by law; and

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – GRANTOR OF LICENSES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability as grantor of a license to you.

However:

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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – GRANTOR OF LICENSES – AUTOMATIC STATUS WHEN REQUIRED BY LICENSOR

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) that grants licenses to you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be named as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to their liability as grantor of licenses to you.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person(s) or organization(s) status as an additional insured under this endorsement ends when:

1. The license granted to you by such person(s) or organization(s) expires; or

2. Your license is terminated or revoked by such person(s) or organization(s) prior to expiration of the license as stipulated by the contract or agreement.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any architect, engineer or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In connection with your premises; or

2. In the performance of your ongoing operations.

However:

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

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

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

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

2. Supervisory, inspection, architectural or engineering activities.

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Engineers, Architects Or Surveyors Not Engaged By The Named Insured:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

1. Your acts or omissions; or

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

in the performance of your ongoing operations performed by you or on your behalf.

Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

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

2. Supervisory, inspection or engineering services.

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 services by or for you.

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – AUTOMATIC STATUS FOR DESIGNATED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) for whom you have agreed to add under any contract or agreement, but only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or

2. "Personal and advertising injury";

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations as described in the Schedule above.

B. The insurance afforded to such additional insured described in Paragraph **A.** above:

1. Only applies to the extent permitted by law; and

2. Will not be broader than any coverage requirement in a contract or agreement to provide for such additional insured.

C. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services

2. Preparing, approving, or failing to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs or specifications;

3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as a construction manager;

4. Engineering services, including related supervisory or inspection services;

5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

6. Any health or therapeutic service treatment, advice or instruction;

7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

10. Body piercing services;

11. Services in the practice of pharmacy;

12. Law enforcement or firefighting services; and

13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 services by or for you.

D. 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.** above; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – AUTOMATIC STATUS WHEN REQUIRED IN WRITTEN CONTRACT OR 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 any person(s) or organization(s) for whom you have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an addition insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or

2. "Personal and advertising injury";

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations.

B. The insurance afforded to such additional insured described in Paragraph **A.** of this endorsement:

1. Only applies to the extent permitted by law; and

2. Will not be broader than any coverage requirement in a contract or agreement to provide for such additional insured.

C. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services

2. Preparing, approving, or failing to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs or specifications;

3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as a construction manager;

4. Engineering services, including related supervisory or inspection services;

5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

6. Any health or therapeutic service treatment, advice or instruction;

7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

10. Body piercing services;

11. Services in the practice of pharmacy;

12. Law enforcement or firefighting services; and

13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 services by or for you.

D. 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.**; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured):
Additional Premium: $
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule but only with respect to liability or "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.

2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

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

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

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

However:

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

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

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT – AUTOMATIC STATUS WHEN REQUIRED IN LEASE AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) for whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VENDORS

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Name of Additional Insured Person(s) or Organization(s) (Vendor)	Your Products
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) shown in the Schedule of this endorsement, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" shown in the Schedule of this endorsement which are distributed or sold in the regular course of the vendor's business.

However:

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

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

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

1. The insurance afforded the vendor does not apply to:

a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e. Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

   1. The exceptions contained in subparagraphs **d.** or **f.**; or

   2. Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VENDORS – AUTOMATIC STATUS WHEN REQUIRED IN AGREEMENT

This endorsement modifies insurance provided under the following:

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

A. **Section II – Who Is An Insured** is amended to include as an additional insured any "vendor", but only with respect to liability for "bodily injury" or "property damage" arising out of "your product" which is distributed or sold in the regular course of the "vendor's" business.

However, the insurance afforded to such "vendor":

1. Only to the extent permitted by law; and

2. Will not be broader than that which you are required by the contract or agreement to provide for such "vendor".

B. With respect to the insurance afforded to any "vendor", the following additional exclusions apply:

1. The insurance afforded the "vendor" does not apply to:

a. "Bodily injury" or "property damage" for which the "vendor" is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the "vendor" would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the "vendor";

d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

e. Any failure to make such inspection, adjustments, tests or servicing as the "vendor" has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

f. Demonstration, installation, servicing or repair operations, except such operations performed at the "vendor's" premises in connection with the sale of the product;

g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the "vendor"; or

h. "Bodily injury" or "property damage" arising out of the sole negligence of the "vendor" for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

1. The exceptions contained in subparagraphs **d.** or **f.**; or

2. Such inspections, adjustments, tests or servicing as the "vendor" has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

C. With respect to the insurance afforded to these "vendors", the following is added to **Section III – Limits of Insurance:**

The most we will pay on behalf of the "vendor" is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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

"Vendor" means any person or organization who distributes or sells "your product" in the regular course of its business when you have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCESS PROVISION - VENDORS

This endorsement modifies insurance provided under the following:

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

When you are added to a manufacturer's or distributor's policy as an additional insured because you are a vendor for such manufacturer's or distributor's products, Paragraph **4., Other Insurance** of **Conditions (Section IV)** is amended by the addition of the following:

The coverage afforded the insured under this Coverage Part will be excess over any other valid and collectible insurance available to the insured as an additional insured under a policy issued to a manufacturer or distributor for products manufactured, sold, handled or distributed.

- **Used with a CGL edition date prior to 1998**
- **Added to the retailer's CGL**
- **Not necessary with 1998 and later edition dates**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

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

1. In the performance of your ongoing operations; or

2. In connection with your premises owned by or rented to you.

However:

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

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

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

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

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

I. Additional Insured's reasons to want to be named on the liability policy of another

1. Receive primary insurance protection

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work;"

- Excess over fire, builders risk

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner ; or

- Fire insurance on rented premises

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

- Legal Liability Coverage Form

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury and Property Damage Liability.

- Maintenance or use of aircraft, watercraft

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

- Policy where You are an additional insured

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.

J. Other insurance

1. Can be categorized as excess, pro rata or escape/nonliability clauses

2. Pro-rata

   > When both this insurance and other insurance apply to loss on the same basis, the company shall not be liable under this policy for a greater proportion of the loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

3. Equal shares basis

   > If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or more of the loss remains, whichever comes first.

4. Escape

   > Provides coverage for the insured "but only if no other valid and collectible insurance, either primary or excess, is available to such person.

5. Excess

   > Any insurance we provide will be excess over any other collectible insurance, self-insurance, or bond. Any insurance we provide for use of a covered auto by any person other than you will be excess over any other collectible insurance, self-insurance, or bond.

6. Excess over excess

   > Any insurance we provide shall be excess over any other collectible insurance. Any insurance we provide for use of your covered auto by any person other than you or any family member will be excess over any other collectible insurance, self-insurance or bond stated to be primary, contributing, excess or contingent.

7. Super excess

   > Any insurance we provide shall be excess after exhaustion of all insurance, whether primary, contributing, excess or contingent.

8. In most states where there are conflicting other-insurance provisions (i.e., both excess) the loss involved is prorated among the insurers involved

<table>
<tr><th colspan="8">Type of Clause In First Policy Being Analyzed</th></tr>
<tr><th rowspan="7">Type of Clause In Second Policy Being Analyzed</th><th>Clause Type</th><th>Pro rata</th><th>Escape</th><th>Not insured if covered under another policy</th><th>Excess</th><th>Excess over excess</th><th>Super Excess</th></tr>
<tr><th>Pro rata</th><td>Pro rata</td><td>Pro rata policy is primary</td><td>Pro rata policy is primary</td><td>Pro rata policy is primary</td><td>Pro rata policy is primary</td><td>Pro rata policy is primary</td></tr>
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<tr><th>Not insured if covered by other insurance</th><td>Pro rata policy is primary</td><td>Escape policy is primary</td><td>Both polices primary pro rata</td><td>Excess is primary</td><td>Excess over excess is primary</td><td>Super excess is primary</td></tr>
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<tr><th>Super excess</th><td>Pro rata policy is primary</td><td>Escape policy is primary</td><td>Super excess is primary</td><td>Excess is primary</td><td>Excess over excess is primary</td><td>Both polices primary pro rata</td></tr>
</table>

IV. Trigger of Coverage

A. Policy Language

1. 1966 “Occurrence” definition

> **“occurrence"** means an accident, including injurious exposure to conditions, which results, during the policy period, in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **insured;**

2. 1973 “Occurrence” definition

- During the policy period moved to the definitions of BI & PD

> **“occurrence"** means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the **insured**;

3. 1973 “Property Damage” definition

> **"property damage"** means **(1)** physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or **(2)** loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period.

4. 1986 “Occurrence” definition

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

B. 1986 occurrence trigger from the insuring agreement

> **b.** This insurance applies to "bodily injury" and "property damage" only if:
>
> **(2)** The "bodily injury" or "property damage" occurs during the policy period; and

C. Trigger Theories

1. Exposure theory

All policy periods during which the property has been exposed to the harm are triggered. This trigger is most frequently found in claims involving long-term bodily injury claims such as asbestos.

Alabama	Louisiana	North Carolina
Alaska	Maryland	Texas
Georgia	Massachusetts	Wisconsin
	Minnesota	

2. Injury-in-fact (actual injury) theory

All policies in effect when injury can in fact be demonstrated are triggered, irrespective of when the property damage is discovered.

California	Kansas	North Carolina
Colorado	Maryland	North Dakota
Connecticut	Michigan	Oregon
Florida	Minnesota	Pennsylvania
Georgia	Missouri	South Carolina
Hawaii	New Jersey	Texas
Illinois	New York	Utah
Indiana		Vermont

3. Manifestation theory

The date of occurrence is when the property damage manifests itself or becomes apparent.

Florida	Massachusetts	Pennsylvania
Louisiana	North Carolina	Rhode Island
Maine	Ohio	Texas

4. Multiple or continuous theory

All policies in effect from the date of exposure through manifestation are triggered. Recently, this theory has been reformulated to state that coverage is provided as long as bodily injury or property damage actually occurs during the policy period. In cases of continuous or progressively deteriorating property damage, all CGL policies in effect during the period of injury or damage have potential liability. This includes all relevant policies from the first exposure to the installation or construction until discovery, or even beyond, so long as damage occurs during these policy periods.

California	Massachusetts	Ohio
Delaware	Minnesota	Pennsylvania
District of Columbia	Mississippi	Texas
Illinois	New Jersey	Washington
Indiana	New York	West Virginia
Kansas		Wisconsin

D. Known Loss or Loss in Progress Theory

1. Application of coverage

- BI or PD
- Caused by an occurrence
- Coverage territory
- During the policy period

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

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

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

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

2. Unknown Injury Applicability

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

3. When Insured Has Knowledge

> **d.** "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give notice of an "occurrence" or claim:
>
> **(1)** Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
>
> **(2)** Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
>
> **(3)** Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

E. Allocation

1. Joint and several

a) Originated in Keene Corp. v Insurance Co. of N. America, 667 F2d 1034 (DC Cir 1982, certiori denied), 455 U.S. 1007, rehearing denied, 456 U.S. 952 (1982)

b) Held that there is no pro-ration

2. Pro-rata allocation

c) Insurance Co. of North America v Forty Eight Insulators, Inc., 633 F2e 1212 (6th Cir 1980)

d) Held that defense and indemnity costs for each underlying claim was allocated to the years that the claimant inhaled asbestos

3. Actual injury allocation

e) American Home Products Corp. v Liberty Mutual Insurance Co., 565 F Supp 1485 (SD NY 1983)

f) Liability under a particular policy is limited to injury or damage that occurs during the policy period

V. Liquor Liability

A. Revision to the policy exclusion

- Liquor Liability Exclusion
- Host liquor liability *coverage*
- BYOB *coverage*

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution, or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training, or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol.

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

However, ~~t~~This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

1. " In the business of "

   a) **Laconia Rod and Gun Club v. Hartford Accident and Indemnity Company, 459 A. 2d 249 (N.H. 1983)**

   b) **Newell-Blais Post #443, Veterans of Foreign Wars of the United States, Inc., v. The Shelby Mutual Insurance Company, 396 Mass. 633, (1986)**

2. Recent decisions on negligent supervision, failing to arrange transportation

   a) **Penn-America Insurance Company v. Peccadillos, 27 A.3d 259 (Pa. Super. Ct. 2011)**

   b) **McGuire v. Curry, 766 N.W.2d 501 (S.D. 2009)**

   c) **Essex Insurance Company v. Café Dupont, LLC, 674 F. Supp.2d 166 (D.D.C. 2009)**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following replaces Exclusion **c.** under Paragraph **2.** Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

This exclusion applies only if you:

(1) Manufacture, sell or distribute alcoholic beverages;

(2) Serve or furnish alcoholic beverages for a charge whether or not such activity:

(a) Requires a license;

(b) Is for the purpose of financial gain or livelihood;

(3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or

(4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.

This endorsement not applicable in MA, NJ, TX and WA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION – LIMITED EXCEPTION FOR BRING YOUR OWN ALCOHOL

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following replaces Exclusion **c.** under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

This insurance does not apply to:

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

This exclusion applies only if you:

(1) Manufacture, sell or distribute alcoholic beverages;

(2) Serve or furnish alcoholic beverages for a charge whether or not such activity:

(a) Requires a license;

(b) Is for the purpose of financial gain or livelihood; or

(3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered selling, serving or furnishing alcoholic beverages.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION – EXCEPTION FOR SCHEDULED PREMISES OR ACTIVITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Premises Or Activities:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following replaces Exclusion **c.** under Paragraph **2.** Exclusions of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

This exclusion applies only if you:

(1) Manufacture, sell or distribute alcoholic beverages;

(2) Serve or furnish alcoholic beverages for a charge whether or not such activity:

(a) Requires a license;

(b) Is for the purpose of financial gain or livelihood;

(3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or

(4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.

<u>However, this exclusion does not apply to "bodily injury" or "property damage" arising out of:</u>

(i) The selling, serving or furnishing of alcoholic beverages at the specified activity described in the Schedule; or

(ii) Permitting any person to bring any alcoholic beverages on the premises described in the Schedule, for consumption on the premises described in the Schedule.

B. Liquor Liability – CG 24 08

- All other policy exclusions apply

Exclusion **c.** of COVERAGE A (Section **I**) does not apply.

C. Liquor Liability Coverage Part

1. Two versions available

   a) Occurrence Form – CG 00 33

   b) Claims Made Form – CG 00 34

2. Insuring Agreement

- Injury by reason of
  ① Selling
  ② Serving
  ③ Furnishing
- Occurrence form

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "injury" to which this insurance applies if liability for such "injury" is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any "suit" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "injury" to which this insurance does not apply. We may at our discretion investigate any "injury" and settle any claim or "suit that may result. But:

(1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION **III**); 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.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided under SUPPLEMENTARY PAYMENTS.

b. This insurance applies to "injury" which occurs during the policy period in the "coverage territory."

3. "Injury" Defined

- All damages

5. "Injury" means damages because of "bodily injury" and "property damage," and including damages for care, loss of services or loss of support.

4. Exclusions

a) Expected or Intended Injuries

- Same as CGL

> **a. Expected or Intended Injury**
>
> "Injury" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b) Workers Compensation

- Same as CGL

> **b. Workers Compensation and Similar Laws**
>
> Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or similar law.

c) Injury to Employees

> **c. Employer's Liability**
>
> Bodily injury" to:
>
> **(1)** An "employee" of the insured arising out of and in the course of:
>
> **(a)** Employment by the insured; or
>
> **(b)** Performing duties related to the conduct of the insured's business; or
>
> **(2)** The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph **(1)** above.
>
> This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the "injury."

- Does not have the contractual exception that the CGL has

d) License Suspension

- Excludes vendors operating outside of the law

> **d. Liquor License Not in Effect**
>
> "Injury" arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

e) Products Liability

- Products claims are a CGL coverage
  - Contaminant in a drink
- Exclusion does not apply to off premises losses
  - Auto accident due to intoxication

> **e. Your Product**
>
> "Injury" arising out of "your product." This exclusion does not apply to "injury" for which the insured or the insured's indemnities may be held liable by reason of:
>
> **(1)** Causing or contributing to the intoxication of any person;
>
> **(2)** The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
>
> **(3)** Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

f) Other Insurance

- Both the CGL and Liquor Liability are primary
- Contribution by equal shares if another Liquor Liability Policy

> **f. Other Insurance**
>
> Any "injury" with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.
>
> This exclusion does not apply if the other insurance responds to liability for "injury" imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

5. Limits of Insurance

a) Aggregate Limit

- Per policy year

> **2.** The Aggregate Limit is the most we will pay for all "injury" as the result of the selling, serving or furnishing of alcoholic beverages.

b) Each Common Cause Limit

- Per drunk limit, regardless of number of persons or properties injured

> **3.** Subject to the Aggregate Limit, the Each Common Cause Limit is the most we will pay for all "injury" sustained by one or more persons or organizations as the result of the selling, serving or furnishing of any alcoholic beverage to any one person.

VI. History of the CGL, Auto, Aircraft and Watercraft Exclusion

A. Insertion of non-owned coverage in 1955

- Exclusion applies to any insured

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

B. Impact on claims handling

VII. Commercial Auto Insurance

A. You

- Direct and vicarious

> **a.** You for any covered "auto."

B. Extent of permission

- With permission, *EXCEPT*
- Owner of a hired or borrowed car
- Your employee in personal car
- Garage, unless its yours
- While helping unload
- Partner in Personal car

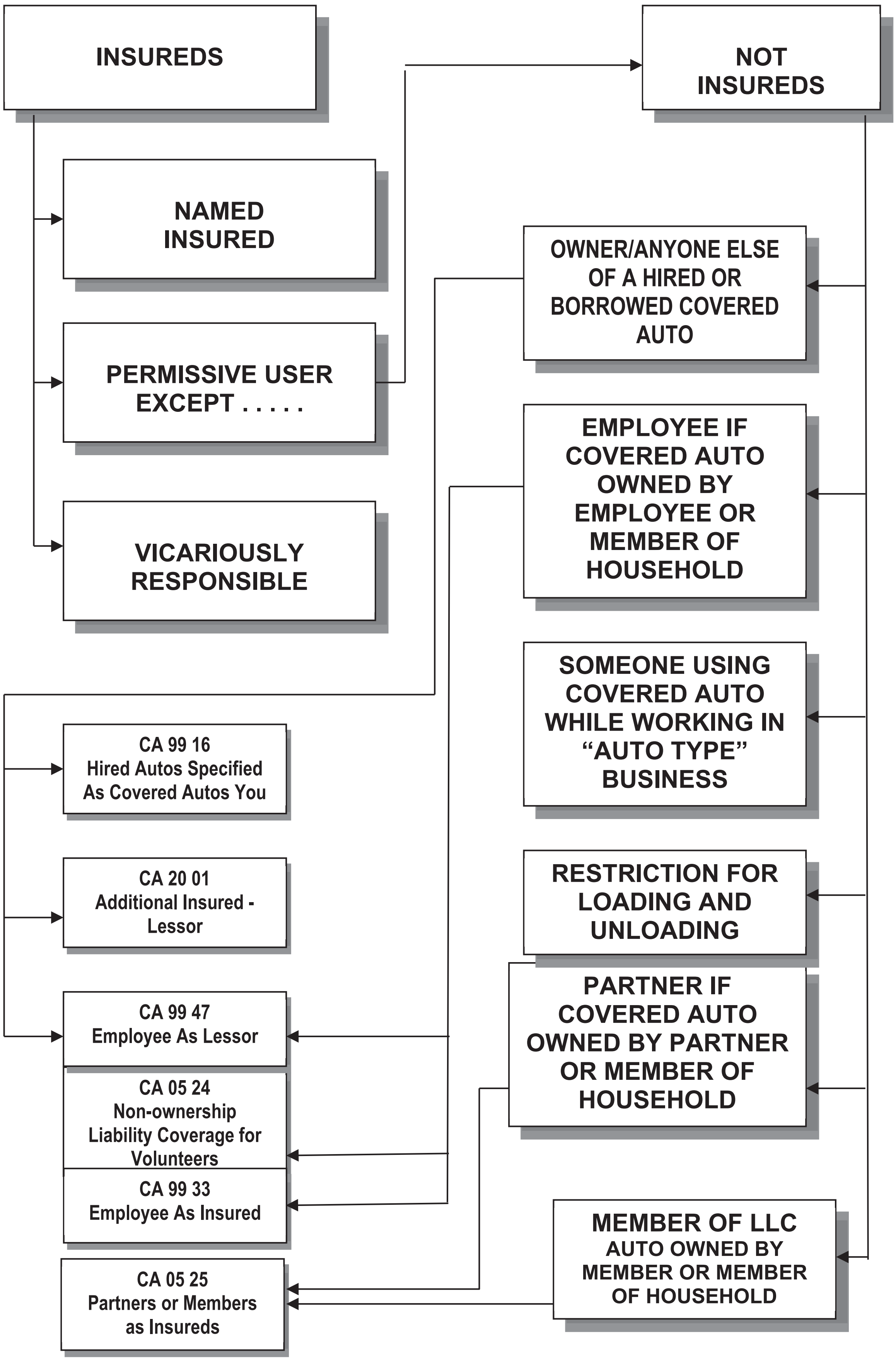
> **b.** Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
>
> **(1)** The owner or anyone else from whom you hire or borrow a covered "auto." This exclusion does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
>
> **(2)** Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
>
> **(3)** Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking, or storing "autos" unless that business is yours.
>
> **(4)** Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto."
>
> **(5)** A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

C. Anyone liable for the conduct of the insured

- Responsible for the conduct

> **c.** Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

BAP – WHO IS AN INSURED



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

Name of Person(s) or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations

<u>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"</u> 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 Auto Coverages of the Auto Dealers Coverage Form.

- **Reaffirms the application of the omnibus clause with respect to the party designated in the endorsement's schedule**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTOS SPECIFIED AS COVERED AUTOS YOU OWN

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

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

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

B. Changes In Covered Autos Liability Coverage

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

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

- **No premium charge**
- **Coverage is primary because the hired auto is treated as an owned auto**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE AS LESSOR

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

Description Of "Auto":
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

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

- **Employees become insureds while their auto is leased to the named insured**
- **No premium charge**
- **Coverage is primary because employee's auto treated as an owned auto**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LESSOR – ADDITIONAL INSURED AND LOSS PAYEE

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

Insurance Company:	
Policy Number:	**Effective Date:**
Expiration Date:	
Named Insured:	
Address:	
Additional Insured (Lessor):	
Address:	
Designation or Description of "Leased Autos"	

Coverages	**Limit Of Insurance**
Covered Autos Liability	$ Each Accident
Comprehensive	Actual Cash Value Or Cost Of Repair Whichever Is Less; Minus $ Deductible For Each Covered "Leased Auto"
Collision	Actual Cash Value Or Cost Of Repair Whichever Is Less; Minus $ Deductible For Each Covered "Leased Auto"
Specified Causes of Loss	Actual Cash Value Or Cost Of Repair Whichever Is Less; Minus $ Deductible For Each Covered "Leased Auto"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

1. Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow.

2. For a "leased auto" designated or described in the Schedule, the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include as an "insured" the lessor named in the Schedule. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:

a. You;

b. Any of your "employees" or agents; or

c. Any person, except the lessor or any "employee" or agent of the lessor, operating a "leased auto" with the permission of any of the above.

3. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

B. Loss Payable Clause

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

2. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.

3. If we make any payment to the lessor, we will obtain his or her rights against any other party.

C. Cancellation

1. If we cancel the policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.

2. If you cancel the policy, we will mail notice to the lessor.

3. Cancellation ends this agreement.

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

E. Additional Definition

As used in this endorsement:

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

- **Adds the owner of the leased or rented auto as an insured**
- **Excludes sole negligence of the owner**
- **Lease must require lessee to provide direct primary coverage for the lessor**
- **Otherwise, it does not meet the definition of "leased auto"**
- **Coverage is primary because the auto is treated as an owned auto**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

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

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

A. Changes In Covered Autos Liability Coverage

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

2. Personal Auto Coverage

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

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

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

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

(1) Any "auto" owned by any "family members".

(2) Any "auto" furnished or available for your or any "family member's" regular use.

(3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".

(4) Any "auto" other than an "auto" of the "private passenger type", used by you or any of your "family members" while working in any other business or occupation.

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

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

This insurance does not apply to:

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

B. Changes In Physical Damage

Personal Auto Coverage

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

C. Additional Definitions

As used in this endorsement:

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

- **Used when the named insured does not have a Personal Auto Policy**
- **Mandatory if the named insured is an individual who owns a private passenger auto**
- **If *liability* coverage is provided on a "private passenger type" vehicle, extends non-owned, hired and borrowed liability to the named Insured and "family members"**
- **If *physical damage* is provided on a "private passenger type" vehicle, extends the physical damage coverage to "non-owned autos"**
- **Eliminates the fellow employee exclusion for the named Insured and "family members"**
- **No premium charge for this endorsement**
- **Coverage is excess**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DRIVE OTHER CAR COVERAGE – BROADENED COVERAGE FOR NAMED INDIVIDUALS

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

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

Note – When uninsured motorists is provided at limits higher than the basic limits required by a financial responsibility law, underinsured motorists is included, unless otherwise noted. If underinsured motorists coverage is provided as a separate coverage, make appropriate entry in the Schedule above.

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

B. Changes In Covered Autos Liability Coverage

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

a. Any "auto" owned by that individual or by any member of his or her household.

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

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

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

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

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

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

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

D. Changes In Physical Damage Coverage

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

1. Any "auto" owned by that individual or by any member of his or her household.

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

E. Additional Definition

As used in this endorsement:

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

- **Individuals named in the endorsement *and their spouses* become insureds**
- **While using an auto the insured or members of the insured's household *hire*, *borrow* or they *do not own***
- **Premium charge for this endorsement**
- **Coverage is excess**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEES AS INSUREDS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

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

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

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

- Named insured must own, hire or borrow auto

b. Anyone else while using with your permission a covered "auto" <u>you own, hire or borrow</u> except:

(1) The owner or anyone else from whom you hire or borrow a covered "auto." This exclusion does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

(2) Your “employee” if the covered "auto" is owned by that “employee” or a member of his or her household.

(3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking, or storing "autos" unless that business is yours.

(4) Anyone other than your “employees”, partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their “employees”, while moving property to or from a covered "auto."

(5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE HIRED AUTOS

This endorsement modifies insurance provided under the following:

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

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

A. Changes In Covered Autos Liability Coverage

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

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

B. Changes In General Conditions

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

For <u>Hired Auto Physical Damage Coverage</u>, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent or borrow; and

2. Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- **Makes the employee (and fellow employees for that rental) an insured when they rent cars for business in their personal name**
- **Must arise from duties relating to the conduct of employer's business**
- **Primary coverage for Hired Physical Damage**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-OWNERSHIP LIABILITY COVERAGE FOR VOLUNTEERS

This endorsement modifies insurance provided under the following:

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

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

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

Description Of Covered Volunteer Activity(ies):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Changes In Covered Autos Liability Coverage

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

Any "volunteer" is an "insured" while he or she is:

a. Engaged in the specified activity(ies) described in the Schedule; or

b. Acting on your behalf, if no activity is described in the Schedule;

And using a covered "auto" you don't own, hire or borrow. Anyone else who furnishes that "auto" to a "volunteer" is also an "insured", but only to the extent of liability arising out of the activities described in preceding paragraphs **a.** and **b.**

2. The following exclusion is added:

This insurance does not apply to:

Volunteer Injury

"Bodily injury" to:

a. Any "volunteer" or any fellow "volunteer" of the "insured", if sustained while such "volunteer" is:

(1) Engaged in the specified activity(ies) described in the Schedule; or

(2) Acting on your behalf, if no activity is described in the Schedule.

b. The spouse, child, parent, brother or sister of that "volunteer" as a consequence of Paragraph **2.a.**

B. Additional Definitions

As used in this endorsement:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PARTNERS OR MEMBERS AS INSUREDS

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.

The **Who Is An Insured** provision under 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 is amended to include as an "insured" a partner (if you are a partnership) or a member (if you are a limited liability company) while using a covered "auto" owned by him or her or a member of his or her household in your business affairs.

b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

(1) The owner or anyone else from whom you hire or borrow a covered "auto." This exclusion does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

(2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

(3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking, or storing "autos" unless that business is yours.

(4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto."

(5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

- Partners and members exclusion

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS PAYABLE CLAUSE

This endorsement modifies insurance provided under the following:

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

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

A. We will pay, as interest may appear, you and the loss payee named in the policy for "loss" to a covered "auto".

B. The insurance covers the interest of the loss payee unless the "loss" results from conversion, secretion or embezzlement on your part.

C. We may cancel the policy as allowed by the Cancellation Common Policy Condition.

Cancellation ends this agreement as to the loss payee's interest. If we cancel the policy, we will mail you and the loss payee the same advance notice.

D. If we make any payments to the loss payee, we will obtain his or her rights against any other party.

- **Physical damage does not have a definition of insured**
- **By inference, it is the named insured**
- **Use when the owner is other than the named insured**

D. Bodily injury to fellow employee of the insured

- Many states allow this type of suit

5. Fellow Employee

a. <u>Any fellow "employee"</u> of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

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

States that Permit Fellow Employee Bodily Injury Suits Exclusive of Gross Negligence or Intentional Acts	
Alabama	New Hampshire
Arkansas	Rhode Island
Maryland	South Dakota
Minnesota	Vermont
Missouri	

Source: *Larson's Workers Compensation Desk Edition*

States that Permit Fellow Employee Bodily Injury Suits For Intentional Injury		
Alabama	**Iowa**	**New Jersey**
Arizona	**Kentucky**	**Oregon**
Arkansas	**Louisiana**	**South Dakota**
California	**Minnesota**	**Vermont**
Connecticut	**Mississippi**	**West Virginia**
Florida	**Montana**	**Wisconsin**
Hawaii	**Nebraska**	**Wyoming**
Idaho	**New Hampshire**	

- **Extended Non-Ownership Liability For Named Individuals • PP 03 06**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FELLOW EMPLOYEE COVERAGE

This endorsement modifies insurance provided under the following:

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

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

The **Fellow Employee** Exclusion contained under the **Covered Autos Liability Coverage** does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FELLOW EMPLOYEE COVERAGE FOR DESIGNATED EMPLOYEES/POSITIONS

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

Name of Person(s), Job Title(s) or Position(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Fellow Employee** Exclusion contained under the **Covered Autos Liability Coverage** does not apply to the "employee(s)", job title(s) or position(s) named or listed in the Schedule.

POLICY NUMBER: **COMMERCIAL AUTO**
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

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

Named Insured:
Endorsement Effective Date:

SCHEDULE

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

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

VIII. Umbrella and excess liability insurance

A. Types of Excess Liability Policies

1. "True" Umbrella
   a) **Additional/higher limits of liability protection**

   b) **Covers everything underlying policies cover**

   c) **Affords broader coverage for exposures not covered by underlying policies**

   d) **Drop down provision - automatic replacement coverage for underlying liability policies which are exhausted by a loss**

      (1) When underlying policy limits (aggregates) are reduced

      (2) When underlying policy limits (aggregates) are exhausted

   e) **"Non-standard" forms of coverage**

      (1) Concepts are the same

      (2) Each must be analyzed

2. Follow Form Excess
   a) **Provide additional limits of liability**

   b) **Provides *only* additional layer of protection on specific exposures selected**

   c) **Only comes into play when payment has been made under primary layer**

   d) **True versus pure follow form**

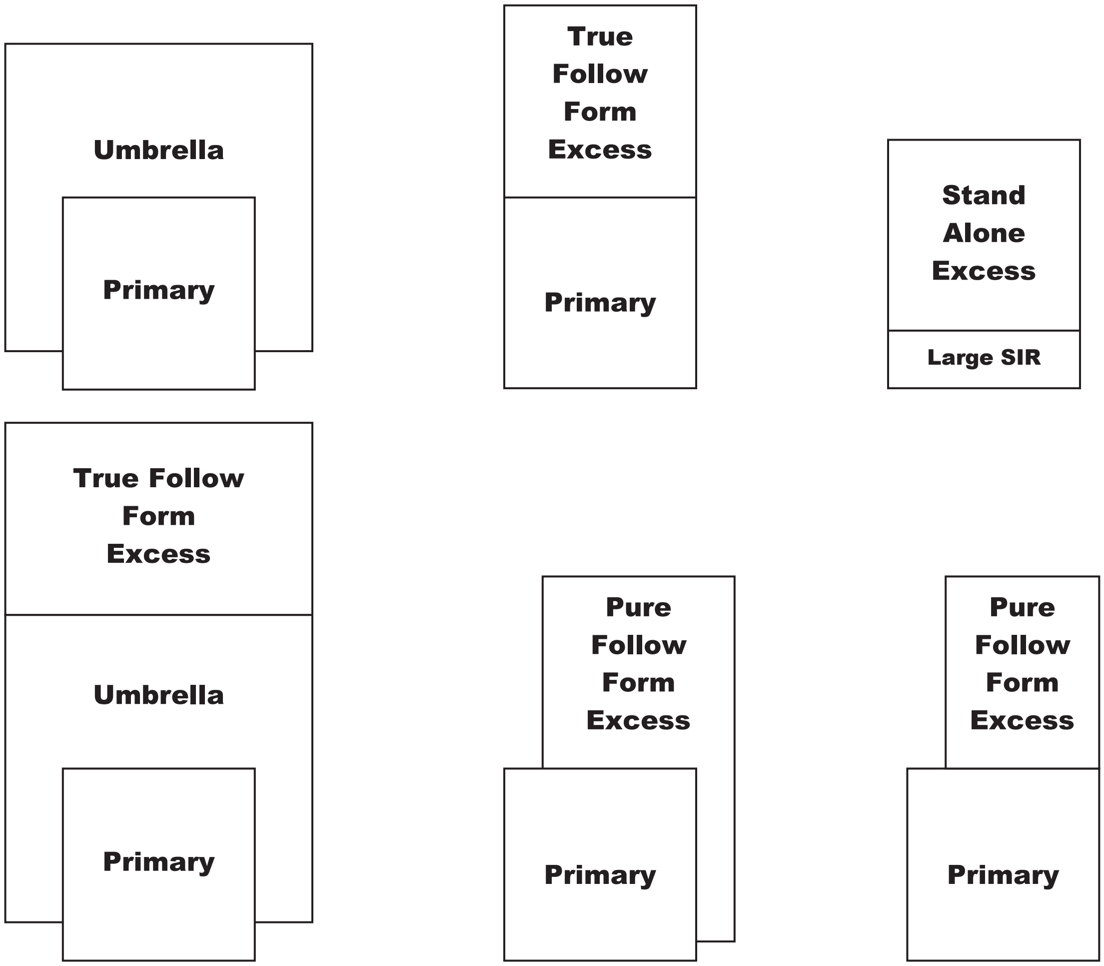
      (1) "True Follow Form" means that every term and condition of the primary is incorporated into the excess policy – no exceptions

The coverage provisions of the scheduled 'Underlying Policies' are incorporated as part of this policy.

      (2) "Pure Follow Form" means most, if not all, of the coverages in the underlying form are adopted but there may be variances in certain terms and/or conditions

Except insofar as coverage is available in underlying policies this policy does not cover . . ."

EXCESS AND UMBRELLA COVERAGE ILLUSTRATION



B. ***Drop-down Feature***

1. When underlying aggregate limits are exhausted through the payment of loss(es), the umbrella becomes the primary insurance for defense, indemnity and related expenses

2. May "drop-down" on terms of primary, terms of umbrella or may be ambiguous

a) Underlying terms and conditions

In the event of the reduction or exhaustion of an aggregate limit(s) of liability of the underlying policy(ies) listed in the Schedule of Underlying Insurance by reason of losses paid thereunder, this policy:

(1) in the event of reduction, shall pay the "ultimate net loss" in excess of the reduced underlying limit; or

(2) in the event of exhaustion, shall continue in force as underlying insurance and except for the limits of liability of this policy, shall be subject to all the other terms and conditions of the exhausted underlying policy.

- Advantageous if underlying insurance has broad terms and conditions

b) Umbrella terms and conditions

In the event of the reduction or exhaustion of an aggregate limit(s) of liability of the underlying policy(ies) listed in the Schedule of Underlying Insurance by reason of losses paid thereunder, this policy is subject to its Insuring Agreements, Definitions, Exclusions, Conditions and other terms shall:

(1) in the event of reduction, shall pay the "ultimate net loss" in excess of the reduced underlying limit; or

(2) in the event of exhaustion, shall continue in force as underlying insurance.

- Advantageous if umbrella insurance has broad terms and conditions

c) Ambiguous

In the event of the reduction or exhaustion of an aggregate limit(s) of liability of the underlying policy(ies) listed in the Schedule of Underlying Insurance by reason of losses paid thereunder, this policy:

(1) in the event of reduction, shall pay the "ultimate net loss" in excess of the reduced underlying limit; or

(2) in the event of exhaustion, shall continue in force as underlying insurance.

- Ambiguous as to which terms and conditions apply

3. Ultimate net loss

a) **Determines specifically the expenses or types of payments which the policy covers or excludes within the limits of liability stated in the policy declarations**

b) **Some policies use loss, damages, net final payment**

c) **Some policies use ultimate net loss and then use another defined term such as "Damages" in the definition of ultimate net loss**

- "Defense costs" are included in definition and may be included within limits of liability

Ultimate Net Loss means the total sum which the Insured shall become obligated to pay as Damages and/or Defense Expenses on account of Personal Injury, Property Damage or Advertising Offense, either by final judgment against the Insured after trial or by settlement approved in writing by the Company after making proper deduction for all recoveries and salvages collectible.

DEFENSE COSTS	DAMAGES
ULTIMATE NET LOSS	

- "Defense costs" are not included in definition and will not ordinarily be included within limits of liability

> Ultimate Net Loss means the total amount for which the insured is found liable for a covered "incident" either by adjudication or settlement to which we agree in writing including deduction for recoveries and salvages which have or will be paid. However, it does not include all of the expenses incurred by the insured or us or any Underlying Insurance carrier in connection with defending the "incident", claim or suit.

DEFENSE COSTS	DAMAGES
	ULTIMATE NET LOSS

d) **Ultimate net loss definition may include other supplementary payments as well (i.e., bond premiums, accrued interest, lost wages, etc.)**

e) **In addition to the definition of ultimate net loss, the defense clauses and limits section should be reviewed; when defense costs are paid in addition to the limits of liability, they should not be included in the definition of ultimate net loss to avoid confusion**

4. Retained amounts

a) **Coverage provided will not attach until some specified amount has been met by the insured**

- Retained limit applies to claims and/or defense costs included as underlying insurance or subject to SIR

> "Retained Limit" is the sum stated in the Declarations as such. If the policies of "underlying insurance" do not apply to the "occurrence" or "offense" covered by this insurance, the insured shall retain the amount stated as a Self Insured Retention with respect to:
>
> **a.** "Bodily injury" or "property damage" caused by an "occurrence"; or
>
> **b.** "Personal injury" or "advertising injury" sustained by any one person or organization and caused by an "offense".

b) **In the next example, the retained amount must be met by indemnity payments**

- Any payments within the retained amount paid for defense and investigation costs do not apply toward meeting the retained amount
- Potential coverage gap exists if defense costs are included with policy limits of underlying policy
- SIR applies per occurrence or offense; in some cases, per policy year

"Retained Limit" is the sum stated in the Declarations as such. If the policies of "underlying insurance" do not apply to the "occurrence" or "offense" covered by this insurance, the insured shall retain the amount stated as a Self Insured Retention with respect to:

a. "Bodily injury" or "property damage" caused by an "occurrence"; or

b. "Personal injury" or "advertising injury" sustained by any one person or organization and caused by an "offense".

These "retained limits" shall only comprise indemnity payments. The named insured shall bear all legal costs and expenses incurred until such time as the "retained limits" are exhausted by indemnity payments.

c) **In the next example, the retained amount must be met by claims covered under this policy**

- Any payments within the retained amount paid for defense and investigation costs as well as claims covered by underlying but not this insurance do not apply toward meeting the retained amount

"Retained Limit" is the sum stated in the Declarations as such. If the policies of "underlying insurance" do not apply to the "occurrence" or "offense" covered by this insurance, the insured shall retain the amount stated as a Self Insured Retention with respect to:

a. "Bodily injury" or "property damage" caused by an "occurrence"; or

b. "Personal injury" or "advertising injury" sustained by any one person or organization and caused by an "offense".

These "retained limits" shall only be reduced or exhausted by payment of "claims" that would be insured by this policy. The named insured shall bear all legal costs and expenses incurred until such time as the retained amounts are exhausted by payment of "claims" that would be insured by this policy.

- **Potential coverage gap exists if defense costs are included within policy limits by any underlying policy**
- **Potential coverage gap exists if any claims are provided coverage by underlying but not this policy**
- **Again, SIR applies per occurrence of offense**

C. Broad form named insured provisions

- Not in CGL
- Did CGL require written notification?
- Same as CGL
- Same as CGL
- If written contract requires
- Additional Insureds

(1) "Named Insured" means the person or organization stated in the Declarations and

a. any of your subsidiary companies, or any of their subsidiary companies, or any company over which you exercise control or actively manage;

b. any organization you newly acquire or form during the policy period if:

1. Written notice is given to the company within 90 days after you acquire or form the organization; and

2. the new organization is included in the underlying policies warranted on Schedule A of this policy; and

3. this policy is endorsed to include the new organization.

c. if you are an individual, you and your spouse, but only with respect to the conduct of the business of which you are sole owner, and the ownership or use of an automobile;

d. if you are a partnership or a joint venture, the partners or members and their spouses, but only with respect to their conduct of your business.

(2) "Insured" means the "Named Insured" and

a. any person, organization, trustee or estate that has obligated you by written contract to provide the insurance that is afforded by this policy; but only with respect to duties performed by or for you, or to facilities owned or used by you;

b. at your option and subject to the terms of this policy, any additional "insured" included in the underlying policies, other than the "named insured," but the limit of insurance available to that additional "insured" shall be the lesser of:

1. that amount of coverage which the "named insured" has contractually agreed to provide to that additional insured, or

2. the limits of insurance available under this policy.

Who is an Insured continued

- Same as CGL
- Different from CGL
- Different from BAP

c. your executive officers, directors and stockholders, but only within the scope of their duties as such;

d. at your option and subject to the terms of this policy, any of your employees while within the scope of their employment by you except for:

1. "Bodily Injury" or "Property Damage" arising out of the use of an automobile, other than the one owned by, loaned to, or hired by you; or

2. "Bodily Injury" or "Personal Injury" to you or to a co-employee while in the course of his or her employment.

e. at your option and subject to the terms of this policy, any person who has your permission to use an automobile owned by or loaned to you or hired for use by you, and any person or organization legally responsible for the use of that automobile.

NONCONCURRENCY OF LIMITS OF LIABILITY PROVISIONS

Before claims

* $5 MM 1st EXCESS		
General Aggregate	P/CO Aggregate	Auto Liability (no aggregate)
$4 MM UMBRELLA Combined Single Limit Aggregate		
$1 MM PRIMARY		
General Policy Aggregate	P/CO Aggregate	Auto Liability (no aggregate)

First claim
$7 MM
P/CO
Claim

* $5 MM 1st EXCESS		
General Aggregate	P/CO Aggregate Pays $2 MM $3 MM Remains	Auto Liability (no aggregate)
$4 MM UMBRELLA Combined Single Limit Aggregate Pays $4 MM Exhausted		
$1 MM PRIMARY		
General Policy Aggregate	P/CO Aggregate Pays $1 MM Exhausted	Auto Liability (no aggregate)

Subsequent
claim
$2 MM
Premises/
Operations
Claim

* $5 MM 1st EXCESS		
General Aggregate Pays $0	P/CO Aggregate $3 MM Remains	Auto Liability (no aggregate)
$4 MM UMBRELLA Combined Single Limit Aggregate Pays $0 Already Exhausted		
$1 MM PRIMARY		
General Policy Aggregate Pays $1 MM Exhausted	P/CO Aggregate Exhausted	Auto Liability (no aggregate)

* Attachment /drop down provision only applies when retention has been met by claims which affect that particular aggregate.

NONCONCURRENCY OF LIMITS OF LIABILITY PROVISIONS

* $5 MM 1st EXCESS		
Combined Single Limit Aggregate		
$4 MM UMBRELLA		
General Aggregate except P/CO and Auto	P/CO Aggregate	Auto Liability (no aggregate)
$1 MM PRIMARY		
General Policy Aggregate	P/CO Aggregate	Auto Liability (no aggregate)

First claim
$10 MM
P/CO
Claim

* $5 MM 1st EXCESS		
Combined Single Limit Aggregate Pays $5 MM		
$4 MM UMBRELLA		
General Aggregate	P/CO Aggregate Pays $4 MM	Auto Liability (no aggregate)
$1 MM PRIMARY		
General Policy Aggregate	P/CO Aggregate Pays $1 MM	Auto Liability (no aggregate)

Subsequent
claim
$6 MM
Premises/
Operations
Claim

* $5 MM 1st EXCESS		
Combined Single Limit Aggregate Pays $0 Already Exhausted		
$4 MM UMBRELLA		
General Aggregate Pays $4 MM	P/CO Aggregate Exhausted	Auto Liability (no aggregate)
$1 MM PRIMARY		
General Policy Aggregate Pays $1 MM	P/CO Aggregate Exhausted	Auto Liability (no aggregate)

* Does not follow underlying aggregates; CSL aggregate limit only

G. Problems

1. Occurrence over claims made

2. Claims made over occurrence

H. Solutions

1. Avoid

2. If can not be avoided:

   a) Try to confine "claims made" policies to the upper layers

   b) If the 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 nonrenewal

   f) Put in writing for all parties

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

UNDERLYING CLAIMS MADE COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

If any "underlying insurance" is written on a claims-made basis, the following applies to the insurance provided by this policy which is excess over that other underlying insurance:

A. Paragraphs **1.c.(2), 1.c.(3), 1.d, 1.e.** and **1.f.** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** are replaced by the following:

1. Insuring Agreement

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

(2) The "bodily injury" or "property damage" did not occur before the Retroactive Date, if any, shown in the Declarations of the "underlying insurance" or after the end of the policy period; and

(3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph **d.** below, during the policy period or any Extended Reporting Period we provide under Extended Reporting Periods.

d. A claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

(1) When notice of such claim is received and recorded by any insured or by the "underlying insurer" or us if the limits of the "underlying insurance" have been used up, whichever comes first; or

(2) When we make settlement in accordance with Paragraph **1.a.** above, or settlement is made by the "underlying insurer" with our agreement.

e. All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury", will be deemed to have been made at the time the first of those claims is made against any insured.

f. All claims for damages because of "property damage" causing loss to the same person or organization will be deemed to have been made at the time the first of those claims is made against any insured.

B. Paragraph **1.c.** of **Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

1. Insuring Agreement

c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business, but only if:

(1) The offense was committed in the "coverage territory";

(2) The offense was not committed before the Retroactive Date, if any, shown in the Declarations of the "underlying insurance" or after the end of the policy period; and

(3) A claim for damages because of the "personal and advertising injury" is first made against any insured, in accordance with Paragraph **d.** below, during the policy period or any Extended Reporting Period we provide under Extended Reporting Periods.

C. The following is added to Paragraph **1.** of **Section I – Coverage B – Personal and Advertising Injury Liability**:

1. Insuring Agreement

d. A claim made by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

(1) When notice of such claim is received and recorded by any insured or by the "underlying insurer" or us if the limits of the "underlying insurance" have been used up, whichever comes first; or

(2) When we make settlement in accordance with Paragraph **1.a.** above or settlement is made by the "underlying insurer" with our agreement.

All claims for damages because of "personal and advertising injury" to the same person or organization as a result of an offense will be deemed to have been made at the time the first of those claims is made against any insured.

D. Exclusion **2.a.(3) Material Published Prior To Policy Period,** of Section **I** – Coverage **B – Personal And Advertising Injury Liability** is replaced by the following:

b. Material Published Prior To The Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the Retroactive Date, if any, shown in the Declarations.

E. The following section is added:

Extended Reporting Periods

1. With respect to any "underlying insurance" written on a claims-made basis, we will provide one or more Extended Reporting Periods, as described below, if:

a. This Coverage Part is cancelled or not renewed; or

b. "Underlying insurance" written on a claims-made basis is renewed or replaced with insurance that:

(1) Has a Retroactive Date later than the date shown in the Declarations of the "underlying insurance"; or

(2) Does not apply to "bodily injury", "property damage" or "personal and advertising injury" on a claims-made basis.

2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply to claims for:

a. "Bodily injury" or "property damage" that occurs before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations of the "underlying insurance; or

b. "Personal and advertising injury" caused by an offense committed before the end of the policy period but not before the Retroactive Date, if any, shown in the Declarations of the "underlying insurance".

Once in effect, Extended Reporting Periods may not be cancelled.

3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:

a. Five years with respect to claims because of "bodily injury" and "property damage" arising out of an "occurrence" reported to us, not later than 60 days after the end of the policy period, in accordance with the Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition;

b. Five years with respect to claims because of "personal and advertising injury" arising out of an offense reported to us, not later than 60 days after the end of the policy period, in accordance with the Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition; and

c. Sixty days with respect to claims arising from "occurrences" or offenses not previously reported to us.

The Basic Extended Reporting Period does not apply to claims that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.

4. The Basic Extended Reporting Period does not reinstate or increase the Limits of Insurance.

5. A supplemental Extended Reporting Period of unlimited duration is available, but only by an endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in Paragraph **3.** above, ends.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

a. The exposures insured on a claims-made basis;

b. Previous types and amounts of insurance;

c. Limits of Insurance available under this Coverage Part for future payment of damages; and

d. Other related factors.

This endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period.

6. If the Supplemental Extended Reporting Period is in effect, we will provide a supplemental aggregate limit of insurance equal to the dollar amount of the Aggregate Limit shown in the Declarations in effect at the end of the policy period, but only for claims first received and recorded during the Supplemental Extended Reporting Period.

Limits of Insurance will be amended accordingly. The Personal And Advertising Injury Limit and the Each Occurrence Limit shown in the Declarations will then continue to apply.

X. Certificates of insurance

A. Historical development

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

B. Problems with standard certificate forms

1. Certificates do not include the information necessary to verify the insurance requirements
   - **a) Policy endorsed to reflect additional insured**
   - **b) Extent of coverage provided additional insured**
   - **c) Cross liability exclusion endorsement**
   - **d) Policy endorsed to reflect notice requirement**
2. Protection may be below additional insured's expectations
   - **a) Certificate reflects additional insured**
   - **b) Policy is endorsed**
   - **c) Endorsement is not given to certificate holder**
     - (1) Vicarious liability
     - (2) Direct liability

C. Failure to require, failure to review, or acceptance of certificate may create waiver and estoppel

Whalen v K-Mart Corp., 166 Ill 3d 339, 519 NE2d 991 (1988)

Geier v Hamer Enterprises, Inc., 226 Ill App 3d 372, 589 NE2d 711 (1st Dist 5th Div 1992)

D. Modification of a certificate may create coverage

Bonner County v Panhandle Rodeo Association, et al, 620 P2d 1102 (Idaho S Ct 1990)

Bucon, Inc. v Pennsylvania Manufacturing Insurance Co., 547 NYS2d 925 (AD 3 Dept 1989)

E. Policy terms control

> This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.
> ACORD 25S ©

1. The disclaimer is not a legal requirement except in California (California insurance code section 384)

2. Most insurers require the disclaimer as a condition precedent to coverage

3. "For information only" provision has been held to allow insurer to avoid providing coverage for certificate holders

   Mercado v Mitchell, et al, 264 NW2d 532 (Wis S Ct 1978)

F. Notice problems

> Should any of the above described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail _________ days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.
> ACORD 25S ©

1. Notice requirement of "will endeavor" creates no firm obligation to give notice

   U.S. Pipe and Foundry Co. v U.S. Fidelity & Guaranty Co., 505 F2d 88 (US Ct App 5th Cir 1974)

2. Certificate holder may want the language modified

> Should any of the above described policies be canceled before the expiration date thereof, the issuing company will ~~endeavor~~ to mail _________ days written notice to the certificate holder named to the left, ~~but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives~~.
>
> ACORD 25S ©

   a) **Some insurers may agree to the modified language**

   b) **No standard endorsement for compliance**

      (1) Even if the certificate is modified, without an actual endorsement no contractual obligation

      (2) Lack of consideration

   c) **What tracking system does the insurer have in place?**

3. The certificate holder may require a manuscript certificate to be used

   a) **Designed to give the certificate holder more assurances than the standard ACORD certificate**

   b) **May require "home office" approval be the insurer**

   c) **May have to be filed with the Department of Insurance**

G. Suggestions and alternatives

1. Certificate holder

   a) **Develop a manuscript certificate to be used**

   b) **Request a certified copy of the policy**

      (1) If not given, it may enhance the additional insured's legal position

      (2) If given, must be able to adequately review the policy

   c) **If standard certificates are use, review for compliance**

2. Certificate giver

a) **Certificate should not list the holder as an additional insured unless the policy is endorsed**

(1) A sample copy of a company specific endorsement should be attached

(2) The certificate should reflect the name and number of a "standard" endorsement

b) **Certificate should indicate the extent of the contractual liability coverage provided for the insured**

(1) Per the definition of "insured contract", or per CG 24 26

(2) For perils of "bodily injury" and "property damage" only

(3) For perils of "bodily injury", "property damage", "personal and advertising injury" excluded

c) **Insurers should make an effort to notify certificate holders in case of policy cancellation**

(1) If certificate language is modified to eliminate "endeavor to" theory, policy should be endorsed

(2) Rights should not be given that are broader than those given to the first Named Insured

d) **Certificate holder should be notified if contractual requirement between named insured and additional insured for notice of material change will not be given**

e) **Certificate should reflect the policy(ies) to which the additional insured may expect protection**

CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

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 INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	PRODUCER CUSTOMER ID:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
	PROPERTY					BUILDING	$
	CAUSES OF LOSS	DEDUCTIBLES				PERSONAL PROPERTY	$
	BASIC	BUILDING				BUSINESS INCOME	$
	BROAD	CONTENTS				EXTRA EXPENSE	$
	SPECIAL					RENTAL VALUE	$
	EARTHQUAKE					BLANKET BUILDING	$
	WIND					BLANKET PERS PROP	$
	FLOOD					BLANKET BLDG & PP	$
							$
							$
	INLAND MARINE		TYPE OF POLICY				$
	CAUSES OF LOSS						$
	NAMED PERILS		POLICY NUMBER				$
							$
	CRIME						$
	TYPE OF POLICY						$
							$
	BOILER & MACHINERY / EQUIPMENT BREAKDOWN						$
							$
							$
							$

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	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

ACORD 24 (2016/03)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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 INSURER(S), 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	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A :	
INSURED	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	CLAIMS-MADE / OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	POLICY / PRO-JECT / LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB / OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$
	DED / RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	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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Section 2

Commercial Crime

2022 Commercial Crime Program

R Bryan Tilden, CIC, C.P.C.U., CLU, ARM, SCLA
Tilden and Associates
Pittsboro, North Carolina

Learning Objectives

- ☐ State reasons why an insured should purchase crime coverage *(see page 1)*
- ☐ Give a brief definition of the term employee *(see page 10)*
- ☐ Give a brief definition of crime coverage terms: money, securities, other property *(see page 13)*
- ☐ Differentiate how coverage is triggered under the Loss Sustained *(see page 24)* and the Discovery Forms *(see page 34)*
- ☐ Define the Extended Period to Discover Loss as found in the Loss Sustained Form *(see page 27)*
- ☐ Define the Extended Period to Discover Loss as found in the Discovery Form (*see page 34)*
- ☐ Apply the exclusions and conditions of the Money, Securities and Other Property insuring agreements *(see page 91)*
- ☐ Apply the general exclusions found in the Crime Policy *(see page 107)*
- ☐ Explain the loss settlement conditions and apply each to specific loss situations *(see page 119)*

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tilden@mindspring.com

I. Overview

A. Crime - A violation of law punishable by some governmental body

1. 2022 fire losses - $14.9 billion (National Fire Protection Association)
2. Employee dishonesty - $60 billion per year or 7% of revenue (United States Chamber of Commerce)
3. Total crime loss the United States - $156.6 billion per year (Federal Bureau of Investigation)

B. Crime Insurance is designed to pay an insured for loss of his property due to wrongful taking by someone else

C. 25 % of all bankruptcies are caused by crime

D. Three types of accounts buy crime coverage

1. Mercantile
2. Financial
3. Governmental

II. Reasons to Consider Purchasing

LEARNING OBJECTIVE — STATE REASONS WHY AN INSURED SHOULD PURCHASE CRIME INSURANCE.

A. Money and securities are excluded from coverage in standard commercial property forms

B. Theft coverage on business property is usually available when coverage is written on an open peril basis, such as the ISO Causes of Loss – Special Form

C. Only a limited amount of coverage is provided on other categories of personal property insured against theft

1. Furs
2. Jewelry or watches
3. Patterns, dies, molds
4. Stamps or tickets
5. Letters of credit

D. Certain acts are excluded from standard property coverage

1. Dishonest acts of employees or others involved in the insured business
2. Loss that results from fraudulent scheme in which the insured voluntarily parts with the property

E. Reasons to use a monoline format

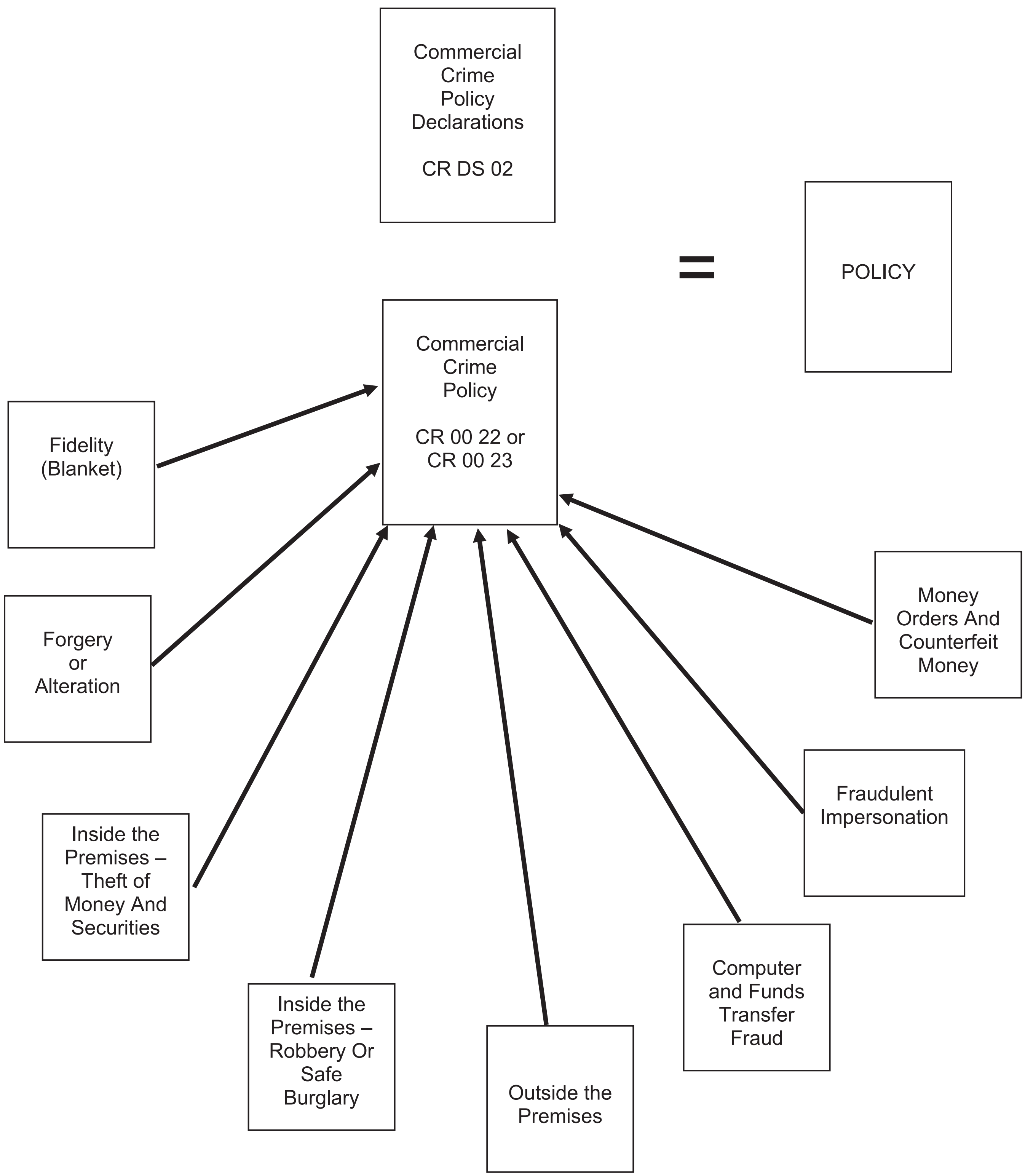
1. Higher limits need than available in the package
2. Different named insured
3. Crime underwriter's expertise
4. Crime underwriter may be more willing to modify and endorse the policy

F. Reasons to use a package format

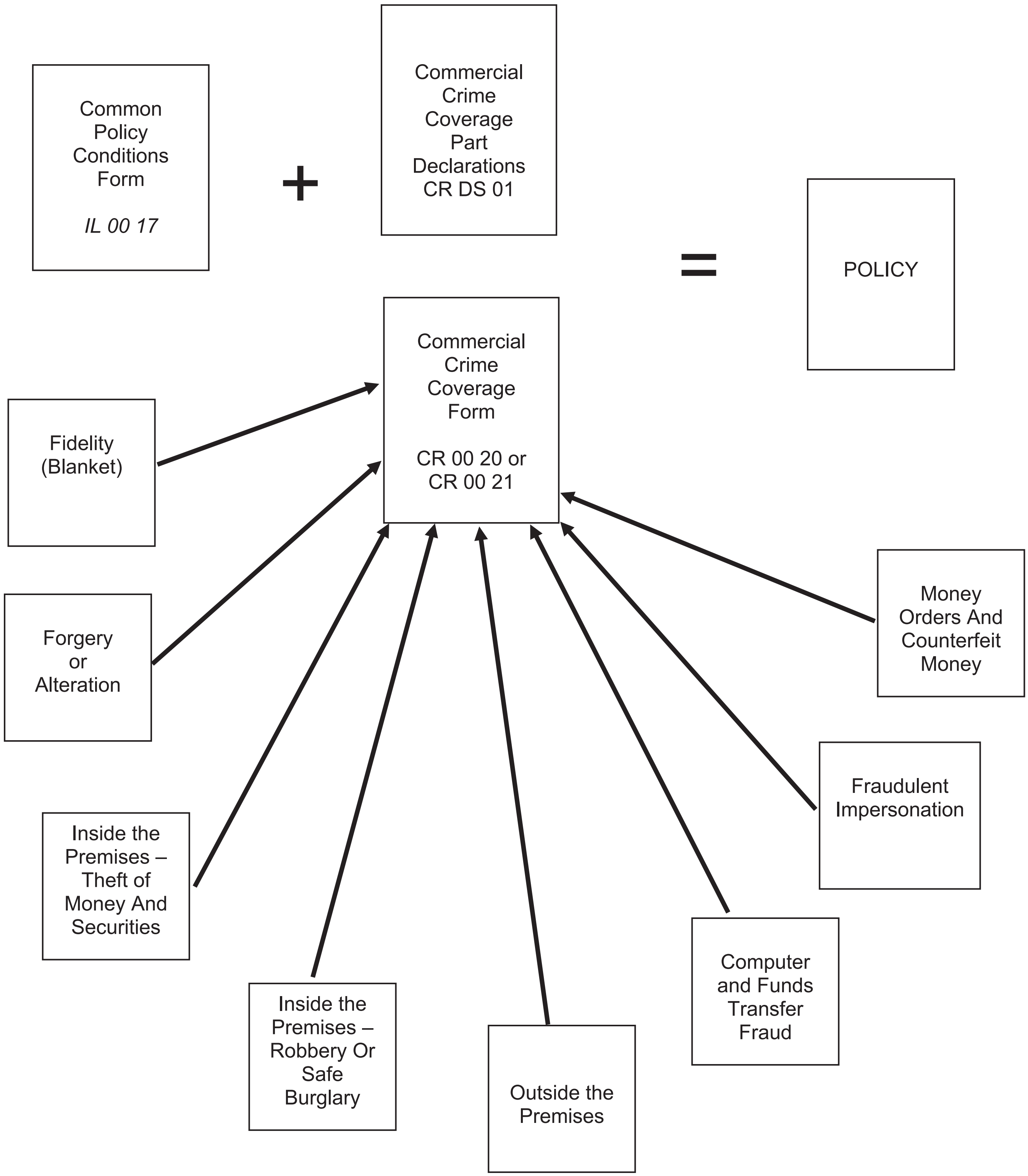
1. May be offered as an automatic coverage if the insured is unwilling to pay another premium
2. Coverage may be better than offered in a separate policy

III. Components of the Commercial Crime Policy

A. Applicable to all monoline crime policies



B. Applicable to all package crime policies



CRIME AND FIDELITY COVERAGE PART DECLARATIONS (COMMERCIAL ENTITIES)

The Crime And Fidelity Coverage Part (Commercial Entities) consists of this Declarations form and the Commercial Crime Coverage Form.

Named Insured:

Coverage is provided only if an amount is shown opposite an Insuring Agreement. If the amount is left blank or "Not Covered" is inserted, such Insuring Agreement and any other reference thereto in this Coverage Part will be deemed to be deleted therefrom.

		Insuring Agreements	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1.	**Fidelity**			
	a.	**Employee Theft**	$	$
	b.	**ERISA Plan Official Dishonesty**	$	**N/A**
	c.	**Employee Theft Of Clients' Property**	$	$
2.	**Forgery Or Alteration**			
	a.	**Forgery Of Negotiable Instruments**	$	$
	b.	**Forgery Of Payment Card Instruments**	$	**N/A**
3.	**Inside The Premises – Theft Of Money And Securities**		$	$
4.	**Inside The Premises – Robbery Or Safe Burglary Of Other Property**		$	$
5.	**Outside The Premises**		$	$
6.	**Computer And Funds Transfer Fraud**		$	$
7.	**Fraudulent Impersonation**		$	$
8.	**Money Orders And Counterfeit Money**		$	$

If added By Endorsement:		
Insuring Agreement(s) Or Coverages	**Limit Of Insurance Per Occurrence**	**Deductible Amount Per Occurrence**
	$	$
	$	$
	$	$
	$	$
Percentage Of Deductible Amount Over Which Losses Must Be Reported:	%	
Percentage Of Total Assets Applicable To Subsidiary Acquisitions:	%	
Endorsement Forming Part Of This Coverage Part When Issued:		
Cancellation Of Prior Insurance Issued By Us:		
By acceptance of this Coverage Part you give us notice cancelling prior Policy Numbers ; the cancellation to be effective at the time this Coverage Part becomes effective.		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCESS OVER UNDERLYING INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

Insurers	Policy Numbers	Description Of Underlying Insurance
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

In Section **E.1. Conditions Applicable To All Insuring Agreements:**

A. In the **Duties In The Event Of** Loss Condition:

1. Paragraph **(1)(a)** is replaced by the following:

(a) Notify us as soon as possible of any loss of the kind covered by this insurance that exceeds the amount of Underlying Insurance set forth in the Schedule, whether or not we are liable for the loss.

2. Paragraphs **(2)** and **(3)** do not apply.

B. Paragraph **(2)** of the **Other Insurance** Condition is replaced by the following**:**

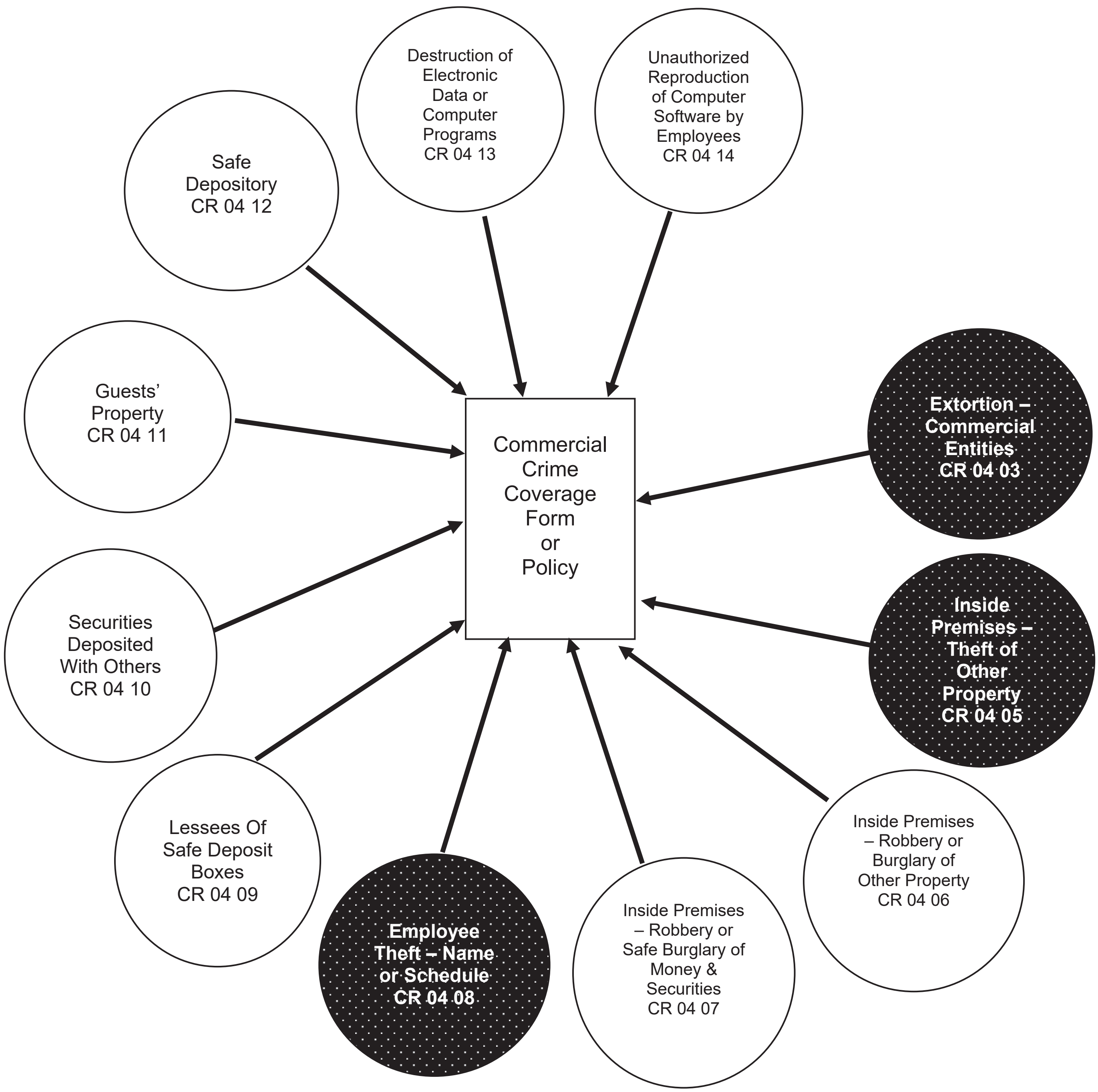
(2) Excess Insurance

(a) The coverage provided under this insurance will only apply as excess over the Underlying Insurance shown in the Schedule, which is identified by the Policy Number and the name of the Insurer shown in the Schedule.

We will only pay for the amount of loss that exceeds the limit of insurance and deductible amount of such Underlying Insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

(b) If loss covered under this excess insurance is subject to a Deductible Amount as shown in the Declarations, we will reduce the Deductible Amount by the sum total of such Underlying Insurance plus any deductible amount applicable to that insurance.

C. Endorsements available



IV. Definitions found in Coverage Forms

A. Occurrence

- Four different
- Employee theft

25. "Occurrence" means:

a. Under Insuring Agreements **A.1.a,** and **A.1.c.:**

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under the Loss Sustained During Prior Insurance Conditions **E.1.l.** or **E.1.m.**

- ERISA Plan

b. Under Insuring Agreement **A.1.b.:**

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts, whether or not related;

committed by an "ERISA plan official" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under the Loss Sustained During Prior Insurance Conditions **E.1.l.** or **E.1.m.**

- Forgery or alteration

c. Under Insuring Agreement **A.2.:**

(1) An individual act;

(2) The combined total of all separate acts whether or not related; or

(3) A series of acts whether or not related;

committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under the Loss Sustained During Prior Insurance Conditions **E.1.k.** or **E.1.l.**

- Other agreements

d. Under all other Insuring Agreements:

(1) An individual act or event;

(2) The combined total of all separate acts or events whether or not related; or

(3) A series of acts or events whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under the Loss Sustained During Prior Insurance Conditions **E.1.k.** or **E.1.l.**

B. Persons

1. Employee

Learning Objective — Give a brief description of the term employee.

- In the insured's service
- Compensate with wages
- Have the right to direct and control
- temp employees
- Leased employees
- Trustee of employee benefit plan

12. "Employee"

a. Means:

(1) Any natural person:

(a) While in your service and for the first 30 days immediately after termination of service, unless such termination us due to "theft" or any other fraudulent or dishonest act committed by the "employee";

(b) Whom you compensate directly by salary, wages or commissions, and

(c) Whom you have the right to direct and control while performing services for you;

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" defined in Paragraph **(1)** above who is on leave; or

(b) To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you;

(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" defined in Paragraph **(2)** above;

(4) Any natural person who is:

(a) An administrator, director, trustee, manager or "employee", except an administrator or manager who is an independent contractor, of a "Non-ERISA employee benefit plan"; and

(b) A director, trustee or "employee" of an Insured sponsoring a "Non-ERISA employee benefit plan", while that person is engaged in handling "money", "securities" or "other property" of the plan;

a) Definition of "employee", continued

- Former employees as consultants
- Guest students and interns
- Merged or consolidated
- Directors acting as employees

(5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;

(6) Any natural person who is a guest student or intern pursuing studies or duties;

(7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance ; and

(8) Any natural person who is your "manager", director or trustee while:

(a) Performing acts within the scope of the usual duties of an "employee"; or

(b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees or functional equivalent thereof, to perform specific, as distinguished from general, directorial acts on your behalf.

b) "Employee" does not include agent, broker, factor, independent contractor, etc.

- Does not include an independent contractor

b. Does not mean:

Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **a.** above.

c) Endorsements to change definition of employee:

(1) **CR 25 02** – Include Designated Agents as Employees

(2) **CR 25 03** – Include Partners As Employees

(3) **CR 25 04** – Include Members Of A Limited Liability Company As Employees

(4) **CR 25 06** – Include Chairperson And Members Of Specified Committees As Employees

(5) **CR 25 08** – Include Specified Non-Compensated Officers As Employees

(6) **CR 25 09** – Include Volunteer Workers As Employees

(7) **CR 25 10** – Include Volunteer Workers Other Than Fund Solicitors As Employees

(8) **CR 25 11** – Include The Spouse And Children Of Building Manager, Superintendent Or Janitor As Employees

(9) **CR 25 12** – Include Treasurers Or Tax Collectors As Employees

(10) **CR 25 13** – Include Students As Employees

(11) **CR 25 14** – Include Officers And Employees Of Federal Reserve Bank Acting As EFTS Agent As Employees

(12) **CR 25 41** – Include Designated Persons Or Classes Of Persons As Employees

(13) **CR 25 42** – Include Computer Software Contractors As Employees

2. Limited liability companies

a) Member

> **21.** “Member” means an owner of a limited liability company represented by its membership interest if a natural person, may also serve as a “manager”.

b) Manager

> **20.** “Manager” means a natural person serving in a directorial capacity for a limited liability company.

C. Defined Crimes

1. Theft

- Includes Burglary and Robbery

32. "Theft" means:

a. The unlawful taking of property to the deprivation of the Insured; or

b. Solely with regard to Insuring Agreement **A.1.c.,** the unlawful taking of property to the deprivation of a "client".

D. Types of property

1. Money

- In current use
- Fidelity
- Computer and Funds Transfer Fraud

23 "Money" means:

a. Currency, coins and bank notes in current use and having a face value; and

b. Traveler's checks and money orders held for sale to the public; and

c. In addition, includes:

(1) Under Insuring Agreements **A.1.a., A.1.b., A.1.c.** and **A.2.** deposits in your account at any "financial institution"; and

(2) Under Insuring Agreement **A.6.,** deposits in your account at any "financial institution" listed in Paragraph **F.16.b.**

2. Securities

- Instruments that represent money
- Does not apply to cards issued by insured

30. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or property and includes:

a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and

b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include money.

3. Virtual Currency Exclusion

- No statutory definition
- Not government-issued legal tender

I. Virtual Currency

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency, or any other type of electronic currency.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE VIRTUAL CURRENCY AS MONEY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated in the Schedule.

SCHEDULE

Insuring Agreement	**Virtual Currency Limit Of Insurance**
☐ **Employee Theft**	**$**
☐ **Computer And Funds Transfer Fraud**	**$**
Virtual Currency	
Name:	
Exchange:	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

With respect to this Include Virtual Currency As Money endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. In Section **D.1. Exclusions Applicable To All Insuring Agreements:**

Virtual Currency is replaced by the following:

Virtual Currency

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency. However if a Virtual Currency Limit Of Insurance is shown in the Schedule, we will pay up to that amount for loss of Virtual Currency shown in the Schedule. That amount is part of, not in addition to, the Limit Of Insurance shown in the Declarations for the applicable Insuring Agreement.

B. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

Paragraph **(1)** of the **Valuation – Settlement** Condition is replaced by the following:

(1) Money

(a) Other Than Virtual Currency

Loss of "money", other than virtual currency, but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

(i) At face value in the "money" issued by that country; or

(ii) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

(b) Virtual Currency

Loss of "money" in the form of virtual currency but only up to and including its value at the close of business on the day the loss was "discovered" as determined by the rate of exchange published by the Exchange shown in the Schedule. We may, at our option, pay the value of the virtual currency in the United States of America dollar equivalent or replace it in kind.

C. In Section **F. Definitions:**

The definition of "money" includes the Virtual Currency shown in the Schedule.

. In Section **F. Definitions,** the definition of "money" is replaced by the following:

4. Financial Institution

- Inside the premises – Theft of Money and Securities
- Computer and Funds Transfer Fraud

16. "Financial institution" means:

a. With regard to Insuring Agreement **A.3.**

(1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;

(2) An insurance company.

b. With regard to Insuring Agreement **A.6.**:

(1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;

(2) An insurance company.

(3) A stock brokerage firm or investment company.

c. For Insuring Agreements other than Insuring Agreements **A.3.** and **A.6.,** any financial institution.

5. Other Property

- Computer data not other property

26. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.

6. Computer Program

- Computer instructions

5. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".

7. Electronic Data

- Facts, images

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESTRUCTION OF ELECTRONIC DATA OR COMPUTER PROGRAMS BY EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

PROVISIONS

With regard to this Destruction Of Electronic Data Or Computer Programs By Employees endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Destruction Of Electronic Data Or Computer Programs By Employees

We will pay for reasonable costs that you incur to restore or replace damaged or destroyed "electronic data" or "computer programs" stored within any "computer system" owned, leased or operated by you resulting directly from vandalism by an "employee".

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Under the Commercial Crime Coverage Form and Commercial Crime Policy:

1. In Section **D. Exclusions:**

a. In Paragraph **D.1. Exclusions Applicable To All Insuring Agreements,** the **Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives** Exclusion is replaced by the following:

Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", "ERISA plan officials", "managers", directors, trustees or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) Wile performing services for you otherwise;

Except when covered under Insuring Agreement **A.1.a., A.1.b., A.1.c.** or this Insuring Agreement.

b. The following are added to Paragraph **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) Errors And Omissions In Design Of Computer Programs

Loss resulting from errors or omissions in the design of "computer programs".

(2) Errors Or Omissions In Programing

Loss resulting from errors or omissions in the programing or processing of "electronic data".

2. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

a. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.a., A.1.b., A.1.c., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

b. The flowing are added to the **Valuation – Settlement** Condition:

(1) Electronic Data

In case of loss or damage to "electronic data", we will pay for reasonable costs to restore or replace such "electronic data", including the cost of data entry and computer consultation services. However, we will not pay for the cost to duplicate research that led to the development of your "electronic data". To the extent that any "electronic data" cannot be restored or replaced, we will pay the cost to repair or replace the electronic storage media on which the "electronic data" was recorded.

(2) Computer Programs

In case of loss or damage to "computer programs", we will pay for reasonable costs to restore or replace such "computer programs", including reprograming and computer consultation services.

However, we will not pay for the cost to duplicate research that led to the development of your "computer programs".

3. In Section **F. Definitions,** the following is added to the definition of "occurrence"**:**

"Occurrence" means:

a. An individual act or event;

b. The combined total of all separate acts or events whether or not related; or

c. A series of acts or events whether or not related;

committed by an "employee", or other person, acting alone or in collusion with others, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

E. Under the Government Crime Coverage Form and Government Crime Policy:

1. In Section **D. Exclusions:**

a. In Paragraph **D.1. Exclusions Applicable To All Insuring Agreements,** the **Acts Committed By Your Employees, Officials Or Representatives** Exclusion is replaced by the following:

Acts Committed By Your Employees, Officials Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", officials or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) Wile performing services for you otherwise;

Except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

b. The following are added to Paragraph **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) Errors And Omissions In Design Of Computer Programs

Loss resulting from errors or omissions in the design of "computer programs".

(2) Errors Or Omissions In Programing

Loss resulting from errors or omissions in the programing or processing of "electronic data".

2. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

a. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.a., A.1.b., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

b. The flowing are added to the **Valuation – Settlement** Condition:

(1) Electronic Data

In case of loss or damage to "electronic data", we will pay for reasonable costs to restore or replace such "electronic data", including the cost of data entry and computer consultation services. However, we will not pay for the cost to duplicate research that led to the development of your "electronic data". To the extent that any "electronic data" cannot be restored or replaced, we will pay the cost to repair or replace the electronic storage media on which the "electronic data" was recorded.

(2) Computer Programs

In case of loss or damage to "computer programs", we will pay for reasonable costs to restore or replace such "computer programs", including reprograming and computer consultation services.

However, we will not pay for the cost to duplicate research that led to the development of your "computer programs".

3. In Section **F. Definitions,** the following is added to the definition of "occurrence"**:**

"Occurrence" means:

a. An individual act or event;

b. The combined total of all separate acts or events whether or not related; or

c. A series of acts or events whether or not related;

committed by an "employee", or other person, acting alone or in collusion with others, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IDENTITY FRAUD EXPENSE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY

SCHEDULE

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

With regard to this Identity Fraud Expense endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. The following insuring agreement is added to Section **A. Insuring Agreements:**

Identity Fraud Expense

We will pay for "expenses" incurred by:

1. You; or

2. Any insured person;

Resulting from "identity fraud".

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **D. Exclusions**:

1. Under Paragraph **1.**:

The **Legal Fees, Costs And Expenses** Exclusion is replaced by the following:

Legal Fees, Costs And Expenses

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2.** or this Insuring Agreement.

2.The following is added to Paragraph **2.**:

This Insuring Agreement does not cover:

Expenses Due To Theft

"Expenses" due to "theft" or any other fraudulent or dishonest act committed by:

1. You;

2. Any "insured person"; or

3. Any person shown in the Schedule;

whether acting alone or in collusion with other persons.

E. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

The following is added to the **Duties In The Event Of Loss** Condition:

You must send to us, within 60 days after our request, receipts, bills or other records that support any claim for "expenses" covered under this Insuring Agreement.

F. The following are added to Section **F. Definitions:**

1. "Expenses" means:

a. Advertising and public relations expenses incurred by you to restore your business reputation as a result of an "identity fraud";

c. Costs incurred by you or any "insured person" for certified mail to law enforcement agencies, credit agencies, financial institutions or similar credit grantors;

d. Costs incurred by you or any "insured person" for obtaining credit reports;

e. Lost income incurred by you or any "insured person" resulting from time taken off work to complete fraud affidavits, meet with or talk to law enforcement agencies, credit agencies, and/or legal counsel, up to a maximum payment of $250 per day. Total payment for lost income is not to exceed $10,000 or the Limit Of Insurance shown in the Declarations, whichever is less;

f. Loan application fees incurred by you or any "insured person" for reapplying for a loan when the original application is rejected solely because the lender received incorrect credit information;

g. Reasonable attorney fees to:

(1) Defend lawsuits brought against you by merchants, vendors, suppliers, financial institutions or their collection agencies;

(2) Remove any criminal or civil judgments wrongly entered against you; and

(3) Challenge the accuracy or completeness of any information in a consumer credit report for you;

h. Charges incurred by you or any "insured person" for long distance telephone calls to merchants, vendors, suppliers, customers, law enforcement agencies, financial institutions or similar credit grantors, or credit agencies to report or discuss an actual "identity fraud"; and

i. Any other reasonable expenses incurred by you or any "insured person" with our written consent.

2. "Identity fraud" means the act of knowingly transferring or using without lawful authority, a means of identification of:

a. Your business as shown in the Declarations; or

b. Any "insured person",

with the intent to commit, or to aid or abet another to commit, any unlawful activity that constitutes a violation of federal law or a felony under any applicable state or local law.

3. "Insured person" means:

a. Any director, trustee, partner, "member", "manager", "employee" or "ERISA plan official" of any insured; and

b. Any spouse, child under the age of 18 or relative residing in the household of any "insured person" defined in Paragraph **a.** above;

unless excluded as shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOLL CHARGE FRAUD

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

SCHEDULE

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

With regard to this Toll Charge Fraud endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Toll Charge Fraud

We will pay for loss from long-distance telephone toll call charges incurred by you resulting directly from fraudulent use or fraudulent manipulation of an "account code" or "system password" required to gain access to your "voice computer system", provided that such loss did not result from the failure to:

1. Install and maintain in operating condition a call disconnect feature to terminate a caller's access after three unsuccessful attempts to enter an "account code";

2. Incorporate a "system password"; or

3. Change a "system password" within the number of days shown in the Schedule.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **F. Definitions:**

1. The following is added to the definition of "occurrence":

All toll call charges made on telephone lines directly controlled by one "voice compyter system" occurring for a period of not more than 30 days inclusive of the date on which the first such toll call charges were made.

2. The following definitions are added:

a. "Account code" means a confidential and protected string of characters that identifies or authenticates a person and permits that person to gain access to your "voice computer system" for the purpose of making long distance toll calls or utilizing voice mailbox messaging capabilities or similar functional features of the system.

b. "System administration" means the performance of any security function including, but not limited to:

(1) Defining authorized persons to access the system;

(2) Adding, deleting or changing "account codes" or passwords;

(3) Installing or deleting any system option which directs telephone call routing or adds, drops or moves telephone lines; or

(4) Any other activity allowed by a hardware- or software-based system that has been incorporated by a manufacturer or a vendor into a "voice computer system" provided the system is not intended for the sole use of the manufacturer or vendor.

c. "System maintenance" means performing hardware and software installation, diagnostic and connection and similar activities that are performed in the usual custom and practice by a manufacturer or vendor to establish or maintain the basic operational functionality of a "voice computer system".

d. "System password" means a confidential and protected string of characters that identifies or authenticates a person and permits that person to gain access to your "voice computer system" to perform "system administration" or a component thereof.

e. "Voice computer system" means a "computer system" installed in one location which functions as a private branch exchange (PBX) voice mail processor, automated call attendant or provides a similar capability used for the direction or routing of telephone calls in a voice communications network.

V. When Coverage is Triggered

Learning Objective – Differentiate how coverage is triggered under the Loss Sustained and the Discovery Forms.

A. Loss Sustained Form

- Sustained
- *AND*
- Discovered

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in the Loss Sustained During Prior Insurance Conditions **E.1.l.** and **E.1.m.**, which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.h.:**

1. Definition of "Discovery"

- Designated person first becomes aware
- Includes actual notice

10. "Discovery", "discover" or "discovered" means the time when a "designated person" first becomes aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discovery", "discover" or "discovered" also means the time when a "designated person" first receives notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

2. Definition of "Designated Person"

- Added 2022

9. "Designated person" means:

a. Any insurance risk manager;

b. Any partner, "member", "manager", director or trustee;

c. Any elected, appointed or otherwise titled officer;

d. The highest-ranking "employee" at the "premises" where such "employee" performs the majority of his or her duties; or

e. Any administrator, fiduciary, director, trustee, officer of manager of an "employee benefit plan";

of any insured.

3. Prior Dishonesty Provisions

a) Applies not only to "theft" but also to other dishonest acts

b) Includes acts before hiring

c) Exclusion for Prior Dishonesty

- Known dishonesty prior to policy period

> **c. Acts Committed By Your Employees, ERISA Plan Officials Prior To The Policy Period**
>
> Loss caused by an "employee" or "ERISA plan official" if the "employee" or "ERISA plan official" had also committed "theft" or any other fraudulent or dishonest act prior to the effective date of this insurance and you or a "designated person", not in collusion with the "employee" or "ERISA plan official", learned of such "theft" or fraudulent or dishonest act prior to the Policy Period shown in the Declarations.

d) Termination Condition of Employee After Discovery

- Terminates coverage

> **b. Cancellation Or Termination**
>
> The following applies in addition to the Cancellation provision in the Common Policy Conditions.
>
> **(3)** Termination Of Coverage As To Any Employee Or ERISA Plan Official
>
> This insurance terminates as to any "employee" or "ERISA plan official":
>
> **(a)** As soon as:
>
> **(i)** A "designated person"; or
>
> **(ii)** An "employee" in your Human Resources Department or its equivalent;
>
> not in collusion with the "employee" or "ERISA plan official", learn of "theft or any other fraudulent or dishonest act committed by the "employee" or "ERISA plan official", whether before or after becoming employed by you; or
>
> **(b)** On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.
>
> We will mail or deliver our notice mailed to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVE ACTS COMMITTED BY EMPLOYEES OR ERISA PLAN OFFICIALS BELOW AN AMOUNT

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

SCHEDULE

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

A. In Section **D. Exclusions,** Paragraph **1.c.** is replaced by the following:

c. Acts Committed By Your Employees Or ERISA Plan Officials Prior To The Policy Period

Loss caused by any "employee" or "ERISA plan official" if the "employee" or "ERISA plan official" had also committed "theft" or any other fraudulent or dishonest act prior to the effective date of this insurance that involved an amount in excess of the Waiver Amount shown in the Schedule and you or a "designated person", not in collusion with the "employee" or "ERISA plan official", learned of such "theft" or fraudulent or dishonest act prior to the Policy Period shown in the Declarations.

B. In Section **E.1.b. Cancellation Or Termination,** the **Termination Of Coverage As To Any Employee Or ERISA Plan Official** Condition is replace by the following:

This Policy terminates as to any "employee" or "ERISA plan official":

(a) As soon as:

(i) A "designated person"; or

(ii) An 'employee" in your Human Resources Department or its equivalent;

not in collusion with the "employee" or "ERISA plan official", learns of "theft" or any other fraudulent or dishonest act committed by the "employee" or "ERISA plan official", whether before or after becoming employed by you, that involved an amount in excess of the Waiver Amount shown in the Schedule; or

(b) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Discovery Period for Loss

Learning Objective – Define the Extended Period to Discover Loss as found in the Loss Sustained Form.

- One year from end of policy
- Automatic termination
- ERISA Plans

h. Extended Period To Discover Loss

We will pay for loss that you sustained prior to the effective date of cancellation or termination of this insurance in its entirety, as to any Insured or on any Insuring Agreement or coverage, which is "discovered" by a "designated person:

(1) Except as provided in Paragraph **(2)** below, no later than one year from the date of that cancellation or termination. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you or that insured, whether from us or another insurer, which replaces in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

(2) No later than one year from the date of that cancellation or termination with regard to any "ERISA employee benefit plan". However, this extended period to "discover" loss terminated immediately upon the effective date of any other insurance obtained by you or that "ERISA employee benefit plan", whether from us or another insurer, that provides, at a minimum, the same coverage afforded by Insuring Agreement **A.1.b.** in an amount that is no less than the minimum amount of coverage required under ERISA and which also provides that such coverage applies to loss sustained prior to its effective date.

5. Loss Sustained During Prior Insurance

a) Different Carrier

m. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- Loss covered by prior policy
- Discovered after discovery period expired
- No lapse in coverage

(1) If loss is "discovered" by a "designated person" during the Policy Period shown in the Declarations, resulting from an "occurrence" taking place during the policy period of any prior cancelled or terminated insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided that:

(a) This insurance became effective at the time of cancellation or termination of the prior insurance; and

- Loss would be covered under this insurance

(b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

(2) In settling loss subject to this condition:

- Lesser of limits

(a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during he period of loss, whether such limit was written under this insurance or was written under the prior cancelled or terminated insurance.

(b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled or terminated insurance.

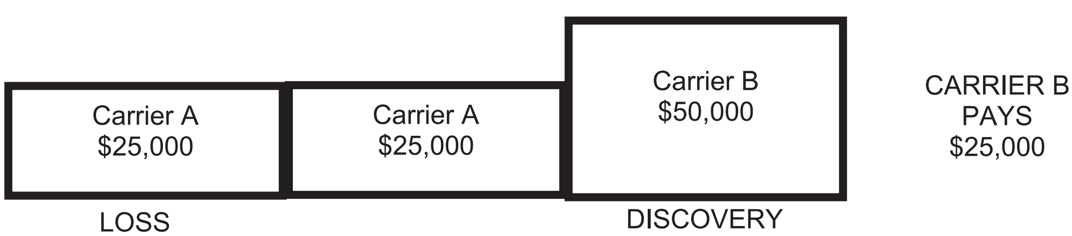
(3) The insurance provided under this condition is subject to the following:

(a) If loss covered under this condition is also partially covered under the Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate Condition **E.1.l.,** the amount recoverable under this Condition is part of, and not in addition to, the amount recoverable under Condition **E.1.l.**

(b) For loss covered under this condition that is not subject to Paragraph **(a)** above, the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:

(i) This insurance as of its effective date; or

(ii) The prior cancelled or terminated insurance had it remained in effect.



b) Same carrier – order of payment

- Sustained partly by this and partly by prior insurance
- Current policy settled first
- Sustained only by prior insurance
- Prior policy settled first

I. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate

(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance

If loss is "discovered" by a "designated person" during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

(a) Partly during the Policy Period shown in the Declarations; and

(b) Partly during the policy period(s) of any prior cancelled or terminated insurance that we or any affiliate issued you or any predecessor in interest;

and this insurance became effective at the time of cancellation or termination of the prior insurance, we will settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.

(2) Loss Sustained Entirely During Prior Insurance

If loss is "discovered" by a "designated person" during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the policy period(s) of any prior cancelled or terminated insurance that we or any affiliate issued to you, we will pay for the loss, provided:

(a) This insurance became effective at the time of the cancellation or termination of the prior insurance; and

(b) The loss would have been in effect at the time of the "occurrence".

We will settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

c) Same carrier – amount of payment

- Larger amount
- No stacking of limits
- Current deductible applies

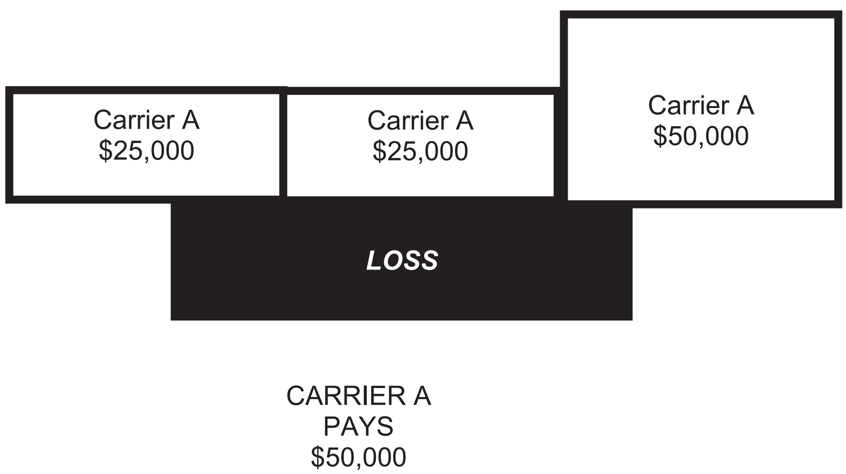
(3) In settling loss under Paragraphs **(1)** and **(2)** above:

(a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or written under the prior insurance issued by us.

(b) We will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.



d) Loss examples

(4) The following examples demonstrate how we will settle losses subject to this condition:

Example Number 1:

The insured sustained a covered loss of $10,000 resulting directly from an "occurrence" taking place during the terms of Policy **A** and Policy **B.**

Policy A

The current policy Written at a Limit of Insurance of $50,000 and a Deductible Amount of $5,000.

Policy B

Issued Prior to Policy **A.** Written at a Limit of Insurance of $50,000 and a Deductible Amount of $5,000.

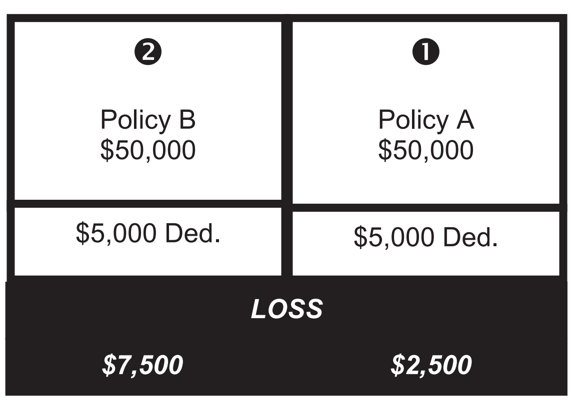
Settlement of Loss

The amount of loss sustained under Policy **A** is $2,500 and under Policy **B,** $7,500.

The highest single Limit of Insurance applicable to this entire loss is $50,000 written under Policy **A.** The Policy **A** Deductible Amount of $5,000 applies. The loss is settled as follows:

(a) The amount of loss sustained under Policy **A.** ($2,500) is settled first. The amount we pay is nil ($0.00) because the amount of loss is less than the Deductible Amount (i.e., $2,500 loss - $5,000 deductible = $0.00).

(b) The remaining amount of loss sustained under Policy **B** ($7,500) is settled next. The amount recoverable is $5,000 after the remaining Deductible Amount from Policy **A** of $2,500 is applied to the loss (i.e., $7,500 loss - $2,500 deductible = $5,000).



e) Loss examples

Example Number 2:

The insured sustained a covered loss of $250,000 resulting directly from an "occurrence" taking place during the terms of Policy **A** and Policy **B.**

Policy A

The current policy Written at a Limit of Insurance of $125,000 and a Deductible Amount of $10,000.

Policy B

Issued Prior to Policy **A.** Written at a Limit of Insurance of $150,000 and a Deductible Amount of $25,000.

Settlement of Loss

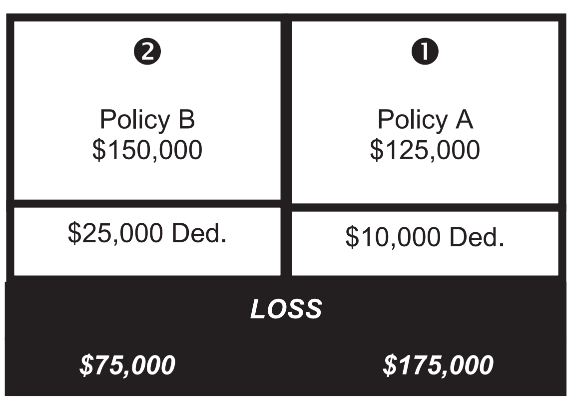
The amount of loss sustained under Policy **A** is $175,000 and under Policy **B** is $75,000.

The highest single Limit of Insurance applicable to this entire loss is $150,000 written under Policy **B.** The Policy **A** Deductible Amount of $10,000 applies. The loss is settled as follows:

(a) The amount of loss sustained under Policy **A.** ($175,000) is settled first. The amount we pay is the Policy **A** Limit of $125,000 because $175,000 loss - $10,000 deductible = $165,000 which is greater than the $125,000 policy limit.

(b) The remaining amount of loss sustained under Policy **B** ($75,000) is settled next. The amount we will pay is $25,000 (i.e., $150,000 Policy **B** limit - $125,000 paid under Policy **A** = $25,000).

The most we will pay for this loss is $150,000.



f) Loss examples

Example Number 3:

The insured sustained a covered loss of $2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies **A, B, C** and **D.**

Policy A

The current policy Written at a Limit of Insurance of $1,000,000 and a Deductible Amount of $100,000.

Policy B

Issued Prior to Policy **A.** Written at a Limit of Insurance of $750,000 and a Deductible Amount of $75,000.

Policy C

Issued prior to Policy **B.** Written at a Limit of Insurance of $500,000 and a Deductible Amount of $50,000.

Policy D

Issued prior to Policy **C.** Written at a Limit of Insurance of $500,000 and a Deductible Amount of $50,000.

Settlement of Loss

The amount of loss sustained under Policy **A** is $350,000; under Policy **B** $250,000; under Policy **C** $600,000; and under Policy **D** $800,000.

The highest single Limit of Insurance applicable to this entire loss is $1,000,000 written under Policy **A.** The Policy **A** Deductible Amount of $100,000 applies. The loss is settled as follows:

(a) The amount of loss sustained under Policy **A.** ($350,000) is settled first. The amount we pay is the Policy **A** Limit of $250,000 (i.e., $350,000 loss - $100,000 deductible = $250,000).

(b) The amount of loss sustained under Policy **B** ($250,000) is settled next. The amount we will pay is $250,000 (no deductible is applied).

(c) The amount of loss sustained under Policy **C** ($600,000) is settled next. The amount we will pay is $500,000, the policy limit (no deductible is applied).

(d) We will not make any further payment under Policy **D,** as the maximum amount payable under the highest single Limit of Insurance applying to the loss of $1,000,000 under Policy **A** has been satisfied.

The most we will pay for this loss is $1,000,000.

B. Discovery Form

Learning Objective – Differentiate how coverage is triggered under the Loss Sustained and the Discovery Forms.

- Taking place at any time
- Discovered during policy period

> **A. Insuring Agreements**
>
> Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting from an "occurrence" taking place at any time which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.g.:**

1. Extended Period to Discover Loss

Learning Objective – Define the Extended Period to Discover Loss as found in the Discovery Form.

- 60 days from end of policy
- Change Extended Period To Discover Loss CR 20 04
- ERISA Plans

> **h. Extended Period To Discover Loss**
>
> We will pay only for covered loss you sustained prior to the effective date of cancellation or termination of this insurance in its entirety, as to any Insured or on any Insuring Agreement or coverage, which is "discovered" by a "designated person":
>
> **(1)** Except as provided in Paragraph **(2)** below, no later than 60 days from the date of that cancellation or termination. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you or that Insured, whether from us or another insurer, which replaces in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
>
> **(2)** No later than one year from the date of that cancellation or termination with regard to any "ERISA employee benefit plan". However, this extended period to "discover" loss terminated immediately upon the effective date of any other insurance obtained by you or that "ERISA employee benefit plan", whether from us or another insure, that provides, at a minimum, the same coverage afforded by Insuring Agreement **A.1.b.** in an amount that is no less than the minimum amount of coverage required under ERISA and which also provides that such coverage applies to loss sustained prior to its effective date.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CHANGE EXTENDED PERIOD TO DISCOVER LOSS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

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

In Section **E.1. Condition Applicable To All Insuring Agreements:**

The **Extended Period to Discover Loss** Condition is replaced by the following:

Extended Period To Discover Loss

The Extended Period To Discover Loss Condition is changed by adding to the 60 day period to "discover" loss, the number of days shown in the Schedule.

We will pay for loss that you sustained prior to the effective date of cancellation or termination of this insurance in its entirety, as to any Insured or on any Insuring Agreement or coverage which is "discovered" by a "designated person":

1. Except as provided in Paragraph **2.** below, no later than the Number Of Days shown in the Schedule from the date of cancellation or termination. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not the other insurance provides coverage for loss sustained prior to the effective date.

2. Under the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy, no later than one year from the date of that cancellation or termination with regard to any "ERISA employee benefit plan". However, this extended period to "discover" loss terminated immediately upon the effective date of any other insurance obtained by you or that "ERISA employee benefit plan", whether from us or another insurer, which provides, at a minimum, the same coverage afforded by Insuring Agreement **A.1.b.** in an amount no less than the amount required under ERISA and which also provides that such coverage applies to loss sustained prior to its effective date.

2. Policy Bridge

q. Policy Bridge – Discovery Replacing Loss Sustained

(1) If this insurance replaces insurance that provided you with an extended period of time after cancellation or termination in which to discover loss and which did not terminate at the time this insurance became effective:

(a) We will not pay for any loss that occurred during the policy period of that prior insurance which is "discovered" by you during such extended period of time to "discover" loss, unless the amount of loss exceeds the limit of insurance and deductible amount of that prior insurance. In that case, we will pay for the excess loss subject to the terms and conditions of this insurance.

- Excess loss is the only amount paid

(b) However, any payment we make for the excess loss will not be greater than the difference between the limit of insurance and deductible amount of that prior insurance and the Limit of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to the excess loss.

- Only pays the difference, not in addition to

(2) The other Insurance Condition **E.1.k.** does not apply to this condition.

3. Retroactive Dates – Reasons for Using

a) Adverse selection – Insured in business for many years without coverage

b) Unacceptable level of incurred but unreported losses

c) Insured requests large increase in coverage

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE RETROACTIVE DATE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

Named Insured:
Joint Insured(s):
Entity(ies), Assets Or Liabilities:
Retroactive Date 12:01 AM on:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. The following is added to Section **E.1. Conditions Applicable To All Insuring Agreements:**

1. Retroactive Date For The Named Insured

If the Retroactive Date applies to the Named Insured shown in the Schedule, the first paragraph under **Section A. – Insuring Agreements** is replaced by the following:

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place in its entirety after the Retroactive Date shown in the Schedule which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

2. Retroactive Date For Joint Insured(s)

If the Retroactive Date applies to the Joint Insured(s) shown in the Schedule, the first paragraph under **Section A. – Insuring Agreements** is deemed amended with respects to such Joint Insured(s) as follows:

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" involving the Joint Insured(s) shown in the Schedule taking place in its entirety after the Retroactive Date shown in the Schedule, which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

c. **Retroactive Date For Entity(ies) Acquired Through Consolidation, Merger Or Acquisition**

The following applies to the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy:

If the Retroactive Date applies to the entity(ies) shown in the Schedule, which is acquired through consolidation or merger, or in which you purchased or acquired of assets or liabilities, the first paragraph under **Section A. – Insuring Agreements** is deemed amended with respects to such entity(ies) or assets or liabilities as follows:

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" involving the entity(ies) shown in the Schedule taking place in its entirety after the Retroactive Date shown in the Schedule which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

B. In the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy:

Under Section **F. Definitions**:

The definition of "occurrence" is replaced by the following:

"Occurrence" means:

1. Under Insuring Agreements **A.1.a.** and **A.1.c.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule.

2. Under Insuring Agreement **A.1.b.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "ERISA plan official" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule.

3. Under Insuring Agreement **A.2.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by a person acting alone or in collusion with other persons, involving one or more instruments, after the Retroactive Date shown in the Schedule.

4. Under all other insuring agreements:

a. An individual act or event;

b. The combined total of all separate acts or events, whether or not related; or

c. A series of acts or events, whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, after the Retroactive Date shown in the Schedule.

C. In the Government Crime Coverage Form, Government Crime Policy and Government Fidelity And Forgery Policy:

Under Section **F. Definitions**:

The definition of "occurrence" is replaced by the following

"Occurrence" means:

1. Under Insuring Agreement **A.1.a.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule.

2. Under Insuring Agreement **A.1.b..:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by each "employee" acting alone or in collusion with other persons, involving one or more instruments, after the Retroactive Date shown in the Schedule.

3. Under Insuring Agreement **A.2.**:

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts whether or not related;

committed by a person acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule.

1. Under All Other Insuring Agreements:

(a) An individual act or event;

(b) The combined total of all separate acts or events, whether or not related; or

(c) A series of acts or events, whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, after the Retroactive Date shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROVIDE LIMITED COVERAGE FOR LOSS OCCURRING BEFORE RETROACTIVE DATE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

Named Insured:
Joint Insured(s):
Entity(ies), Assets Or Liabilities:
Retroactive Date 12:01 AM on:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. The following is added to Section **E.1. Conditions Applicable To All Insuring Agreements:**

1. **Retroactive Date For The Named Insured**

   If the Retroactive Date applies to the Named Insured shown in the Schedule, the first paragraph under **Section A. – Insuring Agreements** is replaced by the following:

   Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place:

   a. In its entirety after; or

   b. Partly before and partly after;

   the Retroactive Date shown in the Schedule which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

2. **Retroactive Date For Joint Insured(s)**

If the Retroactive Date applies to the Joint Insured(s) shown in the Schedule, the first paragraph under **Section A. – Insuring Agreements** is deemed amended with respects to such Joint Insured(s) as follows:

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" involving the Joint Insured(s) shown in the Schedule taking place either:

a. In its entirety after; or

b. Partly before and partly after;

the Retroactive Date shown in the Schedule, which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

3. **Retroactive Date For An Entity Acquired Through Consolidation, Merger Or Acquisition**

The following applies to the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy.

If the Retroactive Date applies to the entity(ies) shown in the Schedule, which is acquired through consolidation or merger, or in which you purchased or acquired of assets or liabilities, the first paragraph under **Section A. – Insuring Agreements** is deemed amended with respects to such entity(ies) or assets or liabilities as follows:

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" involving the entity(ies) shown in the Schedule taking place either:

a. In its entirety after; or

b. Partly before and partly after;

the Retroactive Date shown in the Schedule which is "discovered" by a "designated person" during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition.

B. In the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy:

Under Section **F. Definitions**:

The definition of "occurrence" is replaced by the following:

"Occurrence" means:

1. Under Insuring Agreements **A.1.a.** and **A.1.c.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

2. Under Insuring Agreement **A.1.b.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "ERISA plan official" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

3. Under Insuring Agreement **A.2.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by a person acting alone or in collusion with other persons, involving one or more instruments, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

4. Under all other insuring agreements:

a. An individual act or event;

b. The combined total of all separate acts or events, whether or not related; or

c. A series of acts or events, whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

C. In the Government Crime Coverage Form, Government Crime Policy and Government Fidelity And Forgery Policy:

Under Section **F. Definitions**:

The definition of "occurrence" is replaced by the following:

"Occurrence" means:

1. Under Insuring Agreement **A.1.a.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

2. Under Insuring Agreement **A.1.b.:**

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by each "employee" acting alone or in collusion with other persons, involving one or more instruments, after the Retroactive Date shown in the Schedule.

3. Under Insuring Agreement **A.2.**:

a. An individual act;

b. The combined total of all separate acts, whether or not related; or

c. A series of acts, whether or not related;

committed by a person acting alone or in collusion with other persons, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

4. Under all other Insuring Agreements:

a. An individual act or event;

b. The combined total of all separate acts or events, whether or not related; or

c. A series of acts or events, whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, after the Retroactive Date shown in the Schedule or partly before and partly after such Retroactive Date.

VI. Fidelity – Insuring Agreement 1

Insuring Agreements			Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1.	Fidelity			
	a.	Employee Theft	$	$
	b.	ERISA Plan Official Dishonesty	$	N/A
	c.	Employee Theft Of Clients' Property	$	$

A. Why is this form needed?

1. **Employee theft is NEVER covered under property coverage forms**
2. **Employee theft is EXCLUDED in every crime Insuring Agreement except Insuring Agreement 1**

B. Covered cause of loss

1. Insurance Services Office

- Identification not required
- Blanket basis

> **1. Fidelity**
>
> **a. Employee Theft**
>
> We will pay for loss or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.
>
> For the purposes of this Insuring Agreement, "theft" includes forgery.

2. Surety Association of America

- Manifest intent, not identification of employee required
- Intent to cause loss
- Clarifies salary for a job not done is excluded
- Giving property to others

> **a. "Employee Dishonesty"** in Paragraph **A. 2.** means only dishonest acts committed by an "employee," whether identified or not , acting alone or in collusion with other persons, except you or a partner, with the manifest intent to:
>
> **(1)** Cause you to sustain loss; and also
>
> **(2)** Obtain financial benefit (other than employee benefits earned in the normal course of employment, including: salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions) for:
>
> **(a)** The "employee"; or
>
> **(b)** Any person or organization intended by the "employee" to receive that benefit.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE THEFT – NAME OR POSITION SCHEDULE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

☐ **Name Schedule Coverage**

Item Number	Names Of Covered Employees	Limit Of Insurance On Each Employee	Deductible Amount On Each Employee
1.		$	$
2.		$	$
3.		$	$

☐ **Position Schedule Coverage**

Item Number	Titles Of Covered Positions	Location Of Covered Positions	Number Of Employees In Each Position	Limit Of Insurance On Each Employee	Deductible Amount On Each Employee
1.				$	$
2.				$	$
3.				$	$

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

With regard to this Employee Theft – Name Or Position Schedule endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following is added to Section **A. Insuring Agreements**:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an identified "employee", acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" includes forgery.

B. Section **B. Limit of Insurance** is replaced by the following:

B. Limit Of Insurance

1. The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Schedule.

2. Regardless of the number of years this insurance applies as respects a specific employee", the most we will pay in the aggregate is the largest Limit of Insurance applicable to that "employee" even though:

a. The coverage for that "employee" is not continuous because it has been cancelled for one or more periods; or

b. The Limit of Insurance applicable to that "employee" has changed.

3. If this insurance applies on a Position Schedule basis, the following conditions also apply:

a. The most we will pay for an "employee" serving in more than one position is the largest Limit of Insurance in effect and applicable to any one of those positions at the time loss is "discovered".

b. If at the time loss is "discovered" there are more "employees" serving in a covered position than the number of "employees" listed opposite that position shown in the Schedule, the Limit of Insurance applicable to that position will be reduced.

The reduced Limit of Insurance will be computed by multiplying the limit shown in the Schedule by a factor obtained by dividing the number of "employees" shown in the Schedule by the actual number of "employees" serving in that position at the time loss is "discovered".

C. Section **C. Deductible** is replaced by the following:

C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Schedule. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Under the Commercial Crime Coverage Form, Commercial Crime Policy and Commercial Fidelity And Forgery Policy:

1. In Section **D. Exclusions**:

a. Under Paragraph **1. Exclusions Applicable To All Insuring Agreements:**

(1) The **Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives** Exclusion is replace by the following:

Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", "ERISA plan officials", "managers", directors, trustees or authorized representatives:

(a) Whether acting alone or in collusion with other persons; or

(b) While performing services for you or otherwise;

except when covered under Insuring Agreements **A.1.a., A.1.b., A.1.c.** or this Insuring Agreement.

(2) The **Kidnap, Ransom, Extortion And Other Unlawful Demands** Exclusion is replaced by the following:

Kidnap, Ransom, Extortion And Other Unlawful Demands

(a) Loss resulting from the surrender of ransom in response to an unlawful demand including, but not limited to, an unlawful demand arising out of:

(i) An actual or alleged kidnap or threat to do bodily harm to any person, other than "robbery" covered under this insurance;

(ii) A threat to do damage to any property or to contaminate, pollute or render substandard products or goods;

(iii) A threat to introduce a denial of service attack into any "computer system";

(iv) A threat to introduce a virus or other malicious instruction into any "computer system", which would encrypt, damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system"; or

(v) A threat to access, download, disseminate, divulge or utilize:

i. Your information or the information of any other natural person or entity; or

ii. Weaknesses in the source code of any "computer system";

except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

(b) Loss resulting from payment of any kind in response to a denial of service attack, ransomware, virus or other malicious instruction introduced into any "computer system" that denies or restricts access, encrypts, downloads or otherwise damages, destroys or corrupts any "computer system", "electronic data" or "computer program", except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

b. Under Paragraph **2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) ERISA Employee Benefit Plans

Loss of property belonging to any "ERISA employee benefit plan".

(2) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) An inventory computation; or

(b) A profit- and- loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

(3) Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

(4) Warehouse Receipts

Loss resulting from the fraudulent or dishonest signing, issuing, canceling or failing to cancel a warehouse receipt or any papers connected with it.

2. In Section **E.1. Conditions Applicable To All Insuring Agreements**:

a. The **Additional Premises Or Employees** Condition or the **Additional Employees** Condition does not apply to this Insuring Agreement.

b. The Consolidation – Merger – Acquisition Condition does not apply to this Insuring Agreement.

c. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except loss covered under Insuring Agreement **A.1.a., A.1.b., A.1.c., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

3. In Section **F. Definitions:**

a. The following is added to the definition of "occurrence":

"Occurrence" means:

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts whether or not related;

committed by each "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

b. The definition of "employee" is replaced by the following:

"Employee" means:

(1) Any person named in the Schedule, if coverage applies on a Name Schedule basis; or

(2) Any person you engage to perform the duties of a position shown in the Schedule, if coverage applies on a Position Schedule basis.

c. The definition of "money" is replaced by the following:

"Money" means:

(1) Currency, coins and bank notes in current use and having a face value;

(2) Traveler's checks and money orders held for sale to the public; and

(3) Deposits in your account at any "financial institution".

E. Under the Government Crime Coverage Form, Government Crime Policy and Government Fidelity And Forgery Policy:

1. In Section **D. Exclusions**:

a. Under Paragraph **1. Exclusions Applicable To All Insuring Agreements:**

(1) The **Acts Committed By Your Employees, Officials Or Representatives** Exclusion is replace by the following:

Acts Committed By Your Employees, Officials Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees" or authorized representatives:

(a) Whether acting alone or in collusion with other persons; or

(b) While performing services for you or otherwise;

except when covered under Insuring Agreements **A.1.a., A.1.b.** or this Insuring Agreement.

(2) The **Kidnap, Ransom, Extortion And Other Unlawful Demands** Exclusion is replaced by the following:

Kidnap, Ransom, Extortion And Other Unlawful Demands

(a) Loss resulting from the surrender of ransom in response to an unlawful demand including, but not limited to, an unlawful demand arising out of:

(i) An actual or alleged kidnap or threat to do bodily harm to any person, other than "robbery" covered under this insurance;

(ii) A threat to do damage to any property;

(iii) A threat to introduce a denial of service attack into any "computer system";

(iv) A threat to introduce a virus or other malicious instruction into any "computer system", which would encrypt, damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system"; or

(v) A threat to access, download, disseminate, divulge or utilize:

i. Your information or the information of any other natural person or entity; or

ii. Weaknesses in the source code of any "computer system";

except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

(b) Loss resulting from payment of any kind in response to a denial-of-service attack, ransomware, virus or other malicious instruction introduced into any "computer system" that denies or restricts access, encrypts, downloads or otherwise damages, destroys or corrupts any "computer system", "electronic data" or "computer program", except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

b. The following is added to Paragraph **2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) An inventory computation; or

(b) A profit- and- loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

(2) Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

2. In Section **E.1. Conditions Applicable To All Insuring Agreements**:

a. The **Additional Premises Or Employees** Condition or the **Additional Employees** Condition does not apply to this Insuring Agreement.

b. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except loss covered under Insuring Agreement **A.1.a., A.1.b., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

3. In Section **F**. **Definitions:**

a. The following is added to the definition of "occurrence":

"Occurrence" means:

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts whether or not related;

committed by each "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

b. The definition of "employee" is replaced by the following:

"Employee" means:

(1) Any person named in the Schedule, if coverage applies on a Name Schedule basis; or

(2) Any person you engage to perform the duties of a position shown in the Schedule, if coverage applies on a Position Schedule basis.

c. The definition of "money" is replaced by the following:

"Money" means:

(1) Currency, coins and bank notes in current use and having a face value;

(2) Traveler's checks and money orders held for sale to the public; and

(3) Deposits in your account at any "financial institution".

C. Additional exclusions

1. ERISA and Inventory shortage

- Covered under Insuring Agreement 1.b.
- Proof solely established by inventory

> **2. Additional Exclusions Applicable to Specific Insuring Agreements**
>
> **a.** Insuring Agreement **A.1.a.** does not cover:
>
> **(1) ERISA Employee Benefit Plans**
>
> Loss of property belonging to any "ERISA employee benefit plan".
>
> **(2) Inventory Shortages**
>
> Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:
>
> **(a)** An inventory computation; or
>
> **(b)** A profit and loss computation.
>
> However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed

2. Trading

- Add trading coverage CR 25 16

> **2. Additional Exclusions Applicable to Specific Insuring Agreements**
>
> **a.** Insuring Agreement **A.1.a.** does not cover:
>
> **(3) Trading**
>
> Loss resulting from trading, whether in your name or in a genuine or fictitious account.

3. Warehouse receipts

- Add warehouse receipts coverage CR 25 17

> **2. Additional Exclusions Applicable to Specific Insuring Agreements**
>
> **a.** Insuring Agreement **A.1.a.** does not cover:
>
> **(4) Warehouse Receipts**
>
> Loss resulting from the fraudulent or dishonest signing, issuing, canceling or failing to cancel a warehouse receipt or any papers connected with it.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD TRADING COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

SCHEDULE

Limit Of Insurance: $
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

In Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

The **Trading** Exclusion is replaced by the following:

We will not pay for loss resulting directly or indirectly from trading, whether in your name or in a genuine or fictitious account. However, if a Limit Of Insurance is shown in the Schedule, we will pay up to that amount for loss resulting directly from trading in a genuine account. That Limit Of Insurance is part of, not in addition to, the Limit of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD WAREHOUSE RECEIPTS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

SCHEDULE

Limit Of Insurance: $
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

In Section **D. Exclusions:**

The **Warehouse Receipts** Exclusion is replaced by the following:

Warehouse Receipts

We will not pay for loss resulting from the fraudulent or dishonest signing, issuing, canceling or failing to cancel a warehouse receipt or any papers connected with it. However, if a Limit Of Insurance is shown in the Schedule, we will pay up to that amount for loss resulting directly from the fraudulent or dishonest signing, issuing, canceling or failing to cancel a warehouse receipt or papers connected with it. That Limit Of Insurance is part of, not in addition to, the Limit of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUDE DESIGNATED PERSONS OR CLASSES OF PERSONS AS EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

SCHEDULE

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

In Section **F. Definitions:**

The definition of "employee" is amended so that it does not include any person named or class of persons shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD FAITHFUL PERFORMANCE OF DUTY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

A. In Section **A. Insuring Agreements:**

The following is added to the **Employee Theft** Insuring Agreement:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from the failure of any "employee" to faithfully perform his or her duties as prescribed by your constitution and by-laws or resolution of your governing body, including inability to faithfully perform those duties because of a criminal act committed by a person other than an "employee".

B. The following are added to Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

1. Depository Failure

Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.

5. Employee Benefit Plans

Loss of property belonging to any "employee benefit plan".

6. Fraudulent Instructions

Loss resulting from an "employee" acting upon any instruction to:

a. Transfer, pay or deliver "money", securities" or "other property"; or

b. Debit or delete your account;

which instruction proves to be fraudulent.

7. Tortious Conduct

Damages for which you are legally liable as a result of the tortious conduct of an "employee", except the conversion of property of other parties held by you in any capacity.

C. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

Under the **Cancellation Or Termination** Condition, the following is added to **Termination Of Coverage As To Any Employee Or ERISA Plan Official:**

This insurance terminates as to any "employee":

As soon as:

1. A "designated person"; or

2. An "employee" in your Human Resources Department or its equivalent:

learns of any act committed by the "employee", whether before or after becoming employed by you, which would constitute a loss covered under the terms of the Employee Theft Insuring Agreement, as amended by this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD FAITHFUL PERFORMANCE OF DUTY COVERAGE FOR GOVERNMENT EMPLOYEES

This endorsement modifies insurance provided under the following:

GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Insuring Agreement(s) designated in the Schedule.

SCHEDULE

Insuring Agreement		Limit Of Insurance
☐	**Employee Theft – Per Loss Coverage**	**$**
☐	**Employee Theft – Per Employee Coverage**	**$**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

A. In Section **A. Insuring Agreements:**

The following is added to the **Employee Theft** designated in the Schedule:

We will pay for loss or damage to "money", "securities" and "other property" resulting directly from the failure of any "employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your covered property. The most we will pay for loss arising out of an "occurrence" is the Limit Of Insurance shown in the Schedule. That limit, is part of, not in addition to, the Limit Of Insurance shown in the Declarations.

B. The following are added to Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

1. Depository Failure

Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.

2. Employee Benefit Plans

Loss of property belonging to any "employee benefit plan".

3. Fraudulent Instructions

Loss resulting from an "employee" acting upon any instruction to:

a. Transfer, pay or deliver "money", securities" or "other property"; or

b. Debit or delete your account;

which instruction proves to be fraudulent.

4. Deprivation Or Violation Of Civil Rights And Tortious Conduct

Damages for which you are legally liable as a result of:

a. The deprivation or violation of the civil rights of any person by an "employee"; or

b. The tortious conduct of an "employee", except the conversion of property of other parties held by you in any capacity.

C. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

Under the **Cancellation Or Termination** Condition, the following is added to **Termination Of Coverage As To Any Employee Or ERISA Plan Official:**

This insurance terminates as to any "employee":

As soon as:

1. A "designated person"; or

2. An "employee" in your Human Resources Department or its equivalent:

learns of any act committed by the "employee", whether before or after becoming employed by you, which would constitute a loss covered under the terms of the Employee Theft Insuring Agreement, as amended by this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD FAITHFUL PERFORMANCE OF DUTY COVERAGE FOR SPECIFIED GOVERNMENT EMPLOYEES OR POSITIONS

This endorsement modifies insurance provided under the following:

GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Employee Theft – Name Or Position Schedule Insuring Agreement.

A. The following is added to the **Employee Theft – Name Or Position Schedule Insuring Agreement**:

We will pay for loss or damage to "money", "securities" and "other property" resulting directly from the failure of any "employee" to faithfully perform his or her duties as prescribed by law, when such failure has as its direct and immediate result a loss of your covered property.

B. The following are added to Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

1. Depository Failure

Loss resulting from the failure of any entity acting as a depository for your property or property for which you are responsible.

2. Employee Benefit Plans

Loss of property belonging to any "employee benefit plan".

3. Fraudulent Instructions

Loss resulting from an "employee" acting upon any instruction to:

a. Transfer, pay or deliver "money", securities" or "other property"; or

b. Debit or delete your account;

which instruction proves to be fraudulent.

4. Deprivation Or Violation Of Civil Rights And Tortious Conduct

Damages for which you are legally liable as a result of:

a. The deprivation or violation of the civil rights of any person by an "employee"; or

b. The tortious conduct of an "employee", except the conversion of property of other parties held by you in any capacity.

C. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

Under the **Cancellation Or Termination** Condition, the following is added to **Termination Of Coverage As To Any Employee Or ERISA Plan Official:**

This insurance terminates as to any "employee":

As soon as:

1. A "designated person"; or

2. An "employee" in your Human Resources Department or its equivalent:

learns of any act committed by the "employee", whether before or after becoming employed by you, which would constitute a loss covered under the terms of the Employee Theft Insuring Agreement, as amended by this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

UNAUTHORIZED REPRODUCTION OF COMPUTER SOFTWARE BY EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

PROVISIONS

With regard to this Unauthorized Reproduction Of Computer Software By Employees Endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Unauthorized Reproduction Of Computer Software By Employees

We will pay for fines and penalties that you incur resulting directly from the unauthorized reproduction of computer software by an "employee", in violation of a licensing agreement with a third-party vendor, provided that the unauthorized reproduction is done:

1. Without your knowledge;

2. Without the knowledge of a "designated person"; or

3. Without the knowledge of any other person having responsibility for compliance with the terms of the software licensing agreement;

and you are legally liable for the loss.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Under the Commercial Crime Coverage Form and Commercial Crime Policy:

1. In Section **D. Exclusions:**

a. In Paragraph **D.1. Exclusions Applicable To All Insuring Agreements,** the **Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives** Exclusion is replaced by the following:

Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", "ERISA plan officials", "managers", directors, trustees or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) Wile performing services for you otherwise;

Except when covered under Insuring Agreement **A.1.a., A.1.b., A.1.c.** or this Insuring Agreement.

b. The following are added to Paragraph **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) Errors And Omissions In Design Of Computer Programs

Loss resulting from errors or omissions in the design of "computer programs".

(2) Errors Or Omissions In Programing

Loss resulting from errors or omissions in the programing or processing of "electronic data".

2. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

a. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.a., A.1.b., A.1.c., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

b. The flowing are added to the **Valuation – Settlement** Condition:

(1) Electronic Data

In case of loss or damage to "electronic data", we will pay for reasonable costs to restore or replace such "electronic data", including the cost of data entry and computer consultation services. However, we will not pay for the cost to duplicate research that led to the development of your "electronic data". To the extent that any "electronic data" cannot be restored or replaced, we will pay the cost to repair or replace the electronic storage media on which the "electronic data" was recorded.

(2) Computer Programs

In case of loss or damage to "computer programs", we will pay for reasonable costs to restore or replace such "computer programs", including reprograming and computer consultation services.

However, we will not pay for the cost to duplicate research that led to the development of your "computer programs".

3. In Section **F. Definitions,** the following is added to the definition of "occurrence"**:**

"Occurrence" means:

a. An individual act or event;

b. The combined total of all separate acts or events whether or not related; or

c. A series of acts or events whether or not related;

committed by an "employee", or other person, acting alone or in collusion with others, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

E. Under the Government Crime Coverage Form and Government Crime Policy:

1. In Section **D. Exclusions:**

a. In Paragraph **D.1. Exclusions Applicable To All Insuring Agreements,** the **Acts Committed By Your Employees, Officials Or Representatives** Exclusion is replaced by the following:

Acts Committed By Your Employees, Officials Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", officials or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) Wile performing services for you otherwise;

Except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

b. The following are added to Paragraph **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

(1) Errors And Omissions In Design Of Computer Programs

Loss resulting from errors or omissions in the design of "computer programs".

(2) Errors Or Omissions In Programing

Loss resulting from errors or omissions in the programing or processing of "electronic data".

2. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

a. Paragraph **(3)** of the **Duties In The Event Of Loss** Condition is replaced by the following:

(3) If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.a., A.1.b., A.2.** or this Insuring Agreement) involves a violation of law, you must notify the local law enforcement authorities.

b. The flowing are added to the **Valuation – Settlement** Condition:

(1) Electronic Data

In case of loss or damage to "electronic data", we will pay for reasonable costs to restore or replace such "electronic data", including the cost of data entry and computer consultation services. However, we will not pay for the cost to duplicate research that led to the development of your "electronic data". To the extent that any "electronic data" cannot be restored or replaced, we will pay the cost to repair or replace the electronic storage media on which the "electronic data" was recorded.

(2) Computer Programs

In case of loss or damage to "computer programs", we will pay for reasonable costs to restore or replace such "computer programs", including reprograming and computer consultation services.

However, we will not pay for the cost to duplicate research that led to the development of your "computer programs".

3. In Section **F. Definitions,** the following is added to the definition of "occurrence"**:**

"Occurrence" means:

a. An individual act or event;

b. The combined total of all separate acts or events whether or not related; or

c. A series of acts or events whether or not related;

committed by an "employee", or other person, acting alone or in collusion with others, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

DIFFERENCES IN EMPLOYEE THEFT – INSURING AGREEMENT 1

Blanket

1. Written on a blanketed amount basis.
2. Covers loss of monies, securities and other property due to employee theft.
3. Covers anywhere in the world.
4. Recovery is limited by the amount shown in the Declarations. This can limit employee collusion.
5. Covers dishonest acts by an Employee. The definition of employee is found in the Commercial Crime Coverage Form/Policy.
6. Loss in excess of the deductible will be paid by the insurer.
7. Insured must notify the company, even if the loss is less than the deductible. Employee is suspended immediately due to any dishonest act whether before or after employment date if insured has knowledge.
8. 30 days notice to the insured if the company wants to suspend coverage on an employee.
9. Subject to the Consolidation-Merger Provision found in the Commercial Crime Coverage Form/Policy.
10. Losses are excluded when the only means of proving them is dependent upon inventory or profit & loss statements.
11. Occurrence Definition - Loss caused by one or more employees as a single act or series of acts.

CR 04 08 – Schedule

1. Can be written on a Named Schedule or on a Position Schedule basis.
2. Same as Blanket Form.
3. Same as Blanket Form.
4. Also limited by the amount shown in the Schedule, <u>but</u> is a Per Employee Limit.
5. Must be an identified employee in the Named Schedule or an identified Position. This is an exception to the Employee Theft definition found in Commercial Crime Coverage Form/Part.
6. Same as Blanket Form.
7. Same as Blanket Form.
8. Same as Blanket Form.
9. This provision does not apply.
10. Same as Blanket Form.
11. Occurrence Definition – Loss caused by each employee, whether the result of a single act or series of acts.

12 Additional Provisions in this form only:
   - The most the insurance company will pay for an employee in more than one position is the largest limit in effect for that position.
   - If at any time of loss there are more employees serving in a position than the number shown in the schedule, the limit would be reduced. The Company would divide the number listed by the number actually in that position.

Minimum Recommended Amount of Employee Theft Insurance

The formula below was devised by the Surety Association of America and has been endorsed by the American Institute of Accountants. It is the result of a long and comprehensive survey of the fidelity losses in excess of $10,000 over a period of 10 years. This survey revealed that 65% of the losses were underinsured. Tests of the formula against the actual losses covered in the survey showed that the formula would have provided full protection in 95% of the cases.

The Formula

1. **Enter Total Current Assets**
   (cash, deposits, securities, receivables, goods on hand, etc.) $________________
2. **Enter Goods on Hand**
   (raw materials, materials in process, finished merchandise or products) $________________
3. **Subtract 2 from 1 and enter remainder** $________________
4. **Enter Annual Gross Sales or Income** $________________

Using the amounts above enter:

a. 5 % of 2 $__________________

b. 20 % of 3 $__________________

c. 10 % of 4 $__________________

Exposure Index (a + b + c) $__________________

Exposure Index Amount of Coverage	Minimum Recommended
Up to - $ 25,000	$ 15,000 - $ 25,000
$ 25,000 - 125,000	25,000 - 50,000
125,000 - 250,000	50,000 - 75,000
250,000 - 500,000	75,000 - 100,000
500,000 - 750,000	100,000 - 125,000
750,000 - 1,000,000	125,000 - 150,000
1,000,000 - 1,375,000	150,000 - 175,000
1,375,000 - 1,750,000	175,000 - 200,000

Exposure Index Amount of Coverage	Minimum Recommended
1,750,000 - 2,125,000	200,000 - 225,000
2,125,000 - 2,500,000	225,000 - 250,000
2,500,000 - 3,325,000	250,000 - 300,000
3,325,000 - 4,175,000	300,000 - 350,000
4,175,000 - 5,000,000	350,000 - 400,000
5,000,000 - 6,075,000	400,000 - 450,000
6,075,000 - 7,150,000	450,000 - 500,000

NOTE: For businesses which perform service functions such as transporting the property of others, or which perform work on or process the property of others, the value of that property should be included in the "Total Current Assets" and the "Goods on Hand" totals.

For firms acting in an agency capacity which have custody of cash, securities, etc., belonging to others, or have disbursing or collecting responsibilities, the average amount of such items on hand at one time should be included in "Total Current Assets" and the annual volume of such items should be included in "Annual Gross Sales or Income."

D. ERISA Obligations

1. **Insured must carry employee dishonesty coverage**

2. **This is not the same as fiduciary coverage**

3. **Any *<u>person</u>* handling funds or other property must be insured**

   a) *Employees*

   b) *Outside agents as plan administrators*

   c) *"ERISA plan official"*

> **24.** "ERISA plan official":
>
> a. Means any natural person who is:
>
> **(1)** An administrator, fiduciary, director, trustee, manager or "employee" of an "ERISA employee benefit plan"; or
>
> **(2)** A director, trustee or "employee" of an Insured sponsoring an "ERISA employee benefit plan", while that person is engaged in handling "money", "securities" or "other property" of such plan.
>
> **b.** Does not mean:
>
> Any agent, broker, financial institution, registered representative investment advisor, independent contractor or representative of the same general character.

4. **Each *<u>person who handles funds or other property</u>* must have the following minimums**

   a) *$1,000 minimum limit per person*

   b) *10% of plan assets*

   c) *$500,000 maximum coverage per person*

   d) *$1,000,000 maximum coverage per person if employer securities are held*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE DESIGNATED AGENTS AS ERISA PLAN OFFICIALS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

And applies to the ERISA Plan Official Dishonesty Insuring Agreement.

SCHEDULE

Capacity Of Agent	Limit Of Insurance
	$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

1. The most we will pay for loss caused by an agent included as an "ERISA plan official" by this endorsement is the Limit Of Insurance shown in the Schedule. That Limit of Insurance is part of, not in addition to, the Limit Of Insurance shown in the Declarations applicable to the ERISA Plan Official Dishonesty Insuring Agreement.

2. Each such agent and the partners, members, officers and employees of that agent are considered to be, collectively, one "ERISA plan official" for the purposes of this insurance. However, under the Cancellation Or Termination Condition, the Termination Of Coverage As To Any Employee Or ERISA Planb Official provision applies individually to each of them.

B. In Section **F. Definitions:**

The definition of "ERISA plan official" is amended to include each natural person, partnership or corporation you appoint in writing to act as your agent in the capacity shown in the Schedule while acting on your behalf or while in possession of covered property.

5. Additional Condition

- Insured responsible for picking limit
- Inflation guard
- DOL changes minimums

1. Additional Condition Applicable To Specific Insuring Agreements

a. Under Insuring Agreement A.1.b.

(1) Limit Of Insurance

You are responsible for selecting a Limit of Insurance for "ERISA employee benefit plans" covered under Insuring Agreement **A.1.b.** that is equal to, or greater than, the minimum amounts of coverage required under ERISA as set forth in Paragraphs **(a)** and **(b)** below.

(a) For "ERISA employee benefit plans" holding no employer securities:

(i) 10% of the amount of funds handles as of the effective date of this insurance; or

(ii) $500,000;

whichever is less, but in no event less than $1,000.

(b) For "ERISA employee benefit plans" holding employer securities:

(i) 10% of the amount of funds handled as of the effective date of this insurance; or

(ii) $1,000,000;

whichever is less, but in no event less than $1,000.

<u>If at the time of "discovery"</u> of loss sustained by an "ERISA employee benefit plan", the Limit of Insurance for Insuring Agreement **A.1.b.** <u>no longer complies with the minimum amount of coverage</u> required for such plan, <u>we will automatically increase</u> the Limit of Insurance for such plan so as to equal such required minimum amount of coverage. You are <u>not required to pay any additional premium</u> for the increase in the Limit of Insurance.

If the <u>minimum amounts of coverage required under ERISA are amended</u> after the effective date of this insurance, the amended minimum amounts of coverage will automatically apply to the "ERISA employee benefit plans" covered under Insuring Agreement **A.1.b.** You are <u>not required to pay any additional premium</u> for the remainder of the policy period.

6. Each plan must be insured

- Limits must be as if separately insured
- Pooled Employer Plan
- Proportion to ERISA requirements

> **1. Additional Condition Applicable To Specific Insuring Agreements**
>
> **a. Under Insuring Agreement A.1.b.**
>
> **(1) Limit Of Insurance**
>
> If <u>two or more</u> "ERISA employee benefit plans" are covered under Insuring Agreement **A.1.b.,** the Limit of Insurance must be written in an <u>amount sufficient</u> to cover each plans <u>as if there were separately</u> insured.
>
> **(2) Payment For Loss Sustained By Multiple Plans**
>
> Any payment we make for loss:
>
> **(a)** Sustained by two or more "ERISA employee benefit plans"; or
>
> **(b)** Of commingled "money", "securities" or "other property" of two or more "ERISA employee benefit plans":
>
> will be made to each such plan sustaining loss in the proportion that the amount of coverage required under ERISA for each such plan bears to the total amount of coverage on all plans sustaining loss.

7. No deductible

> **1. Additional Condition Applicable To Specific Insuring Agreements**
>
> **a. Under Insuring Agreement A.1.b.**
>
> **(3) Deductible Amount**
>
> Section **C.** Deductible does not apply to loss sustained by an "ERISA employee benefit plan" covered under Insuring Agreement **A.1.b.**

8. One year discovery period for loss

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE AS JOINT INSURED(S) – EMPLOYEE BENEFIT PLANS ("OMNIBUS" PROVISION)

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

Your "employee benefit plans" in existence as of the effective date of this insurance and any "employee benefit plan" that is created or acquired by you after the effective date of this insurance are automatically included as Insured(s).

E. ERISA Plan Insuring Agreement

1. Fidelity

b. ERISA Plan Official Dishonesty

We will pay for loss of or damage to "money", "securities" and "other property" belonging to an "ERISA employee benefit plan" resulting from "fraud or dishonesty" committed by:

(1) An "ERISA plan official", whether identified or not; or

(2) You, but only if you are a sole proprietor;

acting alone or in collusion with other persons.

F. Definitions regarding employee benefit plans

1. Fraud or Dishonesty

- Derived from ERISA regulations

19. "Fraud or dishonesty" means larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or other fraudulent or dishonest act, including any act or arrangement prohibited by title 18, section 1954 of the U.S. Code.

2. Employee benefit plan

13. "Employee benefit plan" means any "ERISA employment benefit plan" or "Non-ERISA employee benefit plan":

a. Shown in the Declarations as the first Named Insured; or

b. Included as an Insured and is sponsored:

(1) Solely by another insured; or

(2) Jointly by another Insured and an employee organization, including a labor organization, solely for the benefit of that Insured's "employees".

3. ERISA employee benefit plan

14. "ERISA employee benefit plan" means any welfare or pension benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendment thereto.

4. Non-ERISA employee benefit plan

24. "Non-ERISA employee benefit plan" means any welfare or pension benefit plan other than an "ERISA employee benefit plan."

5. Additional Exclusion

- Proof solely established by inventory

2. Additional Exclusions Applicable to Specific Insuring Agreements

a. Insuring Agreement **A.1.b.** does not cover:

Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(1) An inventory computation; or

(2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed

G. Employee Theft of Clients' Property

1. Insuring Agreement

1. Fidelity

c. Employee Theft of Clients' Property

We will pay for loss of or damage to "money", "securities" and "other property" sustained by your "client" resulting directly from "theft" committed by an identified "employee", acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" includes forgery.

2. Client Defined

4. "Client" means any natural person or entity to whom you provide goods or services in exchange for a fee or pursuant to a written agreement.

3. Additional Exclusions

- Proof solely established by inventory

2. Additional Exclusions Applicable to Specific Insuring Agreements

c. Insuring Agreement **A.1.c.** does not cover:

(1) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) An inventory computation; or

(b) A profit and loss computation.

However, where your "client" establishes wholly apart from such computations that it has sustained a loss, then you may offer your "client's" inventory records and actual physical count of inventory in support of the amount of loss claimed.

(2) Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

(3) Warehouse Receipts

Loss resulting from the fraudulent or dishonest signing, issuing, canceling or failing to cancel a warehouse receipt or any papers connected with it.

VII. Forgery Or Alteration – Insuring Agreement 2

Insuring Agreements			Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
2.	Forgery Or Alteration			
	a.	Forgery Of Negotiable Instruments	$	$
	b.	Forgery Of Payment Card Instruments	$	N/A

A. Definitions

1. Forgery

> **18.** "Forgery" means the signing of the name of another person entity with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

2. Alteration

a) Changing its meaning; or

b) Materially affecting the rights of persons interested in the document

B. Insuring Agreements

1. Forgery of Negotiable Instruments

> **2. Forgery Or Alteration**
>
> **a. Forgery Of Negotiable Instruments**
>
> **(1)** We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:
>
> **(a)** Made or drawn by or drawn upon you; or
>
> **(b)** Made or drawn by one acting as your agent;
>
> or that are purported to have been so made or drawn.
>
> For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act will be treated the same as the original it replaced.
>
> **(2)** If you are sued for refusing to pay any instrument covered in Paragraph **(1)** above, on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

2. Forgery Of Payment Card Instruments

- From withdrawn endorsement CR 25 20

> **2. Forgery Or Alteration**
>
> **b. Forgery Of Payment Card Instruments**
>
> We will pay for loss resulting directly from "forgery" of written instruments required in conjunction with any credit, debit or charge card issued to:
>
> **(1)** You; or
>
> (**2**) Any of your "employees" or "ERISA plan officials";
>
> for business purposes.

3. Deductible

> **(1) Deductible Amount**
>
> The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.2.**

4. Facsimile Signatures

- Includes electronic signatures

> **(2) Electronic And Mechanical Signatures**
>
> We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

5. Proof of Loss

> **(3) Proof Of Loss**
>
> You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

6. Forgery of Payment Card Instruments Exclusion

> **2. Additional Exclusions Applicable to Specific Insuring Agreements**
>
> **4.** Insuring Agreement **A.2.b.** does not cover:
>
> **(1) Non-compliance With Payment Card Issuer's Requirements**
>
> Loss arising from any credit, debit or charge card if you have not complied fully with the provisions, conditions or other terms under which the card was issued.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD WAREHOUSE RECEIPTS FORGERY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

and applies to the Forgery or Alteration Insuring Agreement.

SCHEDULE

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

A. In Section **A. Insuring Agreements:**

Covered instruments includes "warehouse receipts" and "withdrawal orders".

B. The following is added to Section **B. Limit Of Insurance:**

The most we will pay for loss resulting directly from an "occurrence" is the Limit Of Insurance shown in the Schedule.

C. Section **F. Definitions:**

The following are added:

1. "Warehouse receipt" means an instrument that you issued, or purportedly issued at any of your offices that evidences or purports to evidence receipt by or deposit with you of goods, wares, merchandise or commodities.

b. "Withdrawal order" means a written order directed to you that you receive at any of your offices that is drawn or purports to be drawn by or under authority from the owner, assignee or transferee of any "warehouse receipt".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE PERSONAL ACCOUNTS OF SPECIFIED PERSONS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL PROPERTY AND FORGERY POLICY

and applies to the Forgery or Alteration Insuring Agreement.

SCHEDULE

Name Of Person	Limit Of Insurance
	$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

In Section **A. Insuring Agreements:**

The following is added to the **Forgery Or Alteration** Insuring Agreement:

Each person named in the Schedule is an Insured under the Forgery Or Alteration Insuring Agreement, but only for loss involving covered instruments of that person's personal account and is subject to the Limit of Insurance shown in the Schedule. That Limit Of Insurance is part of not in addition to, the Limit Of Insurance shown in the Declarations.

VIII. Money, Securities and Other Property– Agreements 3, 4 and 5

Insuring Agreements		Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
3.	**Inside The Premises – Theft Of Money And Securities**	$	$
4.	**Inside The Premises – Robbery Or Safe Burglary Of Other Property**	$	$
5.	**Outside The Premises**	$	$

A. Definitions

1. Financial Institution Premises

> **17.** "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph **F.9.a**.

2. Financial Institution

> **16.** "Financial institution" means:
>
> **a.** With regard to Insuring Agreement **A.3.**;
>
> **(1)** A bank, savings bank, savings and loan association, trust company, credit union or similar depositary institution;
>
> **(2)** An insurance company; or
>
> **(3)** A stock brokerage firm or investment company.

3. Destruction

a) *Insured property was destroyed. No intent to destroy the property is necessary.*

4. Messenger

- Outside the premises

> **22.** "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises."

5. Mysterious Disappearance

a) *Insured property was known to be at a given place at a given time. It is later discovered to be missing.*

6. Premises

> **27.** "Premises" means the interior of that portion of any building you occupy in conducting your business.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXTEND PREMISES TO ENTIRE PLOT OF GROUND UNDER YOUR CONTROL

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below.

SCHEDULE

☐ **Inside the Premises – Theft of Money and Securities**
Address Of Premises:
☐ **Inside the Premises – Robbery or Safe Burglary of Other Property**
Address Of Premises:
☐ **Inside the Premises – Robbery or Safe Burglary of Money and Securities**
Address Of Premises:

☐	**Inside the Premises – Robbery Of A Watchperson Or Burglary Of Other Property**
Address Of Premises:	
☐	**Inside the Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities**
Address Of Premises:	
Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.	

In Section **F. Definitions:**

The definition of "Premises" is amended to include the entire plot of ground under your control at the address shown in the Schedule.

7. Watchperson

• No other duties

> **36.** "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.

B. Insuring Agreements

1. Inside The Premises – Theft of Money and Securities – Insuring Agreement 3

> **3. Inside The Premises – Theft Of Money And Securities**
>
> We will pay for:
>
> **a.** Loss of "money" and "securities" inside the "premises" or "financial institution premises":
>
> **(1)** Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
>
> **(2)** Resulting directly from disappearance or destruction.
>
> **b.** Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" or "securities", if you are the owner of the "premises" or are liable for damage to it.
>
> **c.** Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSIDE THE PREMISES – ROBBERY OF A CUSTODIAN OR SAFE BURGLARY OF MONEY AND SECURITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

With regard to this Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Mony And Securities

We will pay for:

1. Loss of or damage to "money" and "securities":

a. Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or

b. Inside the "premises" or a "financial institution premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

2. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

3. Loss from damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of the loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. The following are added to Section **D.2 Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not apply to:

1. Fire

Loss resulting from fire, however caused, except:

a. Loss of or damage to "money" and "securities"; and

b. Loss from damage to a safe or vault.

2. Vandalism

Loss from damage to the "premises" or its exterior or to any "other property" by vandalism or malicious mischief.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SECURITIES DEPOSITED WITH OTHERS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

SCHEDULE

Name	Address Of Premises	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
Name Of Custodian		$	$
Name Of Depository			
Name Of Custodian			
Name Of Depository			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

With regard to this Securities Deposited With Others endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following is added to Section **A. Insuring Agreements**:

We will pay for loss of or damage to "securities" while they are:

1. Inside the "custodian's premises";

2. Being conveyed outside the "custodian's premises" by the "custodian" or an employee of the "custodian"; or

3. On deposit by the "custodian" for safekeeping in a "depository";

resulting directly from "theft", disappearance or destruction.

B. Section **B. Limit Of Insurance** is replaced by the following:

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit of Insurance shown in the Schedule.

C. Section **C. Deductible** is replaced by the following:

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Schedule. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **D.** Exclusions:

1. Under Paragraph **1.:**

As respects the Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives Exclusion, neither the "custodian" nor the "depository" is deemed to be your authorized representative within the meaning of this exclusion.

2. The following is added to Paragraph **2.**:

This Insuring Agreement does not cover:

a. Exchanges or Purchases

Loss resulting from the giving or surrendering of "securities" in any exchange or purchase.

b. Premises

Loss in any "premises" that you occupy.

c. Property Owned Or Held As Collateral

Loss of or damage to "securities" owned by the "custodian" or "depository" or held by the "custodian" or "depository" in trust for more than 30 days.

e. Voluntary Parting Of Title To Or Possession Of Property

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any fraudulent or dishonest act to voluntarily part with title to or possession of any "securities".

E. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

Change Of Depository

If the "depository" shown in the Schedule is changed by the "custodian", this insurance will apply to the new "depository", if you give us notice of the change within 30 days after the change.

F. In Section **F. Definitions:**

The following definitions are added:

1. "Custodian" means the custodian shown in the Schedule"

2. "Custodian's premises" means the interior of that portion of any building at the address shown in the Schedule that is occupied by the "custodian" or "depository".

3. "Depository" means the depository shown in the Schedule.

2. Inside The Premises – Robbery Or Safe Burglary Of Other Property – Insuring Agreement 4

- Include robbery of a janitor – CR 35 02
- Inside the premises – Theft of other property – CR 04 05

> **4. Inside The Premises – Robbery Or Safe Burglary Of Other Property**
>
> We will pay for:
>
> **a.** Loss of or damage to "other property":
>
> **(1)** Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
>
> **(2)** Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".
>
> **b.** Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
>
> **c.** Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

a) Robbery

- Taking of property
- Actual or threatened harm to custodian

> **28.** "Robbery" means the taking of property from the care and custody of a person by one who has:
>
> **a.** Caused or threatened to cause that person bodily harm; or
>
> **b.** Committed an obviously unlawful act witnessed by that person.

b) Custodian

- Inside the premises

> **8.** "Custodian" means you, any of your partners, "members", or "employees" while having care and custody of property inside the "premises," excluding any person while acting as a "watchperson" or janitor.

c) Safe Burglary

- Forced entry into a safe
- Manipulation not covered
- Removal of safe

> **29.** "Safe Burglary" means the unlawful taking of:
>
> **a.** Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
>
> **b.** A safe or vault from inside the "premises."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FORCIBLE ENTRY INTO PREMISES REQUIREMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below.

☐ **Inside The Premises – Robbery Or Safe Burglary Of Other Property**
☐ **Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities**
Information required to complete this Schedule, if not shown above, will be shown in the declarations.

"Safe burglary" must be committed by a person who first makes an unlawful entry into your "premises" as evidenced by marks of forcible entry.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSIDE THE PREMISES – ROBBERY OR BURGLARY OF OTHER PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

With regard to this Inside The Premises – Robbery Of A Watchperson Or Burglary Of Other Property endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following insuring agreement is added to Section **A. Insuring Agreements:**

Inside The Premises – Robbery Of A Watchperson Or Burglary Other Property

We will pay for:

1. Loss of or damage to “other property” inside the “premises” resulting directly from an actual or attempted:

a. “Robbery” of a “watchperson”; or

b. “Burglary”.

2. Loss from damage to the “premises” or its exterior resulting directly from an actual or attempted:

a. “Robbery” of a “watchperson”; or

b. “Burglary”;

if you are the owner of the “premises” or are liable for damage to it.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an “occurrence” is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an “occurrence”, unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. The following are added to Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not cover:

1. Changes In Condition

Loss occurring while there is any change in the condition of the risk within your control that increases the possibility of loss.

2. Fire

Loss resulting from fire, however caused, except loss from damage to a safe or vault.

3. **Motor Vehicles Or Equipment And Accessories**

   Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

4. **Vandalism**

   Loss from damage to the "premises" or its exterior or to any "other property" by vandalism or malicious mischief.

E. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

1. **Suspension Of Coverage**

   If a loss covered under this Insuring Agreement occurs, coverage is suspended until the "premises" are restored to the same condition of security that existed prior to the loss. However, if you maintain at least one "watchperson" while the "premises" are closed for business, this condition will not apply.

F. In Section **F. Definitions:**

1. The definition of "watchperson" is replaced by the following:

   "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties. A "watchperson" also includes a janitor you employ who has care and custody of covered property.

2. The following definition is added:

   Burglary" means the unlawful taking of property from inside the "premises" by a person unlawfully entering or leaving the "premises" as evidenced by marks of forcible entry or exit.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSIDE THE PREMISES – THEFT OF OTHER PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

With regard to this Inside The Premises – Theft Of Other Property Endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Inside The Premises – Theft Of Other Property

We will pay for:

1. Loss of or damage to "other property" inside the "premises" resulting directly from "theft".

2. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "other property", if you are the owner of the "premises" or are liable for damage to it.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. The following are added to Section **D.2. Additional Exclusions Applicable To Specific Insuring Agreements:**

This Insuring Agreement does not apply to:

1. Changes In Condition

Loss occurring while there is any change in the condition of the risk within your control that increases the possibility of loss.

2. Exchanges OR Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

3. Fire

Loss resulting from fire, however caused, except:

a. Loss from damage to a safe or vault; or

b. Loss from "theft" occurring during a fire inside the "premises".

4. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

a. An inventory computation; or

b. A profit and loss computation.

5. **Motor Vehicles Or Equipment And Accessories**
   Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.
6. **Vandalism**
   Loss from damage to the "premises" or its exterior, or to any "other property", by vandalism or malicious mischief.
7. **Voluntary Parting Of Title To Or Possession Of Property**

   Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any fraudulent or dishonest act to voluntary part with title to or possession of any property.

E. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

1. If a loss covered under this Insuring Agreement occurs, coverage is suspended until the "premises" are restored to the same condition of security that existed prior to the loss. However, if you maintain at least one "watchperson" while the "premises" are closed for business, this condition will not apply.

3. Outside The Premises – Insuring Agreement 5

5. Outside The Premises

We will pay for:

a. Loss of “money” and “securities” outside the “premises” in the care and custody of a “messenger” or an armored motor vehicle company resulting directly from “theft”, disappearance or destruction.

b. Loss of or damage to “other property” outside the “premises” in the care and custody of a “messenger” or an armored motor vehicle company resulting directly from an actual or attempted “robbery”.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE COVERED PROPERTY IN CUSTODY OF DESIGNATED AGENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below:

☐ **Inside The Premises – Theft Of Money And Securities** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**
☐ **Inside The Premises – Robbery Or Safe Burglary Of Other Property** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**
☐ **Outside The Premises** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**

☐ **Inside The Premises – Theft Of Other Property** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**
☐ **Inside The Premises – Robbery Of A Watchperson Or Burglary Of Other Property** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**
☐ **Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities** **Address Of Premises:** **Name Of Agent:** **Service Performed For You:** **Limit Of Insurance:** **$**

1. The Definition of "Premises" is amended to include the interior of that portion of any building occupied by an agent (other than an armored motor vehicle company) shown in the Schedule in conducting its business.

2. The definition of "Messenger" is amended to include any agent (other than an armored motor vehicle company) shown in the Schedule and any officer, partner or employee of the agent.

3. The most we will pay for loss caused by an agent shown in the Schedule above is the Limit Of Insurance shown in the Schedule. That Limit of Insurance is part of, not in addition to, the Limit Of Insurance shown in the Declarations.

C. Additional Exclusions

Learning Objective – Apply the exclusions and conditions of the Money, Securities and Other Property insuring agreements.

- Stock exchanges or fraud
- Money and securities exception
- Watch out for drink machines

e. Insuring Agreements **A.3., A.4.** and **A.5.** do not cover:

(1) Accounting Or Arithmetical Errors Or Omissions

Loss resulting from accounting or arithmetical errors or omissions.

(2) Exchanges Or Purchases

Loss resulting from giving or surrendering of property in any exchange or purchase.

(3) Fire

Loss or damage resulting from fire, however caused, except:

(a) Loss of or damage to "money" and "securities"; and

(b) Loss from damage to a safe or vault.

4. **Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

5. **Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

6. **Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property", by vandalism or malicious mischief.

7. **Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your expressed or implied authority, being induced by any fraudulent or dishonest act to voluntarily part with title to or possession of any property.

D. Additional Condition

d. Conditions Applicable To Insuring Agreement A.5.

Armored Motor Vehicle Companies

We will only pay for the amount of loss you cannot recover:

(1) Under your contract with the armored motor vehicle company; and

(2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUDE SPECIFIED PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below.

SCHEDULE

☐ **Inside The Premises – Theft Of Money And Securities**
Property Not Covered
☐ **Inside The Premises – Robbery Or Safe Burglary Of Other Property**
Property Not Covered
☐ **Outside The Premises**
Property Not Covered
☐ **Computer And Funds Transfer Fraud**
Property Not Covered

☐	**Inside The Premises – Theft Of Other Property**
Property Not Covered	
☐	**Inside The Premises – Robbery Of A Watchperson Or Burglary Of Other Property**
Property Not Covered	
☐	**Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities**
Property Not Covered	
Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.	

Covered property does not include the property shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADD PROTECTIVE DEVICES OR SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below:

SCHEDULE

Address Of Premises:

Items Applicable:

Item 1. ☐ The burglar alarm system shown below will be:
a. Maintained in proper working order; and
b. Connected at all times;
when the "premises" is not open for business.

Name of Alarm Company	**UL Classification**	
Alarm Company Has Keys	**Type Of Alarm**	**Certificate Number**
☐ Yes	☐ Premises	**Effective:**
☐ No	☐ Safe or Vault	**Expiration:**

Connected With:

Outside Central Station	**Outside Gong**
☐ Yes	☐ Yes
☐ No	☐ No

Item 2. ☐	________________ private "watchperson(s)" (state the number) with no other duties, that you employ exclusively, will be on duty inside the "premises" while closed for business. Each will make at least hourly rounds and will: **a.** Register at least hourly on a clock — ☐ Yes ☐ No or **b.** Signal a central station — ☐ Yes ☐ No at least hourly — ☐ Yes ☐ No	
Item 3. ☐	The "premises" is equipped with a bullet resisting enclosure for which you hold an unexpired Underwriters' Laboratories, Inc. certificate.	
Item 4. ☐	The "premises" is equipped with a bullet resisting enclosure and alarm system for which you hold an unexpired Underwriters' Laboratories, Inc. certificate.	
Item 5. ☐	________________ guard(s) (state the number) will be on duty inside the "premises" or at its door while regularly open for business.	
Item 6. ☐	The "premises" is equipped with a holdup alarm connected with: ☐ A central station. ☐ A police station with one regular police officer on duty at all times. ☐ A local gong inside or outside the "premises".	
Item 7. ☐	Insured: ☐ Does hold an unexpired Underwriters' Laboratories, Inc. certificate. ☐ Does not hold an unexpired Underwriters' Laboratories, Inc. certificate.	
Item 8. ☐	Covered property will be conveyed outside the "premises" in the following: ☐ A locked safe or chest bolted or welded inside a vehicle. ☐ An Underwriters' Laboratories, Inc. approved messenger protective bag.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

The following is added to Section **E.1. Conditions Applicable To All Insuring Agreements:**

Devices Or Services

1. The devices or services indicated as applicable in the Schedule will be maintained at all times during the policy period.
2. This insurance ceases during any period you fail to maintain the indicated devices or services, but only as respects any "premises" or "messengers" affected, for the time of discontinuance.

   However, if for reasons beyond your control:

   a. You fail to maintain the alarm system shown in the Schedule but, until that alarm system has been restored, you provide at least one "watchperson" in addition to any number of "watchpersons" specified in this endorsement, this insurance will continue to apply.

   b. You fail to maintain any other device or service shown in the Schedule, the insurance provided by the applicable Insuring Agreement will apply only in the reduced amount that the premium for this insurance would have purchased in the absence of your agreement to maintain the device or service.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DECREASE LIMIT OF INSURANCE WHILE PREMISES NOT OPEN FOR BUSINESS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated below.

SCHEDULE

☐ **Inside The Premises – Theft Of Money And Securities**	
Address Of Premises	**Limit Of Insurance**
☐ **Inside The Premises – Robbery Or Safe Burglary Of Other Property**	
Address Of Premises	**Limit Of Insurance**
☐ **Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities**	
Address Of Premises	**Limit Of Insurance**
Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.	

For the "premises" shown in the Schedule, the Limit Of Insurance in the Declarations is reduced to the Limit Of Insurance shown in the Schedule while the "premises" are not open for business and a "custodian" is not on duty.

POLICY NUMBER:

CRIME AND FIDELITY
CR 35 24 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCREASE LIMIT OF INSURANCE FOR SPECIFIED PERIODS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

SCHEDULE

☐ **Inside The Premises – Theft Of Money And Securities** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**
☐ **Inside The Premises – Robbery Or Safe Burglary Of Other Property** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**
☐ **Outside The Premises** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**

☐ **Inside The Premises – Theft Of Other Property** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**
☐ **Inside The Premises – Robbery Of A Watchperson Or Burglary Of Other Property** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**
☐ **Inside The Premises – Robbery Of A Custodian Or Safe Burglary Of Money And Securities** **Address Of Premises:**	
Policy Period	
From: **To:** At 12:01 AM (Standard Time at your mailing address shown above)	
Limit Of Insurance	
From: $	**To: $**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

The Limit of Insurance is increased for the designated period shown in the Schedule. However, the amount by which the Limit is increased applies only to loss "discovered" by you before the end of the period of time provided in the Extended Period to Discover Loss Condition, after the designated period shown in the Schedule.

IX. Computer And Funds Transfer Fraud – Insuring Agreement 6

A. Definitions

1. Transfer Instruction

- Electronic instructions
- Written instructions
- Instructions to the bank to transfer funds
- Fraudulent Impersonation

34. "Transfer instruction" means:

a. With regard to Insuring Agreement **A.6.b.,** an instruction received by a "financial institution", which is transmitted**:**

(1) By email, text message, instant message, telefacsimile, telephone or other electronic means; or

(2) In writing, other than an instrument covered under Insuring Agreement **A.2.**;

directing the "financial institution" to transfer, pay or deliver "money" or "securities" from your "transfer account" to a person, entity or account beyond your control.

b. With regard to Insuring Agreement **A.7.**, an instruction received by you, which is transmitted:

(1) By email, text message, instant message, telefacsimile, telephone or other electronic means; or

(2) In writing;

directing you to transfer, pay or deliver "money" or "securities" to a person, entity or account beyond your control.

2. Transfer Account

- Insured can initiate transfer

33. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities".

B. Covered Causes of Loss

- Entry or change of data

- Transfer instructions

6. Computer And Funds Transfer Fraud

We will pay for:

a. Loss resulting directly from a fraudulent:

(1) Entry of "electronic data" or "computer program" into; or

(2) Change of "electronic data" or "computer program" within:

any "computer system", provided that the fraudulent entry or fraudulent change causes, with regard to Paragraphs **(1)** and **(2)** above:

(a) "Money", "securities" or "other property" to be transferred, paid or delivered to a person, entity or account beyond your control; or

(b) Your account at a "financial institution" to be debited or deleted;

without your knowledge or consent.

b. Loss resulting directly from a "financial institution" debiting your "transfer account" in reliance upon a "transfer instruction" purportedly issued by you directing the "financial institution" to transfer, pay or deliver "money" or "securities" from that account, but which "transfer instruction" proves to have been fraudulently issued by an imposter without you knowledge or consent.

C. Additional Exclusions

1. Authorized Access

f. Insuring Agreement **A.6.** does not cover:

(1) Authorized Access

Loss resulting from a fraudulent:

(a) Entry of "electronic data" or "computer program" into; or

(b) Change of "electronic data" or "computer program" within:

any "computer system" by an "employee" or other person or entity with authorized access to that "computer system".

2. Credit Card Transactions

f. Insuring Agreement **A.6.** does not cover:

(2) Credit Card Transactions

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification or other cards, or information contained on such cards.

3. Exchanges or Purchases

f. Insuring Agreement **A.6.** does not cover:

(3) Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

4. Fraudulent Instructions

f. Insuring Agreement **A.6.** does not cover:

(4) Fraudulent Instructions

Loss resulting from an "employee" or other person or entity acting upon any kind of instruction to:

(a) Transfer, pay or deliver "money", "securities" or "other property"; or

(b) Debit or delete your account:

which instruction proves to be fraudulent, except for a "financial institution" acting upon an instruction to debit your "transfer account" when covered under Insuring Agreement **A.6.b.**

5. Inventory Shortages

f. Insuring Agreement **A.6.** does not cover:

(5) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(a) An inventory computation; or

(b) A profit and loss computation.

E. Fraudulent Impersonation

1. Previous Definitions

a) Transfer Instruction – page 99

b) Client – page 69

2. Vendor Defined

35. "Vendor" means a natural person or entity that provides or has provided goods or services to you pursuant to a written agreement but does not include any financial institution or armored motor vehicle company.

3. Change of Account Request Defined

2. "Change of account request" means an instruction received by you, which is transmitted:

a. By email, text message, instant message, telefacsimile, telephone or other electronic means; or

b. In writing

directing you to change a "client's" or "vendor's" bank account information or wire transfer instructions.

4. Authorized Person Defined

1. "Authorized person" means:

a. Any "employee", "partner", "member", "manager", director or trustee;

b. Any "ERISA plan official"; or

c. You (but only if you are a sole proprietor):

who, with regard to Paragraphs **a., b.** and **c.** above, has the authority to:

(1) Act upon "change of account requests" or direct others to act upon such requests; or

(2) Issue "transfer instructions" or diect others to issue such instructions.

5. Insuring Agreement

- Change of account request
- Transfer instruction

7. Fraudulent Impersonation

We will pay for:

a. Loss resulting directly from you having acted upon a "transfer instruction" that was, in fact, issued by a "client" or "vendor", but in which the bank account information or wire transfer instruction of such "client" or "vendor" had been changed by you acting in good faith <u>reliance upon a "change of account request</u>" proves to have been fraudulently issued by an imposter without the knowledge or consent of the "authorized person", "client" or "vendor" and the fraudulent act resulted in you transferring, paying or delivering "money" or "securities" to a person, entity or account beyond your control; or

b. Loss resulting directly from you having acted in good faith <u>reliance upon a "transfer instruction"</u> purportedly issued by an "authorized person", "client" or "vendor" and you transferred, paid or delivered "money" or "securities" to a person, entity or account beyond your control, but which "transfer instruction" proves to have been fraudulently issued by an imposter without the knowledge or consent of the "authorized person", "client" or "vendor".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FRAUDULENT IMPERSONATION – EXTENDED COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

With respect to this Fraudulent Impersonation – Extended Coverage endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. In Section **A. Insuring Agreements**:

Insuring Agreement **7. Fraudulent Impersonation** is replaced by the following:

7. Fraudulent Impersonation – Extended Coverage

We will pay for:

a. Loss resulting directly from you having acted upon a “transfer instruction” that was, in fact, issued by a “client” or “vendor”, but in which the bank account information or wire transfer instruction of such “client” or “vendor” had been changed by you acting in good faith reliance upon a “change of account request” proves to have been fraudulently issued by an imposter without the knowledge or consent of the “authorized person”, “client” or “vendor” and the fraudulent act resulted in you transferring, paying or delivering “money”, “securities” or “other property” to a person, entity or account beyond your control; or

b. Loss resulting directly from you having acted in good faith reliance upon a “transfer instruction” purportedly issued by an “authorized person”, “client” or “vendor” and you transferred, paid or delivered “money”, “securities” or “other property” to a person, entity or account beyond your control, but which “transfer instruction” proves to have been fraudulently issued by an imposter without the knowledge or consent of the “authorized person”, “client” or “vendor”.

B. In Section **F. Definitions**:

Paragraph **b.** of the definition of Transfer instruction” “transfer instruction” is replaced by the following:

b. With regard to Insuring Agreement **A.7.**, an instruction received by you, which is transmitted:

(1) By email, text message, instant message, telefacsimile, telephone or other electronic means; or

(2) In writing;

Directing you to transfer, pay or deliver “money”, “securities” or “other property” to a person, entity or account beyond your control.

X. Money Orders and Counterfeit Money – Insuring Agreement 8

A. Definition

> **7.** "Counterfeit money" means an imitation of "money", which is intended to deceive and to be taken as genuine.

B. Covered Cause of Loss

> **8. Money Orders And Counterfeit Paper Currency**
>
> We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:
>
> **a.** Money orders issued by any post office, express company or bank that are not paid upon presentation; or
>
> **b.** "Counterfeit money" that is acquired during the regular course of business.

XI. General Exclusions

Learning Objective — Apply the general exclusions found in the Crime Policy.

A. Acts Committed by You or Your Partners

- CR 25 03 provides coverage for acts of partners
- CR 25 04 provides coverage for acts of members

a. Acts Committed by You, Your Partners Or Members

Loss resulting from "theft" or any other fraudulent or dishonest act committed by:

(1) You; or

(2) Any of your partners or "members";

whether acting alone or in collusion with other persons, except when covered under Insuring Agreement **A.1.b.**.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE PARTNERS AS EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

SCHEDULE

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

A. In Section **D.1. Exclusions Applicable To All Insuring Agreements:**

The **Acts Committed By You, Your Partners Or Members** Exclusion is replaced by the following:

Loss resulting from "theft" or any other fraudulent or dishonest act committed by:

1. You; or

2. Any of your partners or "members", except a partner who has been included as an "employee" by this endorsement, whether acting alone or in collusion with other persons.

B. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

Partners

We will not pay for loss caused by any partner included as an "employee" by this endorsement, unless the amount of that loss exceeds the sum of:

1. Any amounts you owe that partner on the date that the loss was "discovered";

2. The value of that partner's partnership interest in a partnership insured under this insurance as determined by the closing of that partnership's books on the date that the loss was "discovered"; and

3. Any applicable Deductible Amount.

We will then pay the amount of loss excess of that sum, up to the Limit of Insurance applicable to the Employee Theft Insuring Agreement.

C. In Section **F. Definitions:**

The definition of "employee" is amended to include any natural person who is a partner in a partnership that is an Insured and who is shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE MEMBERS OF A LIMITED LIABILITY COMPANY AS EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

SCHEDULE

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

A. In Section **D.1. Exclusions Applicable To All Insuring Agreements:**

The **Acts Committed By You, Your Partners Or Members** Exclusion is replaced by the following:

Loss resulting from "theft" or any other fraudulent or dishonest act committed by:

1. You; or

2. Any of your partners or "members", except a "member" who has been included as an "employee" by this endorsement, whether acting alone or in collusion with other persons.

B. The following is added to Section **E.2. Additional Conditions Applicable To Specific Insuring Agreements:**

Members

We will not pay for loss caused by any "member" included as an "employee" by this endorsement, unless the amount of that loss exceeds the sum of:

1. Any amounts you owe that partner on the date that the loss was "discovered";

2. The value of that "member's" membership interest in the limited liability company insured under this insurance as determined by the closing of that limited liability company's books on the date that the loss was "discovered"; and

3. Any applicable Deductible Amount.

We will then pay the amount of loss excess of that sum, up to the Limit of Insurance applicable to the Employee Theft Insuring Agreement.

C. In Section **F. Definitions:**

The definition of "employee" is amended to include any natural person who is a "member" of a limited liability company that is an Insured and who is shown in the Schedule.

B. Acts of Employees, ERISA Plan Officials, Managers, Directors

- Reinforces the fact that coverage is provided under employee fidelity

> **b. Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives**
>
> Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", "ERISA plan officials", "managers", directors, trustees or authorized representatives:
>
> **(1)** Whether acting alone or in collusion with other persons; or
>
> **(2)** While performing services for you or otherwise;
>
> except when covered under Insuring Agreement **A.1., A.1.b.**or **A.1.c.**

C. Prior Acts of Employees

> **c. Acts Committed By Your Employees, ERISA Plan Officials Prior To The Policy Period**
>
> Loss caused by an "employee" or "ERISA plan official" if the "employee" or "ERISA plan official" had also committed "theft" or any other fraudulent or dishonest act prior to the effective date of this insurance and you or a "designated person", not in collusion with the "employee" or "ERISA plan official", learned of such "theft" or fraudulent or dishonest act prior to the Policy Period shown in the Declarations.

D. Confidential Or Personal Information

- Excludes disclosure or use
- Some of the excluded exposures available under cyber

> **d. Confidential Or Personal Information**
>
> Loss resulting from:
>
> **(1)** The disclosure of your or another person's or entity's confidential or personal information; or
>
> **(2)** The use of another person's or entity's confidential or personal information, except that this Paragraph **(2)** does not apply to loss otherwise covered under this insurance that results directly from the use of your or an "employee benefit plan" participant's confidential or personal information.
>
> For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, "client", customer or "vendor" information, financial information, payment card information, health information, retirement or health savings account information or any other type of nonpublic information.

E. Data Security Breach

- Available under cyber policy

e. Data Security Breach

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or entity's confidential or personal information, including, but not limited to, patents, trade secrets, processing methods, "client", customer, or "vendor" information, financial information, payment card information, health information, retirement or health savings account information or any other type of nonpublic information.

F. Governmental Action

f. Governmental Action

Loss resulting from seizure or destruction of property by order of governmental authority.

G. Indirect Loss

- Business income excludes also
- Liability damages, except compensatory

g. Indirect Loss

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

(1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".

(2) Payment of damages of any type for which you are legally liable. But we will pay compensatory damages arising directly from a loss covered under this insurance.

(3) Payment of costs, fees or other expenses you incur in establishing either the existence or amount of loss under this insurance.

H. Kidnap, Ransom, Extortion And Other Unlawful Demands

- No coverage applies from surrender of payment
- Available under Kidnap/Ransom and Extortion Coverage Form CR 00 40

h. Kidnap, Ransom, Extortion And Other Unlawful Demands

(1) Loss resulting from the surrender of ransom in response to an unlawful demand including, but not limited to, an unlawful demand arising out of:

(a) An actual or alleged kidnap or threat to do bodily harm to any person, other than "robbery" covered under this insurance;

(b) A threat to do damage to any property or to contaminate, pollute or render substandard your products or services;

(c) A threat to introduce a denial of service attack into any "computer system";

(d) A threat to introduce a virus or other malicious instruction into any "computer system", which would encrypt, damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system"; or

(e) A threat to access, download, disseminate, divulge or utilize:

(i) Your information or the information of any other natural person or entity; or

(ii) Weaknesses in the source code withing any "computer system";

except when covered under Insuring Agreement **A.1.a.** or **A.1.b.**

(2) Loss resulting from payment of any kind in response to denial of service attack, ransomware, virus or other malicious instruction introduced into any "computer system", "electronic data" or "computer program", except when covered under Insuring Agreement **A.1.a.** or **A.1.b.**

(3) Fees, costs and expenses incurred by you arising out of any act or event in Paragraph **(1)** or **(2)** above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXTORTION – COMMERCIAL ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY

SCHEDULE

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

With regard to this Extortion – Commercial Entities endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by endorsement.

A. The following is added to Section **A. Insuring Agreements:**

Extortion – Commercial Entities:

We will pay for loss of “money”, “securities” or “other property surrendered by you to a natural person or entity as ransom away from your “premises”, except in any Territory shown in the Schedule, as a result of a threat first communicated to you during the Policy Period shown in the Declarations to:

1. Do bodily harm to any of your directors, trustees, partners, “members”, “managers”, “employees”, “ERISA plan officials”, or to you (if you are a sole proprietorship), or to a relative or invitee of any of these persons, other than “robbery”, who was, or allegedly was, captured;

2. Do damage to the “premises” or “other property” inside the “premises”; or

3. Contaminate, pollute or render substandard your products or goods.

B. Limit Of Insurance:

The most we will pay for all loss resulting directly from an “occurrence” is the applicable Limit Of Insurance shown in the Declarations.

C. Deductible

We will pay for loss resulting directly from an “occurrence”, unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **D.1. Exclusions Applicable To All Insuring Agreements,** the **Kidnap, Ransom, Extortion And Other Unlawful Demands** Exclusion is replace by the following:

h. Kidnap, Ransom, Extortion And Other Unlawful Demands

(1) Loss resulting from the surrender of ransom in response to an unlawful demand including, but not limited to, an unlawful demand arising out of:

(a) An actual or alleged kidnap or threat to do bodily harm to any person, other than "robbery" covered under this insurance;

(b) A threat to do damage to any property;

(c) A threat to introduce a denial of service attack into any "computer system";

(d) A threat to introduce a virus or other malicious instruction into any "computer system", which would encrypt, damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system"; or

(e) A threat to access, download, disseminate, divulge or utilize:

(i) Your information or the information of any other natural person or entity; or

(ii) Weaknesses in the source code within any "computer system";

except when covered under Insuring Agreement **A.1.a., A.1.b.** or this Insuring Agreement.

(2) Loss resulting from payment of any kind in response to a denial of service attack, ransomware, virus or other malicious instruction introduced into any "computer system" that denies or restricts access, encrypts, downloads or otherwise damages, destroys or corrupts any "computer system", "electronic data" or "computer program", except when covered under Insuring Agreement **A.1.a.** or **A.1.b.**

(3) Fees, costs and expenses incurred by you arising out of any act or event in Paragraph **(1)** or **(2)** above.

E. In Section **E.1. Conditions Applicable To All Insuring Agreements:**

1. The following is added to the **Duties In The Event Of Loss** Condition:

When you first become aware of facts which would cause a reasonable person to assume that an extortion threat of the type covered under this endorsement has been or will be incurred, you must make every reasonable effort to report the extortionist's demand to local law enforcement authorities and, if appropriate, the Federal Bureau of Investigation pr foreign equivalent before surrendering any property as ransom.

2. The **Territory** Condition is replaced by the following:

Territory

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world, except in any Territory shown in the Schedule.

3. The **Valuation – Settlement** Condition is amended as follows:

a. The first sentence of Paragraph **(2) Securities** is replaced by the following:

Loss of or damage to "securities" but only up to their market value on the day they were surrendered.

b. Paragraph **(3) Property Other Than Money And Securities** is replaced by the following:

(3) Property Other Than Money And Securities

Loss of or damage to property other than "money" and "securities" for not more than:

(a) Its replacement cost value without deduction for depreciation at the time it was surrendered; or

(b) The Limit of Insurance;

whichever is less.

I. Legal Expense

- CR 25 40 Include expenses incurred to establish amount of loss

h. Legal Fees, Costs And Expenses

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE EXPENSES INCURRED TO ESTABLISH AMOUNT OF COVERED LOSS

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Insuring Agreement(s) designated in the Schedule.

SCHEDULE

☐ **Employee Theft Insuring Agreement**	
Costs, Fees Or Other Expenses	
Limit Of Insurance	**Covered Loss**
$	**%**
☐ **Computer And Funds Transfer Fraud Insuring Agreement** (Not applicable to the Commercial Fidelity And Forgery Policy or Government Fidelity And Forgery Policy)	
Costs, Fees Or Other Expenses	
Limit Of Insurance	**Covered Loss**
$	**%**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. In Section **D.1. Exclusions Applicable To All Insuring Agreements:**

Paragraph **(3)** of the **Indirect Loss** Exclusion **D.1.b.** is replaced by the following:

(3) Payment of costs, fees or other expenses you incur in establishing the existence of loss under this insurance.

B. The following is added to Paragraph **2.** Of Section **E. Conditions:**

Costs, Fees And Expenses

1. We will pay for reasonable costs, fees or other expenses that you incur and pay to an independent accounting, auditing or other service use to determine the amount of loss covered under this insurance.

2. The most we will pay for reasonable costs, fees or other expenses is limited to the lesser of the:

a. Limit Of Insurance; or

b. Percentage of the Covered Loss;

shown in the Schedule.

3. We will pay for reasonable costs, fees or other expenses only after settlement of covered loss.

4. We will have no liability to pay any such costs, fees or other expenses if the amount of the covered loss does not exceed the Deductible Amount of the applicable Insuring Agreement.

5. The amount that we will pay is part of, not in addition to, the Limit of Insurance for the applicable Insuring Agreement.

J. Chemical, Biological, Nuclear

> **j. Nuclear, Biological Or Chemical Hazard**
>
> Loss or damage resulting from the dispersal or application of pathogenic or poisonous biological or chemical materials, nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident, however caused.

K. Pollution

> **k. Pollution**
>
> Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

L. Virtual Currency – *see page 13*

M. War

> **m. War and Similar Military Actions**
>
> Loss or damage resulting from:
>
> **(1)** War, including undeclared or civil war;
>
> **(2)** Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
>
> **(3)** Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending any of these.

XII. Conditions

Learning Objective — Explain the loss settlement conditions and apply each to specific loss situations.

A. Additional Premises or Employees

> **a. Additional Premises Or Employees**
>
> If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through:
>
> **(1)** Consolidation or merger with; or
>
> **(2)** Purchase or acquisition of assets or liabilities of:
>
> another entity, such "premises" and "employees" will automatically be covered under this insurance.
>
> Notice to us of an increase in the number of "premises" or "employees" is not required and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

B. Change of Control

1. Change of control defined

> **3.** "Change of control" means:
>
> **a.** The acquisition of any Insured more than 50% of its assets by an entity other than an another Insured, or the merger or consolidation of any Insured into or with an entity other than another Insured, such that the acquired Insured is not the surviving entity; or
>
> **b.** The obtaining by any person, entity or affiliated group of persons or entities of the right to:
>
> **(1)** Elect, appoint or designate more than 50% of the board of directors, board of trustees or functional equivalent thereof, of any Insured; or
>
> **(2)** Exercise a majority control of the board of directors, board of trustees or a functional equivalent thereof, of any Insured.

2. Change of control condition

b. Cancellation Or Termination

The following applies in addition to the Cancellation provision in the Common Policy Conditions.

(1) Coverage Termination

(a) This insurance terminates in its entirety immediately upon:

(i) The effective date of a "change of control" of the first Named Insured; or

(ii) The voluntary dissolution or liquidation of the first Named Insured.

(b) This insurance terminates as to any Insured, other than the first Named Insured, immediately upon:

(i) The effective date of a "change of control" of that Insured; or

(ii) The voluntary dissolution or liquidation of that Insured.

If this insurance terminates for any reason specified in Paragraph **(a)** or **(b)** above, we will send the first named Insured any premium refund due. The refund will be pro rata.

C. Concealment, Misrepresentation or Fraud

- Fraud applies to You
- Concealment or misrepresentation to any insured

c. Concealment, Misrepresentation Or Fraud

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceal or misrepresent a material fact concerning:

(1) This insurance;

(2) The property covered under this insurance;

(3) Your interest in the property covered under this insurance; or

(4) A claim under this insurance.

D. Consolidation – Merger

1. Loss Sustained Form

- No coverage for newly formed
  - Must modify Named Insured for coverage
- Automatic coverage
- 90 day limit

d. Consolidation – Merger – Acquisition

(1) Except as provided in Paragraph **(2)** below, if you consolidate or merge with another entity where you are the surviving entity, or you purchase or acquire the assets or liabilities of, another entity:

(a) You must give us written notice as soon as possible and obtain our written consent to extend this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent upon payment of an additional premium; but

(b) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, any insurance provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

Any "employee benefit plan" acquired in such consolidation, merger or purchase or acquisition will automatically be included as an Insured under this insurance.

2. Acquired Subsidiaries

- No coverage for newly formed
  - Must modify Named Insured for coverage
- Automatic coverage
- 90 day limit

d. Consolidation – Merger – Acquisition

(2) For "subsidiaries" you acquire in which you own greater than 50% of the voting stock or voting rights, the coverage provided by this insurance will automatically apply to loss sustained by such acquired "subsidiary" resulting directly from an "occurrence" taking place at any time which is "discovered" by a "designated person" during the Policy Period shown in the Declarations, except as provided in the Loss Sustained During Prior Insurance Conditions **E.1.l.** and **E.1.m.,** or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.h.,** provided that:

(a) The assets of the acquired "subsidiary" do not exceed the Percentage of Total Assets Applicable To Subsidiary Acquisitions shown in the Declarations, which is based on your total assets as reflected in your most recent fiscal year-end consolidated financial statements immediately preceding the effective date of this insurance; and

(b) The acquired "subsidiary" has not had any paid or reported claims of the type covered under this insurance for the three-year period prior to the date of such acquisition.

You are not required to provide notice of acquisition to us and you are not required to pay any additional premium for the remainder of the Policy Period shown in the Declarations.

Any "employee benefit plan" pf an acquired "subsidiary" will automatically be included as an Insured under this Insurance.

E. Cooperation

e. Cooperation

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

F. Duties in the Event of Loss

- Notify as soon as possible
- Request an extension of time when filing a loss

f. Duties In The Event Of Loss

Upon "discovery" of loss or a situation that may result in loss of or loss from damage to "money", "securities" or "other property"

(1) Except as provided in Paragraph **(2)** below, you must:

(a) Notify us as soon as possible;

(b) Give us a detailed, sworn proof of loss within 120 days;

(c) Cooperate with us in the investigation and settlement of any claim;

(d) Produce for our examination all pertinent records;

(e) Submit to examination under oath at our request and give us a signed statement of your answers; and

(f) Secure all of your rights of recovery against any person or organization for the loss and do nothing to impair those rights.

(**2)** If a Deductible Amount applies to the loss and a percentage is shown in the Declarations as the Percentage Of Deductible Amount Over Which Losses Must Be Reported, you do not have to notify us if the amount of loss at the time of "discovery" does not exceed such percentage of the applicable Deductible Amount.

However, if you later learn that the amount of such loss exceeds, or may reasonably be expected to exceed, the percentage of the applicable Deductible Amount, then you must:

(a) Notify us no later than 15 days from the earliest of:

(i) The date you learned that such loss exceeded the percentage of the applicable Deductible Amount;

(ii) The effective date of termination or cancellation of this insurance; or

(iii) The termination of the period of time provided in the Extended Period To Discover Loss Condition **E.1.h.(1)**;

(b) Give us a detailed, sworn proof of loss within 120 days from the date you gave us notice; and

(c) Comply with the requirements set forth in Paragraphs **(1)(c)** through **(1)(f)** above.

(3) If you have any reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.a., A.1.b., A.1.c.** or **A.2.**) involves a violation of law, you must notify local law enforcement authorities.

G. Employee Benefit Plans

g. Employee Benefit Plans

Any payment we make for loss sustained by any “employee benefit plan” will be mad to he plan sustaining the loss and will fully release us on account of such loss.

H. Joint Insured

- language that could serve to deny coverage

i. Joint Insured

(1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance.

(2) If a “designated person” of any Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.

(3) An "employee" of any Insured is considered to be an "employee" of every Insured.

(4) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.

(5) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any “employee benefit plan” for loss sustained by that plan, will fully release us on account of such loss.

I. Legal Action Against Us

- After 90 days
- Within 2 years

j. Legal Action Against Us

You may not bring any legal action against us involving loss:

(1) Unless you have complied with all the terms of this insurance;

(2) Until 90 days after you have filed proof of loss with us; and

(3) Unless brought within two years from the date the loss was "discovered".

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

J. Liberalization

k. Liberalization

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

K. Other Insurance

• Two deductibles could apply

I. Other Insurance

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

(1) Primary Insurance

When this insurance is written as primary insurance, and:

(a) You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.

(b) You have other insurance covering the same loss other than that described in Paragraph **(a)** above, we will only pay for the amount of loss that exceeds:

(i) The limit of insurance and deductible amount of that other insurance, whether you can collect on it or not; or

(ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

(2) Excess Insurance

(a) When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the limit of insurance and deductible amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

(b) However, if loss covered under this insurance is subject to a Deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any deductible amount applicable to that other insurance.

L. Ownership of Property

- Owned property

m. Ownership Of Property; Interests Covered

The property covered under this insurance is limited to property:

(1) That you own or lease;

(2) That is held by you in any capacity; or

(3) For which you are legally liable, provided that you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or entity. Any claim for loss that is covered under this policy must be presented by you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GUESTS' PROPERTY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY

SCHEDULE

☐ **Guests' Property – In Safe Deposit Boxes**			
Address Of Premises	**Limit Of Insurance Per Occurrence**		**Deductible Amount Per Occurrence**
	$		**$**
☐ **Guests' Property – Inside The Premises**			
Address Of Premises	**Limit Of Insurance**		**Deductible Amount Per Occurrence**
	Per Guest	**Per Occurrence**	
	$		**$**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

With regard to this Guest's Property Endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following section(s) of this Insuring Agreement for which a Limit Of Insurance is shown in the Schedule, is added to Section **A. Insuring Agreements:**

Guests' Property

1. **Guests' Property – In Safe Deposit Boxes**

   We will pay for loss of or damage to "guests' property" for which you are legally liable while the property is in a safe deposit box inside the "premises".

2. **Guests' Property – Inside The Premises**

   We will pay for loss of or damage to "guests' property" for which you are legally liable while the property is inside the "premises" or in your possession.

   If you are sued for refusing to pay for loss of or damage to "guests' property", and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay is in addition to the applicable Limit Of Insurance shown in the Schedule.

B. Section **B. Limit Of Insurance** is replaced by the following:

B. Limit If Insurance

1. Guests' Property – In Safe Deposit Boxes

Under Paragraph **A.1** the most we will pay for all loss resulting directly from an "occurrence" is the Limit of Insurance shown in the Schedule.

2. Guests' Property – Inside The Premises

Under Paragraph **A.2.:**

a. The most we will pay in the aggregate for all loss resulting directly from an "occurrence" is the Per Occurrence Limit Of Insurance shown in the Schedule.

b. Subject to Paragraph **a.** the most we will pay for all loss resulting directly from an "occurrence" for any one guest, is the Per Guest Limit Of Insurance shown in the Schedule.

C. Section **C. Deductible** is replaced by the following:

C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the applicable Deductible Amount shown in the Schedule. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **D.** Exclusions:

1. Under Paragraph **1.**:

The **Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives** Exclusion and the **Legal Fees, Costs And Expenses Exclusion** do not apply to this Insuring Agreement.

2. The following is added to Paragraph **2.**:

This Insuring Agreement does not cover:

a. Assumption Of Liability

Loss resulting from liability you assume under any written agreement. However this exclusion does not apply under Paragraph **A.2.** above, to any written agreement entered into with a guest before the "occurrence" of any loss or damage that increases to an amount not exceeding $1,000 any lesser amount you may otherwise be liable for under any statute.

b. Fire

Loss of or damage to property resulting from fire, however caused.

c. Food Or Liquid

Under Paragraph **A.2.** above, loss of or damage to property resulting from the spilling, upsetting or leakage of any food or liquid.

d. Inherent Vice

Loss or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

e. Laundry Or Dry Cleaning

Under Paragraph **A.2.** above, loss of or damage to preperty while in your care and custody for laundering or cleaning.

f. Legal Liability

Loss of or damage to property resulting from insects, animals, wear and tear, gradual deterioration or inherent vice.

g. Samples Or Articles For Sale

Under Paragraph **A.2.** above, loss of or damage to property while in your care and custody for laundering or cleaning.

h. Motor Vehicles Or Equipment And Accessories

Under Paragraph **A.2.** above, to of or damage to any vehicle including:

(1) Its equipment and accessories; and

(2) Any property contained in or in a vehicle.

E. In Section **E. Conditions**:

1. Under Paragraph **1.**:

a. The Records Condition does not apply to this Insuring Agreement.

b. The **Ownership Of Property; Interests Covered** Condition is replaced by the following:

Ownership Of Property; Interests Covered

The property covered under this Insuring Agreement is limited to property belonging to your guests while the property is in a safe deposit box, inside the "premises" or in your possession.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or entity, including your guest. Any claim for loss that is covered under this Insuring Agreement must be presented by you.

2. The following is added to Paragraph **2.**:

Bankruptcy

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Insuring Agreement.

F. In Section **F. Definitions**:

1. The following definition is added:

"Guests' property" means "money", "securities" and "other property" belonging to your guest.

2. The definition of "premises" is replaced by the following:

"Premises" means the interior of that portion of any building at the address shown in the Schedule that you occupy in conducting your business.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LESSEES OF SAFE DEPOSIT BOXES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY

SCHEDULE

Section	Limit of Insurance Per Occurrence	Deductible Amount Per Occurrence
Name Of Depository:		
Address Of Depository Premises:		
Section	**Limit of Insurance Per Occurrence**	**Deductible Amount Per Occurrence**
Section A.1.	$	$
Section A.2.	$	$
Name Of Depository:		
Address Of Depository Premises:		
Section	**Limit of Insurance Per Occurrence**	**Deductible Amount Per Occurrence**
Section A.1.	$	$
Section A.2.	$	$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

With regard to this Lessees Of Safe Deposit Boxes Endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

A. The following section(s) of this insuring agreement for which a Limit Of Insurance is shown in the Schedule is added to Section **A. Insuring Agreements:**

Lessees Of Safe Deposit Boxes

We will pay for:

1. Loss of or damage to "securities" while they are:

a. In a safe deposit box in a vault inside the "depository premises"; or

b. Temporarily elsewhere inside the "depository premises" during the course of deposit or removal from your safe deposit box;

resulting directly from "theft", disappearance or destruction.

2. Loss of or damage to "other property" while the property is:

   a. In a safe deposit box in a vault inside the "depository premises"; or

   (2) Temporarily elsewhere inside the "depository premises" during the course of deposit or removal from the safe deposit box;

   resulting directly from an actual or attempted "burglary", "robbery" or vandalism.

B. Section **B. Limit Of Insurance** is replaced by the following:

B. Limit If Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit of Insurance shown in the Schedule.

C. Section **C. Deductible** is replaced by the following:

C. Deductible

We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Schedule. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. In Section **D. Exclusions**:

1. Under Paragraph **1.**:

As respects the Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives Exclusion, the "depository" is deemed not to be your authorized representative within the meaning of the exclusion.

2. The following is added to Paragraph **2.**:

This Insuring Agreement does not cover:

a. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

b. Fire

Under Paragraph **A.2.,** loss resulting from fire, however caused.

c. Property Owned Or Held As Collateral

Loss of or damage to property owned by the "depository" or held by it as collateral or held by the "depository" in trust for more than 30 days.

d. Voluntary Parting Of Title To Or Possession Of Property

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any fraudulent or dishonest act to voluntary part with title to or possession of any property.

E. The following definitions are added to Section **F. Definitions**:

1. "Burglary" means the taking of property from within a locked safe deposit box in a locked vault inside the "depository premises" by a person unlawfully entering the box and vault as evidenced by marks of forcible entry upon the exterior of the box and vault.

2. "Depository" means the depository shown in the Schedule.

3. "Depository premises" means the interior of that portion of any building at the address shown in the Schedule that is occupied by:

   a. The "depository"; or

   b. Its safe depository affiliate;

   in conducting a banking or safe deposit business.

M. Records

- Insured required to keep records to verify loss

p.	**Records**
	You must keep records of all Covered Property so we can verify the amount of any loss.

N. Recoveries

- First, the insured for loss in excess of limits
- Second, insurer
- Third, insured for deductible
- Fourth, insured for uncovered loss

q. Recoveries

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or you, will be applied net of the expense of such recovery:

(a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;

(b) Second, to us in satisfaction of amounts paid in settlement of your claim;

(c) Third, to you in satisfaction of any Deductible Amount; and

(d) Fourth, to you in satisfaction of any loss not covered under this insurance.

(2) Recoveries do not include any recovery:

(a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or

(b) Of original "securities" after duplicates of them have been issued.

O. Territory

- current and future operations?

r. Territory

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMEND TERRITORY CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

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

In Section **E.1. Conditions Applicable To All Insuring Agreements:**

1. The **Territory** Condition is replaced by the following:

Excluded Territory

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world, except in:

a. Any Territory shown in the Schedule; and

b. Any territory that is subject to trade or other economic sanction or embargo by the United States of America.

2. The following is added to the **Legal Action Against Us** Condition:

Unless you and we agree otherwise, any legal action against us involving loss must be brought in the United States of America (including its territories and possessions), Puerto Rico or Canada.

P. Subrogation

• Cannot impair after a loss

> **s. Transfer Of Your Rights Of Recovery Against Others To Us**
>
> You must transfer to us all your rights of recovery against any person or entity for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

Q. Valuation – Settlement

- RC settlement

t. Valuation – Settlement:

The value of any loss for purposes of coverage under this policy will be determined as follows:

(1) Money

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

(a) At face value in the "money" issued by that country; or

(b) In the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".

(2) Securities

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

(a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or

(b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicate of the "securities". However, we will, be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:

(**i**) Market value of the "securities" at the close of business on the day the loss was "discovered"; or

(**ii**) The Limit of Insurance applicable to the "securities".

(3) Property Other Than Money And Securities

(a) Loss of or damage to "other property" other than "money" and "securities" for the <u>replacement cost of the property</u> without deduction for depreciation. However, we will not pay more than the least of the following:

(i) The Limit of Insurance applicable to the lost or damaged property;

(ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;

(iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property; or

(b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **(a)** above**:**

(**i)** Until the lost or damaged property is actually repaired or replaced; and

(**ii)** Unless the repairs or replacement is made as soon as reasonably possible after the loss or damage occurred.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

(c) We will, at our option, pay for loss or damage to such property:

(i) In the "money" of the country in which the loss or damage was sustained; or

(**ii)** In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".

(d) Any property that we pay for or replace becomes our property.

Learning Objectives

- ☐ State reasons why an insured should purchase crime coverage *(see page 1)*
- ☐ Give a brief definition of the term employee *(see page 10)*
- ☐ Give a brief definition of crime coverage terms: money, securities, other property *(see page 13)*
- ☐ Differentiate how coverage is triggered under the Loss Sustained *(see page 24)* and the Discovery Forms *(see page 34)*
- ☐ Define the Extended Period to Discover Loss as found in the Loss Sustained Form *(see page 27)*
- ☐ Define the Extended Period to Discover Loss as found in the Discovery Form (*see page 34)*
- ☐ Apply the exclusions and conditions of the Money, Securities and Other Property insuring agreements *(see page 91)*
- ☐ Apply the general exclusions found in the Crime Policy *(see page 107)*
- ☐ Explain the loss settlement conditions and apply each to specific loss situations *(see page 119)*

CRIME COVERAGE CHART

COVERAGE FORM	***CAUSE OF LOSS***	***PROPERTY COVERED***	***CULPRIT***	***PLACE WHERE EFFECTIVE***
Employee Theft ***Agreement 1a***	Employee Theft, Including Forgery	All property including Money and Securities	Any Employee	Worldwide
Employee Theft Name Or Position Schedule ***CR 04 08***	Employee Theft Committed by Identified Employee	All property including Money and Securities	Employee Scheduled by Name or Position	Worldwide
ERISA Plan Official Dishonesty ***Agreement 1b***	Fraud or Dishonesty	All property including Money and Securities	ERISA Plan Official	Worldwide
Employee Theft of Client's Property ***Agreement 1c***	Employee Theft Committed by Identified Employee	All property including Money and Securities	Identified Employee	Worldwide
Forgery of Negotiable Instruments ***Agreement 2a***	Forgery or Alteration	Checks and Drafts issued by the Insured, Credit Cards by Endorsement	Anyone *but* an Employee	Worldwide
Forgery of Payment Card Instruments ***Agreement 2b***	Forgery of Written Instruments	Credit, Debit or Charge Card Issued for Business Purposes	Anyone *but* an Employee	Worldwide

CRIME COVERAGE CHART

COVERAGE FORM	***CAUSE OF LOSS***	***PROPERTY COVERED***	***CULPRIT***	***PLACE WHERE EFFECTIVE***
Theft of Money and Securities ***Agreement 3***	Theft, Disappearance & Destruction	Money and Securities Only	Anyone *but* an Employee	Inside the Premises or Financial Institution Premises
Inside the Premises – Theft of Other Property ***CR 04 05***	Theft	Property Other Than Money or Securities	Anyone *but* an Employee	Inside the premises
Robbery Or Safe Burglary ***Agreement 4***	Robbery or Safe Burglary	Property *Other Than* Money and Securities	Anyone *but* an Employee	Inside the Premises
Inside the Premises – Robbery or Safe Burglary of Money & Securities ***CR 04 07***	Robbery of a Custodian or Safe Burglary	Money and Securities Only	Anyone *but* an Employee	Inside the Premises
Outside the Premises ***Agreement 5***	Theft, Disappearance & Destruction	Money and Securities	Anyone *but* an Employee	Outside the Premises
	Robbery of Messenger	Other Property	Anyone *but* an Employee	Outside the Premises

CRIME COVERAGE CHART

COVERAGE FORM	***CAUSE OF LOSS***	***PROPERTY COVERED***	***CULPRIT***	***PLACE WHERE EFFECTIVE***
Computer and Funds Transfer Fraud ***Agreement 6***	Fraudulent Entry or Change of Data Fraudulent Instruction Directing Financial Institution To Transfer or Pay Funds From Insured's Account	All Property including Money and Securities Money and Securities	Anyone *but* an Employee	Worldwide
Fraudulent Impersonation ***Agreement 7***	Fraudulent Change Acting In Good Faith Fraudulent Impersonation of Authorized person, Customer or Vendor	Money and Securities	Anyone *but* an Employee	Worldwide
Fraudulent Impersonation – Extended Coverage ***CR 04 18***	Fraudulent Change Acting In Good Faith Fraudulent Impersonation of Authorized person, Customer or Vendor	Other Property	Anyone *but* an Employee	Worldwide
Money Orders And Counterfeit Money ***Agreement 8***	Acceptance of Counterfeit Money Order or Currency in Exchange for Currency, Merchandise or Services	Money Orders including Counterfeit Money Orders and Counterfeit Money	Anyone *but* an Employee	Worldwide
Extortion - Commercial Entities ***CR 04 03***	Extortion	All, including Threats to Property	Anyone *but* an Employee	Worldwide

CRIME COVERAGE CHART

COVERAGE FORM	***CAUSE OF LOSS***	***PROPERTY COVERED***	***CULPRIT***	***PLACE WHERE EFFECTIVE***
Lessees Of Safe Deposit Boxes ***CR 04 09***	Theft, Disappearance or Destruction	Securities	Anyone *but* an Employee	Depository premises listed on the Schedule
	Burglary, Robbery or Vandalism	Property other than Money and Securities	Anyone *but* an Employee	Depository premises listed on the Schedule
Securities Deposited with Others ***CR 04 10***	Theft, Disappearance or Destruction	Securities	Anyone *but* an Employee	Custodian premises listed on the Schedule
Guests' Property ***CR 04 11***	Legal liability because of loss or destruction of covered property	Guest's Property	Anyone *but* a named Insured or Partner	Safe Deposit Box inside the premises
	Legal liability because of loss or destruction of covered property	Guest's Property	Anyone *but* a named Insured or Partner	Inside the Premises
Safe Depository ***CR 04 12***	Legal liability because of loss or destruction of covered property	All customer's property including Money and Securities	Anyone *but* a named Insured or Partner	Safe Deposit Box or Vault plus temporary on premises
	Burglary, Robbery, Destruction or Damage	All customer's property including Securities	Anyone *but* an Employee	Safe Deposit Box or Vault plus temporary on premises

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James K. Ruble Seminar

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Section 3

Special Property Endorsements & Gaps

THE NATIONAL ALLIANCE
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SPECIAL PROPERTY ENDORSEMENTS AND GAPS FOR PROPERTY CLIENTS

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I. INTRODUCTION

A. Virus & SARS-CoV-2 (COVID-19) Property Insurance Coverage Questions?

1. A key to accessing property insurance is understanding that coverage may be afforded even if there is no physical damage to property or there is no “Loss” of property in the sense of the property being destroyed or vanishing.

2. Does the mere presence of SAR-CoV-2 constitute an insured loss or damage to property?

3. When property such as surfaces or airspace, are contaminated, including a virus, it may be deemed to be damaged.

4. In fact, courts have recognized that contamination that renders a property uninhabitable or unusable for its intended purpose may constitute direct property loss or damage.

5. Many courts have recognized that contamination of property by a hazardous substance is property damage. Court found coverage for ammonia that was accidently released into a facility, rendering the building unsafe until it could be aired out and cleaned. Therefore, the property can sustain physical damage without experiencing structural alteration.

6. However, viruses, pandemics, and contagious infectious disease such as SAR-CoV-2 are generally not designated perils in a standard form commercial property policy even with the Special Causes of Loss Form CP 10 30.

7. Most standard commercial property policies include the "exclusion of loss due to virus or bacteria" endorsement (CP 01 40 06 07).

    a. This endorsement expressly excludes "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease."

b. It applies to "coverage under all forms and endorsement that comprise this coverage part or policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority."

c. Therefore, even if coverage was otherwise triggered under the insuring agreement, this endorsement will most likely exclude any damages due to the coronavirus.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

C. With respect to any loss or damage subject to the exclusion in Paragraph **B.,** such exclusion supersedes any exclusion relating to “pollutants.”

D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:

1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.

E. The terms of the exclusion in Paragraph **B.,** or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

8. There are specialized commercial property policies that may include communicable and infectious diseases as a designated peril such as in hospitals and health care.

9. Therefore, most businesses that are suspending operations are not doing so due to SAR-CoV-2 causing physical damage to the building.

10. These enterprises are generally confronting circumstances where they are suspending operations as a means of preventing infected individual from transmitting SAR-CoV-2 to other policies.

11. Clients need to read their insurance contracts and agent/broker must submit claims to the insurance company if the client so directs as per the conditions of the insurance contract and agency or broker agreements.

B. Virus & SARS-CoV-2 (COVID-19) Business Income Insurance Coverage Questions?

1. Does the client have a standardized Business Income Coverage Form or a Business Interruption Coverage Form?

2. Standard ISO CP 00 30 Business Income (with Extra Expense) Coverage Form pays for the actual loss of business income, due to a suspension of operations, during the period of restoration, due to direct physical loss of property at the premise describes caused by a covered cause of loss.

    a. There is no direct loss or physical injury to tangible property.

Rose's 1, LLC v. Erie Ins. Exch., Civ. Case. No. 2020 CA 002424 (D.C. Super. Ct. Aug. 6, 2020).

In this case, the court held that restaurant owners were not entitled to COVID-19 business interruption coverage for losses sustained when their businesses were shut down by order of the Washington, DC, mayor. The policyholders argued that, because the policy provided coverage for "direct physical loss *or* damage," a loss of use of property was covered, even if the property was not damaged.

The court rejected plaintiff's argument, finding that "loss" does not include "loss of use" because it is modified by the words "direct" and "physical," and, therefore, "any 'loss of use' must be caused, without intervention of other persons or conditions, by something pertaining to matter - in other words, a direct physical intrusion onto the insured property."

The court also found that there was no evidence that COVID-19 was actually present on the policyholders' property, and, therefore, their loss was not due to any physical change in the property; rather, it was a result of a government order requiring them to close.

b. There is no restoration.

c. There is no covered cause of loss:

1) There are exclusions for pollutants and contaminants.
2) Exclusion for consequential losses.
3) Following the Pandemic, many insurance companies added specific exclusions for bacterial or viral infections to their coverage
4) Exclusion of loss due to virus or bacteria endorsement CP 01 40 06 07.
5) Additional Communicable Disease Exclusions were also applied.

d. There is a waiting period of coverage on many forms ranging from 24 to 72 hours

e. There may be dependent property coverage endorsed to the policy with the same triggers.

f. There is a disconnect between perception and reality for standardized Business Income Coverage Forms.

g. The claims must be turned in by the agent/broker and the insurance company must conduct an adequate and reasonable investigation as per statutes and regulations in the state.

h. Physical Alteration of Property Not Required in a recent Court Decision

Studio 417, Inc. v. Cincinnati Ins. Co., 2020 WL 4692385 (W.D. Mo. Aug. 12, 2020)

This court took a broader view of what constitutes "direct physical loss" under a property policy. In this case, the plaintiffs - hair salons in Missouri - were forced to suspend their businesses as a result of government COVID-19 orders. The plaintiffs alleged that it was likely that customers, employees, and other visitors were infected with COVID-19 and, thus, infected their properties. The plaintiff also alleged that COVID-19 is a "physical substance" and that the presence of COVID-19 "renders physical property in their vicinity unsafe and unusable."

The insurer moved to dismiss the complaint, arguing that plaintiffs did not plead a "physical loss" as required by the policies because "direct physical loss requires actual, tangible, permanent physical alteration of property" and that COVID-19 "does not damage property; it hurts people."

The court denied the insurer's motion to dismiss, holding that plaintiffs had stated a claim for direct physical loss. In so holding, the court applied the dictionary definition of "physical" (i.e., "having material existence: perceptible especially through the sense and subject to the laws of nature") and "loss" (i.e., "the act or losing possession" and "deprivation"). In finding that these definitions were met, the court noted that plaintiffs had pleaded that COVID-19 "is a physical substance" that "live[s] on" and is "active on inert physical surfaces" and that it attached to and deprived plaintiffs of their property by making it "unsafe and unusable."

i. In February 2020, in response to the coronavirus outbreak, ISO offered two endorsements for optional use by its insurance company customers. They have no form number designations at this time.

1) Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus endorsement

2) Business Interruption: Limited Coverage for Certain Civil Authority Orders Relating to Coronavirus (Including Orders Restricting Some Modes of Public Transportation)

3. Business Interruption Coverage Forms may have pandemic and epidemic coverage perils that may trigger coverage.

   a. May provide coverage for restoration and Extended period of indemnity but the insurance contract language must be carefully reviewed.

   b. Business Interruption Arguments under the reasonable expectation doctrine versus business income have a better chance of success with respect to coverage since they do not contain an explicit exclusion of loss due to a virus.

   c. Remember that the requirement of direct physical loss or damage is a serious impediment to any finding of coverage under a standardized commercial property insurance contract.

   d. While COVID-19 coverage cases are still in their infancy and there are only a handful of court decisions so far, these early decisions do offer some lessons for policyholders considering whether to litigate a COVID-19 business interruption claim.

4. Business Income and Business Interruption and Civil Authority

   a. Public space theory of civil authority is being pushed for insurance contracts that do not have a virus exclusion that civil authority coverage has been triggered.

   b. Business Interruption coverage forms generally state that civil authority prohibit access to the covered premises on account of damage to other property, that is property not covered at the premises.

   c. The Other Property in this argument is being declared as the Public Space.

   d. In French Laundry partner, LP dba The French Laundry etal. v Hartford Insurance Company, etal, the plaintiff alleges that access to the restaurants as a direct result of a covered loss in the immediate area. The property damage was not at the restaurants. They argue that COVID-19 has physically impacted public and private property and the stay-at-home orders for protection within the public space is now other property. However, Civil Authority in the CP 00 30 10 12 ISO Business Income (with Extra Expense) coverage form only provides for four weeks of coverage unless modified by endorsement.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

> **(1) Four consecutive weeks** after the date of that action; or
>
> **(2)** When your Civil Authority Coverage for Business Income ends; whichever is later.

e. However, few closures will provide a basis for coverage under civil authority provisions unless access to the specific property is truly "prohibited."

f. Congress and several state legislators have introduced bills that state that no matter what the Business Income or Business Interruption Coverage Form states, the insurance companies should retroactively pay business income and extra expense to their insureds.

g. These bills have significant federal and state constitutional issues and will be ruled unconstitutional as per the Contracts Clause at Article 1, Section 10 of the United States Constitution that prohibit states from passing any law “Impairing the Obligation of Private Contracts.”

C. VIRUS - SARS-CoV-2 (COVID-19) Supply Chain Issues and Trade Disruption Insurance?

1. Trade Disruption Insurance — political risk insurance that covers loss of gross earnings and extra expenses caused by a delay or non-arrival of supplies or stocks arising from foreign government actions or inaction. Such losses can arise from embargoes, expropriation, nationalization, interference with transportation, and similar actions.

2. Uninsured consequential loss of revenues caused by delays in the trade flow disrupted by the pandemic are enormous and required specific coverage which was not purchased by single source operations.

3. Trade disruption insurance with proper perils may trigger extra expense because of:

a. Emergency partial or total closure of ports and transportation centers due to an order of a local or federal government.

b. Quarantine.

c. Confiscation or seizure of a product in transit.

d. Embargo of potential contamination.

e. Pandemic or epidemic.

4. Generally, do not require a direct physical loss to tangible property.

5. Different from cargo forms that provide Business Interruption coverage that require direct physical damage to tangible property.

D. Managing Property Client Reasonable Expectations

1. Most Agent/Broker Team Errors and Omissions Claims are <u>based on failed management of client's reasonable expectations</u>.

2. Standard Form Coverage Forms and Endorsements account for more than <u>ninety five percent (95%) of all Risk Finance Insurance Programs</u> purchased by commercial clients.

3. Most of the Agent/Broker Team clients have <u>difficulty remembering the last time they contracted</u> with another entity and <u>do not recall the purchased standardized Coverage Forms</u>.

4. Most clients <u>fail to understand</u> the subject of insurance or the rules of law governing negotiation.

5. Most clients believe they have a <u>limited choice or voice</u> in dictating the terms of their purchased Coverage Forms.

6. Most clients are <u>clear upon two or three insurance coverage points which the Agent/Broker team promises to protect</u>, and for everything else your client signs ready-made Applications and accepts ready-made Coverage Forms designed to conserve the interests of the insurance companies.

7. It is generally recognized that the insured client will not read the detailed, cross referenced, standardized, mass produced Coverage Forms and Endorsements and that the insured client will not understand the Coverage Contract once received.

8. The courts are allowing these clients that have not read the contract, to assert their self-developed reasonable expectations regarding the terms of the standardized coverage forms and endorsements and that these expectations or perceptions will be honored instead of a painstaking review of the coverage form provisions.

9. These allowed self-developed reasonable expectations are being transferred to insurance companies and Agent/Broker teams. [Bad Faith, Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing and Agent/Broker Errors and Omissions Claims]

10. The courts are allowing clients to operate within the belief that the coverage forms, or endorsement as delivered have been faithfully prepared by the insurance company and all loss exposures that may impact the client have been identified by the Agent/Broker Team and proper endorsements or coverage forms have been attached or purchased for their needs.

11. The Old Concept of "Caveat Emptor" – Let the Buyer Beware no longer applies for commercial clients purchasing insurance from the Agent/Broker Team and insurance company.

12. The major Agent/Broker Errors and Omissions Claims today are:

    a. Failure to obtain proper coverage and

    b. Failure to maintain proper coverage.

13. The failure to obtain coverage generally is created by the Agent/Broker in one of the following three areas.

    a. Failure to identify and analyze the loss exposures and not disclosing the exposures to the client and not providing coverage solutions to the client.

b. Failure to request and provide the required coverage solutions.

c. Failure to receive the requested coverages from the insurance company.

E. Agent/Broker Tools to Manage Client Expectations

1. Identify all loss exposures and discuss those exposures with the client to determine what loss exposures the client wants insurance coverage purchased and what exposures the client will actively self-insure.

2. Determine who qualifies as an insured and who has an insurable interest. [Loss Payees and Additional Insureds]

3. Know the standardized coverage forms from the quoting insurance companies that are being recommended to the client and their limitations and/or deficiencies.

4. Know the endorsements that can be requested to modify the limitation and/or deficiency for the standardized coverage forms at a minimal cost impact to the client.

5. Compare the forms and endorsements listed on the declarations page with the forms and endorsements attached to make sure that the insurance company forwarded a complete policy.

6. Read the Insuring Agreements of the Coverage Forms and Endorsements to determine that covered property is covered as desired.

7. Read the Exclusions for covered property and causes of loss carefully to determine if you need additional coverage. Do not forget the exclusion exceptions or limitations that may apply.

8. Evaluate overlooked coverages and provide options for the client to consider. [Flood, Earthquake, Environmental Impairment, Trade Disruption, Manufacturers Output, Stock Throughput, etc.]

9. Create a Service Plan for the client that details Agent/Broker Team members and account servicing standards.

10. Design and implement a painless system for data collection which includes copies of contracts, leases, lender documents, photos, blueprints, etc.

11. Develop as part of the Service Plan the claim management strategy and work with client to make sure it coordinates with their Disaster Recovery Plan.

12. Develop the necessary skills to trend and develop claims information to assist the client in establishing deductible and/or self-insured attachment points.

13. Develop as part of the Service Plan a Loss Control strategy to effectively manage identified loss exposures including insurance company provided services and outside consulting services as well as internally provided services.

F. Standardized Property Coverage Forms Provide Generic Coverages.

1. Generic Coverage Forms are designed for the Average Property Client but are not designed for the "Unique Loss Exposures" that a given client may present.

2. Carefully review the use of conjunctions in the that are used in a list in the standardized forms. Remember that "AND" is inclusive and "OR" is exclusive when applying coverage or causes of loss.

3. Pay attention to key words and phrases in the coverage forms and causes of loss forms.

   a. "Not" as in "Does not apply" or "Does not include" changes the coverage grant.

   b. Understand the use of the phrases – "Greater than"; "Lesser than"; "Greater of"; "No more than"; "The most"; or "All" as qualifying or limiting phrases to coverage.

c. "Unless"; "Except"; "Only If"; or "Subject To" generally indicate a change in condition or an added requirement or maybe an alternative coverage.

d. The word "However", generally discounts everything before the word, and it creates a coverage or condition limitation or reduction in coverage.

e. The word "Includes" in contract language implies an inclusive term that generally broadens the coverage provision.

f. "Must" and "Regardless" in contract language is generally used as an alternative or surrounding circumstance that are of no consideration in meeting the requirement of the exclusion or conditions in the contract.

g. The contract word "First" establishes the order of sequence of events necessary for coverage. The order of events must occur to get the coverage.

4. REMEMBER to always read and understand the definitions within the Coverage Forms and Cause of Loss Forms.

5. Traditional Silo Insurance Risk Transfer Techniques no longer work today because the Agent/Broker Team must be able to understand gaps in coverage and how to find solutions using other coverage forms, endorsements, or specialized coverage options. Requires a horizontal risk transfer mind set.

6. Agent/Broker Teams and Risk Managers are required today to integrate coverages and eliminate duplication but have proper coverages in place to respond to the loss exposure.

   a. The Risk Manager and Agent/Broker Team must be a great collaborator and orchestrator in pulling together the necessary insurance coverages and services for today's Property Account.

b. The Risk Manager and Agent/Broker Team must be a great synthesizer who can push the boundaries of knowledge and innovation in assisting today's Property Account in establishing an effective Insurance Risk Transfer Program.

c. The Risk Manager and Agent/Broker Team must be a great explainer who can foresee the complexity of risk but explain it in business terms for client's Management Teams.

d. The Risk Manager and Agent/Broker Team must be able to adapt and be versatile to respond to the changes that today's Commercial Account is experiencing in a FLAT WORLD. [Offshoring and Outsourcing]

e. The Risk Manager and Agent/Broker Team must be passionate and responsive to today's Large Account Risk Management challenges.

f. The Risk Manager and Agent/Broker Team must constantly update one's knowledge, skills, and training to fulfill today's client Account Risk Transfer needs.

II. Risk Financing Example: A Horizontal Property Risk Transfer Loss Exposure Example Based on True Case to get the creative juices flowing.

A. Property Account Description:

1. REIT Commercial, Inc. owns thirty (30) separate building units with each building unit comprising 35,000 square foot, multiple tenants, mixed use office, light manufacturing, and retail tenants.

2. Each unit was constructed from 1990 to 2003 and the one floor buildings are the same with joisted masonry construction (hollow concrete block walls with a flat wood truss roof) with each building valued at $5,000,000 based upon updated construction figures from a local builder.

3. The Agent/Broker Team scheduled each building unit on the Commercial Property Insurance Program and the coverages were not blanketed. [Did not consider a Loss Limit or Blanket Limit Coverage Approach]

4. The buildings are covered at replacement cost at a 90% coinsurance level.

5. One night the 1990 building is 60% damaged by a fire from one of the tenants and the fire spreads through the building to the other tenants but the Agent/Broker Team is optimistic that the building has adequate coverage.

6. The $3,000,000 damaged portion of the building (60% of $5,000,000) is covered at replacement cost and will be paid by the insurance company.

7. However, there are several problems requiring a horizontal risk transfer mindset by the Agent/Broker Team.

B. PROBLEM ONE: Pursuant to the recently adopted International Building Code (version 2000, 2003, 2006, 2009, 2013, 2016 or 2019) the Fire Marshall condemns the remaining undamaged portion of the building, meaning that REIT must now pay to demolish $2,000,000 worth of undamaged building to rebuild.

1. Is this additional cost covered?

2. Remember the ordinance or law exclusion in the CP 10 30 Causes of Loss Form?

3. This exclusion applies to all perils, even endorsed perils like earthquake or flood.

4. Replacement Cost will only pay the actual repair or replacement with “like kind and quality”.

5. Replacement Cost does not pay the increased cost of construction caused by the enforcement of an ordinance or law.

6. The standard CP 00 10 Commercial Property Coverage Program will pay the increased cost of construction up to $10,000 only or 5% of the damaged portion of the building whichever is less.

7. It is discovered that most of the plumbing in this building was constructed with Polybutylene Piping which now under the building code must be replaced with copper piping.

Polybutylene Piping Material breaks down over time through the exposure to oxidants in the water supply system, such as chlorine, fluoride, and hard water softening agents. The chemical process breaks down the piping from the inside out and eventually numerous leaks show up through-out the property.

8. The entire roof deck area was covered with Photovoltaic Solar Panels that were added to the building 15 years after construction.

   a. There is a power sharing agreement with the Tenants through the leases and an agreement with the local power company to sell excess generated power.

   b. The photovoltaic solar panels are covered under building but there is also an Equipment Breakdown Coverage Form in place as well.

9. The local community has passed several Green Building Ordinances which require that energy efficient heating and cooling systems along with additional insulation must now be included within the re-constructed building. [Leadership in Energy and Environmental Design (LEED) Certification]

10. Lastly, the zoning changed in this neighborhood and 35,000 square foot, multiple tenants, mixed use office, light manufacturing, and retail tenant buildings are no longer allowed. NOTE: A permit for reconstruction at this site will not be provided.

11. International Code Council Web Site to determine current and accurate code adoption information www.iccsafe.org and contact local community to determine if adopted.

12. Remember that the National Fire Protection Association Model National Code NFPA 5000 is also being adopted and it impacts ordinance or law exposures.

13. Special Property Coverage Forms will provide Coverage under "Additional Coverage" can solve this problem. **[Please Note the Large Commercial Property Forms have coverages built in while ISO Standardized Coverage Forms require Endorsements to provide the coverages required.]**

J. DEMOLITION AND INCREASED COST OF CONSTRUCTION

1) This Policy covers the reasonable and necessary costs incurred, described in item 3 below, to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location, provided:

   a) such law or ordinance is in force on the date of insured physical loss or damage; and

   b) its enforcement is a direct result of such insured physical loss or damage.

2) This Additional Coverage does not cover loss due to any law or ordinance with which the Insured was required to comply had the loss not occurred.

3) This Additional Coverage, as respects the property insured in item 1 above, covers:

   a) the cost to repair or rebuild the physically damaged portion of such property with materials and in a manner to satisfy such law or ordinance; and

   b) the cost:

      (i) to demolish the physically undamaged portion of such property insured; and

      (ii) to rebuild it with materials and in a manner to satisfy such law or ordinance, to the extent that such costs result when the demolition of the physically damaged insured property is required to satisfy such law or ordinance.

4) This Additional Coverage excludes any costs incurred as a direct or indirect result of enforcement of any laws or ordinances regulating any form of Contaminants.

5) The Company's maximum liability for this Additional Coverage at each Insured Location in any Occurrence will not exceed the actual cost incurred in demolishing the physically undamaged portion of the property insured in item 1 above plus the lesser of:

a) the reasonable and necessary actual cost incurred, excluding the cost of land, in rebuilding on another site; or

b) the cost of rebuilding on the same site.

Factory Mutual Global August 2008

14. Standardized Coverage Endorsements like the ISO CP 04 05 09 17 Ordinance or Law Coverage Endorsement can solve the problem, but it is only for each building identified and it is not blanket coverage.

B. Application Of Coverage(s)

The Coverage(s) provided by this endorsement applies with respect to an ordinance or law that regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises, subject to the following:

1. The requirements of the ordinance or law are in force at the time of loss. But if the Post-Loss Ordinance Or Law Option is indicated in the Schedule as being applicable, then Paragraph **B.2.** applies instead of this Paragraph **B.1.**

2. The requirements of the ordinance or law are in force at the time of loss; or the ordinance or law is promulgated or revised after the loss but prior to commencement of reconstruction or repair and provided that such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy.

3. Coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

4. Coverage under this endorsement applies only if:

a. The building sustains only direct physical damage that is covered under this policy and as a result of such damage, you are required to comply with the ordinance or law; or

b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and as a result of the building damage in its entirety, you are required to comply with the ordinance or law.

However, there is no coverage under this endorsement if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, even if the building has also sustained covered direct physical damage.

5. If coverage applies under this endorsement based on the terms of Paragraph **B.4.b.,** we will not pay the full amount of loss otherwise payable under the terms of Coverages **A, B,** and/or **C** of this endorsement. Instead, we will pay a proportion of such loss, meaning the proportion that the covered direct physical damage bears to the total direct physical damage. (Paragraph **F.** of this endorsement provides an example of this procedure.)

However, if the covered direct physical damage, alone, would have resulted in a requirement to comply with the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages **A, B** and/or **C** of this endorsement.

6. We will not pay under this endorsement for:

a. Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

b. The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

7. We will not pay under this endorsement for any loss in value or any cost incurred due to an ordinance or law that you were required to comply with before the time of the current loss, even in the absence of building damage, if you failed to comply.

a. The regulation or ordinance at the time of the loss applies.

b. Compliance is for the minimum requirements of the ordinance or law.

c. Designated building must sustain direct physical loss from a covered peril and the resulting loss creates the enforcement of the ordinance or law.

d. Coverage A – Coverage for Loss to the Undamaged Portion of the Building

e. Coverage B – Demolition Cost Coverage

f. Coverage C – Increased Cost of Construction

g. Coverage A has no limit but will pay the remaining $2,000,000 Limit to REIT for the rebuilding.

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage A for the loss in value of the undamaged portion of the building as a consequence of a requirement to comply with an ordinance or law that required demolition of undamaged parts of the same building.

1) This technically makes this a total loss and the Debris Removal Additional Coverage Limit may now cause a problem.

2) Does the Debris Removal Limit for the damaged portion of the building now revert to only $25,000? [CP 00 10 10 12]

3) An additional $25,000 of debris removal coverage applies if the property damage and debris removal loss together exhaust the limit of insurance, or

4) If 25% of the sum of the direct damage loss payment and the deductible proves insufficient to cover the debris removal expense.

Coverage **A** is included within the Limit Of Insurance applicable to such building as shown in the Declarations or addressed elsewhere in this policy. Coverage **A** does not increase the Limit of Insurance.

5) No coverage applies to the cost of removing deposits of mud or earth from the grounds of the described premises.

6) No coverage applies to removal of debris of the following.

   a) Property of the insured that is not insured under the policy

   b) Property of the insured's landlord, unless the insured is contractually responsible to insure it and it is insured under the policy

   c) Types of property that are excluded from coverage in the "property not covered" provision, including the property addressed under the outdoor property coverage extension.

   d) No coverage applies to the cost to extract pollutants from land or water or to remove, restore, or replace polluted land or water.

7) It is important to consider debris removal costs in establishing limits of insurance on covered property, since, in the event of a total or nearly total loss, the direct damage loss alone would probably exhaust the

limit, leaving no excess available to pay debris removal expenses.

8) For example, in *Strowig Props., Inc. v. American States Ins. Co.,* 32 Kan. App. 2d 7, 80 P.3d 72 (2003), the court held that the property policy unambiguously made debris removal coverage payable within the $139,900 building limit, which was completely exhausted after the insured hotel was destroyed by high winds.

9) ISO Debris Removal Additional Limit of Insurance CP 04 15 10 12 can be used to increase limits for the damaged portion of the building only.

10) Coverage B Limits are for only the undamaged portion of the building.

h. Coverage B of the CP 04 05 Ordinances or Law will require a specific limit to handle the demolition and removal of the undamaged portion of the building and its debris.

> With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building as a consequence of a requirement to comply with an ordinance or law that requires demolition of such undamaged property.
>
> The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

1) The demolition contractor estimates that they will need $150,000 for tearing down the undamaged portions of the building.

2) This cost is higher than the previous estimate of $2.00 to $5.00 per square foot provided by a local builder.

3) To estimate debris removal expenses with a reasonable degree of accuracy, it may be necessary to contact some construction and demolition firms for estimates of the probable costs of clearing the site in the event of a worst-case scenario.

4) This step has seldom been taken in the past, but the World Trade Center disaster has shown us that this is now a necessary step.

5) Consider creating a blanket limit for Coverage B and C to aid in offsetting the unexpected cost for demolition.

6) Work and claim payment will not start until the damaged portion of the building has been removed.

i. Coverage C of the CP 04 05 09 17 Ordinance or Law will provide coverage for the increased cost to repair, reconstruct or remodel the covered building to meet the requirements to comply with the minimum standards of the International Building Code Engineering standards.

1) Must include the Photovoltaic Solar Panels and the application of the CP 04 02 09 Increased Cost of Loss and Related Expenses for Green Upgrades must be evaluated. [RETROACTIVE ORDINANCE OR LAW BECOMING AN ISSUE]

2) Must also evaluate the impact of the Equipment Breakdown Coverage Forms for the equipment. (Damaged by Fire)

3) Does the Joint or Disputed Loss Agreement CP 12 70 endorsement impact coverage application?

4) Must include the copper piping replacement in considering the limits since the Polybutylene Piping is no longer allowed.

5) Must consider the Green Building Ordinances which require that energy efficient heating and cooling systems along with additional insulation in considering the Coverage C Limit.

If the endorsement schedule indicates a limit of insurance for related expenses, the endorsement also provides coverage for certain related expenses, as follows.

1) Waste reduction and recycling – Expenses of reusing or salvaging building materials and contents, and expenses of extraction and transportation of recyclable construction waste to appropriate sites (less any income received thus)

2) Design and engineering professional fees – Reasonable and customary fees for the services of an accredited architect or engineer for design and engineering recommendations needed in repairing or replacing damaged portions of buildings

3) Certification fees and related equipment testing – Fees imposed by the green standards-setter to determine if certification or recertification is appropriate, and expenses to test repaired or replaced building systems and equipment as part of the certification or recertification process. However, there is no coverage for further modification if the building fails to obtain certification, recertification, or a certain level of certification.

4) Building air-out and related air testing – Reasonable expenses to flush out and conduct air quality testing of the renovated space, in accordance with the recommended procedures of a green standards-setter and to mitigate indoor air quality deficiencies caused by the repair or reconstruction

6) When setting the Coverage, C Limit the Agent/Broker team must include the following additional property exposures since they are covered in this endorsement.

a) The cost of excavations, grading, backfilling and filling.

b) Foundation of the building.

c) Pilings.

d) Underground pipes, flues, and drains

e) Soft Costs (Pages 67-68 in Outline)

7) Zoning law impacts restoration at this current site. Will the coverage forms provide coverage for rebuilding at another site?

8) There is no requirement to rebuild on the same premises, but loss recovery is limited to cost of rebuilding on the same premises for the damaged portion of the buildings as stated in the CP 00 10 Buildings and Personal Property Coverage Form.

> **e**. We will not pay more for loss or damage on a replacement cost basis than the least of **(1), (2) or (3),** subject to **f.** below:
>
> **(1)** The Limit of Insurance applicable to the lost or damaged property;
>
> **(2)** The cost to replace, on the same premises, the lost or damaged property with other property:
>
> **(a)** Of comparable material and quality; and
>
> **(b)** Used for the same purpose; or
>
> **(3)** The amount actually spent that is necessary to repair or replace the lost or damaged property.
>
> If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.
>
> **f.** The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

9) The Ordinance or Law Endorsement CP 04 05 09 17 Loss Payment Section E.4.c(1) applies and provides coverage for the increased cost at the new site subject to the selected limit.

a) The limit selected must include the increased cost at the new location.

b) Blanket limit for Coverage B and C should be used.

4. Unless Paragraph **D.5.** applies, loss payment under Coverage **C** – Increased Cost Of Construction Coverage will be determined as follows:

a. We will not pay under Coverage **C:**

(1) Until the building is actually repaired or replaced, at the same or another premises; and

(2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

b. If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage **C** is the lesser of:

(1) The increased cost of construction at the same premises; or

(2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule.

c. If the ordinance or law requires relocation to another premises, the most we will pay under Coverage **C** is the lesser of:

(1) The increased cost of construction at the new premises; or

(2) The applicable Limit Of Insurance shown for Coverage **C** in the Schedule.

j. <u>Please remember that there are three versions</u> of the International Building Codes.

k. Commonly referred to as the I-Codes and they have been in place since 2000, 2003, 2006, 2009, 2016 or 2019 version and they impact the increased cost of construction.

C. PROBLEM TWO – <u>The tenant whose space caught fire was an auto parts store and the fire spread into the retail/wholesale computer store.</u>

1. Due to the hazardous materials consumed in the blaze, <u>REIT will be required to hire a special demolition contractor to remove the</u>

toxic auto and computer parts and materials and remove the resulting heavy metal pollutants out of the drainage system.

2. The ISO Standard Coverage Form Additional Coverage Debris Removal Limit is available for the damaged portion of the building, but it will not pay for cleanup costs of pollutants.

3. The ISO Pollution Pollutant Clean Up and Removal Additional Coverage for each described premise is $25,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

4. The estimated cost for Debris Removal by a qualified contractor per code is estimated at $200,000.

5. The estimated cost for the Environmental Consultant will be an additional $32,000.

6. How are these costs covered in this horizontal risk transfer portfolio problem?

7. Specialty Property Coverage Forms will provide coverage through Additional Coverage for decontamination costs if required by ordinance or law.

H. DECONTAMINATION COSTS

If insured property is contaminated as a direct result of physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating Contamination due to the actual not suspected presence of Contaminant(s), then this policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated due to the actual not suspected presence of Contaminant(s) as a direct result of insured physical damage.

The Company is not liable for the costs required for removing contaminated uninsured property nor the Contaminant therein or thereon, whether or not the Contamination results from an insured event.

8. An ISO Debris Removal Additional Limit of Insurance endorsement CP 04 15 10 12 can be used to provide the required additional coverage. [The use of this endorsement is addressed by CLM Division 5 Rule 38.F and limit selection is critical.]

9. **CP 04 07 10 91 – POLLUTANT CLEAN UP AND REMOVAL ADDITIONAL AGGREGATE LIMIT OF INSURANCE**

    a. Endorsement provides an additional aggregate limit of insurance.

    b. Endorsement applies to the cost to extract pollutants from land or water at the insured's premises, when the release of the pollutants is the result of a covered cause of loss.

    c. The total limit of insurance applicable to pollutant cleanup and removal is the $10,000 limit granted in the coverage form itself, plus the amount shown in the endorsement schedule.

    d. However, the additional aggregate limit provided by the endorsement is subject to a special pollutant cleanup deductible and the ISO CLM rules prescribe a minimum deductible of $1,000.

    e. The use of this endorsement is addressed by CLM Division 5 Rule 38.E.

10. Remember that the Pollution Liability Coverage may be necessary to cover the cleanup costs for the chemicals and debris that were washed into the premises of the neighbors and the City's storm sewers from the Fire Department Actions to put out the fire.

    a. Additionally, the smoke and fumes from the hostile fire that entered the premises of surrounding neighbors is covered under Coverage A of the CGL as well.

    b. Some Specialty Property Coverage Forms may provide coverage as well.

P. LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of the actual not suspected presence of Contaminant(s) from uninsured property consisting of land, water, or any other substance in or land at the Insured Location if the release, discharge or dispersal of such Contaminant(s) is a direct result of insured physical loss or damage to insured property.

This policy does not cover the cost to cleanup, remove and dispose of Contamination from such property:

1) at any location insured for Personal Property only.

2) at any property insured under AUTOMATIC COVERAGE ERRORS AND OMISSIONS or Miscellaneous Unnamed Location coverage provided by this Policy.

3) when the Insured fails to give written notice of loss to the Company within 180 days after inception of the loss.

11. An Environmental Impairment Liability Coverage Form or Pollution Legal Liability Coverage Form can be purchased to cover all locations and the client does not need to add the CP 04 07 Endorsement.

    a. Cover on premise clean up and

    b. Damage to third parties

12. Non-insurance risk transfer through REIT leases can transfer the Environmental Liability Exposure to the tenants for indemnification and may require the purchase of insurance.

13. ISO Legal Liability Coverage Form CP 00 40 purchased by tenants will not respond because of cause of loss exclusions.

I. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss." But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

> This Exclusion, **I.**, does not apply to damage to glass caused by chemicals applied to the glass.
>
> **CP 10 30 Causes of Loss – Special**

D. **PROBLEM THREE** – REIT's tenants in the undamaged portion of the building cannot access their premises as the Fire Marshall has condemned the building, so under REIT's lease terms their rent is abated.

1. REIT will not receive rent payments and REIT will need to pay the continuing expenses transferred to the tenants through the lease.

2. Changes the profitability of the property and the shareholders may get less.

3. The unendorsed Business Income (And Extra Expense) Coverage Form (CP 00 30 10 12) will pay the Rental Value and Extra Expenses concerning the 60% damaged portion of the structure only.

4. The Civil Authority Additional Coverage will not apply for the four weeks of coverage because this only applies for loss at other than the described premises caused by a peril because of the enforcement by a civil authority because a local ordinance is being enforced.

> 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.

5. How do you solve this problem?

a. Please remember that the ISO Business Income (And Extra Expense) Coverage Form CP 00 30 10 12 does not include coverage for Ordinance or Law.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

(1) Regulates the construction, use or repair, or requires the tearing down of any property; or

(2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

b. Please remember that the increase in business income or extra expense loss due to the suspension, lapse, or cancellation of a license, lease, or contract caused by the suspension of operations is covered.

c. However, coverage is only to the extent that it affects the insured's business income during the policy's indemnity period. [ISO CP 10 30 09 17 Form]

(3) Any increase of loss caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

d. Coverage will not apply in this instance because the undamaged portion of the building is not a covered peril the enforcement of an Ordinance or Law which is still excluded.

e. Need to attach the ISO CP 15 31 09 17 Ordinance or Law – Increased Period of Restoration.

f. When this endorsement is attached, the period of restoration includes the additional period needed to repair or rebuild the damaged property in compliance with an ordinance or law that regulates the construction or repair of property or requires the demolition of undamaged portions of the property.

A. If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from a requirement to comply with any ordinance or law that:

1. Regulates the construction or repair of any property;

2. Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and

3. Is in force at the time of loss.

g. This exclusion applies to the costs of complying with any ordinance or law requiring demolition, repair, reconstruction, etc., due to the presence of pollutants, fungus, wet or dry rot, or bacteria, or requiring the insured to test for or otherwise address pollutants, fungus, wet or dry rot, or bacteria.

However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of or compliance with any ordinance or law which requires:

1. The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

2. Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

E. PROBLEM FOUR: The REIT's Building Tenant's insurance companies want to subrogate for the Business Personal Property Losses that occurred at the property against the Landlord REIT.

1. Does the tenant's insurance company have any recourse?

2. What does the lease state?

1. Lessee shall be liable for and hold Lessor harmless in respect of damage or injury to Lessor, premises, and property of person of Lessor's other tenants, or anyone else, if due to act or neglect of Lessee, or anyone in this control or employ.

2. Lessee shall indemnify and save harmless Lessor from and against any and all loss, cost (including attorney's fees), damages, expense and liability in connection with claims from damages as a result of injury or death of any person or property damage to any property sustained by Lessee and all other persons which arise from or in any manner grow out of any act or neglect on or about the building complex by Lessee, Lessee's partners, agents, employees, customers, invitees, contractors, and subcontractors.

3. Lessee waives all claims against Lessor for injuries to Lessee, his agents or invitees in or about said premises, and Lessee will hold Lessor exempt from any damage or injury to any such person, arising from the use of the premises by Lessee or from failure of the Lessee to keep the premises in good condition and repair as herein provided.

4. Lessee shall and does hereby agree to indemnify and save Lessor harmless from any and all liability arising out of the ownership, selection, processing, leasing, renting, operation, control, use maintenance, delivery and return of any equipment provided to the Lessee for use including access to the power being generated from the photovoltaic solar system attached to the building.

5. Lessee and Lessor waives any and every claim which arises or may arise in favor and against the other party, hereto during the term of the lease or any extensions or renewal, for any and all loss of, or damage to, any of its property located within or upon or constituting a part of the premises leased to the Lessee.

3. What does the property policy condition section read concerning waiver of rights? ISO CP 00 90 Conditions state:

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

1. Prior to a loss to your Covered Property or Covered Income.

2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:

a. Someone insured by this insurance;

b. A business firm:

(1) Owned or controlled by you; or

(2) That owns or controls you; or

c. Your tenant. This will not restrict your insurance.

III. HORIZONTAL PROPERTY RISK TRANSFER LOSS EXPOSURE GENERAL MODIFICATIONS

A. ISO General Policy Condition IL 00 17 Modifications

1. The "Common Policy Conditions" form IL 00 17 sets out provisions that are common to all commercial lines of insurance.

2. This approach allows a package policy to be assembled with the common provisions stated only once regardless of the number of coverages applicable.

3. Cancellation of Coverage

   a. First Named Insured controls

b. Ten (10) Days for non-payment of premium

c. Thirty (30) days for any other reason by the insurance company.

d. Modified by state law

e. Opportunities and Problems

1) Larger Accounts – Designate the First Named Insured or the Controlling Party – Risk Manager, Treasurer, CFO, etc.

2) Larger Accounts need more than ten-day notice of cancellation for non-payment of premium and thirty-day notice of cancellation because of complexity.

3) Cancellation for Nonpayment of Premium should be negotiated to 30 days.

4) Cancellation Notice should be negotiated to 90 to 120 days to allow for re-marketing of the account.

Section A., Cancellation, of the Common Policy Conditions IL 00 17 11 98 is deleted and replaced by the following:

A. CANCELLATION, MATERIAL POLICY CHANGE, OR NONRENEWAL

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation. The Notice for Cancellation for Non-payment of Premium and for Any Other Reason will be provided to the First Named Insured's Designated Individual or Position listed below:

SCHEDULED POSITIONS

Risk Manager: ______________________

Chief Financial Officer: _______________

Treasurer: __________________________

2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

a. 30 days before the effective date of cancellation if we cancel for nonpayment of premium; or

b. 120 days before the effective date of cancellation if we cancel for any other reason.

3. If we decide to make a material policy change during the term of the policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the material policy change not less than 120 days before the effective date of such change.

4. If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 120 days before the expiration date. If we do not give such notice of our intent not to renew prior to expiration, the policy period will be extended for 120 days from the date of notice and existing policy terms, conditions and rates, where not prohibited by law, will remain in effect for that period.

5. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.

6. Notice of material policy change or nonrenewal will state the effective date of change or nonrenewal.

7. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

8. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund will be less than pro rata and will not be less than the minimum premium stated in the declarations. The cancellation will be effective even if we have not made or offered a refund.

9. If notice is mailed, proof of mailing or electronic e-mail will be sufficient proof of notice.

5) Standard Coverage Form Mortgage Clauses, Standard Lender Loss Payee Endorsements, and Standard Loss Payee Endorsements will <u>need to be modified to include similar timelines</u>.

6) Special Property Coverage Forms <u>are usually modified to provide the best coverage for Additional Insurable Interests and Certificates of Insurance</u>.

1. ADDITIONAL INSURABLE INTERESTS/CERTIFICATES OF INSURANCE

Additional insured interests are automatically added to this Policy as their interest may appear when named as additional insured, lender, mortgage and/or loss payee in the Certificate of Insurance as scheduled on file with the Company. Such interests become effective on the date shown in the Certificate of Insurance and will not amend, extend, or alter the terms, conditions, provisions, and limits of this policy.

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7) Property Additional Insured Endorsements present a unique problem for ISO Standardized Coverage Form.

a) There is no standard, preprinted commercial property endorsements designed to designate additional insured.

b) An additional insured endorsement to a commercial property policy usually consists of a statement typed onto an otherwise nearly blank general change endorsement form that simply says that a given individual or entity is an additional insured.

c) The only preprinted entries on the form are spaces labeled for insertion of the effective date, the policy number, the insurer's name, and the additional insured's name.

d) Generally, there is no Cancellation Clause and no requirement to provide notice to the Property Additional Insured if the Policy is cancelled.

Remember that the Cancellation Provision in the ISO common policy conditions form establishes that only the first named insured will be notified of a Cancellation by the insurer. Under this language, an additional insured would not be entitled to NOTICE OF CANCELLATION by the insurer.

e) Need to add Cancellation Provision Language like Loss Payee Provision Language to the Endorsement and make sure that notice is provided to the Additional Insured as well.

f) Modify to be concurrent with Named Insured Cancellation Notices.

If we cancel this policy, we will give written notice to the Additional Insured at least:

a. 30 Days before the effective date of cancellation if we cancel for nonpayment of premium; or

b. 120 days before the effective date of cancellation if we cancel for any reason.

If we elect to not renew this policy, we will give written notice to the Additional Insured at least 120 days before the expiration date of this policy.

g) The contract that requires the additional insured endorsement may require that a deductible or Self-Insured Retention (SIR) will not apply to a loss involving the described property. A Deductible or SIR Buy Down Endorsement will be required to be added to the contract.

THIRD PARTY (LOSS PAYEE OR ADDITIONAL INSURED) DEDUCTIBLE OR SELF-INSURED RETENTION REIMBURSEMENT ENDORSEMENT

The Company agrees that notwithstanding any provisions to the contrary in any policy deductible or Self Insured Retention (SIR), at the insured's written request and in accordance with any Certificates of Insurance or other written evidence issued to protect the insurable interest of any third party, the Company will adjust and pay losses in full without regard to any deductible or SIR provision which would otherwise apply under the terms and condition of this policy and forms attached hereto.

4. Changes to the Contract – Who Controls?

a. This section may need to be modified to indicate the party or parties that control modifications within the property program.

b. Please remember that changes will not be processed until the insurance company agrees.

B. CHANGES

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

c. Some specialty property coverage forms may set specific conditions for the change.

9. POLICY MODIFICATION

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The insured and Company may request changes to the Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

A. create a waiver, or change any part of this Policy; or

B. prevent the Company from asserting any rights under the provisions of this Policy.

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B. Commercial Property Conditions Form CP 00 90 Modifications

1. Conditions Form establishes the Property Coverage Forms position on the following issues.

   a. Concealment, misrepresentation, and fraud.

   b. Control of property.

   c. Insurance under two or more coverage parts of the policy.

d. Legal action against the insurer.

e. Liberalization.

f. No benefit to Bailee.

g. Other insurance.

h. Policy period and coverage territory; and

i. Transfer of rights of recovery.

2. Concealment, Misrepresentation, and Fraud – Who has knowledge to create the fraud or concealment?

a. Fraud by the named insured relating to the commercial property coverage part of the policy voids the commercial property coverage part of the policy.

b. Intentional concealment or misrepresentation of a material fact by any insured, with respect to the commercial property coverage part of the policy, the covered property, the insured's interest in the covered property, or a claim under the commercial property coverage part, also voids coverage.

c. This section may need to be modified to indicate the party or parties that will sign applications and indicate that everything has been disclosed that the individual has knowledge concerning.

Our failure to disclose all hazards or prior "occurrences" existing as of the inception date of this policy shall not prejudice the property coverage afforded by this policy, provided such failure to disclose all hazards or prior "occurrences" is not intentional by the individual in one of the positions listed below:

SCHEDULED POSITIONS

Risk Manager ______________________

Chief Financial Officer _______________

Treasurer ___________________________

3. Property Insurance Under Two or More Coverage Parts – Resolution to Conflicts

   a. In Equipment Breakdown Protection Policies, there is a joint or disputed loss agreement provision.

   b. The provision is designed to prevent an insured from suffering because its equipment breakdown insurer and its commercial property insurer disagree as to which policy should respond to a loss and in what amounts.

   c. A steam boiler explosion and ensuing fire at a manufacturer's assembly plant would probably trigger coverage under the manufacturer's property policy and its equipment breakdown policy.

   d. While the two insurers determine the proper apportionment of the loss, a delayed settlement could seriously inconvenience the insured manufacturer.

   e. Most commercial property forms do not include a joint or disputed loss agreement provision.

   f. There is an ISO standard endorsement called the Joint or Disputed Loss Agreement, CP 12 70 02 00 that accomplishes this purpose.

   g. This is a free endorsement, and it will save your Property Client a lot of headaches.

   h. The endorsement is addressed by *CLM* Division 5 Rules 38.U and 54.C.

   i. Specialty property coverage forms address conflicts that may impact coverage, contributing insurance, and large deductible impacts.

8. OTHER INSURANCE

A. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.

B. In no event will this Policy apply as contributing insurance.

C. The Insured is permitted to have other insurance over any limits or sub-limits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sub-limit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.

D. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the limits of liability of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.

E. In the event this Policy is deemed to contribute with other insurance, the limits of liability applicable at each Location, for purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest Location value on file with the Company.

Factory Mutual Global

4. No Benefit to Bailee – How to cover the bailment loss exposure?

   a. No one having custody of the covered property other than the insured will be permitted to benefit from the insurance.

   b. In the absence of this provision, a Bailee might attempt to evade its legal liability for loss to the property occurring while the property was in the Bailee's care by claiming that the customer should recover under its own insurance.

   c. The "no benefit to Bailee" clause is designed to ensure that a covered loss for which a Bailee is legally liable will ultimately be paid for by the Bailee.

   d. Care, Custody and Control Exclusion in the Commercial General Liability Coverage Form also applies and other Coverage Forms are required to cover the exposure.

e. ISO Business Personal Property of Others in the CP 00 10 10 12 Building and Personal Property Coverage Form may be a solution, but it is subject to only the covered perils. Loss exposure may require special perils coverage.

f. General commerce coverage forms to consider that provide specific perils for the Bailment Exposure:

1) Motor truck cargo liability coverage forms.

2) Jewelers' block floaters.

3) Fur dealers' block floaters.

4) Equipment dealers' block floaters.

5) Camera dealers' block floaters.

6) Musical instrument dealers' block floaters.

7) Furriers' customer floater.

8) Laundries and dry cleaner’s floater.

9) Cold storage lockers floater.

10) Miscellaneous Bailee floater.

11) Installation floater.

12) Commercial Output Policy.

13) Armored car and messenger floater.

14) Warehouse operators' legal liability policy.

g. Automobiles of others Bailment:

1) Non-owned auto physical damage and

2) Garage-keeper’s legal liability.

h. Ocean Marine Bailment:

1) Ship repairers' legal liability.

2) Stevedore legal liability.

3) Charterers' legal liability.

4) Wharfingers' liability.

i. Aircraft Bailment:

1) Non-owned aircraft physical damage and

2) Hangar keeper's legal liability.

j. Railcars and Cargo Bailment:

1) Railroad protective liability and

2) Cargo Coverage Forms.

5. Policy Period and Coverage Territory – How do you handle off-shoring exposures?

a. ISO Standard Coverage Forms – Only loss or damage beginning during the policy period shown in the declarations and occurring within the United States, Puerto Rico, and Canada will be covered.

b. Coverage Territory extensions and broadening endorsements have become very important and must be part of any Property Risk Finance Program.

c. ISO Business Personal Property Limited International Coverage CP 04 32 04 02

1) The endorsement provides temporary coverage for the insured's business personal property while it is in, or in route to or from, the foreign coverage territory shown in the endorsement schedule.

2) For coverage to apply, three criteria must be met.

   a) The property must be used during the insured's business activities in that territory.

   b) The property must be in the custody of the insured or an authorized representative of the insured (including another insured or a salesperson of the insured), or at a business location that the insured owns, leases, or operates.

   c) The property must be in the foreign coverage territory temporarily.

3) No coverage applies to property exported to or held for sale in the foreign coverage territory.

4) No coverage applies to property while it is in the care, custody, or control of a common or contract carrier or a bailee for hire, UNLESS that carrier is transporting the insured or the insured's authorized representative at the same time.

5) Covered Causes of Loss Form on the policy will apply to this property.

d. ISO Property in Process of Manufacture by Others Limited International Coverage CP 04 33 04 02.

1) The endorsement adds coverage for the insured's raw materials and goods while they are in the process of manufacture in the foreign territories shown in the endorsement schedule.

2) The endorsement also provides coverage on the partially or finished goods while they are in temporary storage awaiting transport.

3) Coverage under the endorsement applies only to property at locations not owned, operated, or leased by the insured.

4) Owned locations require separate coverage which may require the following:

   a) Separate Foreign Coverage Form purchased under the insurance laws of the country.

   b) Foreign DIC coverage to add perils not covered by the Foreign Coverage Form.

5) Under the CP 04 33 04 02, there is NO COVERAGE for the following:

   a) Merchandise held for sale

   b) Property in transit

   c) Property that is in the custody of a common or contract carrier or a Bailee hired to transport the property

6) Need Special Cargo Forms which will include Ocean Cargo, Aircraft Cargo, and Truck Cargo or Trip Transit Policies.

7) Stock Throughput Coverage Forms may also be used to cover the exposure.

8) SPECIAL EXCLUSION CP 04 33 04 02 – There is no coverage to property in a territory where sanctions or embargo prohibit the insured's activities in that territory or to property in a territory in which insurance law prohibits the issuance of this endorsement.

e. ISO Business Income Form Dependent Properties Limited International Coverage – CP 15 01 10 12

1) Coverage under the endorsement applies to business income loss suffered by the insured because of direct physical loss or damage from a covered cause of loss to the "dependent property" described in the endorsement schedule.

2) Dependent Property (Contributing Locations and Manufacturing Locations) are those that deliver materials or services to the insured or others on behalf of the insured.

"Dependent property" means property operated by others whom you depend on to:

a. Deliver materials or services to you, or to others for your account (Contributing Locations). But any property which delivers any of the following services is not Contributing Location with respect to such services:

(1) Water supply services;

(2) Power supply services;

(3) Wastewater removal services; or

(4) Communication supply services, including services relating to Internet access or access to any electronic network;

b. Manufacture products for delivery to your customers under contract of sale (Manufacturing Location)

3) Secondary Contributing location is a new issue that impacts coverage.

3. "Secondary contributing location" is an entity which:

a. Is not identified in the Schedule;

b. Is not owned or operated by the Contributing Location identified in the Schedule; and

c. Delivers materials or services to the Contributing Location identified in the Schedule, which in turn are used by that Contributing Location in providing materials or services to you.

A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a "secondary contributing location".

Any property which delivers any of the following services is not a "secondary contributing location" with respect to such services:

(1) Water supply services;

(2) Power supply services;

(3) Wastewater removal services; or

(4) Communication supply services, including services relating to Internet access or access to any electronic network.

4) There is no coverage under the endorsement when the only loss or damage to the dependent property premises or the secondary dependencies described in the endorsement schedule is to electronic data.

5) If there is loss or damage to both electronic data and other property, coverage under the endorsement ends with the repair or replacement of the other property.

6) The causes of loss for which coverage is provided, and any endorsements that broaden or restrict covered causes of loss, are to be indicated on the endorsement schedule.

7) Consequently, it is possible for the insured to select a different causes of loss form for coverage under this endorsement than the causes of loss form that applies to the other coverages provided by the policy.

f. ISO Extra Expense from Dependent Properties Limited International Coverage CP 15 02 10 12

1) Coverage under the endorsement applies to extra expenses incurred by the insured because of damage from a covered cause of loss to the contributing or manufacturing locations (dependent properties) that are identified in the endorsement schedule.

2) Secondary Dependencies are also included.

3) There is no coverage under the endorsement when the only loss or damage to the premises described in the endorsement schedule is to electronic data.

4) If there is loss or damage to both electronic data and other property, coverage under the endorsement ends with the repair or replacement of the other property.

5) The causes of loss for which coverage is provided, and any endorsements that broaden or restrict covered causes of loss, are to be indicated on the endorsement schedule.

6) Consequently, it is possible for the insured to select a different causes of loss form for coverage under this endorsement.

g. Electronic Data Processing Direct Damage and Indirect Damage for Business Income and Extra Expense.

1) All Standard EDP Coverage forms have coverage territories limited to events or occurrences that take place within the United States, Canada or its possessions or territories including Puerto Rico.

Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your “stock” of prepackaged software, to electronic data which is integrated in and operates or controls the building’s elevators, lighting, heating, ventilation, air conditioning or security system. **[Please note the extension does not include phone systems]**

2) Some standard coverage forms limit coverage to only scheduled locations on the policy.

3) Most coverage forms require that the legal action be brought within the coverage territory and it will not defend or pay what the client is legally obligated to pay in other countries.

4) Coverage forms need to recognize the unrestricted nature of the internet and cyberspace/online property and provide worldwide or universal coverage territory definitions.

h. Cyberspace Liability – First Party Loss of Intangible property damage including intellectual property losses and business income losses

1) Loss of electronic data and resulting business interruption and extra expense.

2) Computer extortion arising from the threat to destroy data or infect client's system

3) Computer virus

4) Unauthorized use of confidential or proprietary information

5) Theft of intellectual property

6) Diversion of electronic data or fraudulent or illegal transfer of property by an employee, a contractor or volunteer.

7) Loss due to overload of the computer system or lack of capacity or denial of access.

8) Event can be anywhere in the world and broad coverage territory is required.

6. Transfer of Rights of Recovery Against Others to Us

a. To the extent of loss payment made by the insurer, the insured's rights of recovery against others for that loss are transferred to the insurer.

b. The insured may waive these rights in writing prior to loss.

c. The insured may waive these rights against another insured, a tenant, or a related business entity in writing after loss.

d. The main advantage of being an additional insured instead of a loss payee is that the insurer should not be able to subrogate against an additional insured for negligent damage to covered property, because insurers are generally prevented from recovering paid loss from their own insureds.

e. A loss payee is not an insured, and thus receives no protection against subrogation.

f. The phrase "as their interests may appear" is often used in additional insured endorsements.

g. This language is intended to restrict the recovery rights of the additional insured to only the proceeds about the covered property in which the additional insured has a legitimate interest.

h. The phrase "as their interests may appear" has occasionally been interpreted by the courts as limiting not just loss recovery, but also immunity from subrogation.

i. The phrase "with respect only to" could certainly be interpreted in the same way and waives subrogation.

j. Builder's Risk Policies subrogation has become a huge issue.

   1) Immunity from subrogation is a very big concern indeed for builder's risk additional insureds, most of whom are contractors and subcontractors whose negligent work certainly could be the cause of a covered builders risk loss.

   2) The property damage exclusion found in commercial general liability policies can sometimes be used by the contractor's liability insurers to deny coverage for liability for damage to the building under construction.

3) It is important to review the subrogation or transfer of recovery rights provisions in all builder's risk forms under consideration to be sure that pre-loss waivers of recovery rights by the insured are allowed.

4) If the builders risk policy has a subrogation provision that prohibits the insured from waiving recovery rights against others, execution of a standard construction contract containing a typical mutual waiver of subrogation provision would constitute a violation of the policy conditions by the insured, and that violation might well prevent any builders risk loss recovery.

5) If the policy's subrogation provision allows pre-loss waivers by the insured, the insurer should recognize and honor any waiver of recovery rights provision that is included in the construction contract.

6) Most builders risk policies contain a subrogation provision that falls into one of the following categories.

   a) The commercial property insurance type of subrogation provision affirmatively states that the insured may waive recovery rights against another party in writing prior to loss.

   b) The Commercial General Liability (CGL) type of subrogation provision implies that the insured may waive recovery rights prior to a loss.

   c) The CGL condition states that the insured must do nothing after loss to impair any recovery rights against others. [Condition 8]

   d) The CG 24 04 Waiver of Transfer of Rights of Recovery Against Others to Us can be used on the Commercial General Liability Coverage Form.

e) The CA 04 44 Waiver of Transfer of Rights of Recovery Against Others to Us can be used on the Business Auto Coverage Form

7) Read the Construction Contract carefully and the following example highlights language considerations.

11.4.7 Waivers 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 policy shall provide such waivers of subrogation by endorsement or otherwise...

IV. PROPERTY INSURANCE – WHO IS INSURED COVERAGE ISSUES

A. Property Insurance – Need the broadest coverage

1. Only those that have an insurable interest in covered property should be given a claim to the insurance proceeds.

2. Designating an individual or entity as an additional insured, mortgagee, or loss payee on a commercial property policy gives that person or entity a claim to insurance proceeds that would otherwise belong solely to the insured.

3. Adding others to a Property Policy should be done only with the insured's knowledge, consent, and request to the insurance company.

4. What is an Insurable Interest?

a. A <u>legal interest</u> in another person's life or health or in the protection of property from injury, loss, destruction, or pecuniary damage. [Black's Law Dictionary]

b. Court or Common Law and State insurance codes will also provide a definition.

Insurable interest is defined in Section 148 of the Insurance Laws of New York State as:

"The term insurable interest, as used in this section, should be deemed to include any <u>lawful and substantial economic interest in the safety or preservation of property</u> from loss, destruction or pecuniary damage."

5. <u>Financial interests at the time of loss</u> that fall within this broad definition include those of:

a. The <u>owner</u> of property.

b. A <u>secured creditor</u> (mortgagors, lenders, etc.).

c. A <u>holder</u> of a mechanic's or contractor's lien.

d. A <u>Bailee</u> or other agent of the owner.

e. A <u>lessor or renter</u> of property (to the extent of the lessor's legal obligation).

f. A <u>party who has made improvements</u> upon real property owned by another (such as the tenant).

g. A party with a <u>contractual interest</u> in property (such as the interest of a life tenant).

h. <u>Usufruct interests</u>, defined as "the right to utilize and enjoy profits and advantages of something belonging to another so long as the property is not damaged or altered in any way."

1) Easements

2) Permanent use of storage buildings

3) Private roads

6. There is a need for a very broad Omnibus Named Insured Property Language to cover most of these insurable interest parties for payment at the time of loss.

EXAMPLE OF OMNIBUS NAMED INSURED LANGUAGE PROPERTY

The named insured will include, but is not limited in scope or definitions, to the insured as named and any affiliated, controlled, subsidiary or associated company or any other company/party related by contract, lease, or license. This would include any trust, association, partnership, limited liability company, real estate investment trust, limited liability partnership, joint venture as now or may hereafter exist. This would include any partnership or joint venture interests of which the insured is a participant or otherwise affiliated with to the extent the insured is required to insure such interests, as their respective interests may appear.

B. Mortgagee Insurable Interests

1. A Mortgagee is a person or entity that has an interest in property offered as collateral for a loan.

2. Usually, the mortgagee's interest is in real property (land and the buildings and other structures on that land), rather than personal property.

3. Most commercial property insurance forms include a mortgage clause that provides special protection for those designated on the declarations page.

   a. All mortgage clauses establishes that payment for covered loss or damage to buildings or structures will be made, not to the insured or to the insured and the mortgagee, but to the mortgage holder(s) shown in the declarations.

   b. The mortgage clause also establishes that coverage applies for the benefit of the mortgagee even if the insured's claim is denied because of the insured's acts, if the mortgagee pays any premium due on request and notifies the insurer of any change in ownership, occupancy, or hazard of which it has knowledge.

c. The mortgage clause establishes that the mortgagee will receive written notice of policy cancellation by the insurer as per the conditions or endorsements. [Reference Condition Changes]

d. The mortgage provision in current Insurance Services Office (ISO) forms goes as far as to promise the mortgagee 10 days' notice of nonrenewal.

e. Some special property coverage forms will give up to sixty (60) day notice of cancellation.

f., PLEASE REMEMBER that the typical mortgage clause addresses only cancellation by the insurer and the clause is silent on notice of cancellation at the insured's request.

4. If a form does not have a built-in mortgage clause, one can be added by endorsement using the CP 12 18 10 12 Loss Payable Provisions.

C. Loss Payee Insurable Interests

1. Loss payee endorsements don't normally give the loss payee any rights or responsibilities under the policy other than the right to receive payment for covered loss to the property in which it has an interest.

2. Loss Payee Endorsements are sometimes written to provide the loss payee with notice of cancellation.

3. A Lenders Loss Payable Endorsement gives a creditor of the insured the same rights and duties that a mortgage clause gives a mortgagee.

a. Lenders loss payable insurable interests can apply to creditors with an interest in any covered property (real or personal), if the insurable interest is established in a written contract.

b. Banks and Lenders are requiring this endorsement for protection of their interest – CP 12 18 10 12 Loss Payable Provisions.

c. Banks and Lenders are also requiring that they be named as a Loss Payee under the Business Income (And Extra Expense) Coverage Form.

d. Banks and Lenders now understand the definition of Business Income and Extra Expense and they now include that in the loan documents. [Continuing Normal Operating Expenses]

A. Coverage

1. Business Income

Business Income means the:

a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

b. Continuing normal operating expenses incurred, including payroll.

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

e. Lender Loss Payable Endorsements generally provide notice of cancellation for non-payment of premium and for any other reason. [Modify this language to agree with the modifications concerning notice to the Named Insured]

f. Lender Loss Payable Endorsements for Business Income Coverage Forms are manuscript since the ISO does not have an endorsement now and should include notice of cancellation language.

4. Leased Business Personal Property Loss Payee Exposure

a. Leased personal property that the insured is contractually obligated to insure and is required to replace at a certain value.

b. Leased Property CP 14 60 07 88 endorsement should be used, and it is addressed by CLM Division 5 Rule 31.C.7.

c. This endorsement identifies the leased personal property, so that the lessor can clearly see that it *is* covered under the policy.

d. A valued coverage option that is confusingly labeled an "agreed value option" even though it has nothing to do with coinsurance is written into the endorsement.

e. This option enables the insured to cover the leased property for the amount stipulated by the lessor rather than for its actual cash value.

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

B. Your Business Personal Property is revised to include personal property of others in your care, custody or control under written leases, as described in the Schedule or in the Declarations.

C. If an agreed value is entered for property in the Schedule or in the Declarations, this amount will be considered to be the value of the described property at the time of loss or damage. But this does not otherwise alter the application of the Coinsurance condition.

D. Property described in the Schedule or in the Declarations is not included under any Personal Property of Others coverage in this Coverage Part.

f. Does not provide for Notice of Cancellation to the Loss Payee and therefore additional language needs to be added to satisfy the lease terms.

g., PLEASE READ the Loss Payee Clauses in the Contractors Equipment Floater, EDP Floater, Installation Floater, and Cargo Forms to provide coverage for items that are leased and require insurance. [Review Bailment Contracts listed above]

D. Contract of Sale Provisions Insurable Interest

1. Contract of Sale Provisions recognize simultaneous insurable interests of a buyer and seller of covered property.

2. The contract of sale provisions specify that loss will be adjusted with the insured, but payable jointly to the insured and the designated loss payee.

3. The Loss Payable Provisions CP 12 18 10 12 endorsement has a section that applies to Contracts of Sale.

4. The contract of sale option also modifies the other insurance provision so that it applies to the loss payee as well as to the insured.

E. CONTRACT OF SALE

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.

2. For Covered Property in which both you and the Loss Payee 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.

3. 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.

E. Building Owner Loss Payable Insurable Interest [Tenant Exposure]

1. Tenants of buildings are being required in their leases to name the Building Owner as a Loss Payee.

2. The loss exposure can be covered by two new or modified endorsements.

a. The Loss Payable Provisions CP 12 18 10 12 endorsement is used when the lease may not require the tenant to insure the buildings occupied by the tenant.

b. Additional Insured – Building Owner CP 12 19 06 07 endorsement is used when the lease requires the tenant to insure the building and name the building owner.

3. If the Agent/Broker must cover multiple Loss Payee Insurable Interests, the Loss Payable Provisions CP 12 18 10 12 endorsement can provide this coverage along with the other coverages previously discussed.

F. BUILDING OWNER LOSS PAYABLE CLAUSE

1. The Loss Payee shown in the Schedule or in the Declarations is the owner of the described building, in which you are a tenant.
2. 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.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

4. ISO Additional Insured – Building Owner CP 12 19 06 07 endorsement

The building owner identified in this endorsement is a Named Insured, but only with respect to the coverage under this Coverage Part or Policy for direct physical loss or damage to building(s) described in the Schedule.

MAY WANT CANCELLATION NOTICE LANGUAGE ADDED TO THIS ENDORSEMENT.

5. ISO Business Income – Landlord as Additional Insured (Rental Value) – CP 15 03 06 07

a. Rental and lease agreements may require that the tenant procure insurance for loss of rental income for the benefit of the landlord, for the situation where the premises cannot be used for business purposes because of a covered loss.

b. This coverage endorsement broadens coverage under a policy that the endorsement may be attached to.

c. Many leases are requiring this coverage endorsement along with the CP 12 19 or the CP 12 18 for Direct Damage.

d. The following language from the endorsement highlights the coverage for Rental reimbursement and the limitations as applied to the building owner.

A. The person or entity identified in the Schedule is insured for loss of "Rental Value", up to the Limit of Insurance shown in the Schedule. Such coverage applies in accordance with all terms of Business Income – "Rental Value" Coverage under the applicable Business Income Coverage Form, and all conditions in the Common Policy Conditions and Commercial Property Conditions, except as otherwise provided in this endorsement or other applicable endorsement.

B. The Causes Of Loss Form shown in the Schedule applies to the coverage provided under this endorsement. Unless shown in the Schedule, endorsements which modify the Causes Of Loss Form do not apply to the coverage provided under this endorsement.

C. With respect to the coverage provided under this endorsement, the definition of "Rental Value" is replaced by the following:

"Rental Value" means the:

1. Net income that would have been earned as rental income from tenant occupancy of the premises described in the Schedule, as furnished and equipped by the Additional Insured; and

2. Amount of continuing normal operating expenses which are the legal obligation of the tenant and which would otherwise be the Additional Insured's obligations.

In Paragraphs **C.1**. and **C.2.** above, the terms tenant and tenant occupancy refer to the Named Insured under this policy, who is a tenant of the Additional Insured.

D. If this endorsement provides coverage in excess of the coverage or benefits required under the terms of the lease between the Named Insured and the

Additional Insured, the most we will pay is the amount determined in accordance with the terms of the lease, but not more than the Limit of Insurance shown in the Schedule.

E. The following applies if this policy includes Business Income coverage for the interest of the Named Insured:

The amount of any payment made to the Additional Insured under the terms of this endorsement will be deducted from the Named Insured's Business Income loss and therefore will not be payable to the Named Insured as a continuing normal operating expense.

F. If we cancel this policy, we will provide advance notice in writing to the Additional Insured. The notice will be mailed to the Additional Insured at the last mailing address known to us, in the applicable timeframe specified in the policy's Cancellation Condition or any amendment to that Condition.

G. The following do not apply to the coverage provided under this endorsement:

1. Extra Expense Coverage or Additional Coverage – Expenses To Reduce Loss;
2. Additional Coverage – Alterations And New Buildings;
3. Coverage Extension – Newly Acquired Locations; and
4. Optional Coverages.

F. Additional Insured Insurable Interest

1. There is no standard, preprinted commercial property endorsements designed to designate additional insureds other than what has been highlighted above.

2. An additional insured endorsement to a commercial property policy usually consists of a statement typed onto an otherwise nearly blank general change endorsement form that simply says that a given individual or entity is an additional insured.

3. In the event of covered loss to the item of property in which the additional insured has an interest, the insurer would issue any loss payment check to both the named insured and the additional insured.

4. It would not be possible for either party to obtain the funds without the cooperation of the other.

5. "As Their Interests, May Appear" is language that may show up on these Additional Insured Endorsements.

> It is hereby agreed and understood that XYZ Company is added as an additional insured as their interests may appear.

a. This language is <u>intended to restrict the recovery rights of the additional insured</u> to only the proceeds about the covered property in which the additional insured has a legitimate interest.

b. More complex property risks <u>may need a manuscript endorsement to deal with the Additional Insured</u> exposures since not always reported to the Broker/Agent or Risk Manager.

> **SUBJECT TO ALL THE TERMS AND CONDITIONS OF THIS POLICY, THE POLICY INSURES THE FOLLOWING AS "ADDITIONAL INSUREDS."**
>
> **1.** Any lessor, lessee or other party as required under the terms and conditions of any lease, contract or agreement entered into prior to the issuance of this coverage or during the term of this policy.
>
> **2.** Any mortgagee, loss payable, lenders loss payable, contract of sale as required under the terms and conditions of any agreement entered into prior to the issuance of this coverage or during the term of this policy.
>
> **3.** As respects the broadened definition of additional insured, all parties by definition will receive a notice of cancellation and notice of material change. Should the parties by definition herein have insurable interest in Real or Personal Property, the Replacement Cost Provision is herein expanded to provide Replacement Cost for Property of Others and deletes any policy provision to the contrary.

6. Additional Insured Endorsements for Contractors Equipment Floaters, Builder's Risk Policies, Installation Floaters, and EDP Floaters need to be carefully reviewed as well.

7. Notice of Cancellation language for the Additional Insured must be concurrent with the coverages provided throughout the policy and the Loss Payee language may be useful.

V. HORIZONTAL PROPERTY RISK TRANSFER CLAIM PAYMENT VALUATION LOSS EXPOSURES

A. Real Property Valuation Determination AT TIME OF LOSS

1. For the purposes of the commercial property insurance program, there are basically two types of property valuation from which to choose.

   a. Replacement Cost value and

   b. Actual Cash Value.

2. Replacement cost value is defined as the cost to replace new today with materials of like kind and quality but will not include the increased cost of construction because of ordinance or law.

   a. Some specialty property carriers have expanded the Replacement Cost Valuation Clause.

> **K.** On all other property, the loss amount will not exceed the lesser of the following:
>
> **1)** The cost to repair.
>
> **2)** The cost to rebuild or replace on the same site with new materials of like size, kind, and quality.
>
> **3)** The cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
>
> **4)** The selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss.
>
> **5)** The cost to replace un-repairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
>
> **6)** The increased cost of demolition, if any, resulting from loss covered by this Policy, if such property is scheduled for demolition.
>
> **7)** The unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.
>
> **8)** The Actual Cash Value if such property is:

a) useless to the Insured; or

b) not repaired, replaced or rebuilt on the same or another site within two years from the date of loss.

The Insured may elect not to repair or replace the insured real and/or personal property lost, damaged or destroyed. Loss settlement may be elected on the lesser or repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two years from the date of loss. As a condition of collecting under this item, such expenditures must be unplanned as of the date of loss and be made at an Insured Location under this Policy. This item does not extend to **DEMOLITION AND INCREASED COST OF CONSTRUCTION.**

b. Attempt to get Absolute Replacement Cost which does not have the ordinance or law limitation like in the CP 00 10 Building and Personal Property Coverage Form.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

c. If not available, purchase the ISO Ordinance or Law Coverage CP 04 05 09 17

d. The endorsement specifies that coverage applies only to the costs incurred to meet the minimum requirements of the ordinance or law.

e. Any additional cost above minimum will not be paid by the insurance company.

f. **Retroactive Ordinance or Law changes are occurring after catastrophic events. BIG DEBATE FOR CARRIERS.**

MANUSCRIPT ORDINANCE OR LAW ENDORSEMENT

When reconstruction of any damaged building(s) and/or structures are affected by Ordinances or Laws regulating how the building must be repaired or replaced for compliance, then this policy shall pay such increased costs associated with the Ordinances or Laws in effect at the time of repair and or replacement.

3. Actual Cash Value

   a. The term "actual cash value" is <u>seldom defined</u> in the STANDARD policies, but most courts have upheld the insurance industry's traditional definition.

   b. “The cost to replace new today with materials of like kind and quality, less depreciation.”

   c. Some specialty property coverage forms will have a definition.

> **Actual Cash Value –** The amount it would cost to repair or replace insured property, on the date of loss, with material of like kind and quality, with proper deduction for obsolescence and physical depreciation.
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   d. <u>Down Zoning or other Ordinance restrictions</u> may impact the direct damage valuation. This exposure should be dealt with before the loss and the following manuscript language is provided to handle this exposure.

> **ACV CAP MANUSCRIPT ENDORSEMENT**
>
> When any building(s) and/or structure(s) is affected by zoning laws so that the building usage, size (height, total square footage, dimensions) are limited by law, the policy will provide replacement cost for that portion of the building the insured can by law, replace and will then pay actual cash value that the insured cannot replace by law.

4. PLEASE REMEMBER that the choice of valuation does not affect the rate charged for the insurance.

5. It is important to include other costs in determining the claim payment and not just material and labor costs.

   a. Architects and engineer’s fees,

   b. Construction administration,

   c. Overhead, and

d. Profit.

SOFT COST MANUSCRIPT ENDORSEMENT

The definition of building shall be expanded to include for valuation and settlement purposes fees for architectural studies and plans, engineering, inspection, superintendence, environmental impact studies, geological studies, and all other expenses incidental to the repair or replacement of the property.

6. Some of the insured's property can be covered on a functional replacement cost basis, the value to insure is the cost to replace that property with functionally equivalent property, rather than with substantially identical property.

   a. ISO Functional Building Valuation CP 04 38 09 17 endorsement can be used in certain instances.

   b. The Functional Building Valuation endorsement is designed to insure an older building whose architectural style has become obsolete or simply unnecessary to the insured's current use of the building.

   c. It addresses situations when Replacement Cost valuation would be unnecessary in the event of a total loss, but an actual cash value settlement would not meet the insured's needs in the event of a partial loss.

   d. In the event of a total loss, the Functional Building Valuation endorsement provides for replacement of the building identified in the endorsement with a functionally equivalent but less costly building.

   e. Ordinance or Law Coverage also in endorsement for Coverage A, Coverage B, and Coverage C because of a requirement to comply with ordinance or law.

   f. In the event of a partial loss, the endorsement provides for payment of the cost to repair the damage in the architectural style of the damaged building, using less costly material whenever available.

g. No coinsurance applies.

h. If the insured does not actually make the repairs, valuation is the lesser of the following.

1) The building's market value (prior to the damage), exclusive of the land value.

2) The cost to repair or replace in the same architectural style but with less costly material if available, less an allowance for "physical deterioration and depreciation."

3) "Market value" is defined in the endorsement to mean "the price which the property might be expected to realize if offered for sale in a fair market".

7. Guaranteed Replacement Cost – Some specialized carriers are providing this coverage for special types of property exposures such as Condominium Associations and Homeowners Associations.

8. Increase in Rebuilding Expenses Following Disaster (Additional Expense Coverage on Annual Aggregate Basis) CP 04 09 10 12

C. The Additional Expense Coverage provided under this endorsement applies if all of the following conditions are met, subject to all limitations of this endorsement:

1. The event that caused the covered loss:

a. Results in declaration of a state of disaster by federal or state authorities; or

b. Occurs in close temporal proximity to the event that resulted in declaration of disaster by federal or state authorities;

2. Expenses for labor and/or building materials for repair or replacement of the damaged property increase as a result of the disaster and the total cost of repair or replacement exceeds the applicable Limit of Insurance due to such increase in expenses;

3. You elect to repair or replace the damaged building; and

> **4.** You notified us, within 30 days of completion, of any improvements, alterations or additions to the building which increase the replacement cost of the building by 5% or more, and allowed us to adjust the Limit of Insurance, if necessary, to maintain the required insurance to-value level.

9. Valuing Property to determine insurance to value remains a constant issue that must be constantly addressed.

   a. Not every building is new with original construction prices and newly installed equipment prices to determine adequate insurance limits.

   b. The ideal solution would be to have a professional property appraisal. [Very Expensive and most insureds will not consider.]

   c. Original cost figures can be adjusted and indexed to arrive at insurance values dependent upon the valuation clause selected.

   d. Sometimes a square footage multiplier approach can provide a rough estimate of property value.

   e. Determine the coinsurance impact for understated values since most losses are partial losses.

B. Business Personal Property Valuation Determination AT TIME OF LOSS

1. Typically, it will be Actual Cash Value or Replacement Cost at the time of loss.

   a. Special problems in determining Replacement Cost for <u>stock that is Machinery or Equipment</u>.

   b. Does it cover <u>Installation and Shipping costs</u> in the sales contract?

c. Does it cover the testing costs and customization costs for the personal property?

d. Does it cover the calibration costs or special certification costs or training costs for the equipment?

e. Does it cover the costs associated with certifications from the FDA, EPA, AQMD, etc.?

f. Does it cover the digital restoration or computerization of the business personal property?

g. Does it cover the Excise Tax, Value Added Tax (EU) and Import/Export Duties?

h. Does it cover the additional costs associated with ordinances or laws?

2. Loss or Damage To Products Special Exclusion in the ISO Causes of Loss Form CP 10 30 09 17

a. No coverage for an error or omission for property in the care, custody, and control of the insured.

b. Coverage may apply if the error or omission causes a covered peril.

5. Additional Exclusion

The following provisions apply only to the specified property.

LOSS OR DAMAGE TO PRODUCTS

We will not pay for loss or damage to any merchandise, goods or other product caused b or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production, or use of the product, including planning, testing, processing, packaging, installation, maintenance, or repair. This exclusion applies to any effect that compromises the form, substance, or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

c. This exclusion applies to any effect that compromises the form, substance, or quality of the product.

d. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

e. No coverage CGL because property damage in your care custody and control and your work and your product are excluded.

f. Inland Marine coverage forms – Cargo, Installation Floaters, and Commercial Article Floaters for Bailment may provide coverage.

3. Functional Replacement Cost for personal property valuation endorsement can be used when functional replacement cost exceeds replacement cost or when the cost to replace in function would be less than replacement cost.

a. Functional Personal Property Valuation (Other Than Stock) endorsement CP 04 39 10 90 can be used when functional replacement cost exceeds replacement cost or when the cost to replace in function would be less than replacement cost.

b. EDP policies for hardware may use Functional Replacement Cost or Upgraded Value Basis allows the client to replace equipment that has been destroyed with equipment of greater processing ability.

1) Some forms triggered only if the equipment is destroyed.

2) Generally, in the event of partial loss, the item will merely be repaired.

3) The client must submit to the insurer, at the time that this option is selected, a description of the equipment

that would be purchased to replace any destroyed equipment, along with the cost of each item.

c. EDP Media coverage is valued at its reproduction cost.

1) This includes the cost of recreating the data.

2) Irreplaceable media is often excluded from coverage unless it is specifically identified in the declarations, in which case the limit of insurance is its agreed value. [Proprietary Programs]

3) Some forms establish that media that is not reproduced is valued at the cost of blank materials.

4. ISO Market Value - Stock endorsement CP 99 31 07 88 is available to cover stock that is bought and sold at a market exchange at the value set by the market as of the time and place of loss.

5. ISO Storage or Repairs Limited Liability endorsement CP 99 42 07 88 can be used to value personal property of others held by an insured Bailee at the lesser of actual cash value or the value shown on the receipt issued to the owner.

6. ISO Selling Price Valuation for Stock

a. Inventory sold but not shipped that is damaged will be paid at Selling Price and includes profit. [CP 00 10 10 12]

> **c.** "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

b. Broad definition of Stock must be considered for Stock that has not been sold.

> **3.** "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

c. Manufacturing Selling Price (Finished "Stock" Only) endorsement CP 99 30 07 88 covers stock at its selling price less any discounts or expenses that the manufacturer would have incurred in selling the stock.

d. Manufacturer's Consequential Loss Assumption endorsement CP 99 02 07 88 covers stock that would decline in value or be rendered valueless by the destruction of other stock in process of manufacture.

7. Brand and Label Stock Exposure.

a. If an insurer exercises its option of paying for and taking the damaged property, the insured may be concerned about potential injury to its business reputation resulting from the sale of the salvaged goods.

b. Highly Protected Risk Forms have a brands and labels provision that allows the insured to remove labels or mark the items as "salvage".

c. Equipment Breakdown Protection Policies also include a brands and label provision, but the insured generally is not reimbursed for their additional costs.

d. These forms require the insured at its own expense to remove the labels if there is no physical damage the merchandise.

e. The insured is also required to re-label the items as required by law.

f. Special Property Coverage Forms also provide unique Brands and Labels Issues.

C. BRANDS AND LABELS

If branded or labeled property insured by this Policy is physically damaged and the Company elects to take all or any part of that property, the Insured may at the Company's expense:

> **1)** stamp "salvage" on the property or its containers; or
>
> **2)** remove or obliterate the brands or labels,
>
> If doing so will not damage the property, In either event, the Insured must re-label such property or its containers to be in compliance with any applicable law.
>
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g. ISO <u>Brands and Labels CP 04 01 10 00 endorsement</u> will be the reasonable cost incurred by the client to mark and remove labels.

h. Manuscript endorsements can also be used to broaden coverage.

> **BRAND AND LABEL MANUSCRIPT ENDORSEMENT**
>
> In the event of loss or damage to property bearing the brand or trademark of the insured which in any way <u>carries or implies a guarantee on the part of the insured, or identifies the insured, the salvage value of such damaged property shall be determined</u> after the removal of such brands, trademarks or other identifying characteristics.
>
> The insured can choose the salvor of their product <u>and control the sale of the salvage</u> by indicating where and under what conditions the damaged goods can be disposed of following a covered cause of loss.
>
> The <u>insured can deny right to salvage of damaged items with prior written agreement with the insurance company</u>.

8. ISO <u>Peak Season Limit of Insurance endorsement</u> CP 12 30 07 88 provides a means to avoid over-insurance during the insured's slack season (or under-insurance during the peak season) by establishing a higher limit for the period specified in the endorsement for the remainder of the year.

9. ISO <u>Value Reporting Form endorsement</u> CP 13 10 04 02 is used to convert personal property coverage for some or all locations under the building and personal property coverage form to a reporting basis.

10. <u>Reduction in Value</u> of Components or the Pair and Set Clause.

a. When part of a set or one of a pair is lost, this pair or set clause is used to determine the loss payment.

b. If a loss occurs to an item that is part of a pair or set, the insurer can either:

1) Repair or replace any part to restore the pair or set to its value prior to the loss; or

2) Pay the difference between the actual cash value of the property before and after the loss.

3) This clause normally pertains to Business Personal Property, Contractors Equipment Floaters, Builders Risk Policies, Installation Floaters, and EDP Floaters for software and media.

c. Pair and Set Language Example

> In the event of loss of or damage (as insured against by this policy) to:
>
> **1.** any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles <u>shall be a reasonable and fair proportion of the total value of the pair or set</u>, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or
>
> **2.** any part of covered property consisting, when complete for use, of several parts, the companies <u>shall be liable only for the value of the part lost or damaged</u>.
>
> **Source: Industrial Risk Insurers Form C-AR-PD, Ed. 9/90**

1) This <u>form promises to consider the importance of the lost or damaged article to the value of the whole pair or set</u>, they also say that "in no event" will the loss be construed to be total.

2) When insuring hotel or motel furnishings, the coverage should be properly applied to provide the uniform look after the loss.

3) The issue the insured does not want is to have undamaged older furniture with new furniture. This is not consistent with the brand.

4) The portion of the provision that addresses component parts specifies that only the value of the damaged part will be paid and this must be adjusted to replace all goods to be matching as in the hotel or motel example.

REDUCTION IN VALUE MANUSCRIPT ENDORSEMENT
In the event, there is loss to a portion or part of the product being insured which affects the value of the remaining portion, the insurance company agrees to pay the insured the insured value of the entire product with the agreement that the insured surrender both the damaged and undamaged parts of the product to the insurance company.

C. Tenants' Improvements and Betterments Valuation

1. Most leases require the tenant to insure Tenant's Improvements and Betterments at Replacement Cost and there is usually language in the lease requiring the tenant to "repair or replace the improvements promptly."

2. The valuation of tenant's improvements and betterments is dependent on how quickly repairs are made.

3. The tenant is not permitted to remove the improvements in the lease, the value to the tenant of permanent improvements made to lease real property declines with the running of the lease period.

4. Upon the expiration of the lease, the tenant's interest in the improvements will be completely extinguished.

5. In the event of a lengthy delay in effecting repairs, an adjusted loss settlement would be justified.

6. If repairs are not made "promptly," improvements are valued at a percentage of their original cost and the applicable percentage is the ratio of the number of days between the loss date and the

expiration of the lease, to the number of days between the installation of the improvements and the expiration of the lease.

7. CP 00 10 Building and Personal Property Coverage Form has specific language concerning valuation.

> **e. Tenant's Improvements and Betterments at:**
>
> **(1)** Actual cash value of the lost or damaged property if you make repairs promptly.
>
> **(2)** A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
>
> **(a)** Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
>
> **(b)** Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.
>
> If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
>
> **(3)** Nothing if others pay for repairs or replacement.

8. If the replacement cost option has been elected, replacement cost (without deduction for depreciation) replaces actual cash value in the Tenant's Improvements and Betterments valuation provisions

D. Blanket Limit of Insurance Impacts to Claims Payments

1. A blanket limit is a single limit that applies to more than one category of property, more than one location, or both.

2. Blanket limits can be arranged in several different ways.

   a. There may be a single blanket limit that applies to all property at all locations and this is the ideal arrangement.

   b. There may be one blanket limit covering all buildings at all locations and another blanket limit covering all personal property at all locations.

c. There <u>may be a blanket limit covering both buildings and personal property</u> at a location and another blanket limit covering both buildings and personal property at a second location.

d. Special Property Coverage Forms and Loss Limit Policies will have a maximum limit with sub-limits.

> The Company's maximum limit of liability in an Occurrence regardless of the number of Locations or coverages involved, including any inured TIME ELEMENT loss, will not exceed the Policy limit of liability of USD $850,000,000 but not exceed USD $250,000,000 limit for Time Element subject to the following provisions . . . .

e. ISO Coverage Forms do not define Blanket.

> NOTE: There is no definition of blanketing in ISO coverage forms. While there is an insurance industry usage of the term with historical meaning attached to the approach there is no definition of blanketing within the forms.

f. <u>Without an agreed amount endorsement</u>, a blanket limit does offer some protection against under-insurance in the event of a total loss.

g. The blanket limit <u>does not necessarily prevent a coinsurance penalty</u>, because the coinsurance clauses in most direct damage forms include a blanket limit provision.

h. This provision specifies that when a blanket limit applies to damaged property, the <u>coinsurance clause applies to the total value of all the property covered by the blanket limit</u>.

i. To avoid the Coinsurance Penalty, <u>always apply the Agreed Value Option with the Blanket Limits applied</u>.

j. Some companies will attach an "interdependency clause" for clarity purposes.

Limits of Insurance

The most we will pay for loss or damage in any one occurrence is the sum total of the limits shown in the Supplemental Declarations applying to Covered Property under this Coverage Form at all Designated Locations, regardless of the number of locations at which the loss or damage occurs.

k. How Companies Adjust a loss under Blanket Coverage

1) Policy has no clarification or “interdependency clause” and the claims adjuster is kind.

2) No clarification and claim’s adjuster in not kind and both carrier and insured end up in court.

3) Need a definition added to the policy and the policy may also require Agreed Value Option.

4) Companies may apply a Margin Clause to Limit the Recovery.

l. Margin Clause creates a huge problem.

1) Typically provides for a fixed percentage swing or margin above values as stated under the Statement of Values.

2) Can be used in conjunction with a Blanket Policy an always best to eliminate this clause

MARGIN CLAUSE – TRAVELERS

The most we will pay for loss or damage in anyone occurrence at any one premises location is 120% of the value(s) for each Building or Structure and separately for the total of Personal Property (including but not limited to furniture and fixtures, machinery and equipment, “Stock”, all other personal property owned by you and used in your business and you use interest in improvements and betterments) and Personal Property of Others at each location as shown on the latest Statement of Values filed with us and at each premises location as subsequently reported to and agreed by us to insure.

3) ISO endorsement can be applied to a medium and larger property accounts that use Blanket Limits.

4) Limitation On Loss Settlement – Blanket Insurance (Margin Clause) – CP 12 32 06 07 – Loss Payment Example

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of $4,000,000.

The combined value of these three buildings at the time of loss is $5,000,000.

There is a Coinsurance requirement of 90% (.90 x $5,000,000 = $4,500,000); therefore, the Blanket is underinsured and there will be a Coinsurance penalty.

The value stated for Building #1 is $1,000,000.

The Margin Clause percentage is 120%.

The maximum loss payable for Building #1 is $1,200,000 ($1,000,000 x 1.20).

Building #1 sustains a loss of $1,200,000. The Deductible is $10,000.

Step (1): Amount of Blanket Limit divided by Coinsurance requirement

($4,000,000 ÷ $4,500,000 = .889)

Step (2): Amount of loss times Coinsurance penalty factor ($1,200,000 x .889 =

$1,066,800) is the adjusted amount of loss

Step (3): Adjusted amount of loss minus Deductible ($1,066,800 – $10,000 =

$1,056,800)

Step (4): We will pay $1,056,800 (less than the maximum loss payable).

The remainder of the loss, $143,200, is not covered due to application of the Coinsurance penalty and Deductible.

5) Margin Clauses are on the increase in Property Insurance Programs and the Agent/Broker Team must carefully evaluate the impact to the client.

6) Make sure that the Agent/Broker Team has a good checklist to use in establishing the Limits of Insurance for Insurance to Value Exposures.

VI. HORIZONTAL PROPERTY RISK TRANSFER LOSS EXPOSURE SPECIFIC MODIFICATIONS AND IMPROVEMENTS

A. WATER PERIL EXPOSURES

1. Effective October 2012 in most states the Basic CP 10 10 12, Broad CP 10 20 10 12 and Special CP 10 30 09 17 Causes of Loss Forms have new language concerning the water exclusion.

g. Water

(1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

(2) Mudslide or mudflow;

(3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings; or

(5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph **(1), (3)** or **(4),** or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5),** is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

2. To understand the nature and extent of water damage coverage in the ISO Standard Coverage Forms, the Broker/Agent Team must evaluate:

    a. Any Mandatory Exclusionary Endorsement above

    b. The two seepage exclusions in the Cause of Loss Forms

        1) Continuous Leakage

        2) Discharge Caused by Freezing

    c. The Appliance Leakage Repair Limitation

    d. The water damage coverage extension under Appliance Leakage

3. After reviewing the exclusions and limitations, the only water damage that is left covered is the <u>damage caused by leakage from an appliance or sprinkler system occurring over a period of less than 14 days</u>.

4. The water damage coverage extension <u>grants coverage for the cost of tearing out and replacing otherwise undamaged portions of a building</u>, if necessary, to repair a system or appliance that has caused a covered water damage loss.

5. The "appliance leakage repair" limitation establishes that there is no coverage for the cost of repairs to the faulty appliance or system itself, with one exception: <u>coverage is provided for repairing a fire extinguishing system that has caused a covered loss such as a sprinkler leakage loss</u>.

6. The water damage exclusion <u>can be partially negated</u> by attaching the Flood Coverage Schedule CP DS 65 10 12 and the Flood Coverage Endorsement CP 10 65 10 12.

7. It is a <u>detailed four-page</u> form that is intended to "WRAP AROUND" a National Flood Insurance Program (NFIP) policy.

8. Coverage can be on a Blanket or Separate Schedule Basis and apply to Buildings, Business Personal Property, Business Income, Extra Expense, and other designated properties.

9. This endorsement adds coverage for damage caused by flood or mudslide. The exclusions of sewer backup and seepage of water remain unchanged.

    a. This endorsement can be used with any of the three causes of loss forms to add back coverage for loss from flood.

    b. The endorsement's definition of flood includes mudslide, but not seepage of water and the definition is like the NFIP 0definition but a little less restrictive.

    c. Sewer backup or overflow is specifically excluded unless it results from flood and occurs within 72 hours after the flood waters recede.

    d. Coverage also applies to damage from collapse or sinking of land along the shore of a body of water caused by erosion or undermining by waves or water currents that "exceed the cyclical levels and cause flood."

    e. Otherwise, no coverage applies to the cost of restoring land.

C. Additional Covered Cause Of Loss

The following is added to the Covered Causes Of Loss:

Flood, meaning a general and temporary condition of partial or complete inundation of normally dry land areas due to:

1. The overflow of inland or tidal waters;

2. The unusual or rapid accumulation or runoff of surface waters from any source; or

3. Mudslides or mudflows which are caused by flooding as defined in **C.2.** above. For the purpose of this Covered Cause Of Loss, a mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

All flooding in a continuous or protracted event will constitute a single flood.

f. The endorsement specifies that the earth movement exclusion does not apply to overflow of tidal waters caused by a tsunami.

g. It further specifies that, unless ordinance or law coverage has been added to the policy by endorsement, loss from ordinance or law about flood damage is excluded.

h. Coverage applies for Mortgage Holders Errors and Omissions Coverage Form.

D. Exclusions, Limitations And Related Provisions

1. The Exclusions and Limitation(s) sections of the Causes Of Loss Form (and the Exclusions section of the Mortgageholders Errors And Omissions Coverage Form and the Standard Property Policy) apply to coverage provided under this endorsement except as provided in **D.2.** and **D.3.** below.

2. To the extent that a part of the Water Exclusion might conflict with coverage provided under this endorsement, that part of the Water Exclusion does not apply.

3. To the extent that a tsunami causes the overflow of tidal waters, the exclusion of earthquake, in the Earth Movement Exclusion, does not apply.

4. The Ordinance Or Law Exclusion in this Coverage Part continues to apply with respect to any loss under this Coverage Part including any loss under this endorsement, unless Ordinance Or Law Coverage is added by endorsement.

i. No coverage applies to loss from a flood that begins before or within 72 hours after the inception date of the endorsement.

j. The flood coverage endorsement provides coverage for loss to underground foundations and underground pipes, flues, and drains.

k. However, no coverage applies to boat houses and open structures located on or over a body of water.

l. Bulkheads, pilings, piers, wharves, docks, or retaining walls that are not part of a building also are excluded from coverage, even if they have been added as covered property by endorsement.

m. Personal property in the open is excluded unless otherwise specified in the declarations or flood coverage schedule.

n. No coverage applies to property that is ineligible for NFIP flood coverage under the Coastal Barrier Resources Act and Coastal Barrier Improvement Act of 1990 (generally, buildings constructed after a specified date on specified coastal barrier islands).

5. The following exclusions and limitations are added and apply to coverage under this endorsement:

a. We will not pay for any loss or damage caused by or resulting from any Flood that begins before or within 72 hours after the inception date of this endorsement. If you request and we provide an increase in the stated Limit of Insurance for Flood, the increase will not apply to loss or damage from any Flood that begins before or within 72 hours after your request was made.

If the Flood is due to the overflow of inland or tidal waters, then the Flood is considered to begin when the water first overflows its banks.

b. We will not pay for loss or damage caused by or resulting from destabilization of land arising from the accumulation of water in subsurface land areas.

c. Under this Coverage Part, as set forth under Property Not Covered in the Coverage Form to which this endorsement is attached, land is not covered property, nor is the cost of excavations, grading, backfilling or filling. Therefore, coverage under this endorsement does not include the cost of restoring or remediating land due to the collapse or sinking of land caused by or resulting from Flood. However, coverage under this endorsement includes damage to the covered portions of the building and to covered personal property, caused by collapse or sinking of land along the shore of a body of water as the result of erosion or undermining caused by waves or currents of water which exceed the cyclical levels and cause Flood.

d. We do not cover loss or damage by Flood to personal property in the open except to the extent that such coverage, if any, is specified in the Flood Coverage Schedule or in the Declarations.

e. Property Not Covered, in the Coverage Form to which this endorsement is attached, is amended and supplemented as follows with respect to Flood Coverage:

(1) Property Not Covered includes any building or other property that is not eligible for flood insurance pursuant to the provisions of the Coastal Barrier

Resources Act, 16 U.S.C. 3501 et seq. and the Coastal Barrier Improvement Act of 1990, Pub. L. 101-591, 16 U.S.C. 3501 et seq.

(2) Property Not Covered includes boat houses and open structures, and any property in or on the foregoing, if the structure is located on or over a body of water.

(3) If bulkheads, pilings, piers, wharves, docks, or retaining walls that are not part of a building, have been removed from Property Not Covered and added as Covered Property by separate endorsement, this Flood Coverage Endorsement does not apply to such property.

(4) The following are removed from Property Not Covered and are therefore Covered Property:

(a) Foundations below the lowest basement floor or the subsurface of the ground; and

(b) Underground pipes, flues and drains.

f. We will not pay for loss or damage caused by sewer back-up or overflow unless such back-up or overflow results from Flood and occurs within 72 hours after the flood recedes.

o. A debris removal provision in the endorsement replaces the one in the building and personal property coverage form (or other applicable direct damage coverage form).

p. It establishes that, with respect to flood-borne debris on the insured premises, coverage applies to the removal of debris of both covered property and other property.

q. However, removal of mud deposits from the grounds of the insured premises is not covered.

r. Coverage also applies to removal of debris of covered property from premises other than the insured's premises.

s. Under the flood coverage endorsement, covered debris removal expenses are subject only to the applicable flood limit; there is no debris removal sub-limit.

E. Additional Coverages and Coverage Extensions

1. With respect to Flood Coverage, the Debris Removal Additional Coverage (and any additional limit for Debris Removal under a Limit Of Insurance clause or an endorsement) is not applicable and is replaced by the following:

DEBRIS REMOVAL

a. We will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from Flood. However, we will not pay to remove deposits of mud or earth from the grounds of the described premises.

b. We will also pay the expense to remove debris of Covered Property that has floated or been hurled off the described premises by Flood.

c. This coverage for Debris Removal, as set forth in **E.1.a.** and **E.1.b.** above, does not increase the applicable Limit of Insurance for Flood. Therefore, the most we will pay for the total of debris removal and loss or damage to Covered Property is the Limit of Insurance for Flood that applies to the Covered Property at the affected described premises covered under this endorsement.

10. Coordinate the Water Peril with other Coverage Forms Provided to the insured client in a comprehensive property program.

a. In Equipment Breakdown Protection Coverage Forms the provided coverage varies.

1) The limits of insurance provisions in the Travelers and ISO forms impose a sublimit on recovery for water damage resulting from a breakdown.

2) In the Travelers form, the water damage sublimit is the amount shown in the declarations.

3) In the ISO form, the water damage sublimit is $25,000, unless a higher limit or the word "Included" is shown in the declarations.

b. Difference in Conditions (DIC) Coverage Forms exclude Flood unless the peril is added by endorsement or indicated on the declarations page.

c. Commercial (Manufacturers) Output Policy Coverage Forms exclude flood, surface water, waves, and tidal water, except ensuing fire, explosion, or sprinkler leakage. Some will provide coverage for the transit exposure.

d. Builders Risk Coverage Forms and Installation Floater Coverage Forms

1) Some coverage forms include flood coverage, and some exclude coverage and then require the application of endorsements.

2) If coverage for flood is being added by endorsement to a coverage form that excludes flood, it is important to compare the language of the flood exclusion with the language of the endorsement that adds back coverage.

3) The flood exclusion may well eliminate coverage not only for flood, but for most other types of water damage (such as sewer backup and seepage) as well.

4) In that case, the flood coverage endorsement should (ideally, at least) add back coverage for all the types of water damage mentioned in the flood exclusion and not just for flood.

5) Otherwise, sewer backup and seepage are left uninsured.

e. Business Owners Policy (BOP) always has a water damage exclusion and several Coverage Forms now are including the Mandatory Water Exclusion Endorsement language.

f. Most Transportation Inland Marine Forms such as Trip Transit, Annual Transit, Motor Truck Cargo, Air Cargo, Mail, and Parcel Post do not exclude the water peril.

g. Special Property Coverage Forms will include flood coverage and the definition is an important consideration.

O. FLOOD

This Policy covers physical loss or damage caused by or resulting from Flood.

1) References and Applications. The following term(s) wherever used in this Policy means:

a) Flood:

Flood; surface waters; rising waters; storm surge; sea surge; wave wash; waves; tsunami; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by wind or not; or sewer back-up resulting from any of the foregoing; regardless of any other cause of event, whether natural or man-made, contributing concurrently or in any other sequence of loss. Physical loss or damage from Flood associated with a storm or weather disturbance whether or not identified by name by the U.S. National Hurricane Center or any other meteorological authority, such as the Tokyo Typhoon Center or the Center or the Central Pacific Hurricane Center, is considered to be Flood within the terms of this Policy. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from Flood is not considered to be loss by Flood within the terms and conditions of this Policy.

11. National Flood Insurance Program

a. Emergency Program

1) Once the community has applied for flood insurance, the community is eligible for the Emergency Program.

2) It is intended as an interim program to provide insurance at federally subsidized rate on all construction for potential flood victims pending publication of the Federal Insurance Program.

3) Enrollment by the community within the Emergency Program dictates the mandatory purchase of the first layer of available insurance.

b. Regular Program

1) After the FIA conducts a flood insurance study and publishes the proposed elevation in the Flood Insurance Rate Map (FIRM).

2) The community then has the means for determining the actuarial rates for the regular program.

3) As of the date of publication of the initial Flood Insurance Rate Map, the community is converted to the regular program under which additional insurance is available at actuarial rates.

BUILDING COVERAGE	EMERGENCY PROGRAM	BASIC LIMITS	ADDITIONAL LIMITS	TOTAL LIMITS
Single Family Dwelling	**$35,000**	**$50,000**	**$200,000**	**$250,000**
2-4 Family Dwelling	**$35,000**	**$50,000**	**$200,000**	**$250,000**
Other Residential	**$100,000**	**$135,000**	**$115,000**	**$250,000**
Non-Residential	**$100,000**	**$135,000**	**$365,000**	**$500,000**
Residential Contents	**$10,000**	**$15,000**	**$85,000**	**$100,000**
Non-Residential Contents	**$100,000**	**$115,000**	**$385,000**	**$500,000**

c. Limited Coverage in the Federal Loan Program

d. Limited Coverage Limits available

e. No business Income Coverage

12. Combination Federal Flood Coverage and DIC or MOP

a. The most cost effective may be to combine

b. Purchase the maximum available limit from the Federal Program and excess through the DIC or MOP policy

c. The Federal Program's coverage does not cover Business Income so the adjustment must be made in the DIC or MOP contract.

d. The Federal Program's coverage is more restrictive then the DIC or MOP contract and can create coverage gaps.

e. A drop down/step down clause should be considered to coordinate coverage.

f. A redefined Other Insurance Clause should also be considered to establish Excess and Primary Coverage.

B. FUNGUS, WET ROT, DRY ROT, AND BACTERIA EXPOSURES

1. How does the water peril coverage coordinate and/or provide coverage for Fungus Exposures?

    a. Provides coverage, provides sub-limits of coverage, or do the coverage forms absolutely exclude coverage.

    b. How does it coordinate with the NFIP program?

    c. Remember that the CP 10 65 is intended to provide coverage more than the NFIP.

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of an after that occurrence:

a. A "specified cause of loss" other than fire or lightning; or

b. Flood if the Flood Coverage Endorsement applies to the affected premises.

> This Additional Coverage does not apply to lawns, trees, shrubs, or plants which are part of a vegetated roof.

d. Does the NFIP Program cover fungus?

e. Coverage included in the MOP or DIC insurance program?

2. Loss due to fungus, wet or dry rot, or bacteria is excluded in the ISO Standardized Cause of Loss Forms, except to the extent that coverage is provided under the form's "Limited Coverage for Fungus, Wet Rot, Dry Rot and Bacteria" additional coverage.

3. This exclusion does not apply to loss due to fungus, wet rot, dry rot, or bacteria that is the result of fire or lightning peril, or to ensuing loss from any of the form's "specified causes of loss" listed in the definitions in the policy form.

> **h. "Fungus", Wet Rot, Dry Rot And Bacteria**
>
> Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria. But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".
>
> This exclusion does not apply:
>
> **(1)** When "fungus", wet or dry rot or bacteria result from fire or lightning; or
> **(2)** To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.
>
> Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

4. The fungus additional coverage provides coverage for certain types of loss from fungus, wet or dry rot, or bacteria that result from one of the specified causes of loss (other than fire and lightning) or from flood if the policy has been endorsed to provide flood coverage.

5. Subject to a $15,000 annual aggregate limit, coverage applies to direct physical loss, the cost of tearing out and replacing property to gain access to the fungus, etc., and the cost of testing performed

after restoration of the damaged property, if there is a reason to believe that fungi, wet or dry rot, or bacteria are present.

6. If the policy has been endorsed to provide business income or extra expense coverage, and the insured's operations are suspended due to a covered cause other than fungus, etc., but remediation of fungus, etc., increases the period of restoration, business income and extra expense coverage applies for up to 30 additional days.

7. If the loss that caused the fungus, etc., does not itself cause a suspension of the insured's operations, but the loss due to fungus, etc., necessitates a suspension, business income or extra expense coverage applies for a maximum of 30 days.

8. The fungus additional coverage granted here can be increased by attaching the Changes - Fungus, Wet Rot, Dry Rot and Bacteria endorsement, CP 04 31 04 02.

    a. This endorsement can be used to increase the $15,000 limit that applies to direct physical damage and related costs to the amount shown in the endorsement schedule as the "Revised Limit."

    b. It also contains a "Separate Premises or Locations Option."

    c. If this option has been elected, as indicated in the endorsement schedule, the $15,000 annual aggregate limit (or, if applicable, the revised annual aggregate limit shown in the endorsement schedule) applies separately to each premises or location described in the endorsement schedule.

    d. Finally, the endorsement can be used to increase the indemnity period for business income or extra expense coverage under the fungus additional coverage, from the 30 days specified in both paragraphs of the additional coverage to the number of days shown in the endorsement schedule.

> **A.** In the Limited Coverage For Fungus, Wet Rot, Dry Rot And Bacteria, the amount of $15,000 is deleted and replaced by the amount indicated in the Schedule.

B. If the Schedule indicates that the Separate Premises Or Locations Option applies, then the amount of coverage ($15,000, unless a higher amount is shown in the Schedule) is made applicable to separate premises or locations as described in the Schedule. For each premises or location so described, the amount of coverage is an annual aggregate limit, subject to the terms set forth in Paragraph **3.** of the Limited Coverage For Fungus, Wet Rot, Dry Rot And Bacteria.

C. The coverage provided under this endorsement does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

D. Under the Limited Coverage For Fungus, Wet Rot, Dry Rot And Bacteria, in the section applicable to Business Income and/or Extra Expense coverage, the number of days (30 days) in both paragraphs is deleted and replaced by the number of days indicated in the Schedule.

9. Commercial Property Clients, BOP Clients and Personal Residential Clients are now starting to see Exclusion Endorsements added to their policies to eliminate coverage for Virus or Bacteria.

    a. The ISO Exclusion of Loss Due to Virus or Bacteria endorsement CP 01 40 07 06 needs to be reviewed carefully.

    b. This endorsement clearly states that there is no coverage for damage caused by or resulting from any virus, bacterium, or other microorganism that induces or can induce physical distress, illness, or disease.

    c. The exclusion applies to all coverages provided by the Commercial Property Insurance including property damage and business income and extra expense coverages.

A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense, or action of a civil authority.

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium, or other microorganism, that induces or is capable of inducing physical

> distress, illness, or disease.
>
> However, this exclusion does not apply to loss or damage caused by or resulting from "Fungus", wet rot, or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
>
> **C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.,** such exclusion supersedes any exclusion relating to "pollutants".

C. UTILITY SERVICE INTERRUPTION EXPOSURES

1. Utility Services Interruption exclusion prevents coverage for service interruption off premises and from equipment on premises owned by the utility.

2. If vandalism or a windstorm damages transmission lines on the insured premises itself, coverage does apply from the resulting loss under the appropriate cause of loss form.

3. Business income or extra expense loss resulting from the damage would not be covered, because the utility service failure originates outside the premises.

> **e. Utility Services [Exclusion]**
>
> The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:
>
> **(1)** Originates away from the described premises; or
>
> **(2)** Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.
>
> Failure of any utility service includes lack of sufficient capacity and reduction in supply.
>
> Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.
>
> But if the failure or surge or power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Caused of Loss.
>
> Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

4. Typical services that require coverage for off premises power:

   a. Electricity

   b. Steam

   c. Gas

   d. Refrigeration

   e. Telephone Services and Communication Services

5. <u>Three ISO Property Endorsements that address this exclusion</u>

   a. <u>ISO CP 04 17 10 12 Utility Services – Direct Damage</u>

      1) Water Supply Services

      2) Communication Supply Services

      3) Power Supply Services

> **D.** As used in this endorsement, the term transmission lines include all lines which serve to transmit communication services or power, including lines which may be identified as distribution lines.

      4) Direct Damage Coverage Grant

> **UTILITY SERVICES – DIRECT DAMAGE CP 04 17 10 12**
>
> **A. Coverage**
>
> We will pay for loss of or damage to Covered Property described in the Schedule, caused by an interruption in utility service to the <u>described premises</u>. The interruption in utility service must result from direct physical loss or damage by a <u>Covered Cause of Loss</u> (as indicated in the Schedule) to the property described in Paragraph C. If such property is indicated by an "X" in the Schedule and is located off the premises.
>
> **B. Exception**
>
> Coverage under this endorsement for loss or damage to Covered Property <u>does not apply to loss or damage to electronic data, including destruction or corruption of electronic data</u>. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies. . . .

> **E.** If a Utility Services Limit of Insurance is shown in the Schedule, such limit is part of, not in addition to, the Limit of Insurance stated in the Declarations or in the Separation of Coverage endorsement as applicable to the Covered Property.
>
> If no Limit of Insurance is shown for Utility Services, coverage under this endorsement is subject to the applicable Limit of Insurance on the Covered Property as shown in the Declarations or in the Separation of Coverage endorsement. But this Utility Services endorsement does not increase the applicable Limit of Insurance.

b. ISO CP 15 45 10 12 Utility Services – Time Element

> **UTILITY SERVICES – TIME ELEMENT CP 15 45 10 12**
>
> **A. Coverage**
>
> Your coverage for Business Income and/or Extra Expense, as provided and limited in the applicable Coverage Form, is extended to apply to a "suspension" of "operations" at the described premises caused by an interruption in utility service to that premises. The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss (as provided under the applicable Causes of Loss Form indicated in the Schedule) to the property described in Paragraph C. if such property is indicated by an "X" in the Schedule.
>
> **B. Exception**
>
> Coverage under this endorsement does not apply to Business Income Expense related to interruption in utility service which causes loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies. . . .
>
> **D.** As used in this endorsement, the term transmission lines include all lines which serve to transmit communication services or power, including lines which may be identified as distribution lines.
>
> **E.** The Coinsurance Additional Condition does not apply to this endorsement.
>
> **F.** The Utility Services Limit of Insurance, as shown in the Schedule, is the only Limit which applies to the coverage provided under this endorsement, and is part of, not in addition to, the Limit of Insurance stated in the Declarations as applicable to the described premises.

c. Note that for coverage to apply under either of these endorsements, the service interruption must result from damage from a covered cause of loss.

d. This means that service interruption loss resulting from a mechanical breakdown at a power plant, for example, would not be covered at all.

e. NOTE: The Exclusion of coverage for Electronic Data and the Coverage form only provides a limit of $2,500.

f. ISO CP 04 40 06 07 Spoilage Coverage.

SPOILAGE COVERAGE CP 04 40 06 07

The Coverage Form to which this endorsement applies is extended to insure against direct physical loss or damage by the Covered Causes of Loss, but only with respect to coverage provided by this endorsement.

A. Paragraph **A.1. COVERED PROPERTY** is replaced by the following:

1. Covered Property

Covered Property means "perishable stock" at the described premises owned by you or by others that is in your care, custody or control.

B. With respect to the coverage provided by this endorsement, property located on buildings or in the open or in vehicles is considered property Not Covered.

C. Paragraph **A.3. COVERED CAUSES OF LOSS** is replaced by the following:

3. Covered Causes of Loss

Covered Causes of Loss means the following only if indicated by an "X" in the Schedule:

a. Breakdown or Contamination, meaning:

(1) Change in temperature or humidity resulting from mechanical breakdown or failure of refrigerating, cooling or humidity control apparatus or equipment, only while such equipment or apparatus is at the described premises; and

(2) Contamination by the refrigerant.

b. Power Outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

1) For businesses that process, store or sell perishable items, this endorsement provides direct damage coverage for only spoilage of perishable stock.

2) Provides direct damage coverage only for spoilage of perishable stock resulting from either power outage or mechanical breakdown and contamination by the refrigerant, or both.

3) The power outage coverage of the spoilage coverage endorsement applies whether the interruption of power occurs on or off premises.

4) There is no requirement that the power outage be the result of a covered cause of loss.

5) NOTE – This means that a power outage due to a mechanical breakdown at the power plant is covered under the spoilage coverage endorsement.

D. SELLING PRICE

If Selling price is indicated by an "X" in the Schedule, the following is added to the VALUATION Loss Condition:

We will determine the value of finished "perishable stock" in the event of loss or damage at:

1. The selling price, as if no loss or damage had occurred;

2. Less discounts and expenses you otherwise would have had.

6) There is no ISO endorsement providing time element coverage about the covered perils of the spoilage coverage endorsement (although coverage could be provided using a manuscript endorsement).

7) Equipment Breakdown Protection Insurance with Business Income may be the better solution.

8) Remember that Electronic data is limited in the Property Coverage Form and the Cause of Loss Perils are not broad enough to cover the perils required to insure Electronic Data Processing Equipment.

9) The need to purchase special EDP coverages may force a purchase decision towards Equipment Breakdown Insurance which may include the required EDP Coverages.

10) The endorsement also adjusts the Causes of Loss that will be covered with specific exclusions that need to be closely review with the client.

E. Paragraph **A.5. COVERAGE EXTENSIONS** does not apply.

F. Paragraph **B. EXCLUSIONS** is replaced by the following:

B. EXCLUSIONS

1. Only the following **EXCLUSIONS** contained in paragraph **B.1.** of the Causes of Loss Form applicable to this Coverage Part apply to Spoilage Coverage:

a. Earth Movement;

b. Governmental Action;

c. Nuclear Hazard;

d. War And Military Action; and

e. Water.

2. The following **EXCLUSIONS** are added**:**

We will not pay for loss or damage caused by or resulting from:

a. The disconnection of any refrigerating, cooling or humidity control system from the source of power.

b. The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current**.**

c. The inability of an Electrical Utility Company or other power source to provide sufficient power due to:

(1) Lack of fuel; or

(2) Governmental order.

d. The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand.

e. Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.

6. Spoilage Coverage within the Equipment Breakdown Protection Coverage Form

   a. Breakdown of covered equipment that stores or processes items that must be stored at a constant temperature to avoid spoilage need coverage.

      1) Perishable food, medicines, or flowers

      2) Certain manufacturing processes, where an interruption of power can damage the product and sometimes the production equipment as well need this coverage.

      3) Examples include clothing manufacturers using electrical power in the time-sensitive process of cloth dyeing and petrochemical plants that carefully control the temperature and pressure applied to their feedstock.

   b. With the exception, of the coverage granted for expenses incurred to reduce the amount of the spoilage loss that would otherwise have been payable, the spoilage damage coverage does not address time element loss in the Equipment Breakdown Protection Coverage Form.

   c., Please Note that that the business income and extra expense coverage option does provide coverage for income or expense loss caused by the breakdown of covered equipment and this includes income or expense loss caused by resulting spoilage of perishable goods.

7. Builders Risk Policies can provide coverage for spoilage of building materials caused by covered perils.

8. E & O Issues to review for Utility Service Interruption.

   a. Get coverage for both direct damage and time element exposures.

b. Remember that coverage triggers for both Equipment Breakdown Protection Coverage Form and the Property Coverage Forms are triggered on the Declarations page.

c. Do not forget the electrical disturbance and mechanical breakdown coverage exposures.

d. The Equipment Breakdown Protection Coverage Form or the Property Policy may be correct, but the agent needs to explore the proper coverages provided in both contracts.

D. DEBRIS REMOVAL EXPOSURE

1. The cost to remove debris of covered property that has been damaged by a covered cause of loss is covered, but a sub-limit applies.

2. The sub-limit applicable to debris removal coverage is 25 percent of the sum of the direct damage loss payment amount and the deductible.

3. An additional $25,000 of debris removal coverage applies if the property damage and debris removal loss together exhaust the limit of insurance, or if 25 percent of the sum of the direct damage loss payment and the deductible proves insufficient to cover the debris removal expense.

4. In order, to be covered these expenses must be reported to the insurer within 180 days of the date of the direct damage loss.

5. Debris removal associated with polluted land or water is excluded from this additional coverage but is the subject of a separate additional coverage.

BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10 10 12

ADDITIONAL COVERAGES

4. Additional Coverages

a. Debris Removal

(1) Subject to Paragraphs **(2), (3) and (4),** we will pay your expense to remove debris of C0overed Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of the direct physical loss or damage.

(2) Debris Removal does not apply to costs to: **[NEW STUFF]**

- **(a)** Remove debris of property of yours that is not insured under this policy, or property in your possession that is not covered property;
- **(b)** Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insured such property and it is insured under this policy;
- **(c)** Remove any property that is Property Not Covered, including property addresses under the Outdoor Property Coverage Extension;
- **(d)** Remove property of others of a type that would not be Covered Property under this Coverage Form;
- **(e)** Remove deposits of mud or earth from the grounds of the described premises;
- **(f)** Extract “pollutants” from land or water, or
- **(g)** Remove, restore, or replace polluted land or water.

6. The sub-limit for debris removal requires the agent still to include an estimated debris removal cost when establishing limits of insurance on covered property.

7. What does the term "basic" debris removal additional coverage sub-limit of 25 percent mean?

   a. Applies to the Partial Loss only.

   b. It is the sum of the direct damage loss payment amount and the deductible times 25%.

   c. If the debris removal expense is less than this math, it will be paid for Covered Property. [New $5,000 Sub Limit for Not Covered Property]

d. The debris removal cost is then added to the partial loss payment.

BUILDING AND PERSONAL PROPERTY COVERAGE FORM CP 00 10 10 12

ADDITIONAL COVERAGES

(3) Subject to the exceptions in Paragraph **(4)**, the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to **(a)** above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is $5,000 at each location.

8. However, an additional $25,000 of debris removal coverage applies under the following circumstances.

a. If the total of the actual debris removal expense plus the direct damage loss payment amount exceeds the applicable limit of insurance.

b. If the actual debris removal expense exceeds the basic debris removal sub-limit (which is 25 percent of the sum of the direct damage loss payment amount and the deductible), then the $25,000 will apply.

(4) We will pay up to an additional $25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if **(4)(a)** and/or **(4)(b)** applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus $25,000.

9. Make sure the 25% percentage is applied to the physical damage loss and the time element loss before the deduction for any deductibles, if possible.

10. The ISO Forms only allow Direct Damage in the calculation.

11. Determination of Debris Removal Coverage Amount:

    Limit of Insurance: $100,000 Building

    Deductible: $1,000 per occurrence

    Direct Damage Loss Amount: $75,000

    Debris Removal Expense: $45,000

    Debris Removal Limitation: $18,750

    25% X ($74,000 Paid Loss + $1,000 Deductible)

    Loss Recovery: $74,000 Loss with deductible

    $18,750 Debris Removal

    $25,000 Additional Debris Limit

    $117,750 Total Recovery

12. If significant debris removal expense is anticipated, a debris removal additional limit of insurance endorsement should be used to provide additional coverage.

13. ISO CP 04 15 Debris Removal Additional Insurance endorsement.

DEBRIS REMOVAL ADDITIONAL INSURANCE CP 04 15 10 12

The additional amount of $25,000 for debris removal in the Debris Removal Additional Coverages section is replaced by the higher amount shown in the Schedule.

14. PLEASE NOTE: If you endorse the Property Policy with the CP 04 05 Ordinance or Law Coverage, remember that Coverage A pays the remainder of the Limit and Coverage B pays for the demolition and debris removal of the undamaged portion of the building.

15. Make sure that the adjuster properly interprets the Debris Removal Additional Coverage for the damaged portion of the building. Always need to consider adding the CP 04 15 to increase the Debris Removal Limit to get coverage beyond $25,000 for the damaged property.

16. PLEASE NOTE: If you endorse the Property Policy with the CP 04 38 Functional Building Valuation Coverage, remember that if it is a total loss, the Limit on the endorsement will be paid and the Debris Removal Limit of $25,000 applies. You will always need to add the CP 04 15 to increase the Debris Removal Limit to get coverage beyond $25,000 if you use the Functional Building Valuation Endorsement.

E. POLLUTANT CLEANUP AND REMOVAL EXPOSURE

1. Expenses to extract pollutants from land or water at the described premises are covered, up to a maximum of $10,000 per location per policy year, if a covered cause of loss causes the release of the pollutant.

2. This additional coverage applies regardless of whether covered property is damaged.

3. The coverage applies only to the occurrence of a covered cause of loss.

4. Like debris removal expense, expense to extract pollutants must be reported to the insurer within 180 days of the date of direct damages.

5. Tests to assess the existence and extent of pollution are specifically not covered.

6. However, tests performed as part of the cleanup are covered.

7. Know the definition of pollutants is important in applying this additional coverage.

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

8. Building and Personal Property Coverage Form Additional Coverage Language.

d. Pollutant Clean Up and Removal

We will pay your expenses to extract "pollutants" from your land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants." But we will pay for testing which is performed in the course of the extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is $10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

9. PLEASE REMEMBER that the pollution exclusion of the CGL, coverage excludes coverage for pollutants entering the environment through a discharge, dispersal, seepage, migrations, release, or escape.

10. Coordinate impact with client's Environmental Impairment Liability (EIL) Coverage Forms.

11. The EIL policy covers bodily injury, property damage, and cleanup costs arising from previously undiscovered or newly created pollution conditions at specific (scheduled) sites.

12. The EIL coverage is triggered by the discovery of a release of pollutants that results in a third-party claim for damages or cleanup costs that are required under environmental laws.

13. Can add the CP 04 07 Pollutant Clean Up and Removal — Additional Aggregate Limit of Insurance to the property insurance for losses caused by a covered peril.

The cost of Clean Up and Removal	$40,000
Remaining Aggregate	$ 6,000
Deductible in the Schedule	$10,000
Aggregate Limit	$25,000
Cost Incurred	$40,000
Less Remaining Aggregate	($ 6,000)
Less Deductible	($10,000)
Payment	$24,000

Remaining benefit under this endorsement for costs incurred for the policy year is $1,000.

14. The Pollutant Cleanup Additional Coverage and the CP 04 07 applies only to cleanup **of polluted land and water on the insured premises.**

A. The $10,000 annual aggregate limit for the **POLLUTANT CLEAN UP AND REMOVAL Additional Coverage** is increased by the Additional Aggregate Limit of Insurance shown in the Schedule**.**

B. We will not pay under this endorsement for "pollutants" clean up or removal costs in any occurrence until the total of all such costs exceeds the sum of:

1. The $10,000 aggregate limit from the basic Pollutant Clean Up and Removal Additional Coverage, less any prior payments for the same policy year; plus

2. The Deductible shown in the Schedule.

We will then pay the costs in excess of that sum, until the Additional Aggregate Limit of Insurance shown in the Schedule is used up during the applicable 12-month period.

C. No other Deductible in this policy applies to this endorsement

15. Expenses associated with the removal of debris of contaminated covered property would be subject to the debris removal limit assuming the direct damage loss is covered.

16. Damage by pollutants is covered if the release of the pollutants is caused by one of the specified causes of loss.

EXCLUSION SPECIAL CAUSE OF LOSS FORM CP 10 30

I. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss." But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This Exclusion, **I.,** does not apply to damage to glass caused by chemicals applied to the glass.

17. The perils listed in the definition of Specified Perils must trigger the discharge, dispersal, seepage, migration, release or escape of "pollutants" and the claim payment will be to the sublimit of the policy and/or endorsement limit.

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

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

(1) The cost of filling sinkholes; or

(2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss or damage to:

(1) Personal property in the open; or

> **(2)** The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
>
> **c.** Water damage means [New Language}
>
> **(1)** Accidental discharge of leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning, or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and
>
> **(2)** Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the described premises and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.
>
> But water damage does not include loss or damage, otherwise excluded under the terms of the Water Exclusion. Therefore, for example there is not coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe, which was causes by or related to weather-induce flooding, even if wear and tear contributed to the breakage or cracking. As another example and also in accordance with the terms of the Water Exclusions, there is not coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear
>
> To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

18. Even if damage by pollutants is not caused by a specified cause of loss, and is therefore not covered, resulting damage from one of the specified causes of loss is covered.

> **"**If a noxious gas escapes from a tank at the insured's facility due to a faulty valve, and an explosion ensues, there would be no coverage for any damage done by the gas itself, but the explosion damage would be covered."

19. Damage to the covered property is covered if caused by a specific cause of loss.

20. Damage to water and land caused by a pollutant is covered separately from this coverage.

21. EQUIPMENT BREAKDOWN PROTECTION HAZARDOUS SUBSTANCE LIMITATION FOR CLEAN UP

    a. Loss associated with the release of a hazardous substance is subject to the hazardous substance sub-limit established in the Equipment Breakdown Protection Coverage Form.

        1) Coordinate with the EIL Coverage Form.

        2) Coordinate with the Property Coverage Form.

    b. Coverage for cleanup, repair or replacement, or disposal of covered property damaged by a hazardous substance because of a covered accident is usually limited to a specified sum of $25,000 above the amount that would otherwise have been payable by the insurer.

    c. Equipment Breakdown accidents do sometimes result in the release of hazardous substances.

    d. The classic example would be the release of polychlorinated biphenyls (PCBs) during the rupture of an electrical transformer.

    e. Hazardous Substance coverage is excluded under the Ordinance and Law Coverage Section.

EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM EB 00 20 08 08

g. Ordinance or Law Coverage

(2) We will not pay for any:

(e) Increase in loss resulting from a substance declared to be hazardous to health or environment by any government agency.

    f. Definition of Hazardous Substance is very broad.

11. "Hazardous Substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

g. Limited Coverage provided in the Limits of Insurance.

C. Limits of Insurance

5. Unless a higher limit or INCLUDED is shown in the Declarations, the most we will pay for direct damage as a direct result of a "breakdown" to "Covered Equipment" is $25,000 for each of the following. The limits are part of, not in addition to the Limit of Insurance for Property Damage or Limit per Breakdown.

d. Hazardous Substance

Any additional expenses incurred by you for the clean-up, repair or replacement or disposal of "Covered Property" that is damaged, contaminated or polluted by a "Hazardous Substance".

As used here, additional expenses mean the additional cost incurred over and above the amount that we would have paid had no "Hazardous Substance" been involved with the loss.

Ammonia is not considered to be a "Hazardous Substance" as respects this limitation.

This coverage applies despite the operation of the Ordinance or Law Exclusion.

h. Under the ISO Equipment Breakdown Protection policies, a higher limit can be selected to increase the limit for cleanup of Hazardous Substance coverage.

i. the Agent/Broker Team should check This to compliment the property coverage forms and EIL Coverage Forms.

F. NEWLY ACQUIRED OR CONSTRUCTED PROPERTY EXPOSURE

1. Temporary Coverage up to $250,000 per building and $100,000 business personal property per location.

2. This extension provides coverage for buildings under construction only at scheduled locations.

3. THERE IS NO COVERAGE FOR BUILDINGS UNDER CONSTRUCTION OFF PREMISES.

   a. Need a Property Builder's Risk Policy.

   b. Need Inland Marine Builder's Risk Policy.

4. Newly acquired buildings are included provided they are to be put to a use LIKE the scheduled locations or used as a warehouse.

> **a. Newly Acquired or Constructed Property**
>
> **(1)** Buildings
>
> If this policy covers Building, you may extend that insurance to apply to:
>
> **(a)** <u>Your new buildings while being built on the described premises</u>; and
>
> **(b)** <u>Buildings you acquire at locations</u>, other than the described premises, intended for:
>
> **(i)** <u>Similar use</u> as the building described in the Declarations; or
>
> **(ii)** Use as a <u>warehouse</u>.
>
> The most we will pay for loss or damage under this Extension is <u>$250,000 at each building</u>.

5. Business personal property regardless of whether it is newly acquired at any newly acquired location other than at fairs, trade shows, or exhibitions.

6. Business personal property (regardless of whether it is newly acquired) at newly constructed or acquired buildings at the insured premises.

> **2)** Your Business Personal Property
>
> **(a)** If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
>
> **(i)** Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;

> **(ii)** Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
>
> The most we will pay for loss or damage under this Extension is $100,000 at each building.
>
> **(b)** This Extension does not apply to:
>
> **(i)** Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
>
> **(ii)** Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

7. The <u>30-day coverage</u> period begins on the <u>date of acquisition</u> or <u>start of construction</u> of the portion of the building that would qualify as covered property.

8. Since underground foundations are excluded from coverage unless the policy is endorsed to the contrary, <u>the pouring of an underground building foundation would not trigger the 30-day coverage period under the coverage forms language</u>.

> **(3)** Period Of Coverage
>
> With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:
>
> **(a)** This policy expires;
>
> **(b)** 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
>
> **(c)** You report values to us.
>
> We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

9. CP 04 25 – NEWLY ACQUIRED OR CONSTRUCTED PROPERTY INCREASED LIMIT ENDORSEMENT

   a. Newly acquired buildings or constructed buildings only.

   b. No increased limit coverage for business personal property.

c. Need to manuscript the increased coverage.

A. When this endorsement is attached to the **LEGAL LIABILITY COVERAGE FORM CP 00 40,** the term Newly Acquired or Constructed Property in this endorsement is replaced by the term Newly Acquired Property. In addition, the reference to subparagraph **(1)** in paragraph **B.** below is replaced by a reference to subparagraph **(1)(b).**

B. The $250,000 Limit of Insurance in subparagraph **(1)** of the **NEWLY ACQUIRED OR CONSTRUCTED PROPERTY** Coverage Extension is replaced by the following:

The Newly Acquired or Constructed Property Limit shown in the Schedule or in the Declarations.

10. EQUIPMENT BREAKDOWN PROTECTION COVERAGE

a. If elected, the newly acquired premises option found in coverage form provides temporary automatic coverage for locations that the insured purchases or leases.

b. Coverage applies for the number of days specified in the declarations, beginning with the date of acquisition.

c. The coverages and deductibles vary for existing locations, coverage for newly acquired premises is the same as the broadest coverage and the highest limits and deductibles applicable to any existing location.

d. The newly acquired locations limit shown in the declarations places a maximum on the amount that can be collected.

e. Coverage is included for newly acquired under the Equipment Breakdown Protection Coverage.

f. Coordinate the number of days if possible, with the Property Form. Some carriers may only allow 30 days.

G. Increase in Rebuilding Expenses Following Disaster (Additional Expense Coverage on Annual Aggregate Basis) (CP 04 09)

1. When many buildings are damaged by a single event, such as a hurricane or tornado or wildfire, and the supply of labor and building materials for repairing and rebuilding the damaged property is limited, the cost of repair and reconstruction often rises dramatically for a period.

2. This phenomenon is called demand surge. In this situation, limits of insurance that otherwise would have been adequate might not be large enough to cover the full cost of repair or replacement. This endorsement is designed to provide coverage for additional costs due to demand surge.

3. It applies only if all of the following criteria are met.

    a. The event that causes the covered loss results in a declaration of a state of disaster by federal or state authorities, or it occurs near in time ("in close temporal proximity") to the event that resulted in the disaster declaration.

    b. Expenses for labor, building materials, or both, for repair or replacement of the damaged property increase as a result of the disaster and the total cost of repair or replacement exceeds the applicable limit of insurance

    c. The insured elects to repair or replace the damaged building

    d. The insured notified the insurer, within 30 days of completion of any improvements, alterations, or additions to the building that increased the replacement cost of the building by 5 percent or more and allowed the insurer to adjust the limit of insurance if necessary to maintain the required insurance-to-value level.

H. QUICK REVIEW OF IMPORTANT PROPERTY PAIRING ENDORSEMENTS

1. Utility Service Interruption Coverages
   a. CP 04 17 – Utility Services – Direct Damage

   b. CP 15 45 – Utility Services – Time Element

   c. BP 04 56 – Utility Services – Direct Damage

   d. BP 04 57 – Utility Services – Time Element

2. Debris Removal Coverages

   a. CP 04 15 – Debris Removal Additional Insurance

   b. CP 04 05 – Ordinance or Law Coverage

   c. CP 15 31 – Ordinance or Law – Increased Period of Restoration

   d. CP 04 38 – Functional Building Valuation

Need increased Debris Removal because the Building Limit for this Endorsement applies to the functional replacement cost and the $10,000 is not enough for the Debris Removal.

   e. BP 04 84 Functional Building Valuation – No ability to increase Debris Removal Limit

3. Flood Coverage

   a. CP 10 65 – Flood Coverage Endorsement

   b. CP 04 05 – Ordinance or Law Coverage

   c. CP 15 31 – Ordinance or Law – Increased Period of Restoration

d. CP 04 31 – Changes – Fungus, Wet Rot, Dry Rot and Bacteria

e. BP 04 53 – Water Backup and Sump Overflow

f. BP 04 46 – Ordinance or Law Coverage

g. BP 04 41 – Business Income Changes – Time Period

4. Fungus, Wet Rot, Dry Rot and Bacteria

   a. CP 04 31 – Changes – Fungus, Wet Rot, Dry Rot and Bacteria (Remember to change the number of days for Business Income on the Endorsement)

   b. CP 04 05 – Ordinance or Law Coverage – does not apply because the CP 04 31 modifies the Cause of Loss Form which is important.

   c. BP 05 76 – Changes - Limited Fungi Coverage

5. Radio or Television Antennas

   a. CP 14 50 – Radio or Television Antennas

   b. CP 15 50 – Radio or Television Antennas – Business Income or Extra Expense

6. Joint or Disputed Loss Agreements

   a. CP 12 70 – Joint or Disputed Loss Agreement

   b. BM 00 20 – Equipment Breakdown Protection Coverage Form; Joint or Disputed Loss Agreement impeded in the policy form. Always check the Equipment Breakdown Coverage form and add by endorsement if not in the form.

7. Ordinance or Law Exclusion

   a. CP 04 05 – Ordinance or Law Coverage

b. CP 15 31 – Ordinance or Law – Increased Period of Restoration

c. CP 04 15 – Debris Removal Additional Insurance

8. Functional Building Valuation

a. CP 04 38 – Functional Building Valuation

Need increased Debris Removal because the Building Limit for this Endorsement applies to the functional replacement cost and the $10,000 is not enough for the Debris Removal

b. BP 04 84 – Functional Building Valuation – No ability to increase Debris Removal Limit

c. BP 04 41 – Business Income Changes – Time Period

d. CP 15 31 – Ordinance or Law – Increased Period of Restoration

e. CP 04 15 – Debris Removal Additional Insurance

VI. CONCLUSION

A. Direct Damage Property Risk Finance

1. All businesses recognize their need for direct damage property insurance.

2. Direct damage property insurance provides funds to pay for repair or replacement of the insured's buildings, equipment, supplies, inventory, and other property when it is physically damaged by a covered cause of loss, such as a fire or windstorm.

3. To assure that the organization will receive the funds that it expects and needs in the event of a loss, the direct damage coverage must be properly arranged.

4. It is particularly important to be sure that the policy covers the locations and types of property for which coverage is needed, that it covers all or most of the possible causes of loss to the property, that the property is valued appropriately, and that adequate limits of insurance have been purchased.

B. Indirect Damage Property Risk Finance [DO NOT FORGET]

1. When an organization's property is damaged by an insured catastrophe (such as a fire or windstorm), the organization is likely to suffer a loss of income or an increase in operating expenses because of not being able to use the damaged property while it is being repaired or replaced.

2. The resulting loss of income or increase in expenses might well equal or even exceed the direct damage loss.

3. Time element property insurance can be added to the direct damage insurance policy to pay for the loss of income or the increase in operating expenses that result from suspended or makeshift operations while the damaged property is being repaired or replaced.

4. To assure that the organization will receive the funds it expects and needs in the event of a loss.

5. It is important that its time element loss exposures are correctly analyzed that the appropriate kinds of time element coverages are purchased, and that these coverages are properly arranged.

C. Plan to cover Intangible Property as Well

1. Intellectual Property has value and needs protection.

2. Data is intangible and needs first and third-party coverages.

3. Media exposures continue to grow and the use of intellectual property in the media exposures.

4. Contractual relationships continue to drive intangible property coverage issues as well as federal and state statutes.

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Section 4

Long-Term Care Insurance

THE NATIONAL ALLIANCE
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Long-Term

Care Insurance

The Old Way &
The New Way

Presented by

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I. What are the Odds of Needing Long-Term Care?

Odds of having a car accident ___________________

Odds of having a residential fire __________________

Odds of being admitted to a critical care unit ________

Odds of needing long-term care __________________

II. What exactly is Long-Term Care (LTC)?

> **While many people equate the term "long-term care" with someone who lives in nursing home or other institutional facility, almost 80% of the elderly and 41% of the severely disabled individuals live at home or in community-based settings.**
>
> ***Aging Committee Hearing Finding Summary***
> ***A Report presented by the Senate Special Committee on Aging***
> ***June 2002***

Long-Term Care is the personal care and other related services provided on an extended basis to people who need help with activities of daily living or need supervision due to a cognitive impairment. It is NOT acute or rehabilitative care. It is considered skilled care, non-skilled care, or custodial care.

When you need LTC you usually need help with your activities of daily living. These are items such as bathing, dressing, toileting, continence, eating, or transferring. Or you may be able to do all of your activities of daily living but still need care and supervision due to a severe cognitive impairment (memory loss, dementia, etc.). You may be able to dress yourself, but not remember to take your medications.

Statistics show at least 6.4 million people aged 65 or older need LTC, with one in two over age 65 requiring care. At least half of the population who are 65+ will need help with Activities of Daily Living. * Most people think of LTC care as something needed by older people, but an accident or illness can strike someone of any age. When it does, they too may find themselves in need of assistance.

* *Planning for Long-Term Care*
United Seniors Health Council,
Washington, DS.C. McGraw-Hill, NY, 2002

Types of Medical Care

What LTC is not

Acute care is usually provided in hospitals and emergency rooms. Your health insurance and Medicare will likely provide some or all of the expenses because skilled care is usually provided. Acute care is usually for conditions which are treatable and where recovery may occur with medical attention. These conditions usually develop rapidly and can strike suddenly.

Examples of Acute Care: Stroke, heart attack, pneumonia

Chronic care is usually provided in your home, nursing homes, and assisted living facilities. Your health care and Medicare will usually NOT cover chronic care because it is not considered skilled care. Chronic care is usually for conditions that are treatable but generally not curable. A lot of times these are not noticed or are ignored in the initial stages.

Examples of Chronic Care: Arthritis, Diabetes, Hypertension

What LTC is

Levels of Long-Term Care

1. **Skilled Nursing Care –** 24 hour nurse service subject to period review by a physician and nurse; care is provided in a state-licensed facility which provides nursing care and related services to inpatients with a licensed physician available for emergency care; facility has at least one full-time nurse, and a nurse always on duty or on call, to appropriately handle and administer drugs and biologicals and to maintain clinical records for the patients.

2. **Intermediate Nursing Care –** Care provided only on an OCCASIONAL basis and in a state-licensed facility which provides nursing care and related services to in-patients with a licensed physician available for emergency medical care; facility has at least one full-time nurse, and a nurse on duty or on- call to appropriately handle and administer drugs and biologicals and to maintain clinical records for all patients.

3. **Custodial Care –** Adult care provided in a legally operated and state licensed (if required) facility which provides such care at least five days a week; facility staff must include a full-time director, one or more nurses present at least four hours per day and enough full-time staff for a client-to-staff ratio of 8 to 1 or less.

4. **Home Care –** May include all levels of care discussed above but performed in the patient's home rather than in a nursing facility; in addition to providing help with the housework and certain types of therapy.

Places You Can Receive LTC

SKILLED NURSING FACILITIES (SNF)

The number of nursing home patients has actually declined in recent years due to an increased availability of home health and other community services.

"Medical Deductions for the Elderly, Part II, Expenses and Premiums Related to Long-Term Care."
The ElderLaw Report, Panel Publishers, March 2002

SNFs are usually comprised of two separate components. The first component is a unit that provides skilled nursing care that may be covered by Medicare. (If the care meets the criteria set forth by Medicare). The rest of the facility provides non-skilled (or custodial) care. The goal of the "Medicare" section of the skilled nursing facility is to provide services needed to rehabilitate the patient so they can return home. However, many times patients are unable to return home and are moved over to the non-skilled or custodial section of the facility. Many times, this patient may not have any support services or family in the community that would allow them to receive the facility.

Example: Mary Ann had a stroke 12 months ago. Immediately after her stroke she was admitted to a snf in the Medicare section and received rehabilitative therapy on a daily basis. After about 45 days, her therapists determined that she was not getting better and would need help with her activities of daily living for the rest of her life. Because she did not have anyone to take care of her at home, she was transferred to the non-skilled wing of the skilled nursing facility where she now lives.

HOME CARE

Most LTC recipients live in their own homes or with their families. About 1.3 million seniors in the community receive care from paid helpers, who provide skilled home care or unskilled care with basic personal activities. Another 5.5 million older Americans in the community receive unpaid help from family members. The burden on family caregivers of juggling work and other responsibilities is likely to grow in the future as women – who provide most family care – continue to spend more time in the labor force.

2003 Health & Retirement Study,
Johnson and Occello,
Center for Retirement Research, at Boston College,
March 2005 Report.

Home care is generally considered appropriate at the custodial and non-skilled levels. Skilled care can be provided in the home; however, it can be very expensive. Home care could consist of a weekly visit by a homemaker who performs housekeeping chores, a personal care attendant that provides assistance with bathing and dressing, or it may be a daily visit by a home health registered nurse or therapist.

Example: Verna was diagnosed with Parkinson's disease two years ago. Now she is unable to walk without assistance. She cannot bathe or dress herself. Her daughter, Shirley, is currently helping her with these needs. Her daughter has to go back to work in order to provide college funding for her two children, the oldest is only two years away from college. Verna is now going to have to tap into her life savings and pay for a caregiver to come and help her, so that she can stay at home.

ASSISTED-CARE LIVING FACILITIES (ACLFs)

In 2004, states reported 36,451 licensed residential care facilities with 937,601 units/beds compared to 36,283 facilities with 909,196 units/beds in 2002.

State Residential Care & Assisted Living Policy:
2004 US Department of Health and Human Services,
National Academy for State Health Policy, March 31, 2005

ACLFs, otherwise known as Assisted-Living Facilities, may also be called Residential Care Facilities for the Elderly or simply Residential Care Facilities. These facilities provide non-skilled care for people who need help with their activities of daily living but can also provide a lot of their own care and get through a daily routine with minimal assistance. Usually, skilled care is NOT provided in assisted-living facilities.

These facilities are excellent alternatives to a nursing home. The residents may live in individual apartments that they furnish and personalize to make it seem more like home. Meals are usually provided in a community dining room and there are lots of activities and social events to attend. You can find these facilities as part of a larger independent retirement community, or as a stand alone facility that only offers assisted living. There are also small board and care homes that care for anywhere from 3-10 people. These are homes that have been converted to a board and care.

Example: Sara is 87 years old and lives in her own home. She was not getting out of the house and not socializing with anybody. Her daughter, Joan, arranged to have her mother moved to an Assisted Living Facility after learning her mother was forgetting to take her medications and having trouble handling her own hygiene issues. She didn't need skilled nursing care, but she did need help with her activities of daily living. Now Joan will not worry as much since there will be caregivers with her mother. Also, her mother will be able to participate in the weekly activities to remain socially active.

ADULT DAY CARE

Adult Day Care is a community-based service that was developed to help keep people out of nursing homes and in their homes. Adult day care facilities offer custodial care during the weekdays (some provide weekend services). This care can be provided to people who need minimal assistance and have moderate impairments. Patients with Alzheimer's or senile dementia are ideal candidates for this program.

Adult day care offers a form of support for those who live in their own homes, or maybe with their children. Ault day care centers offer family members who are providing care the much needed break during the day to continue to live their lives and provide care for their loved ones.

Example: Lyle lives with his daughter, Sandy. Sandy works full time. Lately, she noticed that Lyle has been forgetting to prepare and eat his meals during the day. One day she was called at work by a neighbor who found Lyle wandering down the street. Sandy wants to take care of her father after work and on the weekends, but she needs help during the day. An Adult Day Care could provide her with the solution.

III.   Why is Long-Term Care Such a Problem?

Due to advances in our medical technology; our society has been blesses with an increasing average life span. Today, we are living almost twice as long as our ancestors did only 100 years ago. Unfortunately, along with this comes the drawback that the longer we live, the more likely we may need long-term care before we die.

In the past 30 years, projections of the number of seniors needing LTC exceed 6 million, with family and other informal caregivers providing much of this care.

Who Will Care For Each of Us? America's Coming Health Labor Crisis,
UIC Nursing Institute 2001

“Who is at risk for needing long-term care? Isn’t it just older people?”

While many older people need LTC, it is important not to overlook that young people can need LTC too. It is never too early to plan for your future LTC needs. Some common reasons that young people can need LTC are:

Strokes, Parkinson’s disease, cancer, multiple sclerosis, and accidents to name just a few.

Over 40% of Americans receiving LTC are under 65 years old.

Long-Term Care Chart Book: Persons Served, Payers, and Spending, The Urban Institute with the Congressional Research Service, May 5, 2000

“I can’t see myself in a nursing home. I’d rather shoot myself!”

People may have a hard time admitting that they could need LTC because they associate LTC with nursing homes. None of us can imagine ourselves being in nursing homes. In fact, we may live our lives promising our parents that we will NEVER put them I a nursing home. A nursing home is the LAST place we would like to receive care.

The good news is that a nursing home is probably the last place you will have to go. Today, there are so many more options that weren’t available before. Now it is possible to stay at home or live in an assisted living facility, rather than go to a nursing home. Many people are more realistic about seeing themselves needing LTC in their home.

The U.S. nursing home occupancy rate has decreased from 100% to 85% over the last 15 years as more seniors have moved toward assisted living facilities and home health care, according to Joseph Angelelli, an assistant professor of health policy and administration at Penn State University, ***Coverage & Access/New York Time, 4-25-2005***

"How long will I need Long-Term Care?"

Unfortunately, no one has a crystal ball so you can never be sure how long you could need LTC. We can look at some statistics to see what some of the nursing home "averages" are, but this is no guarantee that is you needed LTC you would not be 'above average' or 'below average.'

Length of Stay	Percent of Nursing Home Patients
Less than 3 months	17.8%
3 – 6 months	10.1%
6 – 12 months	14.9%
1 – 3 years	30.3%
3 – 5 years	13.6%
5+ years	14.0%

Source: The National Nursing Home Survey: 1999 Summary National Center for Health Statistics US Department of Health and Human Services June 2002

There have been a lot of studies on the average length of stay in a nursing home, but very difficult to get studies that show how long people need care in assisted living facilities or in their homes.

An important point to note is that LTC usually starts out in the home. Therefore, it is important to consider that you may need care at home BEFORE you enter a nursing home and not plan solely on nursing home statistics.

The average care giving time in a national survey was FIVE years.

Health Spending Projections For 2001-2011: The Latest Outlook, Office of the Actuary, Centers for Medicare and Medicaid Services, Health Affairs, March/April 2002

"America's Future & LTC"

"One-third of all Americans (77 million people) were born between 1946 and 1964, a group we affectionately named the Baby Boomers. We are on the verge of the country's first Senior Boom. One out of four people in the USA is already over 50. In reality, the longer we live, the greater the chance we will need LTC."

Phyllis Shelton, Long-Term Care Your Financial Guide, 2003

Much of the financial burden of LTC falls on the care recipients and their families."

Boston College Center of Retirement Research, 2004

IV. What are the different options to pay for Long-Term Care?

Here are four option to pay for your LTC

1. **Rely on Others –** You can rely on your spouse, children, relatives, etc. to provide the help needed. This option is only available with a support system in place and if the amount and type of care required is possible for them to provide.

2. **Self-Insure** – You can pay for LTC with your own assets and income.

3. **Spend Down Assets** – You can spend down all of your assets and then qualify for Medicaid. (Medi-Cal in California)

4. **Transfer the Risk –** You can transfer a predetermined amount of risk of LTC to an insurance company by purchasing long-term care insurance.

V. What are the costs of LTC?

The costs of LTC vary greatly, depending on where you live and the type of care you receive. Many people think that home care usually cost less than nursing home care. However, skilled care at home can cost just as much, if not more than nursing home care. It depends on what type of care you need in your home, and for how many hours per day.

1. **Actual Cost** – Summary of 2021 Findings	National Median Rate
Homemaker Services (Licensed) Provides "hands-off" care such as helping with cooking and running errands. often referred to "Personal Care Assistants" or companions." This is the rate charged by a non-Medicare certified, licensed agency.	**$26 per hour**
Home Health Aide Services (Licensed) Provides "hand-on" personal care, but not medical care, in the home, with activities such as bathing, dressing and transferring. This is the rate charged by a non-Medicare certified, licensed agency.	**$27 per hour**
Adult Day Health Care Provides social and other support services in a community-based, protective setting during any part of a day, but less than 24-hour care.	**$78 per day**
Assisted Living Facility (One Bedroom/Single Occupancy) Provides "hands-on" personal care as well as medical care for those who are not able to live by themselves, but to not require constant care by a nursing home.	**$4,500 monthly**
Nursing Home (Semi-Private Room) Provides skilled nursing care 24 hours a day.	**$260 per day**
Nursing Home (Private Room) Provides skilled nursing care 24 hours a day.	**$290 per day**

LONG-TERM CARE AVERAGE RATES

State or Region	Home Care (Certified & Licensed) Hourly Rate	Assisted Living Annual rate	Nursing Home Semi-Private Annual rate	Nursing Home Private Annual Rate
Alabama	$20.00	$42,030	$ 80,1189	$ 84,315
Alaska	$30.00	$81,960	$378,140	$378,140
Arizona	$28.50	$48,000	$ 78,475	$ 96,350
Arkansas	$22.00	$45,120	$ 73,000	$ 80,300
California	$32.00	$63,000	$117,530	$146,000
Colorado	$33.50	$57,000	$102,810	$116,709
Connecticut	$28.00	$61.551	$165,163	$182,044
Delaware	$28.00	$71,940	$147,278	$150,928
Dis. of Columbia	$29.25	$83,730	$125,925	$125,925
Florida	$25.00	$48,000	$103,843	$115,523
Georgia	$23.00	$42,420	$ 84,133	$ 91,250
Hawaii	$30.00	$64,500	$150,015	$169,360
Idaho	$28.50	$46,050	$102,200	$109,500
Illinois	$28,00	$53,850	$ 75,190	$ 85,866
Indiana	$25.00	$51,390	$ 87,235	$104,405
Iowa	$29.25	$52,404	$ 82,490	$ 89,425
Kansas	$24.50	$54,960	$ 75,555	$ 81,760
Kentucky	$25.00	$41,370	$ 86,140	$ 95,630
Louisiana	$19.50	$44,979	$ 69,113	$ 72,719
Maine	$30.00	$70.380	$125,925	$135,050
Maryland	$20.00	$45,000	$104,208	$113,333
Massachusetts	$31.00	$78.000	$151,476	$162,425
Michigan	$29.00	$51,000	$109,135	$118,260
Minnesota	$36.25	$54,090	$139,211	$156,859
Mississippi	$20.00	$42,000	$ 85,410	$ 87,768
Missouri	$25.00	$36,000	$ 63,145	$ 71,175
Montana	$28.00	$53,400	$ 90,885	$ 96,725
Nebraska	$28.00	$48,915	$ 89,790	$ 99.463
Nevada	$27.00	$45,000	$220,595	$120,085
New Hampshire	$32.50	$72,630	$131,400	$144,175
New Jersey	$29.95	$77,940	$135.043	$145,818
New Mexico	$19.00	$53,970	$ 91,250	$100,375
New York	$29.00	$54,960	$153,300	$158,797
North Carolina	$23.00	$48,120	$ 89.790	$ 98,550
North Dakota	$29.84	$40,695	$143,741	$151,041
Ohio	$26.50	$55,620	$ 87.600	$ 98,550
Oklahoma	$25.50	$46,260	$ 65,700	$ 71,000
Oregon	$31.50	$60,540	$124,100	$133,360
Pennsylvania	$26.00	$49,200	$124,841	$133,882

Rhode Island	$31.25	$81,915	$113,150	$120,450
South Carolina	$23.60	$43,338	$ 87,418	$ 95,813
South Dakota	$31.00	$40,200	$ 85,410	$ 91,250
Tennessee	$24.00	$49,260	$ 85,775	$ 91,980
Texas	$24.00	$47,970	$ 61,503	$ 85,107
Utah	$30.00	$42,000	$ 86,140	$109,500
Vermont	$30.00	$63,000	$127,020	$133,225
Virginia	$25.98	$63,000	$ 98,550	$109,865
Washington	$34.50	$72,000	$113,150	$125,597
West Virginia	$18.50	$49,920	$139,430	$146,548
Wisconsin	$30.00	$55,200	$108,259	$116,800
Wyoming	$29.00	$50,025	$ 83,950	$ 91,615
National Avg.	**$27.00**	**$54,000**	**$ 94,900**	**$108,405**

Genworth 2016 Cost of Care Survey 05/05/16

2. Future Costs

When planning for you future LTC expenses it is important to not only note what the cost of care is today, but what it could be in the future. The projected growth rate for LTC is 5.8% according to “Health Spending Projections Through 2013,” *Office of the Actuary, Centers for Medicare and Medicaid Services, Health Affairs- 2/11/2004*.

This means that in 20 years the cost of LTC could triple. So, if you are 60 years old today and you live in an area where the annual cost of care is $61,116 now, the cost in 20 years could be as much as $183,348**.** **Imagine what you future expenses could be in you live in a higher cost area!**

3. Ancillary Costs

Besides the normal daily rate, a nursing home will charge you or the hourly rate a home care agency will charge you, there are always going to be ancillary costs for which you should plan. In a nursing home, additional expenses could be diapers, laundry, medications, and other incidentals. In your home there are additional expenses like safety devices (i.e., grab bars near the bathroom and toilet, and maybe a ramp for the stairs.

4. Human Costs

If a family member decides to provide the care rather than paying a professional, there are many human as well as financial costs to consider.

More than 50 million family caregivers in this country provide care for a chronically ill or aging family member or friend. It is estimated that family caregivers provide some $196 million in services to America's overburdened health care system.

2004 National family Caregivers Association and the National Alliance for Caregiving.

a. Other Financial Costs – if the caregiver works, they may need to work fewer hours or even give up their job altogether.

b. Physical Costs – Providing LTC is hard work. Family members may become exhausted from the long hours of care giving. If you had a stroke and could not bear your own weight it could be very difficult, if not impossible, for a family member to life you in and out of bed, especially is your caregiver were your spouse and you are both in your 80's. If you have Alzheimer's and require 24-hour care, it can be very exhausting for a family member to stay up all night and during the day. Your family caregiver could not do that too many days in a row!

c. Emotional Costs – The emotional toll caregivers experience is another cost your loved ones may pay in providing care to you. You may be thinking that the extent of the care is helping you in and out of bed, assisting you with meal preparation, or driving you to the doctor, but, what if you need more than that? The toll may be staggering!

d. Family Costs – When we look into the past at our parents, grandparents, or great-grand parents, LTC didn't seem to be as big of an issue as it is today. In past generations families seemed to take care of their loved ones if they lived long enough to need LTC. Our families have changed a lot over the years, making it more difficult for families to take on the responsibility of care giving. There are many challenges that families face that make it difficult to take care of their loved ones.

1) Two Family Incomes – In the past, women did not always have to work and were able to care for their parents or their spouse's parents. Now, in order to survive in today's world, many times both the husband and the wife need to bring in an income. If the wife is working it makes it very difficult, if not impossible, for her to be the primary caregiver.

2) Divorce – In America, there has been a tremendous increase in the number of divorces. This leaves a lot of single-parent families. These single-parent families may face a difficult job raising a family on their own while trying to work full-time to support their family. Imagine if they were also providing care for a loved one as well! Also, a child from a divorced family may end up having multiples of parents and parents-in-law that may have a need for LTC.

3) Fewer Children – In the past, people had more children than we are having today. Not long ago, it was normal to have three, four or more children. If a parent needed LTC, there was a greater chance that at least one of those children could provide care. Now, with fewer children in the family the chances of having someone to provide LTC are greatly decreased.

4) Geographical Separation – In the past families usually lived in the same communities, or not far away. If a parent needed LTC there was usually a family member living nearby. In today's world, our families are spread out across the country. This makes if very difficult for the children to participate in the care giving without either the parents or the children relocating.

VI. Medicare and Long-Term Care

Medicare Skilled Nursing Facilities

Medicare only has the potential to pay for up to 100 days in a skilled nursing facility thus it is not an adequate solution to pay for your LTC care. To qualify for the Medicare LTC benefit you must be receiving skilled care on a daily basis, after having a three-day hospital stay prior to entering the nursing home.

Medicare will pay for the first 20 days in full and will pay all costs over a co-pay in 2023 of $128 for the next 80 days. (***The average number of days paid by Medicare is only 23 days according to the Health Care Financing Administration, 1998.)*** It is important to note that if you only needed custodial care, you would receive no Medicare benefits.

(*Example: If you had Alzheimer's or if you needed help with you activities of daily living due to old age, you would not qualify for Medicare benefits.)*

Medicare Home Health Care Benefits

Many people mistakenly think Medicare will pay for an unlimited amount of home care. However, Medicare will only pay for a limited number of visits. The chart above shows you the lower percentage of home care benefit payments made by Medicare. There are many requirements to receive home health care benefits from Medicare. For example, you must be homebound and must need skilled care for fewer than five days per week.

For more information on Medicare, you can call 1-800-Medicare (1-800-633-4227) and speak with a Medicare Customer Representative or visit www.medicare.gov/

Common Misconceptions

If Medicare doesn't pay, won't my Medicare Supplement pay for my LTC?

Generally, Medicare supplements only pay co-payments of Medicare. If Medicare will not pay for you care, then your Medicare supplement probably will not pay either.

I have an HMO, so doesn't that pay for my LTC?

Generally, HMO's offer the same benefits that Medicare offers. To encourage people to assign their Medicare benefits to an HMO, many HMO's offer additional ancillary benefits like vision and prescription benefits. However, they generally use the same LTC benefit criteria as Medicare.

VII. How Will You Pay for Long-Term Care

A. Rely on Others

B. Self-Insure

C. Spend Down Assets

D. Transfer the Risk.

VIII. Is Long-Term Care Insurance Appropriate for you?

Possibly, but it depends on your specific circumstances. A well-designed LTC insurance policy may be one of the best financial decisions you will ever make. It can play a very important role in giving you and your family the "peace of mind" that you will have all the necessary resources to pay for quality care – where and when you need it.

The reasons people buy LTC Insurance

1. Preserve their independence
2. Guarantee their choice of care and caregivers (allow you to stay at home as long as possible)
3. Protect your assets and standard of living
4. Avoid being a burden on your family
5. Leave more assets to your family, church, school or worthy cause
6. Peace of Mind

You SHOULD consider buying LTC insurance if….

- You have significant assets and income that you are concerned about protecting.
- You don't have significant assets and income, but you don't want to rely on Medicaid.
- You want to remain financially independent and not have to rely on family or friends for care.
- You wish to guarantee you and your spouse receives quality care in a setting of your choice.

You should NOT consider buying LTC insurance if….

- You currently receive or may soon receive Medicaid benefits.
- Your only source of income is a social security benefit or supplemental security income.
- You have limited assets and cannot afford the premiums for the life of a LTC policy.

You should consider the following items before considering the details of a LTC insurance policy

- The benefits you receive in the future should be substantially more than the premiums you will pay in your lifetime.
- It should not be a "cookie-cutter" or generic one-size-fits-all plan. The policy should be customized to your specific personal and financial needs.
- The premiums should be affordable. Not only now, but in the future as well.

IX. Legislation Affecting Long-Term Care

A. The Health Insurance Portability & Accountability Act (**HIPAA)** of 1996 (also know as the Kennedy-Kassenbaum Bill), successfully addresses three items that affect LTC insurance. These included:

1. **Tightening up Medicaid eligibility requirements**
2. **Setting state standards on long-term care insurance**
3. **Offering tax incentives for those who purchase LTC insurance**

HIPAA designated two types of LTC policies: tax qualified (TQ) and non-tax qualified policies (NTQ). The tax-qualified policies are the ones that adhere to HIPPA criteria.

Long-term care insurance policies that were purchased before January 1, 1997 (when HIPPA was implemented) were grandfathered and are considered tax qualified (TQ) and will remain so if there are no material changes to them.
***** For our purposes we will discuss TQ policies.**

B. Medicare Prescription Act of 1996 (Medicare Part D)

Established Health Savings Accounts (HSA)

C. Pension Protection Act of 2006

1. **Stricter Medicaid look back from 3 years to 5 years**

2. **Home equity above $500,000 ineligible for Medicaid LTC.**

3. **Established (Re-established Partnership Program)**

4. **Withdrawals from approved LTC annuities for LTC no longer taxed.**

X. Which Policy & Carrier are right for you?

When you are shopping for LTC insurance you will find that there are a lot of choices. Most LTC insurance policies include similar standard features, as the National Association of Insurance Commissioners requires most.

Types of Policies

There are three main types of policies:

1. Comprehensive – provides for Nursing Home Facilities, Assisted Living Facilities, Home Health Care, Adult Day Care, Respite Care and Care Coordination. (*most popular policy sold)*
2. Nursing Home Only - may include Assisted Living Facilities
3. Home Care Only - may include Adult Daycare.

Not all carriers offer all three. The marketing trend the last few years is for companies to offer a Comprehensive policy only.

Reimbursement vs. Indemnity

*Most long-term care policies today are **"reimbursement"** type contracts where benefits are paid only for expenses incurred, up to a pre-determined amount. **"Indemnity"** contracts typically pay for the entire pre-determined of a daily or monthly benefit.*

Discounts available

If you are in excellent health, or buying a policy as a married couple, discounts offered by some carriers can cut your premiums 10 – 40%. Carriers use different methods to determine who qualifies for a preferred rate. Spousal discounts may be available as well. Some carriers will offer the discount to the insurable spouse, even if the other spouse is declined. Some carriers also offer discounts for multi-lives or employer-sponsored discounts.

Carriers

There are four major areas to consider when choosing a carrier.

1. **Underwriting philosophy** – The best carriers are the ones that are responsible with the risk they insure. If a carrier is insuring people that most carriers would decline, it is possible they would be more likely to have rates rise in the future.

2. **Pricing of LTC Policies** – Beware of carriers that price their policies "below market price." In other words, their price is far less than the average the other major carriers are charging. If a carrier does this, it is possible that they will need rate increases in the future to pay their claims.

3. **Experience in The LTC Insurance market** – The best carriers are the ones that are often the largest, have the most policyholders, and have been selling LTC insurance for a considerable period. These carriers are more likely to have a claim-paying track record.

4. **Financial Strength of the Carrier** – It is wise to check out the financial strength and claims paying abilities from several rating agencies. Below is a list of the five main rating agencies.

A.M. Best	**909-439-2200**	**ambest.com**
Standard & Poors	**212-438-2000**	**standardandpoors.com**
Fitch	**212-908-0500**	**fitchratings.com**
Moody's	**212-553-0377**	**Moodys.com**
Weiss	**561-627-3300**	**weissratings.com**

XI. Which Benefits are best for you?

You can control the premiums you pay and the benefits you receive when you select the benefit choices in a policy.

Daily Benefit

The maximum dollar amount the carrier must pay for care on a given day. Some policies pay this benefit as a weekly or monthly benefit, which allows you to receive benefits on specific days that are greater than your daily benefit. (***Daily benefits range from $40 to $500 per day depending on the carrier***)

Tips:

1. Research the average daily cost of care in the area you are planning to retire to ensure you select the appropriate daily benefit amount.

2. The more discretionary income you have, the lower the daily benefit you may want to purchase.

3. Consider the extra cost of a private room when selecting your daily benefit, should you move into an assisted living or nursing home facility.

MONTHLY BENEFITS!!

Benefit Period

The maximum amount of time expressed in years that one would receive benefits. (*Range from one year to unlimited (lifetime*) Many times a benefit period is multiplied by the daily benefit you choose to equal a lifetime maximum or pool of money to pay for care. (*For example, if purchased a three-year benefit period with a daily benefit of $100, this would give you a pool of money (lifetime maximum) of $109,500 (1,095 days X $100).*

Tips:

1. The more assets you have, the shorter the benefit length you may need.

2. If you have a family history of Alzheimer's or simply longevity, you may want to consider unlimited benefits. Alzheimer's patients have been known to require care for more than 20 years.

Elimination Period (Deductible)

The length of time you must pay for long-term care services before the insurance policy begins to pay benefits. The typical elimination periods are: 0, 20, 30, 90, 100, 180, 365, or even 730 days.

Tips:

1. The more savings/assets you have, the longer elimination period you can handle.

2. The younger you are, the more important it is to consider the FUTURE cost of the elimination period. Since the cost of LTC is expected to increase with inflation it may be more cost effective over the long run to select a shorter elimination period.

3. Choose a policy that only requires you to meet the elimination period once in a lifetime.

4. Consider the alternative use of your premium dollars relative to any savings from selecting a longer elimination period. Could your savings be reinvested to make up for the difference in increased exposure for a longer period of time?

5. Usually, the younger you are the smaller the premium savings because of a longer elimination period, but you future exposure could be dramatic 20 or 30 years from the time of purchase.

Home Care Benefits

Provides for care in one's home. This can include skilled professionals like registered nurses and licensed therapists, home health aides and personal care attendants, as well as homemaker services. Also, adult day care services are usually included. (*This benefit is usually based on a percentage of the daily benefit. If you chose a 100% home health care benefit, you would receive 100% of the daily benefit you selected. The choices vary by carrier, and some examples are 75% or 50%.)*

Tip: ***

1. ***If it is important for you to stay in your home, you will want to choose 100% home health care. If you do not have a primary caregiver or live alone, home care may not be in your best interest, since you may require around the clock care.***

***** (Very important to offer this protection, especially for younger ages)**

Policy Features – (usually included with base benefit)

1. **Waiver of Premium –** premiums waived when one qualifies for benefits.

2. **Respite Care –** for primary caregiver who needs a temporary break.

3. **Bed Reservation Benefit –** if hospitalized or in some cases just out of the facility (holiday visit) provides up to 21 days per calendar year that policy will pay to reserve your facility room/bed.

Riders:

1. **Inflation Protection –** so that your policy will stand the test of time and the almost assured inflation of long-term care over the years you will want to consider inflation protection. The two most common choices are 5% Simple or 5% Compound. These options increase one's benefits over time, but premiums are designed to stay level.

Tips:

1. If you are 70 years or older, 5% simple increases may be sufficient.

2. If you are younger than age 70, compound increases make more sense because it will increase the benefit amount faster and to a greater degree in the long run.

XII. What are the triggers that qualify you for benefits?

1. **Activities of Daily Living –** When a person needs substantial assistance to perform at least two of these Activities of Daily Living:

Bathing	Dressing	Eating
Toileting	Transferring	Countenance

2. **Cognitive Impairment** – When one needs substantial supervision to protect themselves from threats to health safety due to Severe Cognitive Impairment (i.e., Alzheimer's disease or biologically base brain diseases or serious mental illness) *** Eligibility usually determined by A Licensed Health Care Practitioner. (*Many times can be family physician*) Often the eligibility certification will require a plan of care.

XIII. How do I qualify for a LTC policy?

You may have heard that LTC insurance is expensive. It can be but may not be nearly as expensive as the cost of long-term care. A good rule of thumb is that the annual premium you pay is less than the cost of one month of long-term care. If you plan ahead and purchase the insurance when you are younger and when you are in good health, the premiums for LTC insurance can be very affordable. You also control the cost by the benefits you choose.

The cost of a LTC insurance policy depends on the following factors:

1) **Your health**

2) **Your age**

3) **Your marital status**

4) **The benefits you choose**

5) **Any discounts for which you may be eligible**

Tip:

1. Most companies will consider your actual age at the time of your application, while others base their rates on actual age nearest birthday. If you have a birthday in the near future now is the time to apply to "save your age" which could save you premiums over the lifetime of the policy!

We all tend to take our health for granted. We can be healthy and active one minute and in the next have a stroke or be in a car accident, changing our lives forever. How would you feel if you had a change in your health that made it impossible to purchase LTC insurance at any premium?

Your health does not have to be perfect to purchase long-term care insurance, however, there are certain conditions and combinations of health conditions that can cause you to be uninsurable:

Alzheimer's, Dementia, memory loss, Multiple Sclerosis, Parkinson's, degenerative nerve diseases, AIDS, cirrhosis of the liver, congestive heart failure, dialysis, osteoporosis (with a history of multiple falls or fractures), cancer that has spread, emphysema, inability to perform your own activities of daily living, use of a walker or wheelchair, Muscular Dystrophy, Neuropathy, (due to diabetes, alcoholism or polio) organ transplant, schizophrenia, renal insufficiency or failure, tremors, sever osteoarthritis or rheumatoid arthritis, sever chronic pulmonary disease, and cerebral palsy.

The chart below shows you the percentages of people that apply that are declined. You can see the younger you are, the better chance you have of getting LTC insurance!

Your age	% Declined
50-55.1	4%-8%
56-60	4%-12%
61-65	7%-14%
66-75	6%-21%
75+	15%-33%

Source: American Association for Long-Term care Insurance, Industry Averages Analysis. Report, June 2000

XIV. Can I deduct the premium for my LTC insurance?

Important note: The information in this section is only intended as a general overview and is not intended to provide tax advice. There may be changes in the tax law that may affect the information in this section. Please consult a tax-advisor for specific tax advice.

The premiums paid for Tax Qualified are eligible for both Federal and State tax deductions.

Federal Tax Legislation

Individual

Premium payments to purchase TX LTC by an individual – for yourself, you spouse, and your tax dependents (e.g. your children or dependent parents) are now included as a personal medical expense if you itemize your taxes (IRS Sec. 213(a)).

Medical expenses in excess of 10 % of your adjusted gross income are tax deductible. For those 65 and older the threshold remains at 7.5% tax years for 2013 – 2023.

Below is a table of the premium deductions for 2019. (*Often referred to as the eligible LTC premium*.) These increase each year based on the Medical Consumer Price Index.

Attained age before the close of the taxable year 2024	Amount of premium that counts as an allowable medical expense
40 & younger	***$ 470***
41 – 50	***$ 880***
51 – 60	***$1,750***
61 – 70	***$4,710***
Older than 70	***$5,880***

Self-Employed

TQ LTC premiums may also be treated like health insurance for the self-employed. Self-employed individual may deduct 100% of the eligible LTC premium shown above (IRC Sec 162(1)). The definition of self-employed includes sole proprietors, partnerships, "greater than 2% shareholders" of S-corporation, or Limited Liability Corporations.

C-Corporations

Premium payments are fully (100%) deductible as a reasonable and necessary business expense similar to traditional health and accident insurance premiums (IRC Sec. 213(d)). This can apply to the owners, their spouses and dependents and to all employees.

Employer-paid LTC insurance is excludable from the employee's gross income (IRC Sec. 106(2)) and the benefits received are tax-free.

****** C-Corps can pick and choose employees!!!!***

Other Entities

Premium payments purchased for a partner or owner (2% + shareholder) are subject to the same rules mentioned above for self-employed (IRC Sec 162(1))

Premium payments for non-partner/non-owner or less than 2% shareholder-employee are 100% deductible as a reasonable and necessary business expenses similar to traditional health and accident insurance premiums (IRC Sec 621(2))
Employer-paid LTC insurance is excludable from the employee's gross income and the benefits received are tax-free (IRC Sec 106(2))

State Tax Legislation

30 states and Washington D.C. currently have some form of tax deduction or tax credit in place for LTC premiums. Many other states are following suit each year.

XV. What if I pay on this policy for 20 years, die, and never use the benefits?

Additional Insurance Products that can be used to fund LTC.

Life Insurance Policy with LTC Rider

1. Normally allows the insured to receive an advance on the death benefit. (*Most have a percentage amount available*)

2. Inflation adjustment riders may be available.

3. Some contracts include automatic waiver of premium triggered by the insured qualifying for LTC benefits.

4. Long-Term Care benefit periods may range from a few years to lifetime.

Linked Benefit Life Insurance

1. A linked benefits policy provides assets, combining life insurance with LTC benefits. If insured needs LTC, the policy helps pay those expenses. If insured does not need LTC the policy provides a death benefit (almost always income tax-free).

2. Most are written on a single-premium basis (can be flexible premium) Which leverages the premium into a higher benefit.

   I.E. - $50,000 single premium purchases $125,000 of benefit that can be used for LTC or passed to heirs at death. (If no LTC benefit used full amount passed on to heirs. If LTC benefit used, unused amount passed on to heirs.)

3. Optional riders may increase LTC benefits.

4. Some companies also offer 2nd to die (survivorship) life policies that provides both insureds with LTXC benefits and death benefit on unused amount.

Linked Benefit Annuities

1. A linked benefit annuity works much the same way as a linked benefit life insurance policy and might be a choice if the applicant cannot qualify for life insurance.

2. Most written on a single deposit basis with percentage of annuity value available for LTC. If annuitant does not need LTC annuity valued death benefit passes to the named beneficiary (death benefit is taxable).

****It may be possible to write a linked benefit immediate annuity on someone already receiving LTC***.

XVI. SELLING ASSET BASED LIFE INSURANCE/LTC

Secrets to Success

1. **Identify the prospect**
   a. Feel like they have money to “weather the storm.”
   b. Successful and independent.
   c. Prime are range – 55 to 75 (can be lower or higher)
   d. Currently self insuring (either by design or not planning)

2. **Identify the asset (Most important & most overlooked!)**
   a. Ask the question – “If you get sick or hurt tomorrow and need assistance or care which asset will you use to pay for the expenses?”
   b. This will be your target – the premium source.
   c. It will always be an asset that is liquid and accessible.

3. **Reallocate this asset to fund long-term care (not asking to spend any new money – if properly done no charge and no shrinkage)**

4. **Example: $100,000 asset for 65 year old female (non-smoker)**

	Universal Life (UL)
Death benefit:	$450,363
LTC benefit:	$450,363 Monthly payment of $6,255 2% of death benefit for 6 years Money back guarantee All benefits guaranteed Reimbursement over time Simplified Issue MIB Larger LTC benefit
Average Underwriting Time	One to four weeks
Benefit Triggers	ADLs & SCI

XVII. What about LTC as an employee benefit?

Long-term care insurance is one of the newest and fastest growing employee benefits. There are tax incentives to employers for purchasing LTC insurance for their employees. Employers can pay for all the coverage, part of the coverage or have employees pay all the cost.

> Eight out of 10 Americans would consider LTC insurance of offered through their employer.
>
> *A Survey of Employers Offering Group Long-Term Care to Their Employees, US Department of Health and Human Services, May 2000*

> Group plans are typically sponsored, but not subsidized by employers. Individual policies continue to dominate the market, but employer-sponsored plans are growing rapidly, fueled in part by the creation of the Federal Long-Term care Insurance Program in 2002, which allows federal employees, retirees, and some of their family members to purchase coverage through the federal government. Employers sponsored about one-third of new policies sold in 2002. By contract, only 18% of the policies sold in 2002 were employer-sponsored plans.
>
> *Center for Retirement Research at Boston College, 2005*

Benefits for Employers

Recent health care legislation may allow employers that pay for LTC for their employees to be eligible for favorable tax treatment. (*The exact consequences vary depending on the structure of the business entity*.)

- Employer-paid LTC premiums for employee, spouse, and retiree coverage may be deducted as a business expense.
- Employers can cover defined classes of workers, making it possible to do executive carve-outs.
- Employees with medical and dental expenses exceeding 7.5% of adjusted gross income may be able to deduct eligible LTC premiums they pay.
- Premiums are not classified as taxable income to employees.
- Benefits are not considered taxable income to the insured or their families (even if the employer paid the premium.)
- Benefits are 100% tax-free to the employees whether the employee or the employer pays the premium.
- Premiums currently cannot be included in a Section 125 “cafeteria” plan.

Benefit for Employees

- Financial security, responsibility and freedom
- Preserve retirement accounts and savings
- Ability to keep job
- Employer-paid premiums not taxable as income
- Employee-paid premiums may be deductible as a medical expense
- LTC benefits are not taxable
- The coverage is fully portable
- Receive high quality care for themselves and/or family.

Two-thirds of employees who responded to the 1999 National Council on Aging/John Hancock Survey agree that LTC is the greatest threat to their standard of living retirement.

Employer Options

1. Can offer LTC insurance to all your employees on a voluntary basis only.

2. You can offer a "base" plan only. "Base" means a very basic plan that has limited benefits. Then, if the employee is interested in additional coverage they can "buy up" for more coverage.

3. You can offer an employer-paid comprehensive LTC insurance policy to all employees.

4. You can do an executive carve-out. You can legally carve-out classes within your employees and only purchase LTC insurance for them.

With some carriers, when you offer LTC insurance to your employees they will receive discounted premiums. Often, these discounts are available to the extended family members (parents, in-laws, grandparents) of your employees as well. This may allow your employee to stay on the job rather than have to miss work, or worse, quit work to become a caregiver.

5. May pay TQ LTC premiums from a **Health Savings Account** (HSA)

Note: Accident and Health insurance premiums are normally considered a qualified medical expense under IRC Sec. 213(d). However, premium expenses cannot be paid from an HAS, except in the following circumstances:

- *Premiums for COBRA type health care continuation.*
- *Premiums for health coverage while an individual receives unemployment compensation.*
- ***Premiums for LTC insurance (prepaid nursing home coverage).***

Summary: As an agent you have a real opportunity to help clients incorporate LTC insurance with their other retirement planning.

1) Assets that have been allocated to provide retirement can be protected

2) Find the premium money from noncash flow sources (CD's, Other Insurance Products, etc.)

3) LTC insurance gives your retired clients permission to enjoy retirement

4) LTC insurance can assist in Wealth Transfer

A Guide to the LTC Funding Options

Client's Top Priority	Solution	Consideration
Protect assets from an extended health care event	Traditional LTCi	PRO: Maximizes LTC leverage while minimizing premium commitment. Potentially tax deductible for businesses. CON: Premiums not guaranteed, lack of flexibility
Protect assets from an extended health care event while retaining maximum flexibility	Asset Based LTCi	PRO: Maximizes flexibility while still retaining the primary objective of providing for a LTC event. Provides Return of Premium, Death benefit, and LTCI. Guarantees level premiums. CON: Reduced death benefit when compared to Life with rider option. Reduced LTC poll when compared to traditional LTCi
Maximizing Death Benefits while retaining some flexibility	Traditional Life Insurance with an Accelerated Benefit Rider	PRO: Provides largest death benefit while retaining flexibility to pay for LTC costs. Better suited to pay on a monthly basis if needed. CON: Reduced LTC benefit when compared to Traditional LTC and Asset Based LTC. Typically, does not offer 100% ROP.
Long Term Care options late in life with potential health concerns.	Fixed or Indexed Annuity with LTC Rider	PRO: Provides streamlined underwriting for clients with health concerns while turning tax deferred growth to potentially tax free income CON: No immediate leverage of the base asset and limited growth opportunities when compared to alternative annuity options.
Access to money	**Self-Fund**	PRO: Zero upfront cost while retaining liquidity. CON: Pay dollar for dollar for any care needed. Estate serves as primary funding source.

Long-Term Care Insurance – Glossary of Terms

Accelerated Benefits: A life insurance provision under which the policyowner may choose to have a certain portion of the policy proceeds paid out before death under conditions spelled out in the policy.

Activities of Daily Living (ADLs): Everyday activities are used to measure an individual's ability to function independently. These activities consist of bathing, eating, continence, dressing, toileting and transferring.

Acute Care: Care for illness or injury that develops rapidly, has pronounced symptoms and is finite in length. Traditional medical insurance, Medicare and Medicare supplements are designed to provide coverage for acute illnesses.

Adult Congregate Living Facility: Residential or apartment housing for people which can include a minimum amount of assistance with activities of daily living.

Adult Day Care: Social, recreational and/or rehabilitative services provided for persons who benefit from daytime supervision. An alternative between care in the home and in an institution. Refers to health support and rehabilitation services provided in the community to people who are unable to care for themselves independently during the day but are able to live at home at night.

Adult Foster Care: A live-in arrangement where on adult lives with and is provided care/ and/or services by an unrelated individual or family. Such arrangements may be certified by the state or managed independently.

Alternate Care Facility: A licensed residence other than a skilled nursing facility where care services are delivered (i.e., hospice, assisted living, Alzheimer's or Christian Science setting.)

Alternate Plan of Care: Feature which allows for substantial flexibility in designing a recovery and/or maintenance program specifically designed to allow the person to reside in a setting other than a nursery facility (i.e., services to provide assistance and capital improvements such as ramps, grab bars and/or durable medical equipment).

Alzheimer's Disease: A form of organic dementia resulting in premature mental deterioration.

Alzheimer's Units: A special unit within nursing facilities or alternative care facilities specifically providing care and services for those with Alzheimer's disease.

Assessment: Determining the level of impairment of an individual and the type and extent of services needed.

Assisted Living Facility (ALF): A non-medical institution providing room, board, laundry, some forms of personal care, and usually recreational services. Licensed by state departments of social services, these facilities exist under several names including domiciliary care facility, sheltered house, board and care home, community-based care facility, residential care facility, etc.

Bed Reservation Benefit: Pays the cost of reserving a place in a care facility should the insured need to be hospitalized during a covered stay.

Benefit: The amount payable by an insurance company to a claimant or beneficiary when the insured suffers a loss covered by the policy.

Benefit Maximum: Amount of money or days of care beyond which a long-term care policy will no longer pay benefits.

Benefit Period: The length of time for which benefits will be paid (i.e.; three years, five years, or lifetime).

Benefit trigger: This is the point at which criteria is used to determine eligibility got benefits is met. Triggers are based on the need for assistance with ADLs or cognitive impairment or both.

Care Advisor: Usually, a registered nurse or licensed social worker who evaluates and monitors the patient's needs and Plan of Care. Will work with the patient's doctor and coordinate health care providers. Amy also acts as an advocate for the insured/patient.

Caregiver: A person providing care to someone with chronic illness or disability. The caregiver can be an unpaid member of the family, friend or volunteer or a paid professional providing care in the home, community or institution.

Caregiver – Primary: The key person (usually a relative) overseeing and providing the care for a person who is incapacitated.

Caregiver(s) – Secondary: Relatives or others who assist part-time in giving care.

Case Management: A professional service that arranges and coordinates health and/or social services through assessment, service plan development and modification, monitoring, and quality assurance.

Catastrophic Illness: Illness resulting in sudden temporary or permanent change or significant disruption to a person' normal lifestyle.

Cognitive Impairment: Refers to the loss or deterioration of mental capacity in people suffering from conditions such as Alzheimer's disease.

Cognitive Reinstatement: A provision to continue a policy which has lapsed (providing that back premiums are paid) when the cause of the lapse was do to cognitive impairment.
Chronic care: Continuous, long-term care for persons suffering from chronic conditions. May be contrasted with “acute care.”

Coinsurance: A cost-sharing requirement that provides that a Medicare beneficiary must assume a portion or percentage of the costs of covered charges.

Continuum of Care: Interrelated and connected range of services ranging from home and community-based programs to institutionalization as needed by seniors at various stages of disability.

Custodial Care: Services that can be given safely and reasonably by a non-medical person, designed to assist with ADLs, including bathing, eating, dressing and other routine activities.

Daily Benefit Amount: A specified, maximum, daily, dollar amount payable on a covered period of care. Policies offer a range of choices in ten-dollar increments.

Deductible: The amount of health care expense a Medicare beneficiary must first incur and pay out-of-pocket for covered services.

Dementia: The severe impairment of cognitive functions (thinking, memory and personality).

Diagnosis-Related Group (DRG): A category of related diagnoses identified by health insurance plans and by Medicare, for which a hospital is paid a flat amount as part of the health plan coverage.

Elimination Period: The period of time that the insured must be in a nursing home before monthly benefits are payable (i.e., 0, 30, and 90 days). In the case of home care, the number of home care visits that must be provided as per the plan of care prior to daily benefits being paid. Also known as the waiting period.

Exclusion: Any condition or expense for which a policy will not pay.

Free Look Period: The amount of time, usually 30 days, during which the policyowner may return the policy for any reason and receive a full refund of premiums paid.

Geriatrics: The study of physical and mental changes in persons as they age. Including the diagnostic, treatment and prevention of disorders

Guaranteed Renewable: This provision of an LTC policy states that the insured’s coverage cannot be canceled except for nonpayment of premium. The insurer may only change premium rates by class. Required in all LTC policies.

Health Care Financing Administration (HCFA): The federal agency that administers Medicare.

Health Insurance Portability and Accountability Act HIPAA): Federal legislation that passed in 1996. It clarifies the tax treatment of LTC, defining the parameters under which benefits and expenses are received tax-free.

Home Health Aide: A person who is hired and certified by a home health agency to help clients in the home with personal care such as light housekeeping, meal preparation, and or shopping.

Home Care: A broad range of services which include home health care, adult day care, personal care services, homemaker services, hospice and respite services.

Home Health Care: A program of professional, paraprofessional and skilled care usually provided through a home health care agency to a person at home. The care is often prescribed by a physician as medically necessary and can include nursing services, physical, speech, respiratory and occupational therapy.

Home Health Agency: A public or private organization that specializes in providing skilled nursing services and other persons in their residences.

Homemaker Services: Assistance given in managing and maintaining household activities that allows you to remain safely in your home when you cannot manage those activities on your own. May include meal preparation, laundry, cleaning, chores, etc

Hospice Care: A coordinated program for control of pain and symptoms for the terminally ill which may also provide support to family members.

Hospital Insurance (Part A): That part of the Medicare program that helps pay for inpatient hospital care, inpatient care in a skilled facility, home health care, and hospice care.

Indemnity: This is a method of benefit payment in LTC insurance policies. An indemnity method pays the stated daily benefit regardless of actual incurred expenses.

Inflation Protection: Increase the daily benefit amount on an annual basis. If elected, increases benefits in order to protect against the effects of inflation. Most common is the Compound 5% Inflation Rider which increases the daily benefit each year by 5% of the previous years daily benefit amount. The compound effect really begins to take off around the 20^{th} year, so if your client is younger when an LTC policy is bought, this seems the best choice. If your client is in retirement, it is a toss-up between paying for extra protection and simply starting out with a higher daily benefit at the beginning.

Intermediate Nursing Care: Assistance needed for stable conditions that require daily, but not 24-hour, nursing supervision. Such care is ordered by a physician and supervised by registered nurses. It is less specialized than skilled nursing care, often involves more personal care, and is generally needed for a long period of time.

Licensed Health Care Practitioner (LHCP): A physician, registered nurse, or licensed social worker.

Long-Term Care (LTC): Also called custodial care. Assistance, expected to be provided over a long period of time with chronic health conditions and/or physical disabilities who are unable to care for themselves without the help of another person.

Long-Term Care Insurance (LTCI): Insurance available through private insurance companies as a means for individuals to protect themselves against the high cost of long-term care.

Medical Insurance (Part B): That part of Medicare which helps pay for medically necessary physicians' services, outpatient hospital services, home health care services and a number of other medical services and supplies not covered by Medicare Part A.

Medicaid: The welfare health program for the poor, jointly administered by the federal and state governments. To qualify for Medicaid, persons must meet poverty standards.

Medicare: A federal government insurance program to assist those age 65 and over and the disabled with medical and hospital expenses. Medicare covers only skilled care in a skilled care nursing facility and limited skilled nursing care at home. It does not provide benefits for personal or custodial care. Medicare requires co-payments and deductibles.

Medicare Supplement or "Medicap": A private insurance program designed to pay Medicare co-insurance amounts and other variable benefits.

Noncancelable/Guaranteed Renewable: A provision that precludes cancellation of a policy or a change of any of its terms by the insurance company, as long as the policy remains in force. The insured need only make timely payment premiums.

Nonforfeiture Benefit: A guarantee for a refund of all of the premiums in one of two ways; 1) to a named beneficiary at the death of the insured, or 2) as an "extended term" type benefit for as long as all premiums accrued will last with balance (if any) left to a named beneficiary.

Nursing Home: A facility that provides room and board and a planned, continuous medical treatment program, including 24-hour-per-day skilled nursing care, personal care, and custodial care.

Personal Care: Refers to assistance provided by another person to help with walking, bathing, eating, and other routine daily tasks. It is provided by aides who are not medical professionals but are trained to help with these tasks.

Personal Care Advisor: Person assigned to assist the insured upon any claim for benefits or any attached riders. A personal plan is tailored to the needs of the insured; assisting in finding facilities and helping insureds maximize their benefits. Personal Care Advisors can be reached by calling 888-503-8110.

Pool of Money: A variation on the typical benefit period. Rather than designate a period of time over which benefits can be payable, this concept creates a lump sum of money to be used as needed during a long-term care claim. The claim ceases when services are no longer needed or the limp sum of money runs out.

Pre-Existing Conditions: Medical conditions that existed prior to the effective date of the policy. Some policies may exclude claims stemming from a condition that falls under this definition for a specific period of time.

Professional Services: A health care professional whose training includes managing and arranging for long-term care services. This person can be a doctor, nurse, social worker or other similarly trained and licensed professional.

Quality Review Organization (QRO): A group of practicing doctors and other health care professionals under contract to the federal government to review the care provided to Medicare patients. (Also known as a Peer Review Organization (PRO).

Reimbursement: This is a method of payment in long-term care insurance policies. A reimbursement method pays for incurred expenses up to a daily limit of the policy.

Respite Care: Is nursing home or home care that temporarily replaces the exiting level of support received from an informal, non-paid caregiver for the purpose of providing care and supervision to the patient while relieving the caregiver.

Restoration of benefits: A provision that restores claim days already used if the insurance selects a benefit other than lifetime.

Skilled Nursing Care: Nursing and rehabilitative care provided by or under the direction of skilled medical personnel – available 24-hours a day and ordered by a physician under a treatment plan. Can be either in a facility setting or at-home. Note: Medicare and Medicaid both have their own definitions of “skilled nursing care” which do not necessarily match those found in LTC policies.

Skilled Nursing Facility (SNF): A licensed institutional setting which provides nursing and rehabilitative care provided by or under the direction of skilled medical personnel – available 24-hours a day and ordered by a physician under a treatment plan.

Spend-down: Depleting almost all assets to meet eligibility requirement for Medicaid.

Tax-Qualified Plans (TQ): Long-term care policies that meet the definition required by HIPPA and are eligible for favorable tax treatment.

Third-Party Notification: Gives you the option of having “the premium overdue” notice sent to a third party as a precaution to insure the policy does not unintentionally lapse.

Waiver of Premium: A policy provision that allows you to stop paying premiums once you are in a period of covered care. Usually applies to a facility stay, although some policies do waive premiums for approved home health care as well. Date when premium stoppage begins varies with each company.

LONG-TERM CARE RESOURCES

Administration on Aging	aoa.dhhs.gov
National Center for Health Statistics	cdc.gov/nchs/default.htm
American Health Care Association	ahca.org/
ARP Health and LTC	research.aarp.org/health/
Health Care Financing Administration	hcfa.org/
Long Term Care Insurance	ltcins.com
LTC Statistics/Natl Center for Health Statistics	cdc.gov/nvhwww/nchshome.htm
Health Insurance Association of America	hiaa.org/cons/guideltc.asp
US Census Bureau	census.gov
National Center for Assisted Living	ncal.org
Senior Law	senior law.com
Aging with Dignity	agingwithdignity.org
Compare Nursing Homes	medicare.gov/Nhcompare/home.asp
Nursing Home Directory	nursinghomedirectory.org
Social Security	ssa.gov
Assisted Living Federation	alfa.org
Alzheimer's Association	alz.org
American Council of the Blind	acb.org
American Diabetes Foundation	diabetes.org
Arthritis Foundation	arthritis.org
Eldercare Locator	eldercare.gov
National Cancer Institute	cancer.gov
National Hospice Organization	nhpco.org
National Mental Health Association	nmha.org
National Osteoporosis Foundation	nal.usda.gov/fnic/etext/000107.html
National Association of Home Care	nahc.org

Recommended Publications

"Long-Term Care – Your Financial Planning Guide – 2007"	*Phyllis R. Shelton*
"How to Care for Aging Parents"	*Virginia Morris, Robert M. Butler*
"The Complete Eldercare Planner: Where to Start, Which Questions to Ask, and How to Find Help"	*Joy Loverde*
"Therapeutic Caregiving: A Practical Guide for Caregivers of Persons with Alzheimer's and Other Dementia Causing Diseases"	*Barbara J. Bridges, Jaime Temairik (Illustrator)*
"Caregiving: The Spiritual Journey of Love, Loss, and Renewal"	*Beth Witrogen McLeod*
"The Continuum of Long-Term Care"	*Connie J. Evashwick*
"Long-Term Care Insurance Made Simple"	*Les Abromovitz*
"Beat the Nursing Home Trap: A Consumer's Guide to Assisted Living & Long-Term Care (3rd Ed)"	*Joseph L. Matthews*
"'What Should We Do About Mom?' A New Look at Growing Old"	*Richard T. Conard, M.D. Jill Laforge Jones*
"Aging is a Family Affair"	*Doug Manning*
Consumer Guide to Long-Term Care	*Gary Ilminen*
"How to Protect Your Life Savings from Catastrophic Illness"	*Harley Gordon*
"Living Well with Parkinson's"	*Glenna W. Atwood*
"Living Well With MS"	*David L. Carroll*
"The 36-Hour Day: A Family Guide to Caring for Persons with Alzheimer Disease, Related Dementing Illnesses, and Memory Loss In Late Life"	*Nancy Mace and Peter V. Rabins*
"After the Stroke: Coping with America's Third Leading Cause of Death"	*Evelyn Urban Shirk*
"Mainstay: For the Well Spouse of the Chronically Ill"	*Maggie Strong*
"Alzheimer's Disease Frequently Asked Questions: Making Sense of the Journey"	*Frena Gray-Davidson*
"The Practical Guide to Aging: What Everyone Needs to Know	*Christine K. Cassel*
"Who Will Take Care for Us?: Aging and Long-Term Care In Multicultural America"	*Ronald J. Angel Jacqueline L. Angel*
"Don't Put Me In A Nursing Home!"	*Claude Amarnick, D.O.*
"Elder Rage or Take My Father… Please!: How to Survive Caring for Aging Parents"	*Jacqueline Marcell*

James K. Ruble Seminar

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Section 5

Cyber Liability – How Your Client Survives in a Connected World

CYBER LIABILITY
How Your Client Survives in a Connected World
Version 10.5

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I. INTRODUCTION

A. How to Sell Cyber Related Products?

1. Sell the problem first before selling the coverages.

2. Every personal line and commercial lines client have the exposure.

3. Have a methodology to get the topic on the table when talking with clients – renewal questionnaires, checklists, claim examples, regulations, and risk management discussions.

4. Recognize that you are a risk or insurance advisor, and this is a remarkable cross selling opportunity and increases client retention,

5. Be ready for the objections and have responses.

   a. Our IT guy states that we cannot be hacked?

   b. We use encryption on everything.

   c. We do not capture or store credit card data.

   d. We have a merchant service agreement, and they are responsible for all breaches.

   e. We are not a large business, and we are not a target.

   f. We are PCI compliant.

   g. We outsource our processing to a third party and they have the liability.

   h. Our data is stored in the cloud, and they are responsible for any breaches.

6. We are going to explore all the elements and factors that you should consider for this important insurance coverage.

B. U.S. Cyber Insurance Market Predictions – Are you ready?

1. Standard & Poor's Corp stated, "Cyber insurance premiums, which now total about $5 billing annually will increase 20% to 30% per year on average for the next five years."

2. The continued development and business reliance on technology such as IoT leads to increasing connectivity and exposure to cyber risk.

3. As attack vectors or surfaces evolve, the attacker's financial incentives continue to grow.

4. Increasing media coverage on enterprises being attacked contributes to businesses seeking to hedge cyber risk with insurance.

5. Over the next five years, regulations for underwriting and managing cyber risk exposures will increase.

6. Cyber MGAs will consolidate over the next five years.

7. Cyber insurance coverage will move towards standardization of coverage language to eliminate ambiguity.

   a. Third Party Liability – Internet Liability, Breach of Security, Privacy Liability, Content Liability, E-Commerce Liability, contractual liability, regulatory liability, infringement of intellectual property liability, and any liability created by two or more computers communicating with each other.

   b. Regulatory Compliance and Payment Card Industry ("PCI") compliance. [Federal Standards Coming]

      "We have reached a tipping point where cyber risk has shifted from being purely a business risk to also being a risk to society overall." RPS Comber McHugh.

   c. Breach mitigation or breach response costs.

d. First party loss exposures such as business interruption, extra expense, system failure, data restoration, dependent business interruption which include cloud or outsource provider outages, reputation harm, cryptojacking, brick losses, utilities fraud, crime with focus on social engineering losses, extortion, and ransomware extortion.

e. Cyber policy wording has been tightened with more exclusions showing up in contracts and endorsements.

f. Cyber terrorism exclusions, infrastructure attack exclusions along with broader definitions of what is considered infrastructure.

g. Systemic risk restrictions for third-party cloud and website providers are showing up on renewals with a sublimit.

h. Social engineering losses continue to increase and will require close attention. [Crime or Cyber Crime Coverage forms]

8. Adaptive cyber insurance policies will become more mainstream.

a. As the industry begins to better understand cyber risk, better data will be available surrounding the connection between preventative behavior, such as implementing better security controls, and the behavior's impact on enterprises in the case of a cyber event.

b. This could lead to month-by-month premiums or credit mechanisms for add on services based on a reevaluation of the risk and rewards for positive behavior.

c. Insurance company underwriters are becoming more sophisticated in their approach to underwriting cyber risks.

d. More detailed cyber-related questions and use of third-party scanning technologies to help in detecting security weakness of the prospective enterprise.

e. Focus on systemic risks and aggregation risks by underwriters. [The potential for a single event to cause massive disruption within a country, industry , or across a broad spectrum of users with sublimit being applied.]

f. Underwriter requiring more stringent security measures and stating that these are the minimum requirements including endorsements around critical known vulnerabilities with a requirement that they be fixed within 45 days.

g. Failure to download and patch exclusions are being added by endorsement.

h. Coinsurance is returning as an underwriting tool.

i. Multi-factor authentication ("MFA") becoming a standard.

j. Lower limits and sublimit approaches are now common. Most quotes are capped at $5,000,000 but some $10,000,000 limits are offered.

k. Loss ratios have improved but the frequency and severity of claims remain a problem for underwriters.

l. Classes like Manager Service Provider (MSP), municipalities, crypto, and cannabis companies remain a high hazard class and are tough to place.

9. Reinsurance capacity will be less concentrated. Shock price increases have stabilized.

10. At least one major cyber insurance catastrophe will cause significant losses and the fundamental need for bottom-up cyber-driven risk models.

    a. Ransomware is one of cybercrime's strongest business models today, pushing aside long-held staples like banking trojans, phishing, distributive denial-of service (DDoS), and cryptojacking.

b. Hardbit ransomware group urges victims to share their cyber insurance policy details as part of the negotiation process and ransom demand.

   1) Insurance companies require this information not to be divulged.

   2) They are asking for the limits of insurance, and they want "the sneaky" insurance agent left out of the picture.

   3) Exclusions and limitations are coming, and the act of divulging cyber insurance may void the coverage.

c. Ransomware has begun taking a toll on human life. These attacks that can impact hospitals and affect medical devices have come to be known as "Killware" in the industry because of their potential to indirectly cause mortality.

d. Ransomware forms are now effectively licensing out proprietary ransomware software and that is leading to more wide scale attacks.

e. Ransomware attacks are no longer solely targeting data to charge a ransom to prevent the publication of the data on the dark web.

f. Instead, cybercriminals are focusing on attacks that take down systems and prevent enterprises from operating which include manufacturing, wholesale distributions networks, and transportation networks. [Large business interruption risk enterprises targeted]

g. Average cost of a Ransomware attack in 2022 was $4.54 million.

h. Class action lawsuits are increasing (Meta, Google, and hospitals for protection of PII, especially HIPPA violations.)

i. Class action lawsuits may bleed over into D&O coverage forms. Exclusionary endorsements showing up in D&O and Cyber contracts.

11. Alternative capital flow will occur into the cyber insurance market.

12. In reviewing the cyber-market data reported to the National Association of Insurance Commissioners (NAIC) by US-domiciled cyber underwriters, in 2021, stand-alone cyber policies in force grew 32 percent, which was less than the 94 percent growth in direct written premiums, from $1.62 billion to $3.15 billion.

13. As a result, premiums written per policy increased to $12,200 from $8,300. (Source: Verisk/ Market Stance analysis of NAIC Cybersecurity and Identity Theft Insurance Supplement Data.)

14. Cyber subjectivities have arrived and are you prepared? Underwriters require line by line technical answers to each individual subjectivity before releasing a bindable quotation.

C. Future of Cyber Insurance Today – A Market View [Partner Re and Advisen Report]

1. One of the fastest growing lines of insurance.

2. Top three Cyber Coverages requested by new and renewal clients.

   a. Cyber extortion and ransom coverage

   b. Cyber related Business Interruption coverage

   c. Funds Transfer Fraud and social engineering coverage

3. Top five industries that procured standalone cyber insurance products.

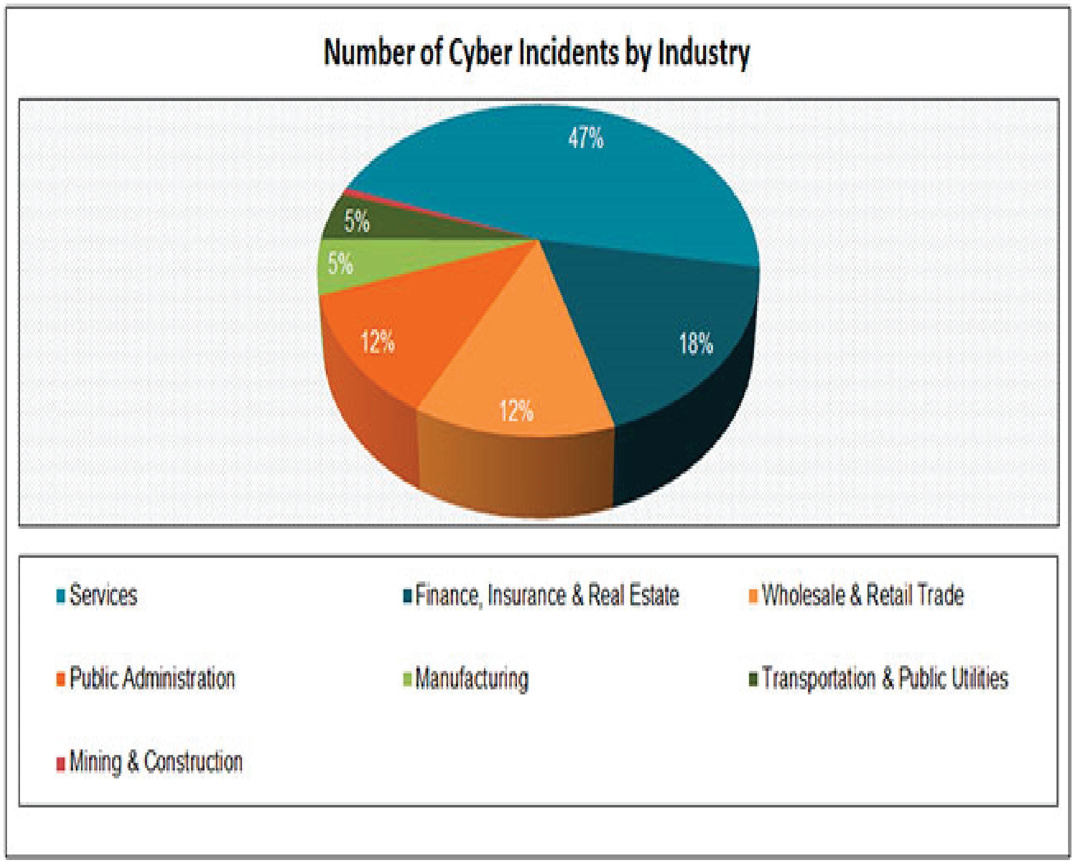
   a. Manufacturing Industrials

   b. Professional Services

c. Information Technology

d. Healthcare

e. Financial Services and Insurance



4. Top drivers or motivators for clients purchasing cyber insurance

a. News of cyber related losses experience by others

b. Experienced a cyber-related loss

c. Required by a third party – customers

d. Increased education about loss exposures

e. Board or Senior Management Demanded

f. Regulatory changes with stiffer fines and penalties

1) GDPR (EU General Data Protection Regulation)

2) CCPA (CA Consumer Privacy Act)

3) BIPA (Biometric Information Privacy Acts)

4) CPRA (CA Privacy Rights Act)

g. Risk Mitigation services

h. Breadth of coverages

i. Cost

j. Excellent salespeople

5. Biggest obstacles to selling cyber insurance

a. Not understanding the loss exposures

b. Cost of the insurance product

c. Not understanding the insurance coverages

d. Application process

e. Capacity or aggregate constraints in the marketplace

f. No standardized coverage forms creating difficulty in comparison

g. Lack of value-added products or services

h. Scope of Coverages

i. Ability to procure higher limits for all coverage parts

6. Challenges are coming since hackers are more organized, profit driven and often nation-state sponsored.

    a. More demand for extortion coverage and higher limits.

    b. Underwriters are more cautious, and more exclusions are showing up.

    c. Increased demand by insurance companies for coinsurance participation.

    d. Confusion concerning coverage under Cyber crime or under the Computer Fraud Provision of a Commercial Crime endorsement. *[G&G Oil Co. of Indiana v Cont'l W. Ins. Co.*, 165 N.E. 3d 82 (Ind 2021)]

    e. United States Treasury Office of Foreign Asset Control (OFAC) guidance concerning the payment of ransom demands and the required mitigation steps that must be in place before payment of ransom demands.

        1) Proactively reduce risk which includes incident response planning, maintaining offline backups, and employing multifactor authentication protocols. [MFA's]

        2) Risk scanning is increasing and being required more and more.

        3) Underwriters are following the OFAC suggestions and have included in insurance applications.

        4) Full impact to the future changes in the cyber marketplace is unknown at this time.

7. Risk aggregation is being actively managed by insurance companies to limit exposures to ransomware attacks.

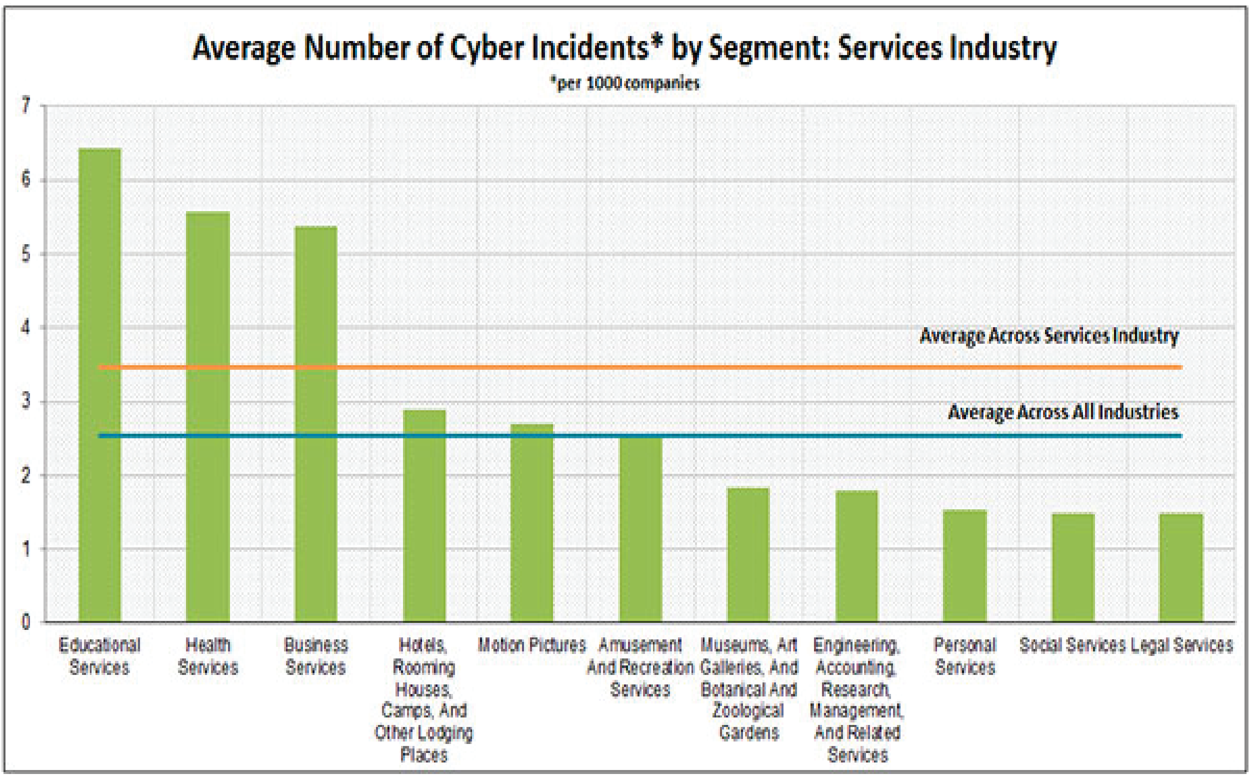
8. 10% of businesses still use Windows 7 that is no longer supported.

9. Infection rates continue to climb across all industries.

10. TOO MANY BREACHES – has caused premium increases and increased retention levels.

    a. The Hard market has arrived and will remain for a while.

    b. Healthcare, retail, public entities, public schools, community colleges, and governmental organizations are low hanging fruit and were actively attacked by ransomware in 2020, 2021, and 2022.



11. COMMON ATTACKS AND LOSSES OR BREACHES

    a. Cyber Extortion

    b. Data – Unintentional Disclosure

    c. Data – Physically Lost or Stolen

    d. Data – Malicious Breach

e. Privacy – Unauthorized Data Collection

f. Privacy – Unauthorized Contact or Disclosure

g. Identity – Fraudulent Use & Account Access

h. Industrial Controls & Operations (SCADA)

i. Network/Website Disruption

j. Phishing, Spoofing, Pharming, and Smishing

k. IT – Configuration & Implementation errors and Vendor exposures

l. IT – Processing errors & Vendor exposures

m. Business Interruption

n. Cloud Computing

o. Social Engineering Fund Transfer

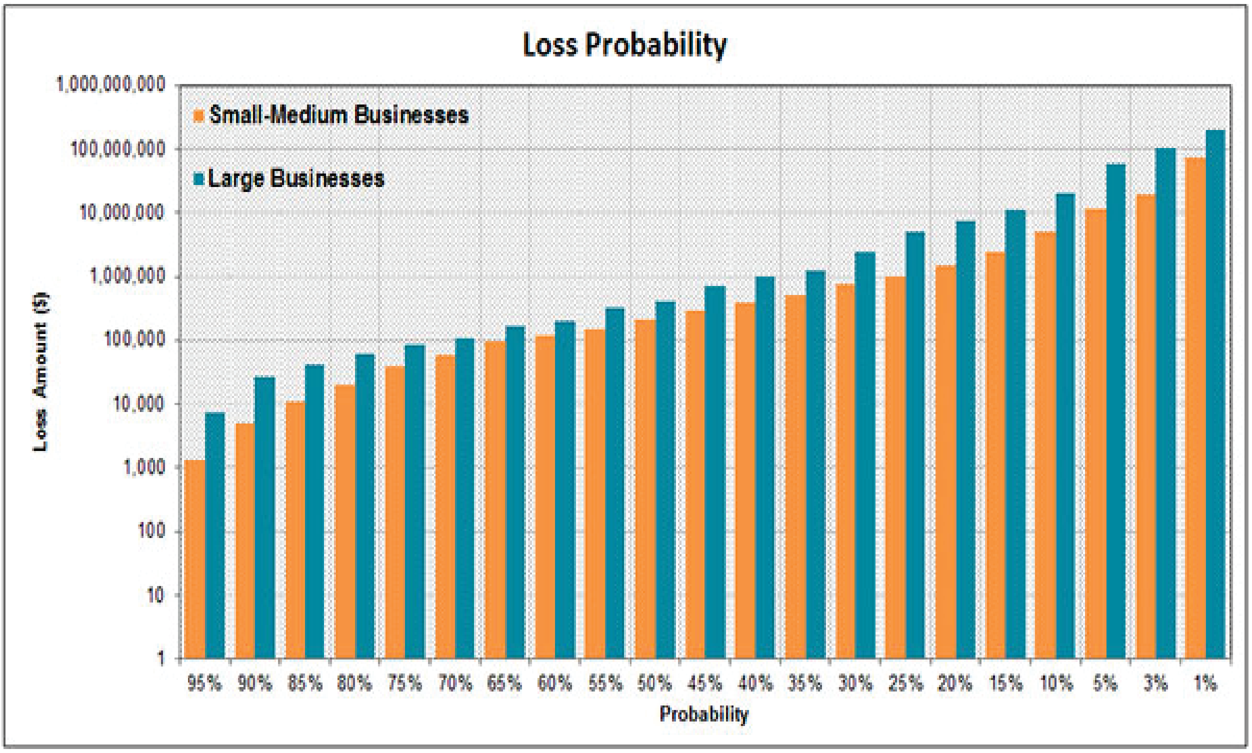
p. Theft of Devices

12. CAN PRICES KEEP UP WITH THE THREATS – Actuaries are having fits trying to get some stability in pricing and determining rate adequacy as attacks keep morphing.

a, 98% of claims came from small to medium enterprises (“SMEs”) with less than $2 billion in aggregate sales.

b. There are enormous variances in the magnitude of the loss data across the industry with ranges from $1,000 to over $300 million.

c. There is no correlation between the size of the organization and the magnitude of the cyber-related loss. However, SMEs suffered more catastrophic impacts.



13. Cyber insurance now is mainstream, and the procurement rate keeps increasing significantly.

14. Insurance carriers are seeing losses and new threats which require careful review of premium rates.

15. Coverage triggers continue to be one or more of the following.

    a. Failure to secure data and failure to patch.

    b. Loss caused by an employee.

    c. Acts by persons other than insureds .

    d. Loss resulting from the theft or disappearance of private property (such as data that resides on a stolen laptop or missing data storage media

16. New coverage sub-limits are showing up on renewals requiring new stacking of limit protocols to get adequate coverage limits.

17. Ransomware is driving the loss ratio. Discussed more in this presentation.

18. Cyber Litigation Trends have been increasing from each year since 2005 and there will be no stop as regulations and statutes keep changing. [Class Action Lawsuits]

19. An increasing interest in coverage beyond third-party liability coverage and data breach response costs including data restoration, business interruption and dependent property business interruption.

20. Cybercrime coverage with higher limits for social engineering.

21. Broad extortion coverages to include Ransomware.

22. Stand-alone insurance contracts are being procured at a greater rate than endorsed programs.

23. CYBER COVERAGE FORMS HAVE GAPS OR LIMTIATIONS:

    a. Reduction in market capital (Target)

    b. Reputational losses, including damaged relationships and opportunities.

    c. Substantial business interruption and extra expense [How much is enough?]

    d. Possible loss of the economic value or intellectual property

    e. Lost staff time and focus

24. COVERAGE PITFALLS FOR AGENTS/BROKERS

    a. Retroactive dates and prior act or litigation exclusions limit past causative events and limit coverage.

    b. Unauthorized access as a coverage trigger means that negligent actions by an employee that provides access to their password or is tricked in providing access may not be covered. The Devil is in the Detail of the Wrongful Act Language.

c. “Minimum Required Security Practices” exclusion or exclusionary words that state “best security practices” may exclude coverage and they need to be modified since security is changing almost daily.

d. Exclusions for incidents or events that arise from acts of war or terrorism will need to be changed since Cyber Terrorism coverage should be provided.

25. CRADLE TO GRAVE EXPOSURE and/or Strict Liability Exposures creates needed additional coverages and services to be provided by insurers and creates new challenges for the Board of Directors for all entities.

26. Ransomware and Destructive Malware Breaches

a. These breaches cost more than the average malicious attacks.

1) Wiper Style attacks average cost $4,520,000

2) Ransomware attacks average cost $4,540,000

b. COVID 19 Pandemic has impacted a significant increase in Ransomware claims.

c. Work from home lessens the willingness to check the authenticity of attachments and instructions.

d. Economic costs of protecting home computer systems with access to the main computer system growing.

e. The increased focus on delivering goods and service online means increased importance of online business activities, making businesses more likely to pay ransom than fight extortion.

f. Insurance companies are not offering Pandemic related coverage extensions and/or Covid-19 Specific coverage extensions leaving clients self-insured.

g. Ransomware coverages are seeing significant increases in deductibles and SIRs.

h. Average time to identify and contain ransomware and Wiper Style attacks is 326 days (237 days for detection and 89 days to contain).

i. Average Cost of ransom ware attack if not paid is at $5,120,000 and if you pay it is $4,490,00.

27. Ransomware is a form of computer malware used by cybercriminals to encrypt digital data.

a. They threaten the victim to erase or release the information into the public domain unless a ransom is paid.

b. Phishing is the most common method of delivering ransomware, but other social engineering fraud techniques are being used.

c. Most ransomware strains use RSA 2048, an extremely strong encryption software making it difficult to unlock.

d. Paying a ransom invariably involves the use of cryptocurrency or virtual currency.

e. Once paid the scammer may provide the decryption software that starts the arduous process of decrypting the files.

f. Frequency and Severity of claims are up significantly in 2020 by over 100%.

g. Originally the ransomware attacks were focused on payoff but that changed in 2019 because of threats to sell or publish the stolen data and name victims if a ransom was not paid. [MAZE ATTACKS]

h. The average 2022 cost of a ransomware attack stands at $4,540,000 and now accounts for 41% of all cyber insurance claims which is a 7.8% increase from 2021.

i. Ransomware surpassed payment card thefts in 2020.

28. PAYING RANSOM DOES NOT END THE ORDEAL

a. Studies have shown that paying the ransom doubles the average cost of ransomware attacks in the future. You are a known commodity in the dark web.

b. Must institute loss prevention and loss reduction techniques with net generation endpoint protection to keep or get Cyber Insurance.

c. Need Data Loss Prevention (DLP) controls, spam filter, backups, network segmentation, and increased security education for employees.

d. Remember that your client may be contractually obligated to report the ransomware breach to clients as well as regulators.

e. Cyber Insurance costs will go up, deductibles and/or SIRs will increase, and the insured will be required to warrant that the above prevention techniques are in place.

29. RANSOMWARE COST CALCULATION – ICEBERG THEORY APPLIES

a. Loss of revenue during downtime.

b. Reputational damage and consequent loss of business

c. Fees to cybersecurity and forensic experts to trace the origin and propagation of the attack.

d. Establishing temporary employee systems in which to work including working from home protocols.

e. The cost of uncompensated network

f. Paying for forensic analysis of an attack through a services provider or through an MP.

g. The cost of notifications and credit monitoring.

h. Performing all necessary curative activities to impede future attacks.

i. Potential fight with insurance claim adjuster about coverage.

j. Legal fees and management time focused on the event.

30. Cybercriminals have weaponized the **Internet of Things** against smartphones, printers, baby monitors, Apple TV devices, etc. to use to begin a distributed denial of service (DDoS) attack against websites such as Amazon, CNN, BBC, HBO, Pay Pal, Pinterest, Spotify, Walgreens, The Wall Street Journal, and many others.

31. **Increased regulation in the USA** on both the state and federal level – FTC, SEC, HHS, DOJ, Etc.

32. **Increased regulation abroad** – Data transfer to the EU continues to be problematic including the Privacy Shield protocol not followed in Europe.

33. Risk Avoidance, Risk Mitigation, Risk Reduction, Risk Prevention, and Duplication Value Added services are needed.

34. Risk Control through advances in technology needed.

a. Cloud-Based Cybersecurity.

b. Close the gap between infection and detection.

c. Procure leading edge preventive defenses against Signature Less Threats (Social Engineering Fraud)

d. Visibility across all ports and protocols to control applications and stop evasive threats.

e. Implementation of plans that meet the organizations electronic footprint.

f. Enhance Secure Socket Layer (SSL) Security for web traffic

g. Develop an actionable threat intelligence and reporting methodology to quickly identify attacks.

h. Keep It Simple Stupid (KISS)

i. Implement Zero Trust security architecture that uses AI and analytics to continuously validate connections between users, data, and resources. [Average Cost of a Data breach by an organization that does not use Zero Trust security architecture is $5,570,000 in U.S. dollars]

D. Root Causes of Data Breach and Associated Costs

1. IBM & Ponemon Institute 2022 Cost of a Data Breach Report

2. Cost of Data Breach Involves these components or elements.

   a. **Detection and Escalation Activities** that include forensic investigative activities, assessment and audit services, crisis management, and communications to senior management.

   b. **Notification Activities** that include emails, letters, outbound calls, general notices, regulatory requirements responses, communications with regulators, and engagement of outside experts (brand & reputation)

   c. **Lost Business** which includes activities to minimize the loss of customers, business disruption, and revenue losses.

   d. **Ex-post response** which includes activities to help victims of breach which included identity theft services, issuing new credit cards, fines, penalties, regulatory proceeding expenditures, credit monitoring, websites, help desks, etc.

3. 83% pf the organizations studied in the report had more than one data breach during the year.

4. 60% of the organizations studied indicated that the breach costs were passed onto their customers by increasing prices for services and goods.

5. 79% of the critical infrastructure organizations did not deploy a zero-trust architecture. [Financial Service, Industrial, Technology, Energy, Transportation, Communications, Healthcare, Education, and Public Sector].

6. 19% of breaches occurred because of a compromise at a business partner.

7. 45% of the breaches were cloud-based and the range of average total cost dependent upon system security was from a low $3,870,000 to a high of $4,590,000. The worst case for identifying and containing was 345 days [244 days to identify and 101 days to contain].

8. Average Total Cost of a breach worldwide was $4,350,000.

9. Average Total Cost of critical infrastructure data breach was $4,820,000.

10 Average Total Cost for a Ransomware attack was $4,540,000.

11. Average Total Cost for breach in the United States was $9,440,000.

12. Average Worldwide Per Record Cost was $164.

13. Supply chain attacks have increased and the Supply Chain compromise average total cost is $4,460,00 driving the need for dependent business income coverages for Cyber insurance contracts. [Average day to identify and contain supply chain compromise is 303 days – 235 to identify and 68 to contain.

14. COVID-19 and Remote Work when 81% to 100% of the employees work remotely had an average loss of $5,100,00.

15. The Cost of a Mega Breach where more than 1,000,000 to 10,000,000 records have been compromised has an average loss of $49,000,000.

16. The Cost of a Mega Breach where more than 10,000,000 to 20,000,000 records have been compromised has an average loss of $180,000,000.

17. The Cost of a Mega Breach where more than 20,000,000 to 30,000,000 records have been compromised has an average loss of $241,000,000.

18. The Cost of a Mega Breach where more than 30,000,000 to 40,000,000 records have been compromised has an average loss of $316,000,000.

19. The Cost of a Mega Breach where more than 40,000,000 to 50,000,000 records have been compromised has an average loss of $379,000,000.

20. The Cost of a Mega Breach where more than 50,000,000 to 65,000,000 records have been compromised has an average loss of $387,000,000.

21. Human Error 23% of all breaches.

22. System glitches 25% of all breaches.

23. Malicious attacks 52% of all breaches.

24.. Nation State hackers are responsible for 13% of malicious breaches.

25. Calculated Costs

a. 44% of all Data Breaches involve Customer Non-Public Personal Identifiable Information (PII) and PII is the costliest type of data compromised at $180 per record

b. 28% of all Data Breaches involve anonymized customer data at $157 per record,

c. 27% of all Data Breaches involve Intellectual Property at $169 per record.

d. 26% of all Data Breaches involve Employee PII at $176 per record.

e. 12% of all Data Breaches involve enterprise sensitive data at $165 per record.

f. Healthcare industry average cost of a data breach was $10,100,000.

g. Financial Services average cost of a data breach was $5,970,000

h. Pharmaceutical companies' average cost of a data breach was $5,010,000.

i. Technology industry average cost of a data breach was $4,970,000.

j. Less than 500 employee entity average breach cost $2,980,000

k. 500 to 1,000 employee entity average breach cost $2,630,000

l. 1,001 to 5,000 employee entity average breach cost $4,090,000

m. 5,001 to 10,000 employee entity average breach cost $5,150,000

n. 10,001 to 25,000 employee entity average breach cost $5,520,000

0. More than 25,000 employee entity average breach cost $5,330,000

p. Ransomware attacks cost an average of $4,620,000.

q. Wiperware style attacks cost an average of $4,690,000

26. BREAKDOWN OF MALICIOUS DATA BREACH BY VECTOR

a. Compromised or Stolen Credentials average cost $4,570,000

b. Cloud Misconfiguration average cost $4,140,000.

c. Vulnerability in 3rd-Party Software average cost $4,550,000.

d. Phishing average cost of $4,910,000.

e. Physical Security Compromise average cost of $3,960,000.

f. Malicious Insider average cost of $4,180,000.

g. Misconfiguration or system error average cost of $3,820,000.

h. Business email compromise average cost of $4,890,000.

i. Social Engineering average cost of $4,100,000.

27. The Average Time to identify and contain a data breach is now 277 days. [207 Days to identify and 70 days to contain]

28. Dependent upon the type of vector attack, the Average Time to Identify and Contain a breach range from 223 days to 323 days with compromised credentials being the most difficult.

29. Conclusion:

a. Identify if the client has corporate information that should be protected.

b. Identify if client has sensitive data that is on paper, microfiche, tape, thumb drive, Zip drives, etc.

c. Ask the Two Key Questions:

1) Are you a user of technology?

2) Are you a seller and services of technology.

E. Healthcare Provider Loss Scenario

1. Doctor Francesco Burkett's medical practice sustains a network security breach caused by the receptionist in collusion with the attacker.

2. The attacker downloads digital patient records, including financial information and health benefits account data.

3. The data is re-sold to individuals who use the benefits information to fraudulently obtain medical services.

4. The doctor is now required to notify all patients and incur the costs for mitigation including notification and credit monitoring as per HIPAA and the HITECH Act.

5. HITECH requires periodic audits to ensure compliance with security and privacy requirements and exposes organizations to civil as well as criminal penalties.

6. Legitimate patients of Dr. Burkett sue seeking compensation for emotional distress in addition to other consequential damages.

7. To determine Data Breach Costs please go to the following sites:

a. eRiskHub – Sample Data Breach Cost Calculator

b. https://eriskhub.com/mini-calc-usli

c. http://www.privacyrights.org

d. http://blog.datalossdb.org/

e. www.emrisk.com/services/take-your-data-breach-risk-assessment

f. www.privacyrisksadvisors.com/data-breach-toolkit/data-breach-calculators

g. https://haveibeenpwned.com/

h. For the healthcare industry the average time to identify and contain a breach is an average of 329 days per breach.

i. The average cost per record for a mega breach is $392, which most healthcare providers face.

8. The legitimate patient's health insurance carriers also sued Dr. Burkett to recover reimbursements made because of the fraudulently obtained health services and fidelity breach by the receptionist.

9. The state is investigating the incident and it appears that the doctor's office will be fined for its violations of the state's privacy statute and the fine will be approximately $125,000.

10. The Total Estimated Cost for the Breach is $1,960,000 (5,000 X $392)

11. Does the crime section of the BOP or Crime forms provide any coverage for Dr. Burkett?

12. Crime Forms cover Loss to Money, Securities and Tangible Property by Employees and others only and provides no coverage for fines and penalties.

13. However; in Retail Ventures, Inc. DSW Inc., DSW Shoe Warehouse, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA. Case # 10-576/4608 decided in the U.S. Court of Appeals for the Sixth Circuit inserting some new concerns about a Crime Insurance Policy with the Computer Fraud Coverage Endorsement.

a. DSW operates retail shoe stores (108).

b. Hackers accessed the local wireless network at one DSW store to get unauthorized access to the DSW computer system and downloaded credit card information for 1,400,000 DSW customers at the 108 stores. A slew of fraudulent credit card transactions followed.

c. Following the DSW breach, DSW incurred substantial expenses for customer communications, public relations, customer claims and lawsuits, and attorney's fees in connection with investigations by seven state attorney generals and the FTC.

d. DSW eventually entered into a consent order with the FTC requiring DSW to fix and increase security for its computer systems.

e. The biggest loss cost was the $4,000,000 that arose from the compromised credit card information that included chargebacks, card reissuance, account monitoring, and fines imposed by VISA/MasterCard. The total loss was about $6,800,000.

f. National Union has sold DSW a Blanket Crime Policy that provided coverage for "Loss which the insured shall sustain resulting directly from . . .. the theft of any insured property by Computer Fraud."

g. The Policy defined "Computer Fraud" as "the wrongful conversion of assets under the direct or indirect control of a Computer System by means of

   1) The fraudulent accessing of such Computer System;

   2) The insertion of fraudulent data or instructions into such Computer System; or

   3) The fraudulent alteration of data, programs, or routines in such Computer System."

h. The Policy specifically excluded the costs of defending lawsuits “except as may be specifically stated to the contrary.”

i. National Union argued that, given the defending lawsuits exclusion, the policy was essentially a Fidelity Bond providing only first-party coverage, and that losses associated with third-party claims such as those made by the customers and the FTC were not included within the insuring agreement.

j. The court stated that “the label given to a policy is not determinative of coverage,” and focused on the coverage grant in the entire coverage form with endorsements.

k. The Court stated the “proximate cause of a loss was all that was needed . . . and that was enough to encompass the costs of dealing with the third-party claims, taking them out of the exclusion for defending suits and claims.”

l. According to the court, there was no question that DSW had suffered a “financial loss,” even if part of the loss was attorney’s fees, and there was a “sufficient link” between “the computer hacker’s infiltration of (DSW) computer system” and the financial loss.

m. The court awarded $5,300,000 and $1,490,000 of prejudgment interest in this case.

n. Result was major changes to crime forms both ISO and AAIS.

14. <u>Computer theft of money, securities, and other tangible property by employees of the insured usually would be covered</u> under the insured's employee dishonesty policy.

a. There are no exclusions in the standard SAA employee dishonesty coverage forms (the blanket form, CR 00 01, and the per-employee form, CR 00 02) that prevent coverage for theft committed using a computer.

b. These forms provide coverage for theft of property of the insured and for theft of property of others for which the insured is legally liable.

c. Employee dishonesty coverage forms generally do not cover loss from theft of intangible property, such as trade secrets or other proprietary business information.

d. The reason is that both employee dishonesty coverage forms cover only loss of money and securities and "property other than money and securities."

e. Computer vandalism loss caused by employees is not covered under the employee dishonesty coverage forms because of their definitions of the term "employee dishonesty."

f. For coverage to apply, the dishonest acts must be committed with the "manifest intent" to cause the insured to sustain a loss *and to obtain a financial benefit* (other than employee benefits earned in the normal course of employment) for the employee or another employee or organization that the employee intended to receive the benefit.

g. In most cases, an employee that vandalizes the insured's property (via computer or by any other means) intends to cause the insured to sustain a loss but does not intend to obtain any financial benefit.

15. Coverage for computer-related theft by nonemployees is available under the ISO Computer Fraud Coverage Form F, CR 00 07.

a. This form covers the loss of money, securities, and other tangible personal property caused by "computer fraud."

b. The term "computer fraud" is defined to mean theft through the use of a computer to transfer covered property from inside the insured's premises or a banking premises to a person or place outside those premises.

c. There is no coverage for income or expense loss resulting from computer theft. Only direct loss is covered; the crime general provisions coverage forms CR 10 00 and CR 11 00 specifically exclude any indirect loss, including but not limited to loss of income resulting from the theft.

d. Since computer fraud is defined to mean *theft* of property using a computer, loss from computer vandalism is not covered.

e. Because the definition of the term "property other than money and securities" (which is located in the crime general provisions form, CR 10 00)) is "any *tangible* property other than money and securities that has intrinsic value ..." (emphasis added), theft of information (trade secrets or other proprietary business information) is not covered.

16. <u>No coverage for defensive measures</u> such as firewalls, spyware, and other rectification costs.

17. <u>No coverage for the E-Discovery costs</u> for digital information in the lawsuit.

18. **ISO Crime Forms August 2013 version have new exclusions and other company forms are now including.**

d. Confidential or Personal Information [EXCLUSION]

Loss resulting from:

(1) The disclosure of your person's or organization's personal information including, not limited to, patents, secrets, processing methods, lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) The use of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

e. Data Security Breach [EXCLUSION]

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

19. The HYBRID Coverage Form Cyber Liability with Cyber Crime endorsement or coverage inclusions may be the only source for coverage for Dr. Burkett.

20. Standardized coverage forms force risk managers, agents, brokers, and consultants to look carefully at Cyber Coverage Forms.

21. Voluntary Parting of money, securities and other property is excluded in Property Coverage Forms, EDP Coverage Forms, Equipment Breakdown Coverage Forms, Cargo or Transit Forms, therefore coverage is needed in the Crime Form or Cyber Crime Form.

22. Computer and Funds Transfer Fraud with Impersonator Coverage Endorsements or Social Engineering Endorsements are becoming common place for this Voluntary Parting Exposure.

F. Infringement in Advertising Claims Scenario

1. Harry's Local Wholesale Plumbing, LLC has a web site that he uses as an e-commerce catalog. Customers can order hard to get plumbing supplies from the web site and Harry will ship all over the world.

2. Harry signs licensing and sales agreements with the manufacturers of the plumbing supplies and the agreements allow him to display their products on his web site along with descriptions of the product provided by the manufacturer.

3. Harry makes sure that all pictures and written material on the web site properly indicates the intellectual property markings necessary

such as patent, patent pending, trademark, service mark, copyrights, etc.

4. Harry and the Fast Flush Company part ways and the licensing and sales agreement are severed.

5. Harry forgets to delete the Fast Flush Company products and descriptions from his web site.

6. Fast Flush is now suing Harry for infringement of its intellectual property for the marketing of its property without the proper licensing and sale agreement.

7. Does the Harry's Local Wholesale Plumbing, LLC Commercial General Liability Coverage Form provide defense and pay legally obligated to pay for this infringement action?

   a. Coverage A does not respond because it only provided coverage for bodily injury and property damage claims and there is no coverage for any Coverage B claims.

   b. Coverage A <u>does not cover property damage to and loss of use of Electronic Data</u>.

p. Electronic Data [4-1-2013 CGL]

Damages arising out of the l<u>oss of use of, damages to corruption of, inability to access, or inability to manipulate electronic data</u>.

<u>However, this exclusion does not apply to liability damages because of "bodily injury".</u>

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

   c. <u>Coverage B – Personal and Advertising Injury Liability with the Definition of Advertising Liability may apply.</u>

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy.

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

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

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

1) Is Harry advertising his goods, products, and services?

2) Please note that a high percentage of business clients involved in e-commerce are to some degree in the business of broadcasting, publishing or telecasting.

3) He is advertising those goods, products and services that he has a proper licensing and sales agreement and those are covered.

4) The restriction in the definition may eliminate coverage under the CGL.

5) Also, there is limited advertising and web site coverage, since coverage will only be provided for the activities related to the client's goods, products or services.

6) An online retailer such as Amazon.com that sells and in effect advertises products made by others would have no coverage for losses associated with those products.

d. Coverage B – Personal and Advertising Injury Exclusions may also apply to Harry's Cyber and infringement risk.

1) Knowing Violation exclusion clarifies that while injury from intentional acts of the insured may be covered under Coverage B, coverage does not extend to the intended result of intended acts when the intent is to cause personal and advertising injury.

2) May exclude Defense and Damages payments for Harry's Local Wholesale Plumbing, LLC.

a. Knowing Violation of Rights of Another

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

3) Infringement of copyright, patent, trademark or slogan, except insured's advertising, infringement of copyright, trade dress or slogan.

4) This exclusion may exclude Defense and Damages payments for Harry's Local Wholesale Plumbing, LLC.

i. Infringement of Copyright, Patent, Trademark or Trade Secret

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

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

5) Media and Internet business, except for false arrest, detention or imprisonment, malicious prosecution, and wrongful eviction.

6) This exclusion may exclude Defense and Damages Payments for Harry's Local Wholesale Plumbing, LLC. because of his business model.

j. Insureds in Media and Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

(1) Advertising, broadcasting, publishing or telecasting;

(2) Designing or determining content of web sites for others; or

(3) An Internet search, access, content or service provider**.**

However, this exclusion does not apply to Paragraphs **14. a., b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

7) Electronic chat rooms or bulletin boards if the insured owns, hosts, or controls. [Excludes Defense and Damages payments for Harry?]

k. Electronic Chatrooms or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

a) The posting of messages and opinions on a variety of topics presents a significant risk of libel, slander, and invasion of privacy claims.

b) The risk is greater than that contemplated in standard Commercial General Liability rates and loss costs and is therefore excluded.

8) Unauthorized use of another's name or product in your email, address, domain name or meta tag

I. Unauthorized Use of Another's Name or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

9) Recording and Distribution of Material or Information in Violation of Law [Exclusion Modified in 4-1-2013 CGL Version]

10) Exclusion clarifies that bodily injury, property damage, and personal and advertising injury arising out of any action or omission that violates or is alleged to violate certain consumer protection statutes are not covered.

11) When considering Media or Content Coverage for the Cyber Liability Contract, the agent/broker team must consider including coverage for the now excluded statutes or at least provide coverage for the related regulatory proceedings.

12) Social Media and Web based activities are not covered under the CGL Coverage B – Employee postings, Social behavior tracking, BIPPA, Hashtags, social medial platforms (META, Snap Chat, Instagram, Etc. and You Tube videos.

p. Recording and Distribution of Material or Information in Violation of Law

"Personal and advertising Injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

1. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

2. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;

3. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or

4. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending transmitting, communicating, or distribution of material or information.

13) CG 22 98 Exclusion – Internet Service Providers and Internet Access Providers Errors and Omissions is usually added to the insurance contract <u>which may eliminate coverage for Harry.</u>

14) There is <u>no coverage for social media activity</u> that creates an EPLI Exposure.

   a) The ADA access rules apply to websites and owners can be sued for damages for not making a reasonable accommodation.

   b) [CG 21 47 Employment – Related Practices Exclusion]

15) **The NEW <u>CG 24 13 04 13 Amendment of Personal and Advertising Injury Definition Endorsement</u> deletes the following offense from the definition of personal and advertising injury.**

a) "Oral or written publication in any manner, of material that violates a person's right of privacy."

b) This eliminates coverage for Social Media exposures.

8. There is no Defense or Legally obligation to pay under the Commercial General Liability Coverage Form for Harry.

   a. CG 21 06 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data-related Liability – With Limited Bodily Injury Exception

   b. CG 21 07 05 14 Exclusion Access or Disclosure of Confidential or Personal Information and Data-related Liability – Limited Bodily Injury Exception Not Included

   c. Both eliminate coverage under Coverage A and Coverage B of the Commercial General Liability Coverage Form.

9. Harry's Local Wholesale Plumbing, LLC may have coverage under a Stand-alone Media Liability Coverage Form or a Cyber Liability Coverage Form with a Media Liability Endorsement.

G. Other Examples to Consider from Advisen Research and Editorial.

1. Stanford Hospital & Clinics September 8, 2011

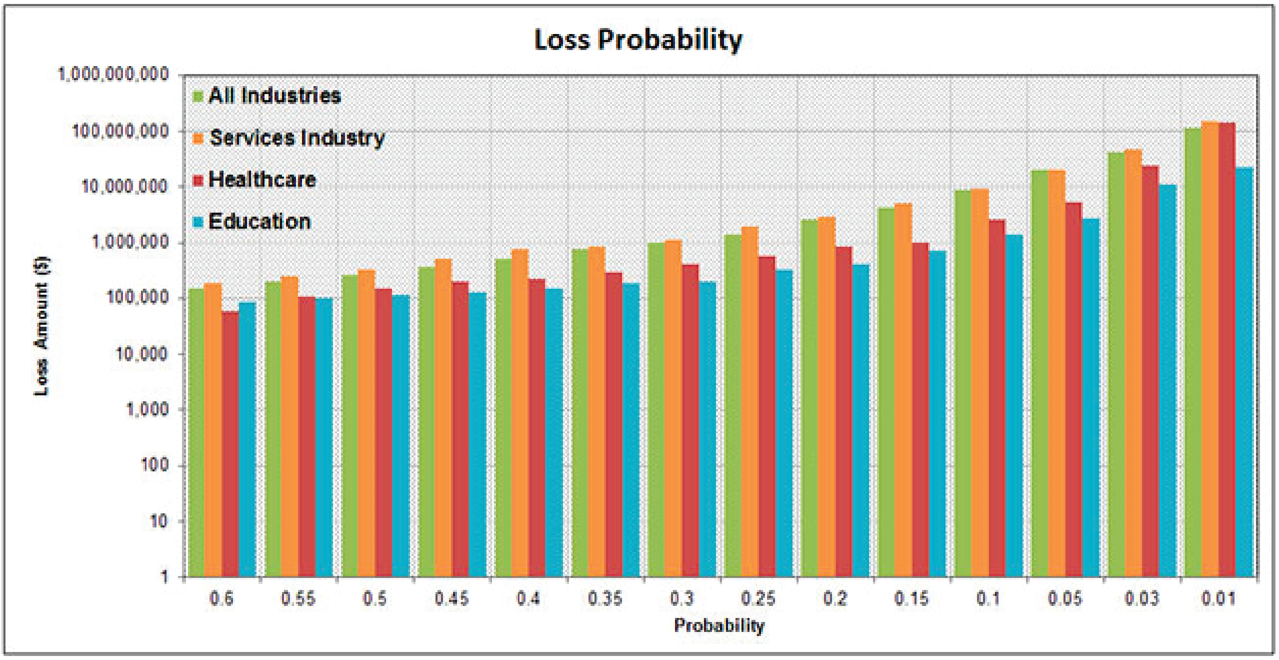
   a. 20,000 patient records were breached.

   b. $20,000,000 lawsuit

   c. The convoluted series of events leading to the breach had no hacker in sight.

   d. Instead, a job applicant for a marketing firm posted a spreadsheet containing the medical records on a homeworkhelp website, seeking advice on how to convert the spreadsheet information into a graph.

e. The marketing firm offering the job was a vendor for the hospital's billing contractor.



SOURCE: Advisen's MSCAd Loss Events database, researched based on the best available public information (individual or related case numbers are in parentheses following the organization name).

2. ISO Introduces Access or Disclosure of Confidential or Personal Information Exclusions for the Commercial General Liability and other Coverage Forms.

a. CG 21 06 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – With Limited Bodily Injury Exception

b. CG 21 07 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – With Limited Bodily Injury Exception Not Included

c. CG 21 08 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information (Coverage B Only)

d. CG 33 53 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – With Limited Bodily Injury Exception for use for the Contractors Protective Liability and Products/Completed Operations Liability Coverage Forms only.

e. CG 33 59 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – Limited Bodily Injury Exception Not Included for use for the Contractors Protective Liability and Products/Completed Operations Liability Coverage Forms only.

f. CG 33 63 05 14 Exclusion – Access, Disclosure or Unauthorized Use of Electronic Data for use with Electronic Data Liability Coverage Form.

3. ISO Commercial Umbrella Exclusions

a. CU 21 86 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – With Limited Bodily Injury Exception

b. CU 21 87 05 14 14 Exclusion – Access or Disclosure of Confidential or Personal Information and Data Related Liability – Limited Bodily Injury Exception Not Included

c. CU 21 88 05 14 Exclusion – Access or Disclosure of Confidential or Personal Information (Coverage B Only)

d. CU 21 43 05 14 Access or Disclosure of Confidential or Personal Information

4. For those smaller businesses that still feel that they do not need to worry about cyber risk, an exercise in comparing and contrasting the cyber event experience of both small and large might be helpful.

5. There are fewer differences in frequency of events and severity than smaller businesses might think or hope, according to Advisen's Loss Insight Database.

6. Data show that cyber cases have increased steadily for businesses of all sizes since 2005, and events at smaller to midsized businesses have kept pace with large businesses in each year, albeit with lower numbers.

7. In the 10 years tracked, small to medium businesses in the services sector experienced 3,923 cyber events, accounting for 56 percent of all events included in the Advisen database.

8. This may be attributable to smaller companies frequently being considered gateways into larger companies for whom they serve as third-party vendors.

9. Far fewer small finance, insurance, and real estate companies were targets than among large businesses.

10. However, small retailers were hit nearly as frequently (10 percent of all cases) as their larger business counterparts (14 percent of all cases).

11. Smaller business risks are now facing significant non-insurance risk transfer exposures concerning providing product or services to medium or large enterprises that are now requiring the procurement of Cyber Liability Insurance which may include additional insured status requests along with hold harmless and indemnification clauses.

H. Conclusion from Above Claims Information

1. Today, Agents/Brokers and Risk Managers must apply Enterprise Risk Management skills and special techniques to identify, evaluate, and implement responses to Cyber Loss Exposures.

    a. Cyberspace Risk is a function of the likelihood of a given threat-source exercising a particular potential vulnerability to an IT system, and the resulting impact of that adverse event on the organization.

b. In IT systems, risk can be introduced from the Internet, servers, networks, malicious insiders, and even lapses in physical security.

c. Must understand the goals of the enterprise through board strategy documents, financial analyst calls, product roadmaps, sales goals, etc.

d. Must determine what keeps management up at night and what will keep management from achieving annual goals in utilizing technology.

e. Need to prioritize the identified cyberspace risks.

1) What ports are open on the client's firewalls and servers in their DMZ?

2) What viruses have been detected on the client's laptops, desktops, and servers in the past?

3) Does the system scan all inbound and outbound data for viruses including removal media?

4) Does the Supervisory Control and Data Acquisition (SCADA) system have firewalls and all ports are closed?

5) Which assets (data bases) are highest in risk from being compromised by a cyber criminal?

6) Which assets (data bases, operating systems, social media systems, software systems, and mobile systems) are currently being attacked?

7) Does the client comply with Payment Card Industry Data Security Standards (PCI DSS) or Tokenization Standards? [Funds Transfer]

8) Does the client comply with the Financial Firm Red Flag Rules as required under the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act (FACTA) and as detailed under the new Federal Trade Commission's regulations?

9) Does the client comply with the Federal Privacy statutes and fifty (50) State Security Breach Notification Laws?

10) Does the client comply with California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPRA), Massachusetts' 201 CMR 17.00 Regulation and Nevada's 603A new Data Protection Laws that require personal information to be encrypted? [Pending Federal Data Accountability and Trust Act (DATA) may also impact – 0% chance to Pass now]

11) Does the client need to comply with the Health Information Technology for Economic and Clinical Health Act (HITECH) and the Health Insurance Portability and Accountability Act (HIPAA) for enhanced security and encryption?

12) Does the client need to comply with the Sarbanes-Oxley Act (SOX)? [Client needs to develop an efficient SOX compliance program to smooth the auditor activities.]

13) Does the client have a disaster recovery plan, security policy, employee use policy, privacy policy, and physical security policy?

14) Does the client test the incident response plan, business continuity and disaster recovery plan?

15) Does the organization prioritize security over compliance to ensure comprehensive risk mitigation?

16) What technological enhancements are in the future such as Cloud Computing and the planned security for this system?

17) Does the client have proper E-Discovery software or systems to minimize the cost for suit compliance?

18) Does the client have a backup tape retention policy that contemplates the consequences of litigation and E-Discovery? [As the E-Discovery landscape keeps shifting, managing backup tapes proactively is the most economical response to the demands of litigation.]

19) Does the client have proper training procedures for employees?

20) Does the client have a Social Media Policy that is enforced?

21) Does the client have a remote site or telecommuter policy and controls?

22) Does the client have a mobile technology policy to control data integrity and safety? [I-Phones, Blackberries, Droids, I-Pads, etc]

23) Does the client provide warranties or guarantees for the professional services provided to their clients?

24) Does the client review WEBSITE content and updates the WEBSITE periodically?

25) Does the client allow remote access and what controls do they have in place?

f. Focus initially on the High-Priority Risks and determine if they can be avoided, reduced, transferred, or shared.

g. <u>Can technology solutions assist in minimizing cyber exposures</u> with an emphasis of on the ease of implementation, ease of use, ability to correlate data, transparency, ease of reporting, and the flexibility to grow the technology solution?

h. 2021 Security and Insurance Predictions to consider

1) Cyber insurance prices increasing because of ransomware (Double digit increases and stepper increases for loss-hit clients)

2) Limits of insurance are being reduced and coverage sub-limits are being added.

3) Risk accumulations given that same event can impact multiple policyholders across geographies and industries. [Sunburst and Solar Wind attacks]

4) 65% of small to medium enterprises are planning to spend more on cyber insurance.

5) Cyber education continues to grow, and cyber insurance has become a necessity rather than a luxury.

6) U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") advisory warns of civil penalties for Ransomware Payments. This may remove ransomware coverage currently in cyber contracts.

7) Social Media challenges

8) Blended attack through friends and the Cloud

9) Smartphone attacks

10) Artificial intelligence and data analytic tools will be increasing defensive and offensive tools

11) SSL/TLS Secure Tunnels will put traffic into corporate blind spot [BYOD]

12) Containment is the new prevention.

13) Significant events and aggregating risk.

14) Social Engineering and Rogue Anti-Virus will continue to reign.

15) Live Cyber Threat Intelligence Impacts must be analyzed.

> Live Cyber Threat Intelligence refers to intelligence data about actual "cyber-attacks" happening now; data is delivered with no delay. In contrast, "real time" refers to the capture of data that is delivered with a short delay ranging from minutes to weeks after the event.

a) Those respondents that have been able to stop cyberattacks say they need actionable intelligence 4.6 minutes in advance to stop them from turning into compromises.

b) Those not successful in detecting attacks believe 12 minutes is sufficient to stop them from turning into compromises.

c) 60 percent of the respondents said their enterprises were unable to stop exploits because of outdated or insufficient threat intelligence.

d) 53 percent of the respondents believe that live intelligence is essential or especially important to achieve a strong cyber-security defense.

e) 57 percent say the intelligence currently available to their enterprise is often too stale to enable them to grasp and understand the strategies, motivations, tactics, and location of the attackers.

f) Only 10 percent of the respondents knew with absolute certainty that a material exploit or breach to networks or enterprise systems occurred.

g) 23 percent of respondents said it can take as long as a day to identify a compromise.

h) 49 percent of respondents said it can take a week or more than a month to identify a compromise.

16) Cyber insurance most often covered the cost of third-party services and victim restitution: 51% of the time for consulting & legal expenses, 36% for restitution to victims, 30% regulatory fines, 29% for recovery technology, and 10% for ransomware or extortion.

2. Today, Agents/Brokers and Risk Managers are required to <u>integrate coverages and eliminate duplication but have proper coverages</u> in place to respond to Cyber Risk exposures.

a. The Agent/Broker Team must be a <u>great collaborator and orchestrator</u> in pulling together the necessary Risk Finance coverages and services that respond to today's Cyberspace Business Environmental Risks.

1) <u>Worldwide</u> business exposures

2) <u>Critical dependence</u> on others for outsourced services

3) <u>Named peril risk finance</u> cyber contracts

4) <u>Anti-litigation culture</u> by clients who seek business solutions with service providers rather than enforce contractual indemnification or pursue litigation.

5) Intellectual property and intangible property theft and malfeasance.

6) Privacy of information [HIPAA, GLB, California Consumer Privacy Act (CCPA), California Privacy Rights Act (CPRA), and other state statutes]

7) The following lists some of the most devastating data breach incidents ranked by their level of impact.

8) CAM4 data breach, March 2020, Impact: 10.88 billion records

9) Yahoo data breach 2017, October 2017, Impact: 3 billion accounts.

10) Aadhaar data breach Date: March 2018 Impact: 1.1 billion people

11) First American Financial Corp. data breach May 2019 Impact: 885 million users

12) The above breached records included the following sensitive information:

   a) Full names

   b) Email addresses

   c) Sexual orientation

   d) Chat transcripts

   e) Email correspondence transcripts

   f) Password hashes

   g) IP addresses

h. Payment logs

13) Web threats analyzed.

14) Mobile technology threats analyzed.

15) Internal threats and management of access.

16) Financial service organizations must comply with the Federal Trade Commission Red Flag Rules.

b. The Agent/Broker Team must be a great synthesizer who can push the boundaries of knowledge and innovation in assisting today's clients in establishing an effective Insurance Risk Finance Program.

1) Access control

2) Encryption and Tokenization

3) Personnel Practices

4) Physical Security

5) Backup, Redundancies and Contingency Plans

6) E-Commerce Policies and Procedures

7) Web Site Privacy Policy

8) Contractual Risk Transfer including vendor agreements and additional insureds

9) Software vulnerabilities

3. The Agent/Broker Team must be a great explainer who can foresee the complexity of risk but explain it in business terms for the client.

a. Understand that 16% of breaches are Credit Card Data and 21% of breaches are Personal Health Information.

b. Understand 37% of breaches are Personal Identifiable Information, 5% breaches are financial information and 21 % are other types of data being breached.

c. 88% of U.S. Organizations had data breaches in 2011.

4. The Agent/Broker Team must be able to adapt and be versatile to respond to the changes that today's client is experiencing in a FLAT WORLD.

5. The Agent/Broker Team must be passionate and responsive to today's Cyber Risk challenges.

6. The Agent/Broker Team must constantly update one's knowledge, skills, and training to fulfill today's client's Risk Management needs.

II. CYBER RISK EXPOSURES

A. What are the Cyber Risk or Loss Exposures or E-Business Risk or Loss Exposures Clients Face?

1. It is a Risk Management Sales Opportunity and the global insurance market is expected to grow from $7,36 Billion to $27,83 Billion by 2026. [Mordor Intelligence 2021]

2. It is estimated that globally 2.5 to 3.5 billion people use the Internet.

3. Know what your insurance company calls cyber insurance,

4. Cyber is anything pertaining to two mor mores computers communicating with each other.

5. Cyber insurance versus cyber liability versus internet liability,

6. Know the methods of attack or the threat vectors that will be used to attack your clients.

a. Point of Sale Intrusions (POS)

b. Web Applications Attacks

c. Software Vulnerability or "Zero Day" Attacks

d. Cyber Espionage Attacks or Terrorism Attacks

e. Card Skimmers

f. File Transfer Appliance ("FTA") System Vulnerabilities such as Drop Box and other proprietary systems that allow hacker exploitation that results in exposing customer PII.

g. Misuse of Passwords and System Privileges

h. Wiper ware Attack

i. Distribute Denial of Service ("DDoS) Attack

j. Bring Your Own Device Attacks ("BYOD")

k. Average Annual WEB-Based attacks cost $143,209 and takes on average 19.1 days to resolve the attacks.

l. Average Annual Malicious Code costs $124,083 and takes on average 39.3 days to resolve the attack.

m. Average Annual Malicious attack by insider's costs $100,300 and takes on average 30.4 days to resolve the attack.

n. Phishing and Social Media attack costs $35,514 and takes on average 8.9 days to resolve the attack.

o. Viruses, Worms and Trojans attack costs $2,054 and takes 2.5 days to resolve the attack.

p. Botnets attack costs $1,627 and takes 1.9 days to resolve the attack.

q. Malware attacks costs $1,090 and takes 2.2 days to resolve the attack.

7. Infected WEBSITES are no longer confined to the dark margins of the Internet.

8. It is estimated that 10% to 15% of all WEBSITES are compromised or infected by sophisticated, skilled, and determined gangs of cyber criminals.

9. The infection techniques have become more cunning and virulent than they were two to three years ago.

10. Every quarter of a second a file is stolen containing information that, if used, could compromise an individual's identity.

11. An identity is stolen about every three (3) minutes, resulting in an average loss of $3,000.

12. Theft of intellectual property (IP) has seen, and will continue to see, double digit growth. [Please note that IP theft undermines our economy, our competitiveness, and in many cases our National Security.]

13. The Pentagon is cyber attacked three (3) million times a day. It has been reported that 27 terabytes of data were stolen from the Department of Defense (DOD) in 2007.

14. There are approximately 10,000 Distributed Denial of Service attacks daily on e-commerce platforms.

15. On average there are about 200 new computer viruses every month that are launched.

16. Modern life is now DEPENDENT on digital or electronic information processing and data storage.

17. E-business or Cyber Activity – Generally it is a business communication or transaction involving the transmission of electronic data from or by means of software whereby the implementation, maintenance or update is under the insured's party control or sometimes under the control of a Service Provider.

18. Our financial systems, our transportation systems, our water and electrical utilities, and all other critical infrastructures have become dependent on our information and communication infrastructure.

19. This data information and communication infrastructure is the most vulnerable to malicious vandalism, terrorist attacks, criminal activity, and cyber warfare using numerous cyber weapons.

20. Cyber Attacks go beyond Identity Theft

    a. STUXNET VIRUS – It is a Windows-specific computer worm first discovered in June 2010 by VirusBlokAda, a security firm based in Belarus.

        1) It is the first discovered worm that spies on and reprograms industrial systems, the first to include a programmable logic controller (PLC) rootkit, and the first to target critical industrial infrastructure.

        2) STUXNET was specifically written to attack Supervisory Control and Data Acquisition (SCADA) systems used to control and monitor industrial processes.

        3) STUXNET includes the capability to reprogram the PLCs and hide its changes.

    b. Night Dragon (2009): Allegedly targeted global oil, gas, and petrochemical companies, as well as individuals and executives in Kazakhstan, Taiwan, Greece, and the US.

        1) Compromise of industrial intelligence – confidential information.

        2) Compromises numbers of control systems.

    c. Attacks are designed to take over industrial control systems.

    d. Attacks are designed to physically damage machinery.

e. Attacks are designed to take control of networks that control critical infrastructure like traffic lights, power grids, water supplies, military networks, telecommunications, and financial systems.

f. Attacks are designed to steal valuable intellectual property like source code, business plans, designs, patents, and information used for contract bids.

g. Attacks are designed to disable systems to create the perception of chaos.

21. Cyber Risk or Loss Exposures are related to computers and the Internet and all resulting electronic transactions.

a. Tangible property damage from the perils specific to electronic hardware and peripheral equipment.

b. Intangible property damage including intellectual property losses and business income losses.

c. Third party damages based upon Negligence, Strict Liability, and Intentional Tort theories of liability.

1) Technology Errors & Omissions coverage for computer/software specialists and service providers.

2) E-Commerce Advertising, Publishing & Infringement (Media Liability)

3) Cyber Security for loss or compromise of data, private nonpublic information, or for virus transfer by client to others

4) Intellectual Property Exposures

5) Contractual liability with confidentiality requirements

6) Regulatory liability

19. Political and charity campaign contributions and constituency communication

20. Consumer warranty tracking and maintenance requirements

21. Data backup and storage on the web (paperless world) – Active and at rest data and security must always be considered. Cloud Storage.

22. Do not forget the paper transactions and destruction sequences necessary to protect information. Remember that scanning makes the document digital.

CVS Caremark Corporation has agreed to pay $2,250,000 because one of their stores improperly disposes of pill bottles bearing patient names, credit card and insurance information and social security numbers. The Federal Trade Commission and the Human Services Department investigated and determined the violations of the Health Insurance Portability and Accountability Act (HIPAA)

B. E-business Activity or Cyber Activity Risk or Loss Exposures – Common methods of communicating that create Tort Liability Exposures.

1. One to one messaging: E-mail

2. One to many messaging: Listserv

3. Distributed message database: Newsgroups, Online Magazines and Newsletters

4. Real time communication: Chat rooms and bulletin boards and blog sites

5. Real time remote computer utilization – Wi-Fi

6. Remote information retrieval : WWW., Google, YAHOO, etc.

7. The above communication transactions can create numerous Cyber Risk or Loss Exposures.

    a. Discount coupons, intended for a limited number of the retailer's best Customer.

    b. Coupons are circulated via the web permitting anyone access and this transaction cost the client in excess of a $1,200,000.

    c. Defamatory statements or actions.

> The publisher of an email newsletter faced suit for publishing an allegation that the plaintiff possessed paintings looted by the Nazi during World War II.
>
> A <u>disgruntled contractor who had worked on the plaintiff's house sent the newsletter publisher an email message containing the allegations</u>. The publisher distributed the email, which contained the plaintiff's name, address and phone number to subscribers.

    d. Privacy Invasion actions

> A doctor's office failed to secure online patient records and numerous social security numbers and patient health care issued were published on the web.
>
> An online retailer attempted to sell it's customer's personal information to pay creditors as part of the retailer's bankrutpcy proceedings. The retailer's privacy policy had stated that personally identifiable information would not be sold. Several parties threatened to sue on privacy grounds.

C. <u>E Business Activity or Cyber Activity – E-commerce Risk or Loss Exposures.</u>

1. <u>Orders placed and payment received</u> over the Internet. [PCI DSS Security Breaches]

2. The <u>dissemination of information</u> and/or the performance of services utilizing on-line technology.

A computer virus was introduced into the company's computer system and from there into software installed on the company's product. The virus was not discovered until after the products were shipped. The virus caused damage to the product purchasers and resulted in a loss to the company totaling approximately $14,000,000.

3. Access, store, process and transmit vast amounts of information in a digital form.

4. Denial of Service Attack where the e-commerce website is taken down and access was denied from 3 to 5 hours.

    a. Yahoo.com, Amazon.com, Buy.com, ebay.com, CNN.com, eTrade.com and ZDNet.com have been attacked.

    b. Yahoo makes $1,600,000 per day

    c. Amazon makes $4,500,000 per day

5. The intangible asset called data has value.

A personal laptop computer stolen from a data processing center contained the account numbers for over 300,000 credit card customers of several major issuers. Requires the data processing center to notify all credit card customers and give them access to their credit history free for one year. The claim was approximately $1,500,000.

6. Copyright infringement through e-commerce activity.

A book seller with an online service allowed a famous author to advertise a book in one of its forums. The online service was sued for copyright infringement by an artist who claimed that the author used certain artwork on the cover of the book without obtaining the artist's permission.

7. Publisher's liability through e-commerce activity.

Emulex Corp had its stock trading halted after a news information service distributed a bogus press release that briefly drove down the shares of the Costa Mesa, CA, based

manufacturer of computer and networking gear. The source for the bogus press release turned out to be from an Emulex competitor.

D. What is Cyber Liability? What is at risk?

1. It is the wrongful acts of obtaining, processing, uttering or disseminating, printed, audio, visual, digital, or informational material in a cyberspace environment.

2. It is the failure of the client's electronic product or the client's error or omission in the installation or design of the electronic product.

3. It is the unintended transmission of computer virus; infringement of copyright, title, slogan, trade name, trade dress, service mark, or service name; and unauthorized use of advertising materials.

4. It is the incidents that cause fraud, denial of service, public relations management costs and extortion exposures.

5. Cyber Liability takes into account first- and third-party risks.

6. Cyber Liability additionally deals with the following:

   a. Torts in cyberspace such as, Negligence, Intentional Torts, Cyber Smearing, Strict Liability and Absolute Liability apply.

   b. Contract liability arising from website privacy statements, company privacy policies, service contracts, and merchant service agreements.

   c Cyber Squatting

   d. Intellectual Property exposures such as copyright and trademark Infringement – Hashtags are a trademark.

   e. Security breaches that allow unauthorized access by third parties

f. Accidental introduction of viruses or malicious code in data or systems

g. Intentional unauthorized access or other wrongful conduct of "rogue" employees

h. Theft of data, hardware and extortion related to data.

i. Privacy issues related to e-commerce transactions – HIPAA, GLB, CA 1386 and other state statutes.

j. Property in cyberspace and the conflict between tangible and intangible property

k. Loss of Competitive advantages and damage to brand and reputation

l. Loss of revenue, Loss of customers and Loss of Investor confidence

m. Social media accounts and websites.

7. Cyberliability includes breach of duty exposures for inadequate security of data.

   a. The unauthorized disclosure of customer data

   b. Failure to provide secure transactions

   c. Failure to prevent or react to unauthorized intrusions to the data

   d. Failure to protect web-based storage and data bases

   e. Failure to exhibit "Due Diligence"

   f. Courts are reluctant to limit liability for a client if they fail to provide adequate security controls.

E. Loss Prevention Techniques

1. People Practices

   a. Follow Password guidelines

   b. Stick to clear screen policy – Make sure your screens are protected from prying eyes – Screen shades and screen savers

   c. Embrace a cyber secure culture – Constant training for at work, at home and on the road.

2. Process Practices

   a. Management must establish a cyber secure culture

   b. Conduct a regular cyber risk assessment

   c. Institute workplace policies and put into the employee manual with stated consequences

   d. Create strong password policies and requirements with MFAs

   e. Secure appropriate cyber insurance coverages

   f. Constantly provide computer security training for new threats

   g. Create an incident response plan.

3. Technology Practices

   a. Implement SSO (Single Sign On) methodology with quick and easy passwords with MFAs.

   b. Use two factor MFAs to confirm but be careful of the biometric loss exposures.

c. Install anti-virus and anti-malware software and keep it current

d. Install patches and update on a regular basis,

e. Have a back up data plan with security for offsite and cloud storage.

Risk Prevention supports the Risk Finance Program, which responds to Tangible Property Loss Exposures and Intangible Property Loss Exposure facing a business enterprise.

III. RISK FINANCE SOLUTIONS FOR CLIENTS

A. Risk Financing Cyber Space Activities Varies.

1. Self Insurance Options:

a. A formal plan of self-insurance involves budgeting or otherwise planning for payment of the organization's losses of a given category.

b. To limit the impact of losses on financial resources, a self-insured organization will typically purchase insurance that applies above a fixed amount per claim or occurrence.

c. The fixed amount is the "self-insured retention" (SIR).

d. Cyber Coverage is also sometimes purchased to limit the total catastrophic cost of self-insured losses in a given year to a fixed amount (annual aggregate or stop-loss protection).

e. To replace services ordinarily provided by an insurer, the self-insured organization must internally staff or contract for claims adjusting, litigation, and risk control services.

f. Self-insured losses are usually financed internally.

g. Sometimes, however, the self-insured organization establishes its own insurer (captive), trust, or internal service fund to serve as the financial "house" through which self-insurance transactions are cleared.

2. Risk financing techniques can be categorized as retention, transfer, and hybrid plans.

a. Transfer plans can be either noninsurance or insurance plans.

b. Generally, an organization will use a combination of techniques to address its individual Cyber Risks as well as its overall risk portfolio.

3. Noninsurance transfer, often referred to as contractual risk transfer, involves using an organization's common law right to enter into contracts to contractually shift all or part of the financial consequences of a loss to another party that is not an insurer.

a. Cyber contracts such as Shrink Wrap contracts, licensing agreements, etc will partially transfer the exposure.

b. This transfer does not necessarily transfer the underlying loss exposure to the third party, but transfers the obligation to pay for a loss, either on behalf of or through reimbursement of the organization.

c. The most prevalent forms of noninsurance transfer are hold harmless agreements and risk transfer to the transferee's insurer.

B. Monoline vs. Package Insurance Transfer Plans/Coverage Forms

1. Monoline – First party cyber property only or third-party cyber liability only

2. Package – First party cyber property and third-party liability.

3. Executive liability – liability arising from Cyber Liability activities may be part of a combination policy that includes Directors & Officers, Fiduciary Liability and/or Employment Related Practices.

    a. Chubb Executive Risk

    b. Travelers Wrap

    c. AIG D & O Program

    d. CNA Management Liability Products

4. Combination with other coverage forms.

    a. EDP Coverage Forms like the Selective Electronic Information Systems Floater will automatically include $50,000 per occurrence with $150,000 aggregate for loss from virus or harmful code. Coverage includes cyber business income coverage if business income is purchased.

    b. Commercial Output Coverage Forms like the AAIS Program will provide $25,000 per occurrence with $75,000 policy aggregate for loss from virus and hacking coverage. Coverage may include some business income coverage as well.

    c. Specialty Coverage Programs like the Selective Comm.Unity® of Faith Elite Pac Extension automatically includes $25,000 per occurrence with $75,000 policy aggregate for virus and harmful code to owned data.

    d. Specialty Coverage Programs like the Selective Technology Elite Pac Extension automatically includes $25,000 for loss of income from a "Denial of Service Attack." It also includes $25,000 per occurrence with $75,000 annual aggregate for the cost to restore damaged or corrupted data from virus or harmful code.

e. <u>Each insurance company's Businessowner's Coverage Programs provide special extension endorsements</u> that will cover viruses and harmful code damage and the resulting business income loss. Some are working on third party endorsements for Cyber Liability Invasion of Privacy and Breach of Security.

f. Each insurance company is addressing <u>the use of the Computer Fraud Endorsements</u> for both their BOP programs and stand-alone Crime Coverage Forms. Limits vary and the coverage grants are going to vary. [Read carefully]

g. Professional Liability Coverage forms for Medical Malpractice and Lawyers Malpractice insurance providing sub-limits of $250,000 with defense inside limits.

h. Some Agent's Errors and Omissions Carriers are providing sub-limits to $150,000

C. <u>Third Party Cyber Liability Policies May Include Coverage for:</u>

1. E-commerce activities only.

2. Network Security Liability including Removable Media Coverage Liability only.

3. Content Injury Liability or Media Liability only.

4. Privacy Injury Liability and Identity Theft only.

5. Professional activities only.

6. Regulatory Defense or Regulatory Proceeding Coverage only.

7. Public Relations and Privacy Breach Notification Expense only.

8. Cyber Crime Liability Only.

9. Combination of all of the above. [Best approach]

D. Application as Warranty

1. A copy of the insured's application or renewal application is attached to the insurance contract.

2. "A copy of the insured's signed Application or Renewal Application is attached to the back of this page. All attachments to the Application or Renewal Application furnished to the Company for the purpose of applying for insurance will be kept on file by the Company and deemed attached to the policy as if physically attached to it."

3. Can be used to void coverage.

4. Answer all questions on application and provide detailed information concerning computer loss control efforts and disaster plans in some instances.

   a. Complete description of Network and Network Activities required.

Please note that "Minimum Required Security Practices" exclusion or exclusionary words that state "best security practices" may exclude coverage and they need to be modified since security is changing almost daily.

   b. Answer general underwriting questions.

   c. Include description of technical controls, procedural controls, legal controls, and protection methods for protecting private information of clients. [Data Privacy and Network Security]

   d. Select coverage options, modules, or insurance clauses on the application.

   e. Has the client been certified under International Standard (ISO) 27001 for Information Technology – Code of Practice for Information Security management?

f. Financial Information required including information concerning mergers and acquisitions.

g. Actual and/or potential claims must be provided for first party and third-party claims, events, and loss history.

h. SALES TIP – Work with your legal counsel and get a Confidentiality Agreement prepared.

i. The Agent/Broker Teams should walk into a prospect with a signed Agreement to indicate that you will be looking at confidential and proprietary information to develop the necessary quotations for risk finance coverage.

j. E & O TIP – Remember that most applications require that any material change between quotation and coverage being bound must be forwarded to the underwriters immediately.

E. General Types of Coverage Forms, Modules, Insurance Clauses, or Endorsements.

1. Cyber Policies are crossover policies, and it creates difficulty in determining which policy provides defense.

2. A lot of the time the D&O, E&O, Cyber, Fiduciary, Crime and EPLI policy may be triggered.

3. The names used to describe the coverages does not help.

4. Cyber Market Insurance Trends

   a. Coverage is becoming more consistent, but it is still difficult to compare coverage forms. 83% of respondents to the Zurich Advisen Annual survey now state they have Cyber Insurance.

   b. After trending downward between 2015 and 2018, loss ratios began increasing and Moody's predicted claim costs would "jump significantly" after an active year in 2020.

c. Direct premiums written for the cyber line have risen steadily since 2015 as cyber insurance has become a must-have for many organizations, up from $488 million to $1.3 billion in 2019. Year end 2021 estimate is U.S. direct written insurance premiums are $4.1 Billion.

d. “The demand for cyber coverage continues to increase given the changing nature of the risk, the pervasiveness of technology, the value of insurance as a risk management tool and expanding regulation,” said Moody’s in its report.

e. The analyst emphasized the need for insurers to manage aggregation in the future, <u>especially with supply chain risks rising</u>.

f. “Buyers without robust business continuity planning, incident response planning, who liberally grant local administrative rights, or who lack multi-factor authentication will experience limited appetite and increased pricing and retentions,” said Brown & Brown.

g. Recent broker reports reflect a clear trend toward higher cyber insurance prices as threats facing organizations ramp up.

h. 85% of all global breaches are financially motivated.

i. Over 80% of insured clients are now switching to stand alone policies versus endorsement coverage.

j. More than 50% of the insurance brokers think that social engineering losses (Funds Transfer Fraud) should be covered under Crime Policies.

k. Not understanding the loss exposures and coverages remained the main obstacle to selling Cyber insurance.

l. Conducting a cyber risk assessment using checklists is a solid step forward in the direction of protection and prevention.

5. First Party Business Income Loss and Extra Expense During Restoration of Network and Data Coverage Part (Caused by Unauthorized Access, Virus, Denial of Service, Hacking, or Malicious Insider) – Can be part of the coverage form or requires a separate endorsement.

6. Contingent First Party Business Income Loss and Extra Expense Coverage Part (Qualified Service Provider Interruption) – Can be part of the coverage form or requires a separate endorsement.

7. First Party Electronic Theft Coverage for Cost to Replace, Restore, or Recollect Content and/or Digital Assets Coverage Part – Can be part of the coverage form or requires a separate endorsement.

8. First Party Electronic Theft of Money, Securities, Goods, Services and Intangible Property Coverage Part: Can be part of the coverage form or requires a separate endorsement.

9. First Party Money Fraud Reimbursement for Fraudulent Entry of Data, Instructions or Source Code for Financial Institutions Coverage Part: Can be part of the coverage form or requires a separate endorsement.

10. First Party Cyber Extortion or Cyber Terrorism Reimbursement Coverage Part – Can be part of the coverage form or requires a separate endorsement.

11. First Party Coverage from Loss Caused by an Inside Source Coverage Part (Employee Dishonesty) – Can be part of the coverage form or requires a separate endorsement.

12. First Party Security Failure Notification Reimbursement Coverage Part: Can be part of the coverage form or requires a separate endorsement.

13. First Party Enterprise Privacy Coverage Part (Employee and Corporate Data): Can be part of the coverage form or requires a separate endorsement.

14. First Party Security Breach Expenses or Privacy Infringement Response Expenses Reimbursement Coverage Part (Forensic Services, Notification, Credit Monitoring, Crisis Management, Contractual Rights, Reputation or Brand Protection and Legal Expenses): Can be part of the coverage form or requires a separate endorsement.

15. First Party Regulatory Defense Expenses Reimbursement Coverage Part: Can be part of the coverage form or requires a separate endorsement.

16. Third- and First-Party Merchant Credit Card Fraud Coverage Part: Can be part of the coverage form or requires a separate endorsement.

17. First Party Domain Name Title Policy [Form or Intellectual Property Coverage Part: Can be part of the coverage form or requires a separate endorsement.

18. Third Party E-Business Products Provider Coverage Part [Application Service Provider (ASP), Business Software & Data Services, or Internet Media or Advertising]: Can be part of the coverage form or requires a separate endorsement.

19. Third Party Information Services Provider Coverage Part [Data processor or data storage, Internet Professional/Technology Services]: Can be part of the coverage form or requires a separate endorsement.

20. Third Party Healthcare Privacy Coverage Part [Health Information Software and Data Service Provider, Technology Errors and Omissions, and Health Insurance Billings both Digital and Paper]: Can be part of the coverage form or requires a separate endorsement.

21. Third Party Network Security or Information Security Liability Including Channel Attacks Coverage Part [Unauthorized Use, Denial of Service, or Transmission of Malicious Code]: Can be part of the coverage form or requires a separate endorsement.

22. Third Party Privacy Injury and Security Breach Coverage Part [Theft of Personally Identifiable Non-public Information Including Medical Records both in Digital and Hard Copy Form under Tort, Contractual and Regulatory Allegations]: Can be part of the coverage form or requires a separate endorsement.

23. Third Party Libel, Slander, Copyright Infringement, Plagiarism, Piracy, and Infringement of Privacy Arising from Internet Media Activities Coverage Part: Can be part of the coverage form or requires a separate endorsement.

24. Third Party Technology, Internet, and Telecommunications Services Errors and Omissions Coverage Part: Can be part of the coverage form or requires a separate endorsement.

25. Third Party Electronic Media Liability or Advertising and Content Coverage. Can be part of the coverage form or requires a separate endorsement. **EVERY CLIENT WITH A FACEBOOK PAGE HAS MEDIA EXPOSURE.**

IV. UNIQUE FIRST PARTY CYBER RISK FINANCE SOLUTIONS

A. First Party Coverages that should be considered.

1. Direct damage equipment

2. Destruction of Data

3. Virus extraction

4. Business Interruption

5. Denial of services

6. Cyberterrorism – Coverage for loss resulting from state-sponsored or Terrorist act

7. Data Privacy costs for compliance with Payment Card Industry which should include PCI Fines and Penalties, Fraud Charges and Card reissuance costs.

8. Regulatory and Statutory Coverage provided for violation of regulatory acts, violation of privacy laws, regulatory fines, regulatory penalties, and consumer redress funds.

9. Data Privacy Remediation Costs for crisis management or brand repair costs, forensic costs, notification costs, credit monitoring costs, credit repair costs and resecure data

B. Direct Damage Tangible Property of the Named Insured – EDP Inland Marine Form, Property Forms, and Cyber Liability First Party Exposures.

1. Cover Direct Damage to hardware like and EDP Coverage Form for described perils.

> **1. Hardware**
>
> **a. Coverage – "We" cover direct physical loss caused by a covered peril to "hardware" and similar property of others that is in "your" care, custody, or control.**
>
> **b. Coverage Limitations – "We" only cover "hardware" and similar property of others:**
> **1) when a "limit" for "hardware" is indicated on the "schedule of coverages"; and**
> **2) while at a premises described on the "schedule of coverages".**

2. Some property forms will extend coverage to <u>Business Personal Property called computer hardware or computer assets.</u>

3. <u>Damage to hardware</u> by various <u>all risk perils unique</u> to the owned or leased hardware including transit.

4. <u>Theft of hardware</u> from secure facilities and theft of mobile technology. [Kill Pills on Mobile Technology]

5. First Party Electronic Theft Coverage Part – CNA Global Technology Net Protect Coverage Form

C. Direct Intangible Property Loss exposures – EDP Inland Marine Forms, Property Forms, and Cyber Liability First Party Forms provide coverage

1. Intangible Property such as data, software and media should be covered.

2. Computer virus and hacking exposures causing first party direct damage loss exposures.

3. First Party Loss or Damage to Client Entity's Network Coverage Part – CNA Global Technology Net Protect Coverage Form

4. Computer Viruses Clean Up costs or extra expenses should be covered for first party losses. Clean up costs for damage to third parties will not be covered and this will be under a Cyber Liability policy.

5. Client needs to be reimbursed for costs or extra expenses necessary to repair, replace, or fix damaged computer systems.

6. Costs for external consultants, contractors or MIS employees to repair hardware, data software systems, WEBSITES, media, Social Media Systems, and databases needs to be paid.

19. "Rectification costs" means those costs that you incur as a result of the use of external consultants, contractors or advisers or any additional costs that you incur to pay your employees. For the avoidance of doubt, rectification costs does not include the basic salaries of your employees or your office expenses or any payments that you have paid or agreed to pay as part of any service or maintenance contract.

7. Some EDP Coverage Forms will pay and some will exclude.

8. Some Property Coverage Forms, like FM Global, now provide coverage for Data, Programs, or Software direct damage coverage that must be coordinated with First Party Cyber Liability Coverage Forms.

This policy covers insured Physical Loss or Damage to Electronic Data, Programs, Or Software, including physical loss or damage caused by the malicious introduction of a machine code instruction, while anywhere within this Policy's TERITORY, including while in transit. . ..

3) This Additional Coverage also covers the reasonable and necessary costs incurred by the Insured to temporarily protect or preserve electronic data, programs, or software against immediately impending insured Physical Loss or Damage to Electronic Data, Programs, RO Software. in the event that the physical loss or damage does not occur, the costs covered under this item 3 will be subject to the deductible that would have applied if the physical loss or damage had occurred.

D. Indirect Damage to Intangible Property Losses – EDP Inland Marine Forms, Property Forms, and Cyber Liability First Party Forms provide coverage

1. First Party Business Interruption and Extra Expense Coverage Part – CNA Global Technology Net Protect Coverage Form

2. Loss or revenue and extra expense for direct damage to data, software, and media must be coordinated with Cyber First Party Coverages.

We agree to reimburse you for business interruption loss incurred as the direct result of any insured peril first discovered during the period of the policy.

3. Must be from unique perils not covered under EDP and Property Coverage forms.

4. Most are the result of a Security Failure and it is critical to understand the Coverage Language and how it applies to trigger coverage.

"Security Failure" means a failure or violation of the security of a Computer System, including, without limitation, that which results in or fails to mitigate any unauthorized access, unauthorized use, denial of service attack or receipt or transmission of a malicious code. "Security Failure" includes any such failure or violation resulting from the theft of a password or access code from a Company's premises, a Company's Computer System, or an officer, director or employee of a Company by non-electronic means in direct violation of a Company's specific written security policies or procedures. Chartis Network Interruption Coverage

E. Cyber Crime Loss Exposures – EDP Inland Marine Forms, Crime Forms, and Cyber Liability First Party Forms provide coverage and must be coordinated.

1. Employee Dishonesty and Sabotage

   a. Computer theft of money, securities, and other tangible property by employees of the insured is covered under an employee dishonesty crime policy.

   b. There are no exclusions in the standard employee dishonesty forms that prevent coverage for theft committed using a computer.

   c. These coverages generally do not address loss from theft of trade secrets or other proprietary business information, because this property is not tangible and thus does not qualify as covered property.

   d. Crime Computer forms generally do not cover sabotage.

A disgruntled employee corrupted data in the company's system that was used to upgrade a product already on the market. The corruption caused damage to client's trying to upgrade the product as well as delays, cost overruns, etc., resulting in a loss of $50,000,000.

e. Generally, need to look at First Party Cyber Crime Coverage to properly wrap the employee dishonesty exposure.

f. Usually, the First Party and Third-Party Crime Coverage are combined into one insuring clause.

> We agree to reimburse you for loss first discovered and notified to us during the period of the policy by reason of the transferring, paying or delivering any funds or property, establishing any credit, debiting any account or giving any value directly caused by the fraudulent input, fraudulent destruction or fraudulent modification of electronic data:
>
> **a.** in your computer system, or
>
> **b.** in any of your customers' computer systems, or
>
> **c.** in the computer system of any service bureau with whom you have a written agreement to provide data processing services, or
>
> **d.** during electronic transmission between, stored within or being run within any of the computer systems in **(a)**, **(b)** or **(c)** above, committed by any third party or any employee of the company named as the Insured in the Declarations or any subsidiary with a clear intent of causing you loss or damage.

2. Introducing computer viruses by employees can be added by endorsement to the Crime program or it may be covered under the EDP Policy form or First Party Cyber Liability Form.

> We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against the company named as the Insured in the Declarations or any subsidiary and notified to us during the period of the policy as a direct result of:
>
> **a)** any third parties' financial losses arising directly from a hacking attack or virus that has emanated from or passed through your computer systems, or
>
> **b)** any third parties' financial losses arising directly from their inability to access your computer systems in the way in which you have authorized them to as a direct result of your computer systems' failure or

impairment due to a hacking attack or virus, or

c) any third parties' financial losses arising directly from the loss or theft of your data or data for which you are responsible or alleged to be responsible arising directly from a hacking attack or virus.

3. Defacing websites by employees are not covered under the Crime program because this is intangible property.

4. Crime programs do not provide coverage for loss of income or market share in connection with computer theft of information.

5. Illegal system uses and theft of time by employees is not a covered crime exposure under crime policies.

6. Network computer theft of inventory is covered in standardized crime policies, but it may take an endorsement. This coverage is for the theft of tangible property only and does not include intangible property exposures.

7. Computer theft by non-employees is not covered under most crime forms. The primary reason is that these other forms contain exclusions of loss from unauthorized property transfer and voluntarily parting with property on the basis of a fraudulent scheme or false pretense.

8. There is no crime coverage for intruder theft which includes dishonest, fraudulent, or malicious acts committed by the intruder which adds to, modifies, or destroys electronic data on the insured's website or other software causing the client to:

    a. Transfer, pay, or deliver any funds or property

    b Establish credit

    c. Debit any account

    d. Give value to the intruder

9. There is <u>no coverage for credit card theft</u> and coverage must be pursued under Payment Card Industry Coverage.

    a. Reimburses the <u>client for "fraud charge backs"</u> by the credit card vendor for sales made at the website with stolen credit card information.

    b. Card reissuance costs and PCI fines and penalties.

    c. Merchant Credit Card Fraud coverage provides <u>damages and defense to develop settlements for the theft.</u>

    d. <u>Computer Fraud Coverage forms exclude this exposure.</u>

10. <u>Identity theft coverage</u> is not provided under the crime forms.

    a. <u>Medical records computer theft</u> is also excluded under the crime forms. [HIPAA AND HITECH ISSUES ALONG WITH STATE STATUTES]

    b. Coverage for identity and medical records will only be found in the Cyber Liability Coverage Forms or through endorsements.

> The client is a Family Medicine Medical Clinic that is written under a Businessowners Coverage Form. The electronic medical records of the medical clinic were hacked into and the digital medical records of the patients were stolen. One of the patient's medical records was subsequently posted on the Internet without her knowledge or consent.
>
> The posting on the Internet was several days after the hacking and followed the woman's treatment for complications from an abortion at a separate women's health clinic. Anti-abortionist activists posted the records online along with a photograph of the woman.
>
> The woman sues the Family Medicine Medical Clinic for releasing her medical records and not providing adequate security for her digital medical records.
>
> Is this covered under the BOP in any section?

Is there defense coverage under the BOP for this theft of medical information?

Defense costs for the Medical Clinic and settlement expenses together exceed $500,000.

Who paid for the loss?

11. <u>Stolen Intellectual Property is not covered under the crime</u> forms and the client must look to Infringement Abatement Insurance to recover the cost of recovery efforts.

12. <u>Phishing is not covered under Crime Coverage Forms</u>.

    a. Phishers send bogus e-mails that look like the message came from the client's bank, ISP, credit card company, store credit card company, mortgage company, etc. urging the client to provide sensitive financial information before their accounts were cancelled.

    b. A link embedded in the e-mails send recipients to stunningly realistic but phony billing pages, where the client inputs credit card number or bank account numbers and in some instances their PIN numbers.

    c. This information is used to then make purchases on the credit card by the criminals that designed the E-mail.

    d. The Cyber Liability Policy may provide coverage for Phishing.

13. <u>Extortionist threat to damage or destroy</u> the client's website, data or other media is not covered under the crime form.

    a. Kidnap and Ransom forms will provide coverage bodily harm only and may not include intangible property coverage.

    b. Some EDP forms will add coverage by endorsement.

    c. Some Cyber Liability Coverage forms will provide extortion coverage.

14. Social Engineering Fraud Coverage Endorsement

    a. Pays for loss resulting from the insured having transferred, paid or delivered any Money or Securities, as a direct result of social engineering fraud committed by a person purporting to be a vendor, client or employee.

    b. The vendor, client or employee was authorized to instruct other employees to transfer Money or Securities.

    c. May delete voluntary parting or false pretense exclusion.

    d. Look for specific limits and high retentions or deductibles may apply.

V. THIRD PARTY CYBER LIABILITY, NETWORK LIABILITY OR MEDIA LIABILITY RISK FINANCE SOLUTIONS

A. Three Major Types of Third-Party Liability Exposures

1. <u>Technology Errors & Omissions Liability and Professional Exposures</u>

a. Companies involved in Web Sites, Programming Systems, Offering Internet Provider Services, providing Web Site management, and developing or selling software.

TECHNOLOGY SERVICES – The activities associated with any electronic or computer-based system or network. These activities include analysis; design; programming; integration of information systems; processing of data; information technology consulting; licensing of computer software; marketing, selling, distributing, installing, maintaining, and training in the use of electronic or computer related hardware and software; website design, programming, maintenance or hosting, including Internet service provider services and application service provider services; and outsourcing to vendors any of the services listed above.

b. An <u>Errors or Omission makes a computer system vulnerable to attack</u> and causes damage to a third party's computer, data, software, or network through hacking, viruses, and malicious code introduction would need to be covered.

c. Loss of income by a third party because of denial of service to the web site of a software glitch that shuts down the web site stopping sales.

d. Professional services that cause third parties to incur lost revenue and expenses to return to operations and expenses resulting from compromise of personal data.

e. The ISO Commercial General Liability Coverage Form excludes this exposure through very specific endorsements.

2. Network E-Commerce, Advertising, Publishing, Infringement, and Internet Media Liability Exposures.

a. Many organizations have Internet access, use E-mail, and have a web site which enhance the “brick and mortar” premises organization.

1) Small companies look large

2) Large companies look small

b. Employees can harass a third party by e-mail which creates third party EPLI exposures and intentional tort liabilities. There is no coverage in the CGL and most Cyber Liability policies. [Need the EPLI policy extended to 3rd party liability.]

c. Posted advertisements and publications on the web can violate a person’s right of privacy.

d. Violations of intellectual property rights through misappropriation, misuse, and infringement of title, slogan, trademark, trade name, domain name, trade address, service mark, service name, copyright, style of doing business, and misappropriation of ideas in advertising for the organization.

e. Cyber Smearing which includes harassment, defamation, libel, slander, infliction of emotional distress, outrage, outrageous conduct, disparagement to the character or reputation of any person or organization, and disparagement of products are exposures that may not be covered by Coverage B of the Commercial General Liability Coverage Form.

f. Remember that the ISO CGL Coverage Form covers personal injury offenses of slander, libel, and violation of privacy as long as the entity is not actively involved in a media or Internet type business or involved in sponsoring a chatroom or bulletin board.

g. Invasion, infringement, interference, public depiction in a false light, disclosure of private facts, intrusion, unauthorized appropriation of a name or likeness, or any other invasion, infringement, or interference of any entity's rights to privacy are not covered by the ISO CGL and must be covered in a Cyber Liability Policy.

h. Web sites that only advertise the client's goods or services are covered under the ISO CGL coverage form and this includes web site frames, borders or links.

i. Please remember that any organization that derives a major share of its revenues from the Internet are generally considered in the "Internet Business" and must get coverage under a Cyber Liability policy.

3. **Privacy Injury and Cyber Security Exposures**

a. Unauthorized access by third parties.

b. When an outsider penetrates the firewall surrounding the client's electronic files and accesses information on third parties held in confidence.

c. The client may be subject to property damage and personal injury claims from the unintended access to, and/or the release of, personal data.

d. A data breach is an incident in which sensitive, protected, secure, or confidential data are intentionally or unintentionally:

1) Stolen

2) Copied

3) Transmitted

4) Viewed or

5) Used

6) In an unauthorized or unlawful way.

An online business process software (ASP) client inadvertently provides access to a non-authorized user, exposing confidential customer contact information to un-authorized users.

This triggered a Regulatory Agency investigation into a data privacy incident which may lead to fines or penalties.

A subsequent civil suit was filed for loss of or damage of data settled for $875,000. Defense expenses were in excess of $275,000.

e. Liability can also result in loss of business to the third party or loss or damage to non-owned data, as well as for loss of use or damages if a virus is transferred to others.

f. Network intrusion both attempted and actual, denial of service attacks, theft of password or access codes caused by operational errors, unintentional programming errors, or failure of project planning.

g. The ISO CGL does not provide coverage because the exposures are intangible property and that is excluded.

B. Sources of Cyber Risk Liability – Third Party

1. Remember that the Types of Business Entity Creates Liability

a. Application Service Providers (ASP)

b. Internet Service Providers (ISP)

c. Web Site Developers, Designers, and Consultants

d. Web hosts and administrators

e. Web site owners

f. Bulletin Board, Chat Room, Forum and News Group Hosts

g. Content providers

h. On-line Marketing/E-Retailer

i. On-line Software Developers

j. Interactive Electronic Environments

k Internet/Digital Media

l. Network Developers, Managers and Consultants

m. Search Engine Portal Managers

n. Electronic Commerce Risks

o. E-brochures and E-catalogs

p, Vendor caused losses

q. Cloud computing losses – active and at rest data.

2. United States Common Law or Case Law

   a. The body of law derived from judicial decisions, rather than from statutes or constitutions.

   b. Few court cases have reached precedent level and court decisions are all over the place.

   c. Law surrounding Cyberspace is developing constantly.

   d. The U.S. and other countries are continuously reviewing and revising treaties and statutory law to address applicability to Internet use.

   e. Cyber Liability can and is regulated by four major components:

      1) By several statutes – Electronic Communications Privacy Act, Anti-cybersquating Consumer Protection Act, Trademark, Patent and Copyright Laws, Uniform Computer Information Transactions Act, Child Online Protection Act, etc.

      2) Social Norms and Expectations

      3) Markets

      4) Architecture or code of the software and data

3. Tort Liability – Legal Wrong

   a. Negligence [Errors or Omissions]

      1) There must be a duty owed based on reasonable care

      2) There must be a breach of that duty.

      3) There must be damages

4) There must be a proximate cause between the breach of duty and the damages.

5) Must <u>prove all four</u> elements to create a claim that cyber liability insurance must defend and pay.

6) Negligence per se also applies when the client violates specific statutes with specific requirements, such as encryption.

ERRORS, OMISSIONS, AND NEGLIGENT ACT CLAIMS

A website owner sold an email list to a company that owned a different website. The company sued, claiming the list had wrong addresses, duplications, and contained names of the people who did not want to receive information from the company.

A company operated a website on which it conducted automobile auctions. A purchaser of a vehicle sued alleging the photo showing the car he bought was misleading and the person he spoke to about the car made misrepresentations.

A company that bought banner ad space on a portal website sued the portal operator. The company alleged the portal failed to make the necessary changes to the banner ads, and that the failure to make changes reduced the effectiveness of the ads.

A cosmetics company sued a search engine alleging that the search engine engaged in trademark infringement and unfair competition by selling banner advertising to another, competing cosmetics company. The search engine sold the competitor a banner ad on the results page that came up when a user entered the first company's name as a search term.

A company provided web site design and consulting services to a client. The parties eventually decided to end their relationship and the company sent its client a letter requesting payment of bills totaling $750,000. The client responded by alleging that the websites designed by the company had architectural and performance issues and demanded $9,000,000 to settle its claims.

A client sued a website developer alleging that its website crashed and blamed the crash on the developer's failure to competently provide services.

b. Professional liability

1) Based on negligence elements with special standards of care being applied because of skill levels and knowledge levels.

2) The duty will be based on a high level of training and proficiency as per the professional community operating in that specific field.

4. Intentional Torts

a. An intentional or voluntary act, which results in injury or loss to another.

b. Libel or slander and defamation of products via electronic communications – Blogging & Social Media

c. Invasion of privacy by keylogging or another electronic tracking device.

d. Privacy injury which includes violation of Health Insurance Portability and Accountability Act of 1996, Gramm-Leach Bailey Act, and the Children's Online Privacy Protection Act

e. Copyright infringement (Intellectual Property)

A distributor of software products acquired another company that sold software pursuant to a license from plaintiff. The distributor continued to sell this software after the acquisition. The plaintiff sued for copyright infringement, alleging that the distributor's continued sale of the software violated the terms of the license.

An online service that provided music for users to download for a fee was sued by another company that allegedly owned rights to certain music. It sued for copyright infringement, alleging that the service sold unauthorized songs on the website. The service had obtained a license for the music from a third party who claimed to have the rights to transfer, but not from the claimant.

Owners of video footage sued a website owner for copyright infringement, alleging the website streamed the footage for webcast on the site without permission. There was an issue about whether the party from whom the website owner had obtained the footage actually owned the rights in the video footage to transfer.

A company created and licensed software that enabled golf courses to advertise and display their courses online. Another company alleged the software was substantially similar in function and appearance to its software.

f. Utterances in violation of an individual's rights of publicity including commercial appropriation of name, persona, or likeness.

g. Utterance in violation of the rights of privacy.

h. Unfair competition or unfair trade practices created by the dilution, confusion, deceptive or unfair practices for consumer fraud, false, disruptive or misleading advertising or misrepresentation in advertising.

i. Trademark infringement (Intellectual Property)

Plaintiff sued an online service provider for trademark infringement. Plaintiff alleged that the provider's domain name violated trademark laws because plaintiff owned the trademark and was in the business of selling apparel, which was also the function of the provider's website.

A website provided information related to residential real estate sales. Another company that published a traditional print magazine with the same name used by the website and which also related to residential real estate sales, sued for trademark infringement and unfair competition.

j. Electronic disparagement of products or service.

5. Strict Liability

a. A concept applied in software product liability cases in which the designer or programmer is liable for any and all defective or hazardous code which unduly threatens data and machine language.

b. This includes design, code, and instructional materials.

c. Cradle to Grave Theories of Liability being applied to the protection of data. This is created by all of the backups and the Cloud storage systems.

6. Breach of contract

a. An agreement between two or more parties which creates an obligation to do or not to do a particular thing and where one party assumes the financial consequences of certain liabilities of another.

b. Online contracts, shrinkwrap licenses, browser agreements, etc.

c. The Uniform Computer Information Transaction Act (UCITA) addresses issues concerning offer, acceptance, and notice.

d. State consumer protection statutes also apply.

7. Federal and State Statutes

a. A rule of law enacted by a legislative body providing direction or prohibition.

b. Statutes override common law.

c. Electronic Communications Privacy Act, Anti-cyber-squating Consumer Protection Act, Trademark, Patent and Copyright Laws, Uniform Computer Information Transactions Act, Children's Online Privacy Protection Act, Children's Internet Protection Act, Children's Online Protection Act, Communications Decency Act, Computer Fraud and Abuse Act, Digital Millennium Copyright Act, Wiretap Act, USA Patriot Act.

d. Health Information Technology for Economic and Clinical Health Act or HITECH Act Strengthening Federal privacy and security law to protect identifiable health information from misuse as the health care sector increases use of Health IT.

e. Payment Card Industry Data Security Standard (PCI-DSS) with compliance, forensics, fines, and compliance audits.

C. <u>Insuring Agreements</u>

1. Content Liability Insurance is also known as website publishing liability.

2. Regulatory Defense and Penalties

3. Information Security and Privacy Breach Liability

4. Payment Card Industry Fines and Assessments

5. Privacy Notification and Crisis Management Expenses

6. Typical Cyber Liability Loss Causes in Insuring Agreements

    a. Unauthorized use of data or software

    b. Unauthorized access to system (Security Breach)

    c. Remediation Costs arising out of the Security Breach

    d. Spread of Virus or Malicious Code (Content Liability)

    e. Unintentional Acts – Mistake, Errors, or Omissions by employees and others for whom the insured has legal responsibility.

    f. Intentional Acts by employees and others for whom the insured has legal responsibility

7. Usually claims made policy but some modules may have occurrence triggers

8. Must carefully review the retroactive date on the policy for prior acts and carefully review any extended reporting periods or discovery periods that impact coverage if the policy has been moved to another carrier.

CLAIMS MADE POLICY: THIS INSURANCE COVERAGE IS ON A CLAIMS MADE BASIS, COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD AND ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AS THOSE TERMS ARE DESCRIBED IN THE POLICY. COVERAGE DOES NOT APPLY TO ANY WRONGFUL ACTS COMMITTED BEFORE THE RETORACTIVE DATE STATED ON THE DECLARATIONS PAGE.

9. Usually "pay on behalf of"

10. Agree to pay for "loss" or "damages" caused by:

    a. Negligent act, error, or omission

    b. Providing or failure to provide professional services

    c. An incident

    d. Wrongful act usually named torts

The Company will pay on behalf of the Insured all Damages and Claim Expense in excess of the Deductible and within the Limit of Insurance which the Insured becomes legally obligated to pay because of liability as a result of one or more Claims arising from any of the following actual or alleged Wrongful Acts in performing Cyberspace Activities, including obtaining, processing, uttering or disseminating Content in or for the Cyberspace Activities, when the first written Claim is made against any Insured during the Policy Period or any Extended Reporting Period:

11. Agree to reimburse or indemnify the insured for certain incurred expenses.

    a. Defense expenses in regulatory proceedings.

The **Insurer** will reimburse the **Insured** for all **Defense Expenses** the **Insured** incurs in responding to any **Regulatory Proceeding** first made against the **Insured** and reported to the **Insurer** during the **Policy Period** or any **Extended Reporting Period**, if applicable, for a **Privacy Wrongful Act** or **Security Wrongful Act** concerning a **Privacy Event**, provided such **Privacy Wrongful Act** or **Privacy Event** or **Security Wrongful Act** first occurs on or after the applicable Retroactive Date shown in Item 5. of the Declarations and before the end of the **Policy Period**.

b. Fines and penalties assessed for non-compliance of violation of Privacy laws and regulations.

Any fines or penalties you are legally obligated to pay as a direct result of **your** breach of **your privacy obligations** where insurable under the applicable law.

1) Violation for all Regulatory Investigations except for antitrust, business competition, unfair trade practices, or tortious interference with another's business or contractual relationships.

2) Does the coverage include Regulatory fines, penalties, and consumer redress funds?

c. Claims mitigation expenses or Crisis Management Expenses for Privacy Breaches.

In addition, **we** agree to reimburse **you** for **privacy breach costs** that **you** incur as a direct result of a **claim** or **loss** under this **INSURING CLAUSE**, subject to **our** prior written agreement (such agreement not to be unreasonably withheld) and provided **you** are legally obligated to incur such **privacy breach costs** or that such reimbursement will effectively mitigate or avoid a **claim** for which **you** would have been entitled to indemnity under **INSURING CLAUSE 1** of this Policy had such measures not been taken.

d. <u>Security Breach Expenses that are caused by the insured's failure to prevent unauthorized access</u> to, or unauthorized use of personal information held within the electronic information system.

PRIVACY BREACH COSTS COVERAGE

The **Insurer** will reimburse the **Company** for the **Privacy Breach Costs** the **Company** incurs that directly result from a **Privacy Event**, provided such **Privacy Event** first occurs and is reported to the **Insurer** during the **Policy Period**.

e. Payment Card Industry Card coverage provided?

1) Coverage for PCI fines and penalties?

2) Fraud Charges covered?

3) Card Reissuance Costs covered?

4) Full policy limit or a sublimit?

5) Insuring agreement or add by endorsement?

D. Definition of Wrongful Acts Critical for Coverage

1. Key Data Privacy Triggers within wrongful acts definitions

a. Failure to secure data

b. Loss caused by employee

c. Acts by persons other than insureds listed in and endorsed to the policy

d. Loss resulting from theft or disappearance of private property including laptops, iPad, smart phones, or from social media

2. Most Cyber Liability coverage forms are modular and the client and agent/broker must determine the coverage parts that apply to the exposure of the client.

3. Some Coverage parts are outlined in Insurance Clauses that must apply to the exposure of the client. NAMED PERIL COVERAGE FORM

4. Coverage parts and Insurance Clauses are triggered on the Declarations Page.

5. CNA, Chubb and Chartis use modular language.

6. Example of the Chartis Net Advantage Modular Language

> **1.** MODULAR FORMAT
>
> This MULTIMEDIA Module is a part of an AIG net Advantage policy comprised of the following components: (i) the Declarations, (ii) a BASE Section, (iii) this Coverage Module, and (iv) if purchased, other optional Coverage Modules. This Coverage Module affords no coverage except as part of a policy comprised of the components set forth above.
>
> The terms, conditions, exclusions and other limitations set forth in this Coverage Module are solely applicable to coverage afforded by this Coverage Module. THIS COVERAGE MODULE IS WRITTEN ON AN OCCURRENCE BASIS.

7. CNA NET Protect Insurance Definition for Network Security coverage only:

> **4. Wrongful Act means any actual or alleged error, omission, neglect or breach of duty committed by any insured that results in:**
>
> **a. Denial of Electronic Access;**
> **b. Failure of Third Party System; or**
> **c. Electronic Information Damage,**
>
> **including any content injury or privacy injury caused by such denial of electronic access, failure of third party system or electronic information damage.**

8. Zurich Wrongful Act Definition

Wrongful Act means a **Security Wrongful Act** or a **Privacy Wrongful Act**.

Security Wrongful Act means any actual or alleged act, error, omission, neglect, or breach of duty by an **Insured**, someone for whom the **Company** is legally responsible, or a **Service Provider**, which causes a breach of the **Company's Network Security** that results in:

(1) the theft, alteration, or destruction of **Electronic Data** on the **Company's Computer System**;

(2) the **Unauthorized Access** to or **Unauthorized Use** of the **Company's Computer System**;

(3) the denial of an authorized user's access to the **Company's Computer System**, unless such denial of access is caused by a mechanical or electrical failure outside the control of the **Insured**;

(4) the participation by the **Company's Computer System** in a **Denial of Service Attack** directed against a third party's **Computer System**; or

(5) the transmission of **Malicious Code** from the **Company's Computer System** to a third party's **Computer System**.

9. Insuring Clause One Privacy – in the CFC Underwriting Ltd. Coverage form.

    a. Personal Information Privacy

    b. Corporate Information Privacy

    c. Employee Information Privacy

    d. Privacy Fines and Penalties

    e. Privacy Breach, Notification & Loss Mitigation

10. Chartis Net Advantage <u>Multimedia Module</u> and wrongful act definition.

2. MULTIMEDIA MODULE INSURING CLAUSE (Occurrence Based)

We shall pay on your behalf those amounts, in excess of the applicable Retention, you or any additional insureds are legally obligated to pay, including liability assumed under contract, as damages resulting from any claim made against you or such additional insured for <u>your wrongful acts; provided that such wrongful act(s) first occur during the policy period, regardless of when such claim is made or a suit is filed.</u>

Media (g) "Wrongful act" means, solely in the broadcast, creation, distribution, exhibition, performance, preparation, printing, production, publication, release, display, research or serialization of material by you, any actual or alleged act, error, omission, breach of duty, misstatement or misleading statement, first occurring during the policy period, which results in:

(1) any covered peril; or

(2) loss because a third party, which has no ownership relationship with you, acts upon or makes a decision or decisions based on the content of the material disseminated by you or with your permission.

11. "Electronic media wrongful act" means any actual or alleged error, misstatement or misleading statement in "electronic communications" committed by or on behalf of an insured that results in:

a. An infringement of another's copyright, trademark, trade dress or service mark or service name;

b. Any form of defamation against a person or organization;

c. A violation of a person's right of privacy; or

d. Plagiarism. [Selective Insurance Company of America]

12. <u>Wrongful act</u> can be defined as – "Any form of <u>defamation</u> or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, malicious falsehood, outrage or outrageous conduct.;"

13. Wrongful act can be defined as – "Any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence and commercial appropriation of name or likeness;"

14. Wrongful act can be defined as – "Infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;"

15. Wrongful act can be defined as – "Infringement of copyright, false attribution of authorship, passing off, plagiarism or misappropriation of ideas under implied contract;"

16. Wrongful act can be defined as – "Misuse of intellectual property right in Content, but only when alleged in conjunction with the types of Claims named in 7. and 8. above;"

17. Wrongful act can be defined as – "Wrongful entry or eviction, trespass, eavesdropping or other invasion of the right to private occupancy;"

18. Wrongful act can be defined as – "False arrest, detention or imprisonment or malicious prosecution;"

19. Wrongful act can be defined as transferring, paying, or delivering any funds or property, establishing any credit, debiting, and account, or giving a value directly caused by the fraudulent input, fraudulent destruction, or fraudulent modification of electronic data.

20. Wrongful act can be defined as – "Failure to prevent a party from:

    a. Unauthorized access to, unauthorized use of, tampering with or introduction of malicious code into data or systems; or

    b. Repetitively accessing a website, under the control of an Insured, with the intent to deny others access to such website or with the intent to cause such website's functionality to fail, including what is commonly referred to as denial-of-service attacks; or"

21. Wrongful act can be defined as – "Errors, omissions or negligent acts."

22. Wrongful act can include the reimbursement of Privacy Breach Costs that are incurred from a Privacy Event.

E. Can Provide Coverage for Crisis Management Events or Crisis Communications Expense created by the failure of security or loss of credit information.

1. Chartis Net Advantage Policy

> "Crisis management event" means one of the following events:
>
> (1) Failure of security: An otherwise covered "failure of security" as defined in the Security Liability Module, the Security & Privacy Liability Module, the Business Interruption Module, or the Information Asset Module, but only if any such module has been made part of this policy; or
>
> (2) Privacy Peril: An otherwise covered "privacy peril" as defined in the Security & Privacy Liability Module, but only if any such module has been made part of this policy.
>
> (3) Personal identity event.

2. Pays for the extra expenses and the expense for a PR firm to assist in protecting reputation and brand if necessary.

3. Reasonable and necessary expenses.

4. DOES NOT PAY for E-Discovery Expenses.

F. NAMED INSUREDS – covered persons and organizations

1. Named insured as broad as possible. Some coverage forms do not define insured or named insured.

> "Named Insured" means the person(s) or entity(ies) listed in Item 1. of the Declarations of the Policy.

2. Named insured with Additional Insureds

(p) "Insured" means each (1) of you; and (2) any additional insured.

With respect to the coverage afforded under this Coverage Module only, Definition Paragraph 3(nn) (you or your) of the BASE Section is hereby deleted and replaced with the following:

(nn) "You" or "your" means each and every:

(1) organization;

(2) employee of an organization, but only while acting within the scope of his or her duties as such in the provision of material for such organization; and

(3) additional insured, but only while acting within the scope of his or her duties as such in the provision, dissemination or distribution of material for an organization.

3. Partnership

4. Professional corporations

5. Coverage of past personnel

6. Coverage for prior acts

7. Outside activities coverage – "individual" or "corporations"

8. Employees – malpractice forms versus errors and omission forms

9. Definitions of covered business systems

"Insured" means, individually and collectively:

1. The Named Insured and any Subsidiary;

2. The Named Insured's stockholders for their liability as stockholders;

3. The Named Insured's and Subsidiaries' partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity in the performance of Cyberspace Activities by the Named Insured or any Subsidiary;

4. The Named Insured's and Subsidiaries' former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity in the performance of Cyberspace Activities by the Named Insured or any Subsidiary;

5. In the event of death, incompetency, insolvency or bankruptcy of an Insured, the Insured's legal representative, but only with respect to their activities within the scope of their duties in such capacity in the performance of Cyberspace Activities by the Named Insured.

10. Newly acquired presents a unique problem.

11. How does the policy deal with mergers, acquisitions, stock purchases and swaps for other technology related companies?

12. Is this a material change and there is no automatic coverage? [Disclosure]

G. Covered Damages

1. Compensatory Damages – Special and General Damages with the broadest definition possible in the coverage form.

    a. Include legal fees for the other side as damages?

    b. Does it include E-Discovery costs?

"Damages" means monetary judgment, award or settlement, including those that are actual, statutory, punitive, multiplied or exemplary, except when applicable law prohibits insurance for punitive, multiplied or exemplary damages; and legal expenses or other costs included as part of the judgment, award or settlement.

"Damages" does not include civil or criminal fines or penalties, royalties, fines or penalties sought by any music licensing organization; disputed royalties, fees, deposits, commissions or charges for goods or services; or loss or disgorgement of profits by an Insured. "Damages" also does not include costs of correcting, performing or re-performing the Insured's Cyberspace Activities by the Insured or another party when the Insured has the capability to correct, perform or re-perform the activity that generated the costs.

2. Punitive damages coverage will vary.

    a. Some policies exclude

    b. Some grant coverage

    c. Many are silent

    d. Statutory bar of coverage

3. Multiplied damages

4. Does not include fines, penalties, taxes or sanctions unless included in the Regulatory Proceeding Coverage.

5. Does not include royalties or licensing payments but may under contractual liability or assumed contract language.

6. Does not include Electronic Discovery Expenses for legal actions to determine Electronic Stored Information (ESI) as per the rules of the court.

H. Coverage Territory

1. Acts, claims, and suits brought in United States

2. Worldwide coverage, but claims and suits restricted to the U.S.

3. Worldwide coverage – usual

The territory and jurisdiction of this policy is universal. Coverage applies to Wrongful Acts committed anywhere and to Claims made in any jurisdiction in the world. If Damages or Claims Expenses are paid in a currency other than United States of America Dollars, then the payment under this policy will be considered to have been made in United States dollars the conversion rate, which is in effect at the time of payment.

I. Key Definitions Must Be Closely Reviewed

1. “Additional insured” means any natural person or entity (i) that an organization has expressly agreed in writing, prior to the commission of a wrongful act, to add as an insured under this policy, but only for the wrongful acts of the organization; or (ii) any other person or entity described or listed as such in a Coverage Module of this policy, and (iii) any employee of any such described or listed entity.

   [Want the broadest coverage to include coverage for the multiple signed contracts with vendors providing service to the client.]

2. “Advertising” means the material in any publicity or promotion including branding, co-branding, sponsorships and/or endorsements.

   [This is a broad definition to provide coverage for more than what is on the web site and includes links and adware or pop ups as well.]

3. “Assumed under contract” means liability for damages from a wrongful act where such liability has been assumed by you in the form of a written hold harmless or indemnity agreement that predates the first such wrongful act. This should recognize the standard operating procedures and protocols on the Internet and the “I Accept” contracts.

4. “Claim expenses” means the reasonable and necessary (i) fees and disbursements charged by an attorney appointed by us, and (ii) other fees, costs and expenses incurred in the defense or investigation of a claim against an insured, either incurred by us or by an insured with our prior written consent. “Claim expenses” shall also include premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any claim against an insured for your wrongful acts; however, we have no obligation to appeal or to obtain bonds. This Definition is subject to the limitations set forth in the Definition of loss.

[Claims expense does not include the costs associated with injunctions but some policies will provide for certain types of coverage modules.]

5. "Computer attack" means unauthorized access, unauthorized use, receipt or transmission of a malicious code or denial of service attack which:

   a. alters, copies, misappropriates, corrupts, destroys, disrupts, deletes, damages or prevents, restricts or hinders access to, a computer system;

   b. results in the disclosure of private or confidential information stored on a computer system; or

   c. results in identity theft whether any of the foregoing is intentional or unintentional, malicious or accidental, fraudulent or innocent, specifically targeted at you or generally distributed, and regardless of whether the perpetrator is motivated for profit.

   [Good definition because it includes IDENTITY THEFT]

6. "Content" means written, printed, video, electronic, digital, or digitized images, sounds, text, music, descriptions and information.

   "Content" does not include:

   a. the actual goods, products or services described, illustrated or displayed in media content;

   b. any software or code that is intended to: (i) control the functioning of computer hardware or electronic controls, or (ii) process data or information; or

   c. your trademark or trade name.

7. “Content Based Liability” means liability arising from a third party acting upon the client’s Internet media or content provided that the third party has no common ownership interest or other affiliation with the client.

   [This definition is designed to allow for claims where the material on the client’s website caused a person to do or not do something to their detriment.]

8. “Denial of service attack” means an attack launched by a person(s) that sends an excessive volume of electronic data to a computer system in order to deplete such computer system’s capacity and prevents those who are authorized to do so from gaining access to such computer system in a manner in which they are legally entitled.
   Provided, however, depletion in your computer system’s capacity shall not be considered a denial of service attack if caused by a mistake in determining capacity needs.

   [This is important for both direct damage and business interruption and third-party liability.]

9. “Failure(s) of security” means:

   a. the actual failure and inability of the security of your computer system to mitigate loss from or prevent a computer attack; or

   b. physical theft of hardware or firmware controlled by an organization (or components thereof) on which electronic data is stored, by a person other than an insured, from a premises occupied and controlled by an organization.

   “Failure of security” shall also include such actual failure and inability above, resulting from the theft of a password or access code from your premises, your computer system, or an officer, director or employee of the organization by non-electronic means in direct violation of an organization’s specific written security policies or procedures.

[Good definition because it includes the theft of hardware on which data is stored.]

10. "Information Assets" means the:

    a. Software or electronic data, including without limitation, customer lists and information, financial credit card or competitive information, and confidential or private information, stored electronically on our computer system, which is subject to regular back-up procedures; or

    b. Capacity of your computer system, including without limitation, memory, bandwidth, or processor time, use of communication facilities and any other computer-connected equipment.

    [Good definition because it includes bandwidth coverage which is important for ISP/ASP providers.]

11. "Security" means hardware, software or firmware whose function or purpose is to mitigate loss from or prevent a computer attack. Security includes, without limitation, firewalls, filters, DMZ's, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users. Security also includes your specific written policies and procedures intended to directly prevent the theft of a password or access code by non-electronic means.

    [Good definition because it covers all software and hardware designed to prevent a computer attack.]

12. "Trade secret" means information (including any idea) that has been reduced to a written or electronic form, including a formula, compilation, pattern, program, device, method, process, or technique which:

    a. Derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use;

b. Is the subject of reasonable efforts to maintain its secrecy; and

c. is used, capable of being used, or intended to be used in commerce.

[It is good to have this coverage included to protect some of the intellectual property of the client.]

13. Make sure that Extra Expense or Expediting expense includes the expenses to investigate the loss including forensic expenses.

    a. Is this a sublimit or part of the limit?

    b. Does coinsurance apply or not?

J. Typical Exclusions

The Company will not be obligating to pay Damages or Claim Expenses for Claims for or arising out of actual or alleged:

1. Bodily injury or property damage exclusion – should remove or modify the property damage exclusion to make sure the desired coverages are not impacted.

2. An act, error or omission that a jury, court or arbitrator finds dishonest, fraudulent, criminal, malicious or intentionally committed while knowing it was wrongful.

3. Liability assumed under contract or agreement or contractual liability exclusion – should be modified to make sure that assumed contract remains covered.

4. Breach of contract, warranty or guarantee exclusion.

5. Claims in conjunction with ERISA, RICO, securities law, antitrust, restraint of trade or unfair or deceptive trade practices exclusion.

6. Claims in conjunction with actual or alleged violation of the Patent Act, the Economic Espionage Act of 1996, or the Trade Secrets Act and their amendments.

7. Punitive damages exclusion.

8. Circumstances of which the insured was aware of prior to policy inception exclusion.

9. Intentional acts exclusion and what is normal maintenance and security for an exclusion.

10. Employment-related practices exclusion – harassment, misconduct, discrimination because of or relating to race, creed, color, age, sex, sexual preference, national origin, religion, handicap, disability, or marital status.

11. Illegal personal profit exclusion.

12. Pollution exclusion.

13. Patent, trademark or copyright infringement exclusion. (May need to modify or seek Copyright Infringement Defense Coverage)

14. Insured versus insured exclusion.

15. War exclusion.

16. Malfunction or defect of any hardware, equipment or component, except this Exclusion does not apply when the malfunction or defect is solely the result of the Insured's negligence in performing Cyberspace Activities.

17. Electrical failure including electrical power interruption, surge, brownout or blackout exclusion. (Covered under EDP Policy?)

18. False, misleading, deceptive, fraudulent or misrepresenting statements in advertising, publicity or promotional material about the Insured or its own product or service exclusion. This exclusion

should only apply to the client's products but other's products are covered.

19. Intentional unauthorized access to, unauthorized use of, tampering with or introduction of malicious code into data or systems by an Insured of a person who would qualify as an Insured but for their acts being outside the scope of their duties as a partner, officer, director or employee of an Insured exclusion.

20. Other exclusions will be by endorsements.

K. Defense Costs

1. May be called defense costs or claims expenses and language may be in definitions, limit section, or insuring agreement. READ CAREFULLY

2. Generally, the defense costs or claims expenses are within policy limits

3. Some defense costs or claims expenses may be in addition to policy limits

4. Some policies apply a deductible to defense costs or claims expenses.

2. Total Limit of Insurance

The Total Limit of Insurance stated on the Declarations is the most the Company will pay for Damages and Claim Expenses combined for the total of all Claims made during the Policy Period and any Extended Reporting Period, no matter how many:

a. Insureds this policy covers;

b. Claims are made;

c. Persons or organizations make claims; or

d. Wrongful Acts committed.

C. Claim Expenses means, when authorized and approved by the Company:

1. Fees charged by an attorney in defense of a Claim, including such fees necessitated by a demand for a retraction or correction;
2. All other fees, costs and expenses which result from the investigation, discovery, adjustment, defense, negotiation, arbitration, mediation, settlement or appeal of the Claim;
3. Interest on any part of a judgment not exceeding the Limit of Insurance that accrues after the entry of the judgment and before the Company has paid or tendered or deposited the applicable judgment amount in court; and
4. Premiums on appeal bonds required as a result of a Claim and premiums on bonds to release attachments for a bond amount not exceeding the Limit of Insurance, but the Company has no obligation to apply to or furnish any such bonds.

Claim Expense does not include salary charges or expenses of regular employees of the Insured

L. Settlement Provisions

1. Consent-to-settle

   a. Required prior consent

   b. Blackmail clause or Hammer clause

It is understood that the Named Insured may settle any Claim for which the total cost of Damages and Claim Expense associated therewith is less than the amount of the remaining Deductible. No offer to settle any other Claim will be made or accepted by the Insured without prior written agreement by the Company.

2. Non-consent or no participation clause

If the Company is willing to accept the judgment of the trial or appellate court or any negotiated settlement or settlement offer and the Named Insured is not willing to accept such judgment or settlement, and providing the judgment or settlement is in excess of the Named Insured's remaining Deductible, the Company may tender or pay to the Named Insured the difference between the amount of said settlement or judgment and the Named Insured's remaining deductible, and will thereby be relieved from paying further Damages and Claim Expense as respects said Claim.

M. Limits – What is included in the definition of Limit?

1. Single annual aggregate limit (combined single limit)

2. Identical per-claim and annual aggregate limit

3. Not identical per-claim and annual aggregate limit

4. Per-claim or wrongful act limit

5. No accumulation of limits

6. Limits range from $250,000 to a maximum of $25,000,000 and depend upon the market.

7. Breach response, regulatory fines and penalties, content coverage, PCI fines, merchant service agreements, ransomware, cybercrime, business interruption, extra expense, systems damage, data restoration, and contingent BI and PD included in the limit, separate limit or sublimit.

(1) The aggregate policy limit of liability set forth in the Declarations is the most we will pay as loss under this policy, in the aggregate, for all coverages combined, regardless of the number of persons, occurrences, claims or entities covered by this policy, or claimants or claims brought against any insured.

(2) Each sublimit of liability set forth in the Declarations as applicable to a specific Coverage Module is the most we shall pay under this policy as loss in respect of such Coverage Module regardless of the number of persons, occurrences, claims or entities covered by this policy, or claimants or claims brought against any insured. If two or more Coverage Modules apply to loss and the amount of the sub limits of liability differ, the most we will pay for loss covered by any single Coverage Module is the sublimit of liability applicable to that Coverage Module. In any event the highest applicable sublimit of liability shall be our maximum limit of liability for all loss from such claim. Each sublimit of liability is part of and subject to the policy limit of liability. Loss arising out of the same wrongful acts, or a series of continuous, repeated or

related wrongful acts shall be deemed to arise from the first such wrongful act.

(3) The policy limit of liability and sub limits of liability for any extended reporting period shall be part of and not in addition to the policy limit of liability and respective sub limits of liability for the policy period.

(4) Further, each and every claim made subsequent to the policy period or an applicable extended reporting period, that pursuant to Paragraph 7(b) is considered made during the policy period or an extended reporting period, shall also be subject to the same policy limit of liability and respective sub limits of liability afforded to claims made and reported during the policy period.

(5) Damages, claim expenses and loss are all part of and subject to the policy limit of liability, and the sub limits of liability.

N. Deductible or Retention

1. Many policies have them and deductible may or may not be applicable to defense

2. Deductibles range from $1,000 to $15,000.

A separate Deductible applies to each actual and/or alleged Wrongful Act. For the purposes of this provision, a series of related Wrongful Acts, as described in Part V.O., will be considered a single Wrongful Act. The Deductible applies to Damages and Claim Expenses combined, and the Company's obligation to pay Damages and Claim Expenses applies only to the amount of damages and Claim Expenses in excess of the Deductible. The amount of the Insured's Deductible is stated in item 6 on the Declarations. The Deductible does not deplete the applicable Limit of Insurance.

3. Self Insured Retention range from $10,000 to $250,000.

Retention: For each claim, the insurer shall only be liable for the amount of loss arising from such claim that exceeds the Retention amount applicable to any Coverage Module affording coverage to such claim. Such Retention amounts must be borne by the insureds and remain uninsured with regard to all loss. In the event a claim triggers more than one Retention amount, then, as to that claim, the highest of such Retention amounts shall be deemed the Retention amount applicable to loss arising from such claim. A single Retention amount shall apply to loss arising from all claims alleging the same wrongful acts, or series of continuous, repeated or related wrongful acts.

O. Conditions

1. Notice of cancellation and nonrenewal – Get at least 60 days or more depending upon account complexity.

2. Subrogation provisions – Read carefully and does it allow blanket subrogation before the loss?

3. Other insurance – Excess or Primary issues when combined with the CGL, EDP, CRIME and PROEPRTY Coverage Forms.

VI. CONCLUSION

A. Selling the Product

1. Must sell the problem first and then sell the product since it is not bought.

2. Deal with the decision maker but work with the technology department to determine the needed coverages.

3. Stress that website breaches erode vital company resources

   a) Financial

   b) Personnel

   c) Reputation

   d) Confidence

   e) Impacts the value of stock

4. Firewalls are not foolproof and 65% of organizations with website firewalls have reported penetration.

5. Virus protection is a reactive tool and not pro-active and virus attacks continue causing damage.

6. Suggest that the client get an assessment to determine the exposures for Internet operations.

7. Computer attacks are increasing in frequency, severity and efficacy.

8. Fully integrate with Property, EDP, Equipment Breakdown, Crime, CGL, and Professional Coverage Forms.

B. Cyber Insurance

1. <u>Risk Management Approach</u> should first be developed for the client.

   a. Focus on people training

   b. Focus on development of policies and procedures

   c. Focus on technology solutions

2. E-Business Insurance or Cyber Insurance

   a. Protects the client's investments

   b. Preserves resources

   c. Saves budgeted expenses

   d. Lessens the negative impact to share value and restores confidence in the client's operations

RUBLE SEMINARS

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Section 6

Annuities: An Income You Cannot Outlive

THE NATIONAL ALLIANCE
for Insurance Education & Research

ANNUITIES:

AN INCOME YOU CANNOT OUTLIVE

By

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What is an Annuity?

The term "annuity" derives from a Latin term meaning "annual" and generally refers to circumstances where principal and interest are liquidated through a series of regular payments made over a period of time. It can also be used as a long-term savings plan that can be used to accumulate assets on a tax-deferral basis for retirement and then liquidate over a period of time. It is a contract between a person (or trust) and an insurance company.

- Life Insurance provides financial protection against the risk of dying prematurely. (Rate based on mortality)
- An annuity provides financial protection against the risk of living too long and being without income during retirement. (Payout based on mortality) (Actually, called morbidity)

Although annuities are investment contracts rather than insurance policies, they typically contain insurance features such as death benefits and minimum guarantees.

Phases of an Annuity

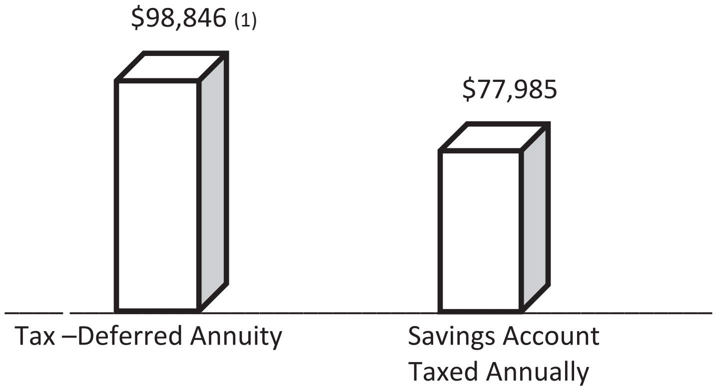
- **Accumulation Phase** (**Savings**) – Annuity premiums, less any applicable charges, accumulate in the contract on a tax-deferred basis until the annuity starting date (payout). (Premiums and Interest Grow)
- **Distribution Phase** (**Withdrawal Phase**) (**Payout Phase**) (**Income Phase**) – The time the value of the annuity is converted into a stream of income.

Two Main Objectives of an Annuity

1. **To accumulate assets (retirement assets) on a tax-deferral basis)**
   (*If you are already contributing the maximum to an employer-sponsored retirement plan and/or an IRA and want to save more money this may be an option for you!)*
2. **To convert assets (retirement assets) into a stream of income you cannot outlive.**
   (Annuities also provide a unique death benefit)

The Power of Tax Deferred Annuity Growth in Action:

Because of tax-deferral, your funds have a chance to grow more quickly than they would in a taxable investment.
20 Year Results, $2,000 Annual Contribution, After Taxes, 8% Hypothetical Annual Rate of Return, 25% Income Tax Bracket



(1) This is a hypothetical illustration. If the annuity is surrendered at the end of the 20th year, the principal amount remaining after payment of the income taxes is **$84,134.**

Other Objectives Provided by an Annuity

1. **Discipline to Save** - Regularly-scheduled payments to an annuity (deferred annuity) can help to form the "savings habit."
2. **Saving to Spend** - An annuity is designed to satisfy longer-term financial needs, such as retirement. Withdrawals of annuity earnings before age 59 ½ are subject to income tax and a 10% penalty tax. Also, the insurer may charge a surrender penalty for early withdrawal.
3. **Income Taxes** – Earnings on money contributed to an annuity growth on a tax-deferred basis.
4. **Longer Life Expectancies** – At retirement, the funds accumulated can be converted into an income that cannot be outlived.
5. **Inflation** – A flexible premium deferred annuity allows you to increase your contributions as your income grows. In addition, a variable deferred annuity or a fixed indexed annuity offer the potential to keep pace with inflation.
6. **Creditor Proof** – In many states, their life-insurance status shields the investment from attachment in litigation.
7. **Default Protection** – In many states the investment account is protected from insurance company default or bankruptcy by the "State Guaranty Fund." (Ranging from $100,000 to $300,000).

General Ideas About an Annuity – Time the accumulation period to end about the time that retirement begins. At that point, earned employment income is not coming in anymore, so it is time to stop saving and accumulating money and to start distributing the money you have accumulated. The classical game plan is to distribute the money in the form of regular, level payments that last for the remainder of their life. Distributions can also be arranged to go to a surviving spouse for the rest of their life as well.

Parties to an Annuity

1. **Insurance Company:** The issuer of the annuity.
2. **Policy owner:** The individual or entity that contributed the funds. They typically have the right to terminate the annuity, to gift it to someone else, to withdraw funds from it, and to change the annuitant or the beneficiary.
3. **Annuitant:** The individual whose life (mortality) is used to determine the payments during annuitization (payout phase). (May or may not be the same person as the owner.
4. **Beneficiary:** The individual or entity that receives any proceeds payable on the death of the annuitant. (*Do not name estate.)*

The History of Annuities

How many financial instruments can claim the awesome, time-tested power of the annuity? Available for more than 2,000 years, the annuity has proven itself to be one of the oldest, most enduring, and historically dependable financial tools on earth.

Yet the annuity has meant so much more to the ongoing development of humankind. Throughout the centuries, the annuity has been the financial key to the development of our modern world.

A historic builder of monuments, defender of nations and citizens across the globe, the annuity of today is widely acknowledged as the fundamental financial cornerstone for everything from the large estates to the modern retirement portfolios.

Yet, few are aware of the contribution the annuity has made to the history of the world. Few appreciate the role of the annuity in forming the political and economic shape of the planet as we know it today.

Rome

In ancient Rome, speculators sold financial instruments commonly known as **"annua."** Translated to today's terms, annua meant "annual stipend," or annual payout, which still applies to the annuity today. Like so many other incredible innovations coming out of ancient Rome – the aqueducts, the Roman arch, the infrastructure of the Roman Coliseum – the Roman 'annua,' or annuity remains a fundamental block for the financial security of industrial and government retirement program, families, estates, and individuals alike.

Annuities in Roman times work fundamentally the same as today's more sophisticated annuity. A Roman annuity buyer made a lump sum payment. In return, the buyer received a contract that promised a fixed payment every year for his natural life. In ensuing years, annuities were modified to allow for enhanced payments for a specific period of years, called terms.

Historians believe an ancient Roman named Domitius Ulpianus was the first annuity dealer on earth. We know that Ulpianus helped create the first version of today's actuarial table, which tried to calculate the probability of human life expectancy at the time. Records show that Ulpianus and his life table calculated the eventual value of an estate, on behalf of the beneficiaries of the decedent who purchased the annuity for his survivors.

For those in the annuity industry, imagine Ulpianus' life table in action. He very likely would have used his life table to make annuity sales presentations, similar to annuity and life insurance presentations today. Ulpianus and his staff would have used basically the same computations to ensure a safe, dependable level of income for his clients!

Middle Ages

We often mistake the "Dark Ages," or Middle Ages, as barbaric period of war and pestilence, a time devoid of progress and innovation. Yet there were exceptions to that perception. While the Middle Ages were marred by near-constant war, revolution and civil conflict, rules of the time could remain in power only through the financing of armies to protect the people they ruled.

During the Middle Ages, the expense of war led to widespread adoption of creative financing vehicles, one of the most popular being the annuity. The annuity was used by kings, queens, and governments throughout the history of the world to finance armies and build arsenals for war. The annuity was the financial powerhouse enabling England and other nations to defend their borders and to expand colonize the world.

After many exhaustive and costly years of was against France, England reportedly created a financial instrument similar to the annuity. Called the State of Tontine of 1693, historians still debate the creation of the first tontine, but this instrument was one of the first types of group annuity. It essentially acted like today's single-premium life annuity,

Detailed records show individual citizens buying into tontines, or special annuity pools. In exchange for an initial lump sum payment of say 100 pounds (a considerable sum at the time), purchasers received an annuity – and annual stipend – for a lifetime. They could also give their annuities to others, by will or deed, for the lifetime of the survivor.

The amount of the annual stipend, or annuity, increase each year for the purchaser's survivor, as he or she received annuity-pool payouts that otherwise would have gone to the deceased. As each nominee/survivor died, the remaining pool of cash was evenly distributed to an ever-shrinking number of nominees. As a result, annuities for remaining survivors grew larger and larger, until the last survivor received the entire amount of remaining principle.

Since sole-survivor annuity payouts could be quite large, word of these wondrous windfalls spread far and wide. The tontine/annuity grew in popularity because it had all the aspects of insurance with a hint of lotto-style speculation – for the possibility of becoming the sole surviving nominee who won an impressive jackpot of cash.

European Times

The tontine soon gave way to more sophisticated forms of annuity programs. Throughout the 16th century, governments in Holland, England and other European nations chose to issue annuities in place of government bonds. While such annuity contracts still promised a lifetime of payouts to their annuitants, the annuity contract proceeds also began to fund a variety of government programs and construction projects. Annuity proceeds virtually built many of the ancient, enduring buildings and monuments we see today, structures that have withstood the centuries all over Europe.

During the 18th century, a growing number of European governments sold annuities, which gave individual citizens a lifetime of state-guaranteed income. From the 1600s through the 1800s, annuities financed government projects, administrative operations, and the retirement income of select government officials. Some of the earlier versions of annuities were sold at the same, fixed price regardless of the buyer's sex or age. Obvious problems arose with fixed-price annuities for both annuity buyers and providers, leading to more refined computations for payouts and pricing structures, and a growing array of rules, regulations and laws governing annuities.

England

In 18th century England, for example, Parliament enacted an intricate grid of virtually hundreds of annuity-related laws, which further defined the sale of annuities and the efforts they would fund. Wars were one obvious recipient, yet annuities went on to do much more, even helping to provide an annual allowance for England's royal family.

Through a series of Acts of Parliament, annuities became the interwoven fiber of English financial law, part of the funding statues of the royal realm. From the Middle Ages of Anglo-Saxon England to modern-day living in London, annuities have thus been an ongoing component in English life and the law.

Detailed recordings of annuities and related Acts of Parliament first appeared in published form as early as 1483. These were bound in Parliamentary volumes of legislative sessions, dating back to the reign of King Richard the III and the first sitting of Parliament. While historians note the extreme rarity of such session recordings, prior to 1713, eight such early volumes do exist today in the Library of the House of Lords. The volumes attest to the existence and vital importance of annuities, the scarcity of volumes due to the high cost of print and the proprietary nature of content. These volumes were meant for the exclusive use of judges, members of Parliament and other high-level government officers. Yet a precious few have survived, and in these volumes – now carefully maintained in certain libraries and museums – details of annuities and related law abound, in considerable detail.

Historic documents show Acts of Parliament relating to the issuance of annuities dating back to 1702. Granting the government's right to fund ongoing war through the sale of annuities.

Acts of Parliament relating to annuities occur frequently, and again in copious detail, throughout the reign of Queen Ann, specifically during the period from 1701 – 1714, and through the reigns of King George I, King George II, King George IV.

Parliament continued to define and regulate the sale of annuities through the successive reigns of King William IV, from 1830 to 1837, and throughout the reign of Queen Victoria, from 1837 to 1901.

Even the great Bank of England owes a debt of gratitude to the annuity. In 1693, when the English Parliament created the first charter for the Bank of England, the bank would be funded, in part, by the sale of certain shares, which promised a fixed rate of return each year. Sound familiar? Putting it another way, what stock or security would promise a fixed rate of return? While historic records use the term ‘share’ or ‘stock,’ these ‘shares acted much like the ‘immediate annuity’ of today. Early Bank of England certificates indeed use the word “Annuity” at the top of each document issued to the purchaser.

In later years, the Bank of England certificates replaced the term ‘shares’ with the more familiar term ‘annuity,’ further refining annuity products and features, as providers do today. And because interest rates changed routinely with economic conditions, annuities changed repeatedly with the times. Yet four basic periods mark the evolution of the annuity during the 100-year period between 1780 and 1880. During that era, the English created Consolidate Annuities, Navy Annuities, Reduced Annuities and the notorious, albeit short-lived, New Annuities.

During the aforementioned 100-year period of change, the British national debt continued to grow. Colonies were added and related conflict continued to escalate as the British Empire spread to all corners of the globe. The promotion and sales of annuities flourished as a result, with Parliament ever dependent upon such a win-win money raising instrument. Yet the ever-growing variety of annuities, and variable rates of interest, caused a great deal of confusion.

As early as 1751, Parliament enacted a radical consolidation of securities into one, single issue. The instrument carried a fixed 3% annual rate, which lawmakers dubbed the “Consolidated Annuity.” Others dubbed it the ‘perpetual bond’ or ‘consol,’ which had no maturity date and was redeemable at any time deemed appropriate by the British government.

Consolidated annuities caught on and were widely respected as a solid retirement instrument, providing guaranteed income for elderly citizens of the realm. The Consolidated annuity became so popular, in fact, that during the late19th century, and well into the 20th century, this instrument represented more than half of England's national debt!

During the latter half of the 19th century, the British government introduced the "Three Percent Reduced Annuity," or simply the "Reduced Annuity," which allowed the government to borrow money at lower interest rates in other markets. These annuities were so popular and pervasive in their heyday that criminals attempted to forge their own names on Reduced Annuity Certificates. Most unfortunately for culprits, English law in that era carried the death sentence for Reduced Annuity forgery. As a result, many a criminal met the hangman's noose in Old Bailey and Newgate Prison.

In the midst of it all, for an 11-year period from 1810 to 1821, the indebted English Navy issued annuities of its own to balance the ledger. These were hot commodities, indeed, because the Navy Annuity carried relatively high interest rates – up to 5% - fostering a ready popularity for this short-lived instrument. Naval commanders and others used the proceeds to buy needed materials and the so-called The "Navy Five Per Cent' became pervasively, popular; it even found its way into English literary novels. In one chronicle, a crew member for the famed Captain Cook is shown to will a portion of "Navy Five Per Cents" to his survivors.

Another annuity of the period, and by far the most controversial, came in the form of the British "New Annuity," which attempted to carry a lower rate of return on the former Navy Annuity. In 1823, probably hoping to correct a deal too good to be true, the British government lowered the New Annuity from 5% to 4%. The resulting public outcry probably rattled the windows of Westminster Abby.

Avid readers of Charles Dickens and other period authors know the popularity of annuities in upper tiers of English society of the day. Aristocrats and wealthy merchants knew annuities could protect them from a humiliating descent into poverty, which was common among investors in other markets, and equally common high born 'wagerers' willing to gamble away family fortunes at the ever-fashionable gaming tables. Without the protective power of annuities, even the lofty echelons of royal gentry were at financial risk.

America

Yet, despite the traditional British-Continental love affair with annuities, early Americans were slow to adopt the time-honored savings tool. Founded as early as 1758, on the eve of the American Revolution, one of the first known American annuity producers began as the Corporation for the Relief of Poor and Distressed Presbyterian Ministers and Distressed Widows and Children of Ministers. The company provided annuity payouts for the survivors of deceased ministers.

As the War of 1812 began to rage, a Pennsylvania company opened its doors to offer annuities and life insurance policies: The Pennsylvania Company for Insurance on Lives and Granting Annuities. For the first time in American history, anyone could purchase annuities through PCIIGA but a relative few seized the opportunity.

Although annuities have been sold and managed in the USA for more than 200 years, life insurance policies would outpace annuities through the remainder of the 19th century. Extended American families cared for their elders in retirement, making the annuity's guaranteed income seem less important than today.

As times changed, beginning around the turn of the last century from the 180s through the 1920s, American families became less multi-generationally focused. They might not live near one another, in a centralized geographical area. As families began to drift and spread into a more modern, mobile society, annuities began to appear in growing numbers of financial portfolios.

During the early part of the 20th century, the concept of the group annuity took hold, requiring both employee and employer to contribute to employee retirement plans. This type of annuity would add to future retirement income provided through company pension plans, with an overall goal of reaching roughly 50% to 60% of a retired worker's former salary.

Yet the annuity's true popularity would have to wait for an explosive catalyst, one of the greatest economic disasters in global history: The Great Depression.

During this time, Americans were suddenly clamoring for stability, asset safety and security. The by-word of the era, during the administration of Franklin D. Roosevelt, was "safe for a rainy day." The annuity served that purpose more than any other saving tool at the time, at a time when banks began to collapse at a catastrophic rate.

One lucky celebrity, baseball legend Babe Ruth, survived the infamous stock market crash of 1929 – thanks to annuities. Urged by business mentor and sports cartoonist Christy Walsh, Ruth put his money into annuities before the crash. As a result, Babe Ruth lived well through the Great Depression, while other celebrities walked the bread lines.

Suddenly everyone followed suit, running to staunch bastions of well-known insurance companies, which offered self-retirement plan alternatives in the form of annuities and life insurance. At the same time, companies and corporations began to see the value of safeguarding employee pension plan through annuities.

Annuities in the late 1930s and early 1940s were comparatively simple, offering a fixed return during accumulation periods, and guaranteed safety and return on principle. Tax-deferral would become a major feature of the annuity, making compounded accumulation all the more attractive. The annuities of that day offered only a few of the features of today's products, but they did offer a fixed, lifetime income when the annuitants were eligible to make withdrawals. Or the annuitant could choose to receive payments over a set number of years.

Then came the advent of the variable annuity. Created in 1952, the variable annuity allowed interest-type earnings based on more speculative financial vehicles in separate accounts. While variable offered certain guarantees of principal, they also posed greater levels of risk for purchasers. In short, variable annuities placed some of a purchaser's earnings at risk through the issuer's involvement in securities and other investments. The variable annuity accordingly acted like an early version of the contemporary mutual fund, which began in popularity through the 1960s, and through several catastrophic recessions, to the present day.

Today, after millions of consumer-level investors have lost trillions in recent markets, annuities have again begun to gain widespread popularity. As fund managers anxiously listen to the rising call for safe-haven, asset preservation in annuities, some have created separate accounts for the annuity premiums of insurance companies. Designed to cater to tax-deferred variable annuities, such accounts may be managed in a different fashion that mainstream mutual fund operations. They may offer the opportunity for higher returns, but they are essentially prone to greater risk than fixed annuities.

Accordingly (and in anticipation of the baby boomer retiree wave soon to come) in the late 1990s and into the 2000s, a new generation of innovative variable annuities begin to emerge – contracts that were intended to provide not just guarantees at death, but also income guarantees during, also known as "living benefit" riders. First came the Guaranteed Minimum Income Benefit (GMIB) riders, followed a few years later by a Guaranteed Minimum Withdrawal Benefit (GMWB) rider, all intended to make a variable annuity more appealing and relevant for retirees as well as accumulators. Notwithstanding the fact that these guarantees could be rather expensive, they remained extremely popular; by the peak in 2007, many variable annuity companies were issuing more than 90%-95% + of all their annuities with living benefit riders.

The financial crisis and the bear market of 2008-2009 presented a big snag for these guarantees. This caused a very low interest rate (obviously still in place), but more importantly many of the annuity contracts became “in the money” for policy owners as the guarantees became more valuable than the annuity cash value. It was that all the annuity contracts became in-the-money at the same time, resulting in a dramatic increase in reserve requirements. This made it impossible to provide annuity guarantees on new contracts at a cost anywhere close to the earlier contracts.

And the variable annuity companies reacted accordingly: 1) no issue of new contracts, 2) limited contribution to current contracts, 3) raised fees for riders, 4) offering buyouts of current contracts with no surrender charges. And the beat goes on!

Regardless of the bedrock security of fixed annuities, or the more risk-oriented nature of the variable annuity, both offer tax-deferred growth and safety of principal. As a result, annuities have been growing steadily in popularity as the American mindset dwells on the post-9/11 effect on Wall Street. (Also, post-9/11 terrorism, catastrophic market corrections, adjustment, borderline market panic and the ever-present threat of a softening, recession-prone economy.)

The combined sale of fixed and variable annuities reached $98.5 Billion in 1985, a paltry figure prior to 1999, when annuity sales soared to $155 billion. Today, annual annuity sales top $200 billion.

Annuities continue to garner larger portions of American Savings, as an ever-cautious generation of Baby Boomers round the last turn into their retirement years. Part of the growth came from other factors, including the Tax Reform Act of 1986, which reduced the ability of Individual Retirement Accounts (IRA) to defer tax liabilities for Investors. IRAs became somewhat less attractive as a result, strengthening the tax-deferred appeal of the annuity.

Since the FDR administration, through Congressional introduction in 2007 of an annuity-related retirement act, Congress has always favored annuities – as governments through the centuries.

Essentially endorsed as the prime vehicle for an economically tumultuous era- the early part of the 21st century – the annuity stood strong with historically proven attributes: safety, liquidity, competitive returns without risk, tax advantages, probate avoidance, Medicaid protection in many states, recession/depression-proof-planning, creditor protection in most states, freedom from1099 reporting, simplicity, flexibility, guaranteed lifetime income, beneficiary benefits and freedom from overall market risk.

As in ages past, annuities still insure against the outliving of personal resources and overspending. Annuities continue to provide a financial cushion for survivors of a pre-mature death. Newer annuities allow for investment-level adjustment without incurring tax liabilities. And the bottom line being most favorable to Congress: annuities promote private savings, which will become more critical in the years to come.

In recent times growing numbers of annuity providers have called for increased professionalism, accountability, and ethical standards in the annuity industry itself – this to insure any isolated allegations of consumer abuse involving the annuity – annuities became an increasingly important component for investor portfolios. This, in turn, made the annuity appear – to certain- interests – ever more threatening to risk-prone speculation.

Yet, even some of the more strident securities advocates have softened about annuities. Bestselling author Suze Ormand wrote favorably (circa 2007) about certain aspects of specific types of annuities, including well-structured index annuities: “In its effort to keep up with mutual funds, “Ormand wrote, the insurance industry yet another kind of annuity in the mid-1990s – the index annuity. It was created to compete with the very popular index funds, mutual funds that track a stock market index. “I have to admit,” concluded Ormand, “I like the concept (of the index annuity) – for the right investors.”

As index annuity sales rose from nothing in 1995 to $13.8 billion in 2005, they still represented only about 8% of total annuity sales, including $42 billion in 2005 sales for traditional, fixed annuities.

While some lamented the increased popularity of annuities during that period, a more conventional wisdom saw obvious stimulants: a recent collapse in the technology sector, increasing caution among baby boomers nearing retirement, and the lackluster performance of the market through 2003.

Life and annuity producers meanwhile continue to heighten self-regulatory efforts across the U.S., having forged a nationwide movement to broadcast the truth about annuities – verses any disinformation generated by risk-promoting securities consultants.

Yet one reality remains with us thus far: with the help of one market decline after another from 2000 through2007, more than $50 billion went out of securities and into annuities … from 2005 to 2007, alone.

By then, millions of investors had had enough. It was time to return to the by-word of the FDR era. It was time to “save for rainy day.”

Historic truth will always remain the best defense for the time-proven, resoundingly honored annuity.

From the height of ancient Roman society to the technological marvels of the 21st Century America, the annuity has changed little over 2000 years. It is, and always will be, the first and last defense for hard-wrought estates and the hard-bought life savings of working people around the globe.

Things change, but the timeless annuity will remain, so long as investors continue to covert the most rare and special commodity of all.

And what would that commodity be? Written into the Iliad and the Odyssey as the Elysian Fields, translated through time as a place called Heaven, humans continue to yearn for that one, precious place in a timeless universe. No matter how we define the name of the place, we would all agree that it would have one essential quality. We call the quality “Peace of Mind.”

With the help of rational thinking, asset preservation and instruments like the annuity, some of us just might find it.

How are Annuities Classified?

Annuities are classified in several ways, including:

- **How premiums are paid**
- **How annuity premiums are invested**
- **When annuity payments begin**

How Premiums Are Paid …

1. **Installment Premium Annuities (Flexible-Premium)**
   - The annuity is paid in installments over a period of time.
   - The installment premiums can either be a **fixed**, scheduled amount or can be **flexible**, meaning that the amount paid can vary (with set contract limits).
   - During the **accumulation** or savings period, installment premiums less any applicable charges accumulate on a **tax-deferred** basis.
   - On the **annuity starting date** (payout) the value of the annuity can be converted into a stream of money.

2. **Single Premium Annuities**
   - The annuity is purchased with a single premium payment.
   - During the **accumulation** or savings period, the single premium, less any applicable charges, accumulate on a **tax-deferred** basis.
   - On the **annuity starting date** (payout) the value of the annuity can be converted into a stream of income.
   - In the case of a **single premium immediate annuity**, the single premium, less any applicable charges, is converted into a stream of income immediately or shortly after the date of purchase.

How Annuities Are Invested …

1. **Fixed Annuities**
2. **Variable Annuities**
3. **Fixed Indexed Annuities**

Fixed Annuities (Fixed Interest Annuities) – pays a **fixed rate of interest** on the premiums invested in the contract, less applicable charges. The insurance company guarantees (based on the claims-paying ability of the issuing insurance company) that it will pay a **minimum interest rate** for the life of the contract.

a. **CD – Annuities** – pay a guaranteed fixed rate of interest for the entire length of the contract (1 year, 3 years, 5 years, etc.). (There is no "excess" or bonus interest rate).
b. **Trust Me Annuities** –pay a guaranteed minimum interest rate for the life of the contract (5 year, 7, years 10 years, etc.) and an "excess" or bonus interest rate, which is guaranteed for a shorter period, such as one year.
c. **Current interest Annuities (**Flexible Interest Annuities) - **pay** a current interest rate set by the insurer based on their investment portfolio that cannot fall below a minimum interest rate for the life of the contract. (5 years, 7 years, 10 years, etc.) Credited interest rate can increase or decrease based on insured wishes, but never fall below the guaranteed minimum interest rate.

Whichever crediting method is used the insurer needs to estimate the benefits it will pay in the future and the money it has available for investment to fund those benefits. Early withdrawals of money worsen the accuracy of its estimates, so it needs to create disincentives for the annuity holder to withdraw their money.

Fixed Annuities are the least risky of annuities because they are invested in conservative, non-stock market investments and you usually do not have input into how they are invested.

Surrender changes are that disincentive. They penalize an early withdrawal by charging the holder a percentage of the money withdrawn. The duration of the surrender charges varies by company and contract, ranging from: CD-Annuities – life of the contract to "Trust Me" or Current Annuities – 4 to 15 years. The percentage might be close to 10 or 12 percent in the first year of the contract, falling drastically in subsequent years

Contract Year	Surrender Charge
1	8%
2	7%
3	6%
4	5%
5	4%
6	3%
7	2%
8	1%
9	Surrender Free

The annuity holder may have an option for taking money out before the end of the surrender penalty. Some contracts allow as much as 10% of the principal value withdraw penalty-free, and sometimes annual interest credited can be withdrawn without penalty as well.

Fixed annuities are conservative investments, like government bonds, and are suitable for older investors nearing or recently entering retirement. They are not suitable for younger investors because their surrender charges make them relatively illiquid and their conservative rate of return makes them ill-suited to a growth-oriented portfolio. Fixed annuities may not be suitable for the truly elderly because surrender charges will penalize withdrawals for daily expenses or emergency purposes.

Fixed annuities may be best suited for individuals who:

- Prefer to reply on fixed rates of return.
- Focus on preservation of assets.
- Want protection from market volatility.
- Prefer to delegate investment decisions and risks to the insurance company.
- Understand that a fixed rate of return may not provide a good hedge against inflation.

Variable Annuities – Premiums less any applicable charges are placed in a separate of the insurance company, where you can invest them in one of more subaccounts (**Ass**et **Allocation**). These subaccounts consist of stock, bonds, money market instruments and other types of investments. The value of a variable annuity is not guaranteed and will vary according to the performance of the **sub-accounts** selected. (They are called sub-accounts to avoid confusion with mutual funds as both are managed by investment professionals) {Can provide greater returns than fixed annuities, but also have greater risk and require you to be more involved.}

- **Stock**: May include: aggressive growth, focusing on high risk/high return stocks; domestic (U.S. Corporations) or global and international stock, with equity investments from around the world; and specialty (sector), emphasizing a particular industry or segment of the economy.
- **Bonds**: May include: corporate bonds; government bonds; and global or international bonds from around the world.
- **Balanced**: Includes a blend of stocks and bonds.
- **Precious Metals**: Includes gold or silver directly; mining companies.
- **Money Market (Short Term)**:Include extremely high-quality short-term debt
- **Fixed Account**: The insured guarantees a specific rate of return, for a period of time.

The annuity holder assumes full responsibility for directing the investment performance of the annuity's account. The purpose of giving the annuity holder more responsibility and more choices is to enable them to try to earn even larger investment returns than those associated with fixed annuities.

Variable annuity contracts normally allow the annuity holder to change the makeup of the investment portfolio without charge, but there may be a limitation on the number of times this option may be exercised. These changes are made without tax consequences.

Variable annuity investments can-accumulate tax-deferred because they are life-insurance products. One feature of a variable annuity is the option to designate a beneficiary for a death benefit that would, at a minimum, equal the value of contributions made less any withdrawals made prior to the holder's death.

The other side of the coin is that variable annuities have the same management-related expenses as mutual funds, plus insurance related expenses that mutual funds do not have.

Variable Annuity Features to Help Reduce Market Risk:

> **Professional Management** – The subaccounts are managed by investment professionals.
> **Dollar Cost Averaging –** Rather than trying to time the market, you invest a specific amount of money at regular intervals, regardless of market conditions. This way you purchase fewer shares when markets are high and more shares when markets are low, resulting in a lower overall price.
> **Diversification –** Rather than "putting all your eggs in one investment basket, each Variable annuity subaccount is diversified among a variety of investments. In addition, you have the opportunity to further diversify by investing in multiple subaccounts.
> **Asset Rebalancing –** Many variable annuities offer a feature that automatically maintains your original asset allocation strategy by periodically reallocating your annuity assets based on your original investment mix (Asset Allocation).
> **Death benefit –** see below.

(Please note that none of the above does not assure a profit nor guarantee against a loss in a declining market.
**Before purchasing a variable annuity contract, carefully consider the contract and the underlying funds' investment objectives, risks, charges, and expenses. Both the contract prospectus and the underlying fund prospectuses contain information relating to investment objectives, risks, charges, and expenses, as well as other important information. The prospectuses are available from your licensed financial representative or the insurance company. You should read them carefully before purchasing a variable annuity contract*.

Contract Fees and Charges: Variable annuities are subject to: charges for investment management, paid to the manager of the investment sub-accounts; administrative and mortality risk charges to cover the insurer's basic expenses, as well as the cost of the guaranteed death benefit; and the surrender charges if withdrawals in excess of a certain amount are made or contract surrendered.

Other Variable Annuity Contract Provisions:

- **Guaranteed Death Benefit:** If an annuitant dies before annuity payments began, the contract will pay the named beneficiary the greater of the investment in the contract (less any withdrawals) or the contract value at the date of death.
- **Enhanced Death Benefit:** This feature provides that upon death of the annuitant, the beneficiary will receive the greater of the account's value on the date of death, or the original principal (plus any additions) compounded at 5% per year.

Surrender charges and partial Surrender Free Withdrawals work the same as with Fixed Annuities.

Variable Annuities May Be Best Suited for Individuals who:

- ➢ Prefer to Invest in equities.
- ➢ Want to make their own investment decisions.
- ➢ Understand that assets can decline in value.
- ➢ Are willing to assume the risk of loss of principal for the possibility of greater asset growth and a stronger hedge against inflation.

Fixed Indexed Annuities (Hybrid Annuities) – An indexed annuity has characteristics of both a fixed annuity and a variable annuity. Similar to a **variable annuity**, the insurer pays a rate of return on the annuity premiums that is tied to a stock market index, such as the Standard & Poor's 500 Composite Price Index. Similar to **fixed annuities**, indexed annuities also provide a minimum guaranteed interest rate, meaning they have less market risk than variable annuities. An investment in an indexed annuity is not a stock market investment. Instead, the rate of return is linked to the performance of a specific group of stocks. Since the minimum guaranteed interest rate is combined with this the interest rate linked to the market index, indexed annuities have the potential to earn returns better than fixed annuities.

If the market index does not rise sufficiently, or even declines, the lower minimum rate is credited. The owner is guaranteed to receive back at least all the principal if the contract is held until the surrender period ends. (Some of these surrender periods can be lengthy.)

Any interest payable in excess of the minimum guaranteed interest rate is determined by a variety of contract features, including:

- **Indexing Method**: There are different methods used to determine the change in the relevant indexed over the period of the annuity. The indexing method will impact the amount of interest credited to the contract.
  - **Participation Rates**: How much of the gain in the index will be credited to the indexed annuity. If, for example, the indexed annuity has an 80% participation rate, the annuity will be credited with only 80% of any gain experienced by the index.
  - **Spread/Margin/Asset Fee**: If for example, the indexed annuity has a 3% spread/margin/asset fee and the index gains 9%, the interest credited will be 6%.
  - **Interest Rate Cap**: Some indexes contain a cap or upper limit on the amount of interest that can be earned. For example, if the cap rate is 10% and the index linked to the annuity gains 12%, only 10% will be credited to the annuity.
- **Index Credit Period:** Amounts are credited to a contract at specific points in time. The most common are:
  - **Annual Reset**: Measures the change in the market index over a one-year period.
  - **Point-to-Point:** Very similar to Annual Reset, but usually longer the one-year.
  - **Monthly High Watermark with Look Back**: At the end of the year, the annuity will look back and credit the highest gain at the end of each month. (30 days)
  - **Monthly Averaging with Look Back:** Same as Monthly Look Back, but at the end of the year the annuity looks back to each monthly gain/0% (if loss) and credits the average of the 12 numbers.

Surrender Charges and Partial Surrender Free Withdrawals work the same way as with Fixed Annuities.

Fixed Indexed Annuities May Be Best Suited for Individuals who:

- Are averse to risk.
- Understand that a rate of return linked to stock market performance provides the potential for higher returns than fixed annuities, together with the risk of losing money if the indexed annuity is surrendered while a surrender charge is in effect.
- Prefer to delegate investment decisions to others.
- Want less market risk than with a variable annuity.

Annuity Comparisons

	Fixed Annuities	Variable Annuities	Indexed Annuities
Minimum Guaranteed Return	**YES** 1	**NO** 2	**YES** 1
Choice of Investment Options	**NO**	**YES**	**NO**
Opportunity to Earn A Higher Return	**NO**	**YES**	**YES**
Possibility of Losing Principal	**NO** 1	**YES**	**Maybe** 3
Tax-Deferred Growth	**YES**	**YES**	**YES**
Minimum Death Benefit	**YES** 1	**YES** 1	**YES** 1

1 Subject to the claims-paying ability of the issuing insurance company.
2 Unless 100% of premiums are placed in a guaranteed fixed interest subaccount.
3 It is possible to lose principal while a surrender charge is in effect.

When Annuity Payments Began…

Deferred Annuities: There are a number of ways that money may be withdrawn or received from a deferred annuity

- **Lump-Sum Withdrawal:** A policy owner can withdraw all of the funds in a single lump sum. Such a withdrawal is considered a surrender of the policy and the annuity ends. (If done early, could be subject to surrender charges.)
- **Partial Withdrawal (Systematic Withdrawals):** A policy owner may withdraw a certain portion of the balance each year. Some policies allow withdrawals of the interest earned at certain intervals each policy year with no surrender charge. Most policies have a 10% to 15% withdrawal once a year without a surrender charge.
- **Annuitization:** A policy owner may convert the value of their annuity into a lifetime stream of payments for a fixed period of time. They include:
  - ➢ **Life Income (Life Only):** Payments are made as long as the annuitant is alive. Payments cease at the annuitant's death. This option produces the maximum guaranteed lifetime income, however if the annuitant dies no refunds are made ever if the total investment has not been recovered.
  - ➢ **Life Income With Period (Term) Certain:** Payments are made as long as the annuitant is alive. If the annuitant dies before the specified period (term) has passed, annuity payments continue to a beneficiary for the remainder of the term.
  - ➢ **Life Income with Refund Guarantee:** Payments are made as long as the annuitant is alive. If the annuitant dies before payments equal to all or a specified portion of the total investment has been received, the designated beneficiary receives the balance of the money either in a lump sum or in specified payments up to the guaranteed amount.

- **Joint-and-Survivor**: This payout covers two lives. The same payment can be received as long as either of the two annuitants is alive, or alternately, at the death of the first annuitant with the payment to the surviving annuitant reduced to a specified percentage (e.g., 75%) of the payment received while both annuitants were alive.
  (A joint-and-survivor payout can also be for a period certain.)

Some companies offer additional flexibility – **so ask!**

Annuitization leaves nothing to the next generation. Stay Tuned!!

Immediate Annuities:

- An immediate annuity has only one phase**: The Distribution Phase (The Income Phase)**
- The single premium used to purchase an immediate annuity is converted into a stream of income **immediately** or shortly after the date of purchase.

An immediate annuity is a contract between an individual and an insurance company. In exchange for a single, lump-sum premium, the insurance company agrees to begin paying a regular income to the purchaser for life or a period of years. (See Annuitization above) The periodic payment amount depends on a number of factors.

- **Premium Paid**: Generally, the larger the premium payment, the larger the income stream.
- **Age**: Older individuals typically receive larger periodic payments.
- **Payout Period Selected**: A shorter payout period usually results in a larger payment.
- **Underlying Investment Medium**: Generally, a fixed annuity, rarely, a variable annuity.

Immediate Annuity Buyers: Two characteristics distinguish the purchaser of an immediate annuity: desire for regular, lifelong income payments and desire to begin those payments as soon as possible.

- **Retirees**: Individuals who are just retired and whose risk tolerance is heavily weighted toward security.
- **Beneficiaries of Structured Settlements** (**Liability Lawsuits**): The terms of the settlement typically require payments to replace lost income or lost wages that would otherwise have been realized over the years; moreover, this replace income must be provided with as much certainty as the legal system can deliver. The defendant is ordered by the court to purchase the annuity in an amount to fulfill the plaintiff's damage claim.

Federal Income Taxation of Immediate Annuities: Because immediate annuities are purchased with after-tax dollars, the income received is pro-rated between ordinary income which is taxable, and a return of principal, which is not taxable. This calculation considers your life expectancy and the amount of each payout. (No penalty if under age 59 ½.)

Qualified vs. Non-Qualified Annuity: Deferred annuities can either be qualified or non-qualified. The difference is how the tax structure works and what contributions are allowed. Both are regulated by the Internal Revenue Service

- **Qualified Annuities:** These are formal IRS-regulated retirement savings plan such as IRAs, 403(b) s, 457s. Qualified annuities have annual contribution limits. The amount contributed is deducted from the annual gross income and all the money grows deferred in the annuity (**PRE-TAX).** When funds are withdrawn from qualified annuities, the entire distribution is added to income for the year (Pre-Tax Premium + Interest Earned) because the funds have never been taxed. (ROTH IRA is the exception.)

- **Non-Qualified Annuities:** These are not formal plans, serving strictly to supplement other retirement savings sources. They have no income or contribution limit set by the IRS. Some insurance companies may have contribution limits (minimum initial investment, total investment limit e.g. - $1 million. They do not get a tax deduction on income for contributions made (**AFTER-TAX).** All assets grow tax deferred and contributions are never tax again. Only earnings are added to income

How are Tax-Deferred Annuities Taxed?

- **During the Accumulation Phase:**
  - ➢ Earnings credited on the funds are tax-deferred, meaning they earnings are not taxed while they remain in the annuity.
  - ➢ Withdrawals are treated withdrawals of earnings to the extent the cash value exceeds the total premiums paid and are taxed as income in the year withdrawn. To the extent a withdrawal exceeds any earnings, that portion of the withdrawal is considered a non-taxable return of principal.
  - ➢ In addition, a 10% penalty tax may be imposed on withdrawals made before age 59 ½, unless certain conditions are met. The penalty tax is in addition to the regular income tax withdrawal.
  - ➢ If the annuitant dies during the accumulation phase, the value of the deferred annuity is generally included in the annuitant's estate.
- **During the Income (Distribution) Phase**:
  - ➢ The annuity purchase price is returned in equal income-tax-free amounts over the expected payment period (based on annuitant's life expectancy).
  - ➢ The portion of each payment in excess of the tax-free return of the purchase price is taxable in the year received.
  - ➢ In summary, a portion of each annuity payment is received income tax free and the balance is taxable as received.
  - ➢ At the annuitant's death, the present value of any remaining annuity payments due is generally included in the person's estate.

(Most contracts state a date [Maturity Date} when you must begin to receive income payments ({Distributions}}.

Annuity Riders:

Living Benefit Riders (Available in some Variable and Fixed Indexed Annuities)

- **Guaranteed Minimum Withdrawal Benefit (GMWB):** This rider guarantees that regardless of stock market or index performance, all of the principal invested in the annuity will be returned to you through withdrawals of a fixed percentage of the principal over a specified period of time until the entire original investment has been returned to you. Some GMWB riders are guaranteed to pay a fixed percentage for life even if the original investment is depleted. GMWB offers income that is:

  - **Predictable**: If there is a delay taking income, the guaranteed rate of return will grow, regardless of market performance with annual deferral credits.
  - **Sustainable:** Many guaranteed an income for life.
  - **Potentially Increasing**: Market participation allows you to lock in gains which may increase annual withdrawals.

- **Guaranteed Minimum Income Benefit (GMIB):** After a vesting period such as ten years the rider guarantees a minimum income benefit, regardless of market performance. If the value of the contract grows, the stream of income may be higher, but it can never be lower than the guaranteed amount.

- **Guaranteed Minimum Accumulation Benefit (GMAB):** Guarantees that after a specified number of years, typically 10 years, the value of the annuity will be equal to or greater than the guaranteed accumulation amount.

(These living benefit riders are optional, require payment of an additional fee, and the guarantees are based on the claims-paying ability of the issuing insurance company. Be sure to carefully read prospectus or provided literature before purchasing a living benefit rider.)

The Reality of the Guaranteed Minimum Withdrawal Benefit:

The **GMWB** provides both protection and flexibility. It allows one to maintain control over their money while also providing the opportunity to create predictable and sustainable withdrawals for life, even if the account value suffers market losses, as long as they stay within the specified withdrawal limits of the rider.

- **Income for Life** – Annual percentage lifetime withdrawals for life are guaranteed. Most have a starting point of age 59 ½ to avoid any tax penalties. (e.g., Single life – 4%, Dual life – 3.75%)
  Some companies stair-step the guarantee:

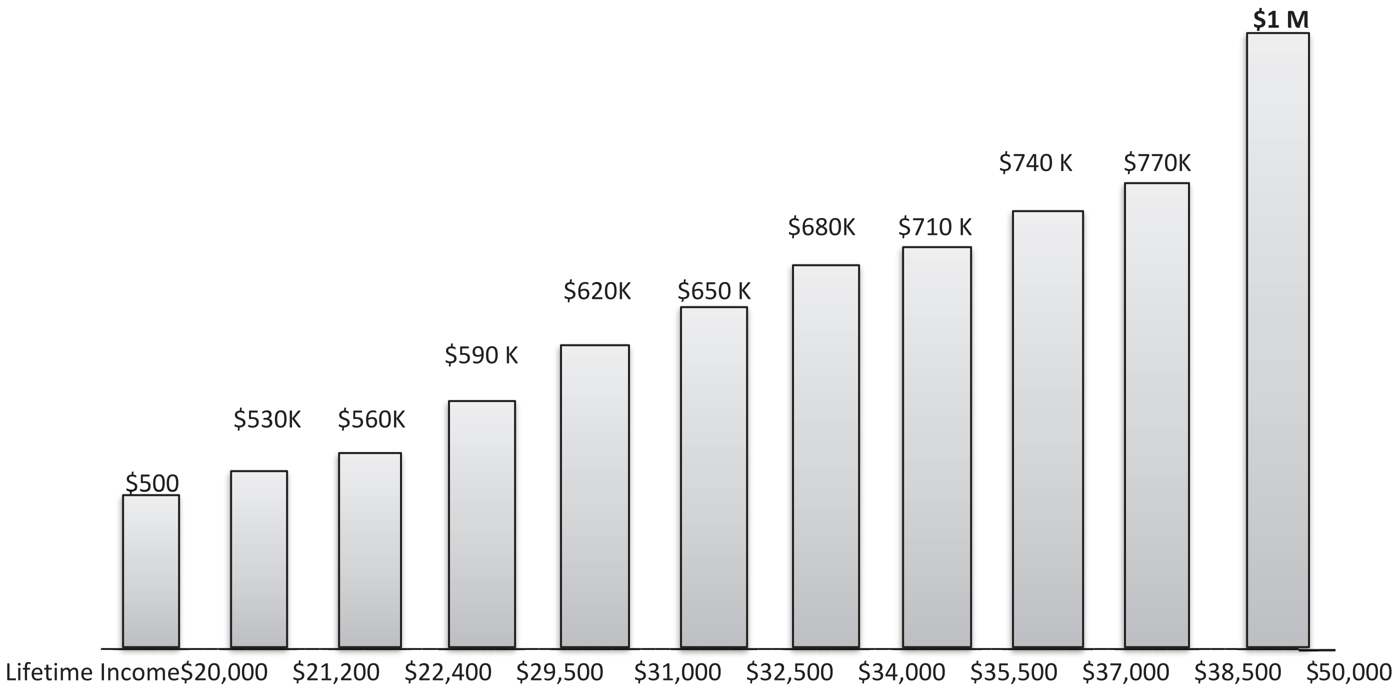
  SINGLE LIFE

Age	Guaranteed Withdrawal Percentage
< 65	4%
65-70	5%
71-75	5.5%
76-80	6%
>80	6.5%

  Most companies keep you at the chosen interest rate for life. A few allow you to step up to the next level when you attain the next age bracket.
- **Withdrawal Delay Increase Benefit Base** – A deferral credit will increase the income benefit base by a guaranteed percentage (e.g., 5%) in any contract year you do not take a withdrawal. The rider may also say, you are eligible for ten deferral credits, and you will receive ten additional credit opportunities anytime your base **steps up** until a given age (e.g., 95). (The longer you wait to take income withdrawal the more income base you have.)
  (**Step Up** – *occurs when the account value increases more than the deferral credit.)*

Leave On	**Live On**
(Account Value)	**(Income)**

The illustration below is based on a $500,000 initial investment. Withdrawal percentages are not cumulative from year to year. Benefit base is only used to determine the withdrawal (income) amount. The Annuitant is age 62. GMWB – 6%



- Higher Income When Markets Perform Well – At each annual contract anniversary, the contract will be reviewed. If the account value has increased the income benefit can step up to equal this anniversary value, adjusted for additional payments and withdrawals. This becomes the income benefit floor.

Scenario One Delay Taking Income

($500,000 Investment)	Account Value	Income Benefit Base	5% Lifetime Monthly Withdrawal
Year 0 -	$500,000	$500,000	$2083.33
Year 1 – market gains 12%	$560,000	$560,000	$ 2333.33
Year 2 – market loses 12%	$493,800	$583,600	$2431.60
Year 3 – market gains 8%	$532,234	$618,616	$2577.56
Year 4 – market loses 8%	$489,646	$655,732	$3732.22
Year 5 – market gains 2%	$499,438	$695,075	$2896.15

Scenario Two Immediate Withdrawal

($500,000 Investment)	Account Value		Immediate Withdrawal Benefit Base	5% Lifetime Monthly Withdrawal
Year 0	$500,000		$500,000	$2083.33
Year 1 – market gains 12%	$560,000			
	- $ 25,000			
	$ 535,000	(7%)	$535,000	$2229.16
Year 2 – market loses 12	$470,800			
	- $ 26,750			
	$444,050		$535,000	$2228.16
Year 3 – market gains 8%	$479,574	(3%)	$551,050	$2296.04
	- $ 26,750			
	$450,224			
Year 4 – market loses 8%	$414,206			
	- $ 27,552			
	$386,654		$551,050	$2296.04
Year 5 – market gains 2%	$394,387			
	- $ 27,552			
	$369,835		$551,060	$2296.04

(For Illustrative Purposes Only)

Real World Uses of Annuities:

- **Retirement**

  How Long Can You Expect to Live After Retirement

Male Life Expectancy		Female Life Expectancy	
Current Age	Life Expectancy (in years)	Current Age	Life Expectancy (in years)
60	20.64	60	24.08
61	19.85	61	23.27
62	19.06	62	22.47
63	18.29	63	21.68
64	17.54	64	20.90
65	16.80	65	20.12
66	16.08	66	19.36
67	15.37	67	18.60
68	14.68	68	17.86
69	13.99	69	17.12
70	13.32	70	16.40
71	12.66	71	15.69
72	12.01	72	14.99
73	11.39	73	14.31
74	10.78	74	13.64
75	10.18	75	12.98

(Source: 2001 Commissioners' Standard Ordinary Mortality Table; based on composite date {combination of smokers, nonsmokers, and smoking status unknown; age nearest birthday)

With longer life expectancies comes the increase risk of outliving your retirement income!

How Long Will Your Retirement Savings Last?

If You Withdraw Both Principal and Interest, How Long Will IT Take to Exhaust a $250,000 Retirement Savings Fund?

Rate of Return	Amount Withdrawn at the Beginning of Each Month: $2,500	$5,000	$7,500
4%	121 monthly payments (10 years, 1 month)	54 monthly payments (4 years, 6 months	35 monthly payments (2 years, 11 months)
6%	137 monthly payments (11 years, 5 months)	57 monthly payments (4 years, 9 months)	36 monthly payments (3 years)
8%	163 monthly payments (13 years, 7 months)	60 monthly payments (5 years)	37 monthly payments 3 years, 1 month)
10%	211 monthly payments (17 years, 7 months)	64 monthly payments (5 years, 4 months)	38 monthly payments (3 years, 2 months)

If we knew how long we were going to live after retirement, this arrangement might be satisfactory. The reality, of course, is that none of us know how long we are going to live after retirement. This uncertainty is what makes it difficult to avoid the risk of outliving retirement.

This main purpose is to protect against the financial risk of living too long…the risk of outliving retirement income…by providing an income guaranteed for life. In fact, it is the only financial vehicle that can systematically liquidate a sum of money in such a way that income can be guaranteed for as long as you live.

- **Retirement Concepts Using Annuities**:

  - **Accumulation Annuity** – purchase an annuity at as early an age as possible and let it grow. (This can supplement other retirement plans.) At retirement exercise the most advantageous available withdrawal method.

  - **Immediate Annuity** – Using a single premium (hopefully a large one) purchase an immediate annuity and exercise the most advantageous available withdrawal method.

- **Transfer Annuity –** Rollover money from an existing account (qualified = transfer; non-qualified = rollover {both are forms of a 1035 exchange) into a more preferred annuity and exercise the most advantageous available withdrawal method.

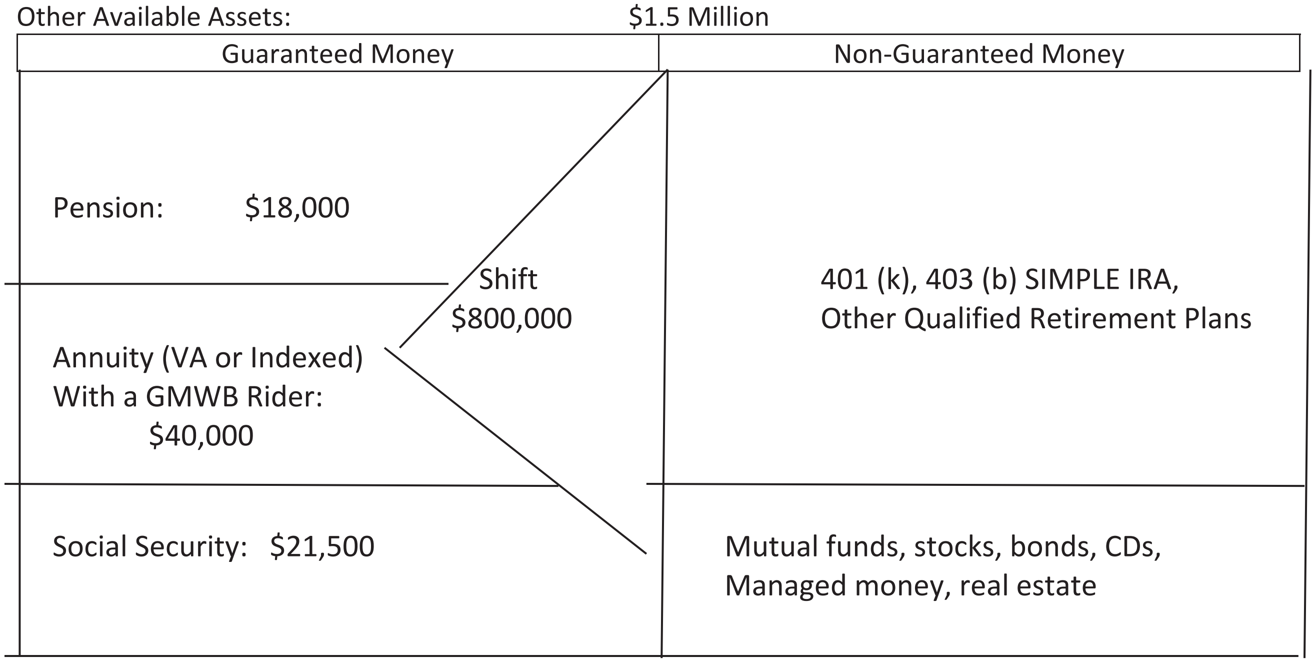
- **Guaranteed Minimum Withdrawal Benefit** – In the real world the **GMWB** is more than just an annuity rider. It is a method of getting a guaranteed income for life and passing on whatever is left.
  a. Could be used for the entire retirement amount.
  b. Could supplement other retirement sources.

Guaranteed Money – Yearly Income you receive for the rest of your life regardless of how the market performs.
<u>Social Security and Pensions</u>

Non-Guaranteed Money – Assets that may fluctuate and more importantly will only pay you until they run out of money.
<u>Everything Else</u>

GMWB in the Real World

Jon Hill: 60 years old Total Income Need: $80,000 Annually
Social Security & Pension Benefits: $40,000 (combined)
Other Available Assets: $1.5 Million

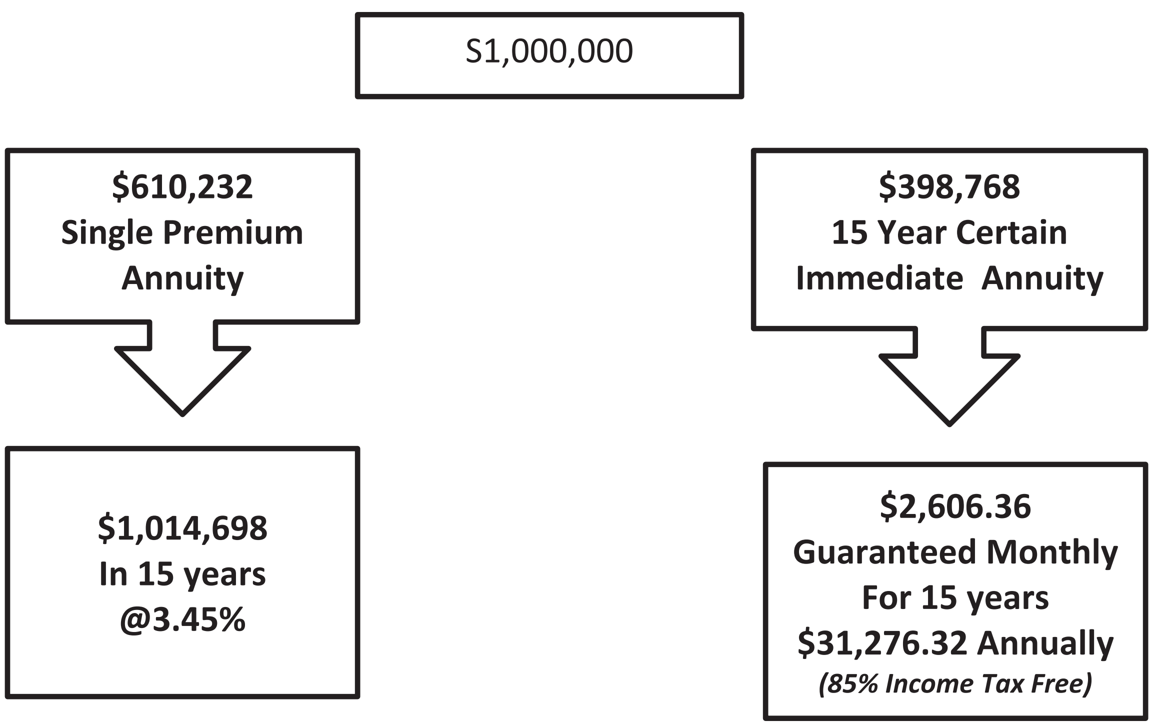


➢ **Split Annuity –** This is a concept of combining two annuity plans; a single-premium immediate annuity and a single-premium tax-deferred annuity. This concept is well structured to provide an immediate assured income for a certain period of time (seven to fifteen years) and to assure the protection of the original principal at the end of the time period. (Depends on the amount of premium, current interest rates and the terms of the contract.

There is a tax advantage because a considerable part of the income taken from the immediate annuity is a return of premium.

Actual Proposal: Male age 44, $ 1,000,000, uninsurable, no kids, does not want GMIR, only wants guaranteed interest rates.

15 Year Split Annuity
Prepared by Charlie Matejowsky



How about setting up a 10-year split annuity and using the immediate annuity payments to pay for a Long-Term Care Policy that is paid up in 10 years.

- **Advanced Life Deferred Annuity (Longevity Insurance)** –the latest tool designed to relieve retirees' anxiety about outliving their income. Even though a retirement plan makes good assumptions on inflation and investment returns, if reality is worse than the assumptions, the retiree could run out of money. To deal with these contingencies this special type of annuity was developed. The product is simply an annuity with a twist or two.

  The policy owner deposits a lump sum of money. The marketing is targeted at people aged 60 to 65, but the deposit can be made at any age. The insurer agrees to begin making payments when the owner turns a certain minimum age, usually 85. Unlike other deferred annuities, when the contract is purchased, the insurer tells the owner exactly the amount of the future payments.

  For example, if a 65-year-old man deposited $10,000, the insurer would guarantee to pay $665 monthly beginning in 20 years. The payment is guaranteed to continue for life, no matter how long that is. That comes to $7,980 annually. If the owner lives another five years the total payouts will be $39,900. If he lives 10 years after payouts begin, the total received would be $79,800.

  (Is this a good deal? If the owner had invested the same $10,000 at age 65 with a 7% annual return, 20 years later he would have a nest egg of $38,670. Plus, there is no guarantee he will earn 7% while the Advanced Annuity payments are guaranteed.

  Negatives:

  - No payments to beneficiaries.
  - No inflation protection.
  - Foregone opportunity. If future investment returns rise you are locked in with today's returns.

- **College Funding**

- **Use a Deferred Annuity until owner is age 59 ½.**
- **Use a Split Annuity (Very Little Income Tax)**
- **If Annuity is IRA (one of exceptions to 10% early withdrawal penalty is using withdrawals from an IRA to fund college (anybody's college).**

- **Charitable Giving**

Large organizations with a planned giving staff will typically issue a charitable annuity backed by the assets of that organization. They will manage the assets, cut the income checks, and prepare the tax reporting forms.

For a small charity, the expense of setting up managing a Charitable Annuity in that fashion is not feasible. Also, donors may be reluctant to reply on their income from a small organization with limited experience and assets to back the income.

The solution is to use a commercial annuity to back the donor's gift. The annuity is purchased from a highly rated insurance company. This gives the donor that the income is backed not by the assets of the organization but by the insurance company.

The charitable organization benefits by retaining any unneeded assets required to purchase the annuity. These assets can be used by the charity immediately or reinvested in their own account.

The charity has no assets to manage for the donor's income, distributes no checks and has no tax documents to issue. This greatly simplifies things for the charity so they can now offer a Charitable Annuity to their supporters without the problems that limited their ability to do so previously.

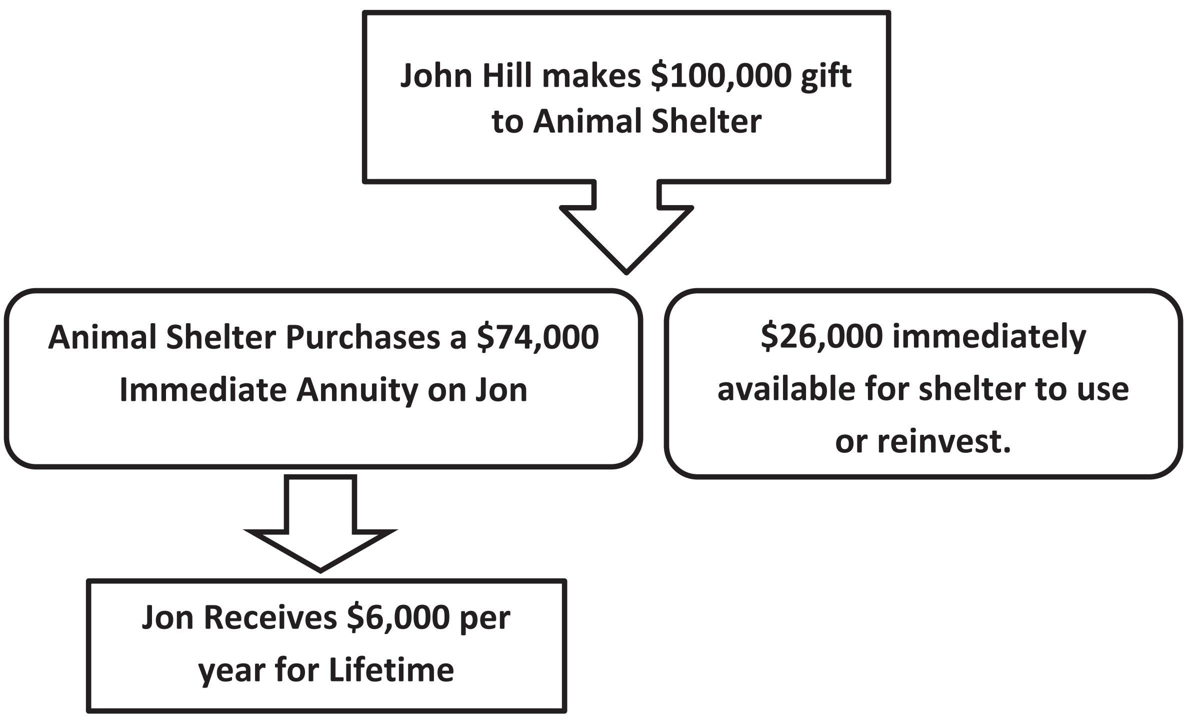
Example:

Jon Hill (annuitant) age 65 establishes a $100,000 Charitable Annuity with the local Animal Shelter. Based on his age he will receive a guaranteed annual income of $6,000 for the rest of his life.

In exchange for the gift the Animal Shelter (the annuity owner) purchases an annuity from an insurance company which will pay Jon his guaranteed income for life.

The Animal Shelter retains the portion of the gift that was not required to purchase the annuity.

John gets a tax deduction for the gift. If the gift has any cost basis or cash, a portion of his income will be tax-free. If his gift was Stock, Bonds, Mutual Funds or Real Estate he will also avoid any capital gains taxes.



Jon's income will be taxed on just 38% of the $6,000. This will give him a taxable equivalent yield of 11.3% assuming he is in a 28% tax bracket. After paying taxes, Jon has $5,400 of net spending money. If John had been taking income from a CD paying 4%, he would have to pay taxes on the full $4,000. That would provide $2,875 of net income. With a Charitable Annuity Jon has $2,525 of net after tax income.

- **Benefits of A Charitable Annuity**

- **Receive Income for Life –** Allows you to donate assets to charity while still providing you a lifetime income.
- **Avoid Capital Gains Taxes –** This means more money is generating more income for life.
- **Establish at No Cost –** The Donor(s) have no cost or fees in establishing a Charitable Annuity. There are no legal fees or transaction fees.
- **Gain an Immediate Tax Deduction –** The actual amount of the deduction is determined by analyzing several variables: the size of the donation and the age(s) and number of income beneficiaries.
- **Avoid Estate Taxes –** The amount of your gift is removed from the value of your estate.
- **Establish with Little or No Paperwork –** The Insurance Company will handle the record keeping and distribution of the income checks. Written confirmation is furnished on all calculations for the contribution's income tax deduction.

Annuity vs. CD – Which is Better?

How safe is my Money? – CD's and fixed annuities are both low risk. CDs are generally issued by banks and are insured by FDIC up to $250,000. Insurance companies issue annuities and the entire amount is backed by the financial strength of the annuity that issues the annuity. (Also backed by the State Guaranty Fund.)

Short-Term Gain – For saving to buy a car or make a down payment on a house, the CD is the better option. CDs are issued with a variety of maturity periods.

Long-Term Gains – The Deferred Annuity is often the better choice.

Growth – Deferred annuities often result in better growth. CDs provide a guaranteed rate of return over the initial period of the CD. But renewal rates will vary depending on what is happening in the economy and there are no guaranteed renewal rates. Deferred Annuities. On the other hand, deferred annuities provide a guaranteed rate for the initial period. After that the interest the rate will adjust regularly, usually once a year and there is a guaranteed minimum interest rate no matter what happens in the economy.

Effect on Taxes – CD earnings are taxable in the year they were accumulated (even if you do not take the money out). By contrast fixed annuities permit your earnings to grow on a tax-deferred basis (No taxes until you take the money out) {You choose when you want to pay the taxes, not the government!}

Comparison of Fixed Annuities with Certificates of Deposit

Features	Annuity	CD
1. Free from principal/market risk.	Yes	Yes
2. Are interest earnings free for current taxation	Yes	No
3. Are interest earnings reinvested automatically	Yes	No
4. Am I able to make additional contributions?	Maybe	No
5. Tax liability on Social Security income eliminated on deferred accumulation?	Yes	No
6. Liquid?	Yes	Yes
7. Flexible?	Yes	Yes
8. Penalty free withdrawals	Yes	No
9. Funds not reduced by commission	Yes	Yes
10. Avoids probate	Yes	No
11. Guaranteed income for life	Yes	No

Three Types of Annuities to Protection Against Inflation

1) **An Immediate Annuity (and keep saving)** – this guarantees a fixed income for life but use a portion of the payout to invest for future payouts.

2) **An Inflation-Indexed Annuity** – pay just life an immediate annuity which are adjusted to reflect increases in the Consumer Price Index (CPI). Initial payout is usually 20% to 30% less than the standard immediate annuity.

3) **A Variable or Fixed Indexed Annuity with Living Benefits** – this gives you a guaranteed minimum payout and if account does better than minimum guarantee you get step-up added to your Live On Account even if taking distributions.

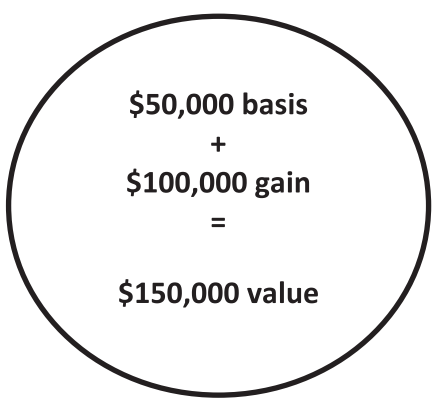
The Pension Protection Act of 2006

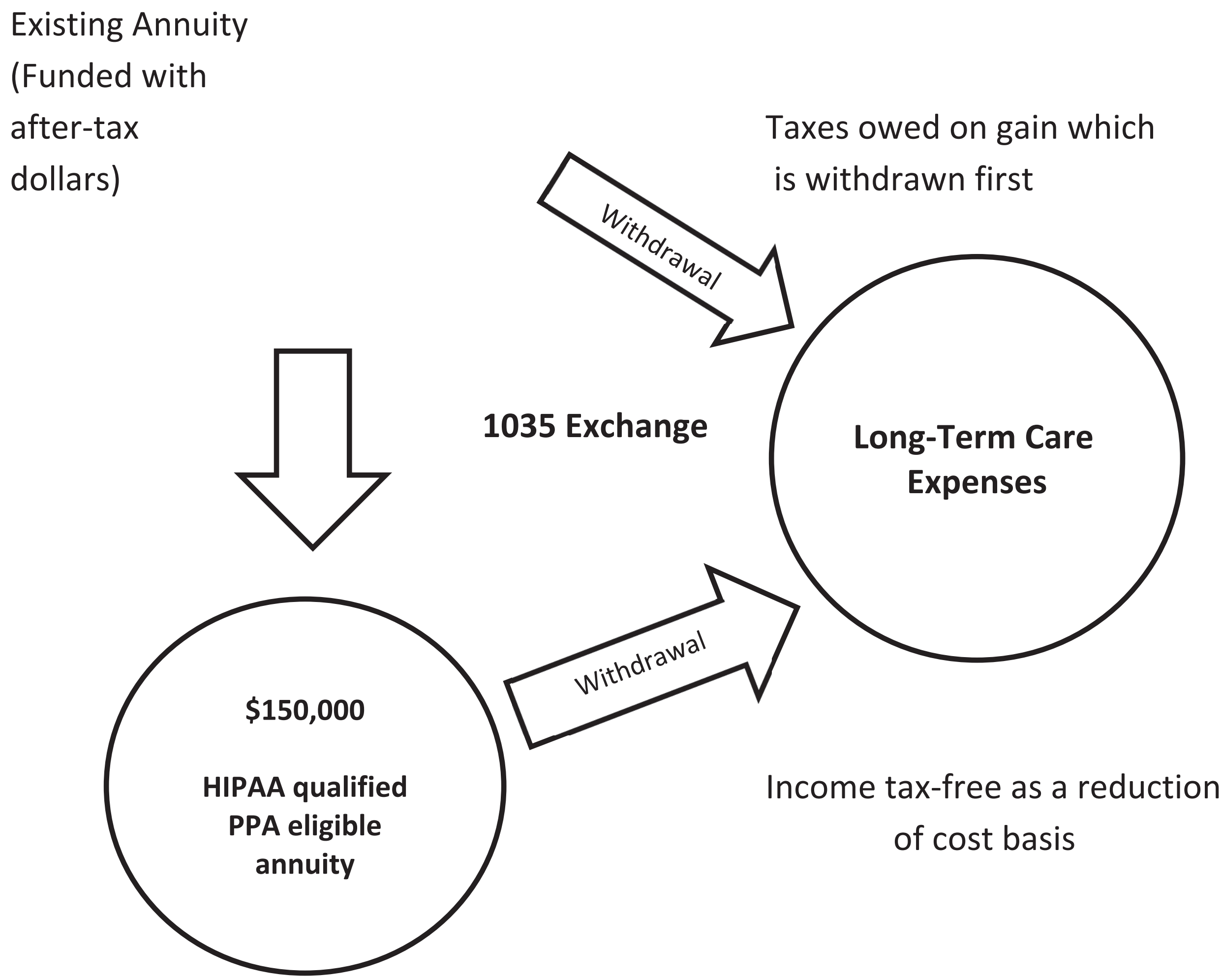
There are several provisions of the Pension Protection Act (PPA) of 2006 that took effect beginning January 1 2010 that affect long-term care planning. One of the provisions permits the use of a **non-qualified annuity to pay for long-term care insurance premiums income tax-free**. The gain in an annuity that has grown substantially in value will eventually be distributed subject to income taxes. However, you may be able to take advantage of a 1035 tax-free exchange to fund your long-term care insurance. Unless their premiums are refunded, you would permanently escape taxation on the gain portion of the exchanged amounts.

(*Prior to engaging in a 1035 exchange, you should carefully consider a number of factors including the features and crediting rate(s) of your current product, applicable surrender changes, any new surrender period on the new product, as well as the various features of the new product. A representative should carefully consider whether a replacement is in the best interest of the client before making a recommendation to replace the existing product.)*

- **Option 1 – Partial 1035 Exchange to Traditional Long-Term Care Insurance**
  The gain and basis portion of the amount exchanged will be pro-rated. This is a non-taxable event for the owner.

- **Option 2 – Total 1035 Exchange to Annuity Based Long-Term Care Policy.**
  The gain and basis portion of the amount exchanged will be pro-rated. This is a non-taxable event for the owner.





Annuity Care Supplemental Illustration Overview

Existing NQ Annuity - $150,000 Female Age 83

Initial Base Policy Benefits	$150,000	(36 Months of LTC Benefit)
Monthly Limit Percentage	2.9%	
Monthly Benefit Amount	$4,349	

- Option LTC Continuation Rider could be added (with additional premium) to make the benefits Lifetime.

Qualified Longevity Annuity Contract (QLAC)

Two things seniors fear the most are "running of money" and "paying taxes."
On July 14, 2024, the Treasury Department and the IRS created a solution to both.

An individual can now invest a portion of their retirement money in "longevity insurance."

a. Not an actual product
b. Deferred Income Fixed-Income Annuity with advance distribution age start, typically 80 to 85.

A portion of the Required Minimum Distribution can be reduced up to 12 years.

a. RMD – April 1 after turning age 73.
b. Circumvent RMD rule by investing up to $200,000 in a QLAC.
c. Taxes are reduced during that period allowing the money to grow.

Retirement Assets Extended

a. Pay Less Taxes
b. Ripple Effect
    1. Lower AGI may lessen the cost of Medicare Part B and Social Security Benefit taxation.
    2. Fixed Income Annuity is not exposed to market risk and can pay a guaranteed lifetime income stream over one or more lives.

Annuity Glossary

1035 Exchange: A tax-free transfer of an annuity contract from one insurer to another. A good reason to switch insurance companies is to lock in a higher return rate. Although a 1035 exchange is tax-free, it might be accompanied by a surrender charge if surrender fees have yet to lapse.

401(k) Plan: A plan offered by an employer that lets employees make contributions to a retirement savings plan on a pre-tax basis, sometimes fully or partially matching these contributions.

403(b) Plan: Similar to the 401(k) plan, buy generally offered by non-profit organizations instead of for-profit businesses. Allows contributions from employees to grow on a tax-deferred basis until they are withdrawn. At withdrawal, the funds are subject to tax like ordinary income.

457 Plan: Named in reference to the portion of the IRS Code that defines its basic rules, the 457 is a tax-exempt deferred compensation program provided to employees in state and federal governments and agencies. While similar to the 401(k) plan, the 457 plan never receives matching contributions from the employer, nor does the IRS consider it to be a qualified retirement plan.

Accrued Monthly Benefit (AMB): This is the monthly amount earned toward an employee's pension via that individual's service to the employing company.

Annuitant: The individual who receives payments from an annuity plan under the terms of that plan.

Annuity: Refers to the payments made on a periodic basis to an individual under an annuity plan. The payments are generally provided until the individual dies.

Accrued Interest: The amount of interest that was accrued to a bond since the payment of the last interest amount; buyers of bonds pay the accrued interest to the seller in addition to market price.

Actuary: The individual who uses statistical mathematics to calculate the premiums, dividends, reserves, and pension, insurance and annuity rates for an insurance company or other institution involved with fiscal risk.

Adjusted Gross Income (AGI): The amount of income obtained after subtracting allowable deductions from the total income received. These adjustments include contributions to an IRA, paid alimony, moving expenses, and contributions to many retirement plans.

Administrator: An individual or a bank that is court-appointed to distribute the estate of a deceased person who has died without a will or who left a will that did not name an executor to perform the distribution duties.

After-Tax Dollars: Refers to the amount of money remaining after taxes have been paid on it.

Age-Weighted Plan: A defined contribution plan in which contributions are allocated to participants so that, when converted to equivalent benefit accruals stated as a percentage of compensation received, all participants receive the same accrual rate.

Amortization: The reduction of a debt, on a gradual basis, through making regular, equal payments that meet the current interest amounts and that will eliminate the debt in total by its maturity date. Used in banking.

Anniversary Date: The anniversary of the date on which an annuity starts or becomes effective. Index annuities calculate annual yield by taking the difference in the S&P (or whatever index is being used) between anniversary dates.

Annual Percentage Rate (APR): The cost of a consumer lean expressed as a basic, yearly percentage amount.

Annual Reset: A way of calculating annual yield for an index annuity in which the baseline from which growth is measured resets every year. With an annual reset, previous years' growth is never lost.

Annuitant: The individual whose life expectancy is used to determine the term of income payments to be made under an annuity contract; generally, but not necessarily the person who receives the income. The annuitant cannot make premium deposits or cancel the contract and has no say over the terms of the annuity or when to withdraw money (unless the annuitant is the owner). The annuitant must typically sign the contract.

Annuitant-Driven: Annuity contracts with provisions that trigger upon death of a designated individual (annuitant). Besides death, an annuitant reaching of a certain age or becoming disabled can trigger contact provisions.

Annuitization: The process of converting an annuity's contract value into an income stream represented by periodic payments made over a special period of time.

Annuity: A plan that allows individuals to make tax-deferred contributions to a retirement savings account and to select a payout option that meets their income needs upon retirement.

Annuity Certain: An immediate annuity income plan from which payments are made for a defined period of time, whether or not the annuitant lives or dies.

Annuity Contract: A legal contract in which an insurer promises to make periodic payments to a designated individual over a specific period of time beginning on a set date in exchange for that individual's payment of premiums to the insurer.

Annuity Period: The length of time between income payments made under an annuity income plan; the span of time may be monthly, quarterly, semi-annually, or annually.

Arbitrage: The act of buying and selling commodities in two markets at the same time to benefit from price differences between the two markets.

Ask Price: The price of shares established by the specialist or dealer offers them.

Assumed Interest Rate: The minimum rate of interest that must be obtained on investments in a variable annuity in order to cover the costs and expected profits of an insurance company.

Audit: A review and examination of financial and accounting documents performed by professionals to determine the consistency and accuracy of these documents as well as whether they meet requirements imposed by law and accounting principles.

Bailout Provision: A provision in an annuity contract that allows the owner to surrender the contract, generally without charge, if the renewal interest rates on a fixed annuity drop under a pre-determined amount (usually 1%).

Basis Point: A unit of measure, with 100 basis points being equal to one percentage point.

Before-Tax Dollars: Amounts of money that have not been subjected to taxation.

Beneficiary: The individual or legal entity receiving an annuity death benefit with annuitant designated in the contract dies. Typically, a spouse or child. The beneficiary cannot manage the annuity – a right reserved solely for the contract owner.

Beta: A statistical measurement indicating the volatility of a stock or portfolio of investments, meaning how the value of the holding has risen or lowered in comparison to the general market over a defined period of time. In theory, when volatility is high, beta is also high.

Bond: A form of debt created by an institution that wants to borrow money. Buyers of bonds receive periodic payments of interest, with the principal amount typically repaid as a lump sum by a specified fate.

Bonus Annuity: The amount added by an insurance company to the premium payments of fixed or fixed indexed annuities with surrender charges, Usually imposed as additional interest or principal in the contract's first year and total between 1% tom 8%.

Buy-Sell Arrangement: An arrangement designed to dispose of an interest in a business when the owner retires, becomes disabled or dies.

Cafeteria Plan: An employee benefit plan that provides flexible dollars or employee payroll deducted dollars to be used by employees to pay for specific benefits from a list of choices, such as life insurance or health insurance.

Catch-Up Provision: With this provision, employee with 401(k) plans. IRAs, etc. can contribute more than is usually allowed to their plans.

Certificate Annuity: A type of annuity in which the interest rate guarantee period is equal to the surrender charge period.

Certificate of Deposit (CD): Certificates issued by banks in exchange for a cash deposit, which is held for a certain period of time and a set interest rate. A bank pays the CD holder the principal amount and all accumulated interest once the specific time period is over.

Charitable Deduction: A deduction taken by an individual or the estate of an individual involving a property transfer to a qualified charitable institution.

Charitable Gift Annuity: An annuity in which a donor provides property to a charity in exchange for an income.

Cliff Vesting: A vesting schedule by which employees may not receive any part of a retirement benefit until "fully vested," or under a predetermined number of years of service to the employing organization.

Collateral: Certain property provided by an individual seeking a loan as security for repaying the loan amount.

Compound Interest: Interest on money that accrues on both principal and accumulated interest.

Confinement Waiver: An arrangement in which surrender charges are eliminated if the annuity owner must be cared for in a hospital or long-term care facility due to medical necessity.

Consumer Price Index (CPI) The percent change in cost of goods and service. CPI is a metric of consumer-felt inflation, measuring how far your dollar goes toward buying goods and services. Typically rises 1- 3% per year.

Contract Owner: The person or entity that makes an application for and buys an annuity. The party is responsible for funding the annuity. An owner could be an individual, couple, partnership, corporation, or trust.

Contract Termination: The forced end to an annuity due to death of the annuitant.

Contract Value: The total of paid premiums and earnings, less any charges, withdrawals, or fees that may apply.

Convertible Bonds: Bonds that can be converted to shares of common stock in the same organization at the request of the bondholder.

Custodian: The institution or individual holding the assets of another. For example, a custodian may be a bank that holds the assets of a corporation or a mutual fund, or it may be an adult who is responsible for the financial activities of a minor child.

Death Benefit: The annuity benefit paid to a designated beneficiary when the contract's owner dies.

Debt Instruments: Investments involving the lending of money, where returns are made by charging interest, CDs, treasuries, government bonds, loans, and promissory notes are all debt instruments that promises to return principle plus interest at a future date.

Debenture: A bond that is backed by the integrity of the borrower and/or good reputation of a company rather than by collateral and is otherwise unsecured,

Deferred Annuity: An annuity that provides a way to accumulate monies tax deferred.

Deferred Compensation: Compensation for services rendered provided under an agreement stating that such compensation will be paid sometime in the future, after the actual services have been performed.

Deferred Debit Plan: A pension plan in which a lifetime income is guaranteed on the basis of the employee income and/or total years of service to the employer.

Defined Contribution Plan: A pension plan whereby an employer deposits a yearly contribution into the plan for each of the plan's participants, with retirement income depending on these contributed amounts.

Discretionary Income: The amount of money from income that remains after an individual pays essential bills, such as food, housing and taxes.

Disposition: Ability to distribute fund pending the termination of an annuity.

Diversification: The allocation of assets to several different types of investments so as to reduce the risks associated with any single investment, the idea being that losses in one area would be better offset by gains in another.

Dividend: A portion of the net profits of an organization that its board of directors allocates for distribution to shareholders.

Duration: Timeframe of an annuity contract: 1, 2, 3, 5, 7, or 10 years. The longer the duration, the better the return on fixed **annuities**.

Employments Retirement Income Security Act (ERISA): The federal law that formed the basis for modern pension regulation by establishing requirements for nondiscrimination, vesting, participation, reporting and disclosure, as well as standards for funding fiduciary responsibilities.

Endorsement: An addition written to an insurance policy includes provisions superseding those of the original policy. It is also known as a rider.

Endowment: An insurance policy that pays out its face amount to the individual insured when it reaches maturity if that person is still alive. If the insured has died before the policy matures, the face amount is paid to a designated beneficiary.

Equity Indexed Annuity: A type of fixed annuity that earn interest connected to an outside equity index, such as the S&P 500 (Standard & Poor's 500 composite Stock Price Index).

Equity Vehicle: Investments involving ownership of company stock, futures, commodities or real estate. Profit in equity vehicles results from their sale after appreciation (growth in value).

Estate Planning: Refers to the preparations made for the administration and disposition of an individual's property either before or after his or her death. Plans may include the creation of wills, trusts and gifts.

Exclusion Ratio: A calculation used to figure the taxable and non-taxable parts of each payment to an annuitant from an annuity. Part of each payment is considered a return of principal and therefore not subject to taxation, while the remainder includes earnings on interest, which are taxable.

Executor: An individual named in a will who is designated to carry out the wishes of the deceased person for the distribution of his or her property and who performs this activity under the supervision of a court.

Fiduciary: An individual or organization that exercises control over a pension plan and/or the assets it holds.

Fiscal Year: The period of 365 days that is used for purposes of accounting and taxation. It is not necessarily that same as a calendar year.

Fixed Annuity: An **annuity** contract that provides a guaranteed minimum interest rate and a higher interest rate for shorter periods during a deferred annuity's accumulation phase.

Flat-Rate Premium: Refers to the premium rate paid on a yearly basis by pension plans to the Pension Benefit Guaranty Corporate (PBGC) on behalf of each plan participant. The rates for multi-employer and single-employer plans are different.

Flexible Premium: A kind of annuity that may be bought into multiple times in the future. After depositing the initial premium, further investment can be made into the same annuity (similar to a money market account).

Flexible Premium Deferred Annuity (FPDA): A type of annuity in which the owner has the option to invest more money in the future.

Forced Annuitization: the mandatory liquidation of an annuity and dispersion of funds, triggered by the death of the annuitant or if the annuitant reaches certain maximum age.

Forfeiture: The amount lost when a pension plan participant leaves the employing organization before becoming fully vested under the plan's schedule.

Free Look Provision: The provision in an annuity contract stating that the owner of the contract has between 10 and 20 days to review the contract immediately after buying it. It gives the buyer the chance to return the contract to the insurer for a total refund and is governed by state regulations, which may vary.

Free Withdrawal Provision: The provision in an annuity contract that allows the owner to withdraw some part of its face value, without the imposition of a withdrawal charge, during the accumulation period.

Front-End Load: A sales charge imposed on an investment purchase. When such charges are imposed at the time of an investment's sale, they are called back-end load.

Frozen Plan: A qualified retirement plan that disallows the continuing benefits accruals of or additional contributions for current employees and also does not permit the recognition of new plan participants.

Fully Funded: When a pension plan has enough assets to pay for all of its current benefits and those promised for the future.

Government Securities: These securities, which enjoy high credit ratings since they are backed by the full credit of the federal government, include bonds and other debt programs that are issued by the Treasury Department.

Growth Fund: A mutual fund designed to provide long-term capital gains and growth instead of current income.

Guaranteed Interest Rate: The minimum interest rate an insurer will cr3edit during an annuity contract's accumulation phase.

Guaranteed Minimum Surrender Value: Index annuities are regulated by the National Association of Insurance Commissioners, which requires investors to at least receive 90% principle + 3% for every year the contract was held.

Holding Period: The period of time during which an investor has ownership of a capital asset.

Immediate Annuity: An annuity contract that begins its payout immediately or within a year.

Income Fund: A type of mutual fund designed to provide current income instead of capital growth. Such funds frequently include bonds and other fixed holdings.

Income or Payout Options: Refers to the various ways the owner of an annuity contract may receive income from an immediate annuity.

Index: A statistical system that measures and tracks the performance of similar investments as a group.

Index Fund: A type of mutual fund that holds bonds or stock investments with the goals of matching a specific market index.

Individual Retirement Account (IRA): a retirement program that permits individual who have earned income to save part of that income in a tax-deferred savings plan. IRAs can be created and funded any time between the first day of the current year up to and including the date on which individual tax returns are due, usually April 15 of the following year.

Initial Interest Rate: The rate of interest that is applied to the first deposit made to a fixed, deferred annuity, with the length of time this rate is guaranteed specified in the annuity contract.

Integration: A way of meshing a qualified benefit plan with Social Security benefits so that the qualified plan may discriminate in favor of highly compensated employees to the extent allowed.

Insurer: One of the four parties to any annuity contract. The insurer is the company to whom the owner pays the premium. The insurer invests premium and doles out payments.

Interest: Fees paid by banks, entities that issue bonds, and other financial institutions for the use of money provided on a loan.

Joint Annuitant: A person name in an annuity contract in addition to the owner. This person’s age and life expectancy are used along with those of the contract owners to calculate the amount of annuity payments.

Joint Life Annuity: A type of annuity that continues to provide payments to a spouse after the death of the contract owner, regardless of the date of death. It also allows for the designation of additional beneficiaries if the spouse dies.

Life Annuity: An annuity that pays a set amount on a regular, periodic basis, for the duration of the annuitant's life.

Liquidity: The ability to quickly convert assets into cash by an organization without incurring significant losses of value.

Load: The sales fee or charge imposed on the owner who buys an annuity contract.

Long Position: Refers to an agreement between two parties for one to buy an asset at a particular, set date in the future for a pre-determined price.

Market Value Adjustment (MVA): A kind of fixed annuity in which there is a guaranteed rate unless the contract owner withdraws amounts that exceed specific free-withdrawal amounts, or if the owner terminates the annuity contract before it matures.

Maturity Date: the date on which an annuity starts to make income payouts.

Money Market: Refers to the market for very liquid and low-risk short-term assets, including Treasury bills and negotiable Certificates.

Money Market Fund: A type of mutual fund that makes investments in a variety of short-term debt, including Certificates of Deposit and Treasury bills.

Multiple Premium Annuity: This is an annuity Program that requires more than one premium payment.

Mutual Fund: Am account combining the funds of many individuals in order to invest these funds in a range of financial instruments. A financial service company usually establishes this type of account.

Net Worth: The difference between the total value of an individual's assets and the total of all or their liabilities.

Non-Prescribed Annuity: The part of non-prescribed annuity plan that can be attributed to the return of capital and therefore is not subject to taxation; the interest portion is, however, taxable.

Owner – Driven: Annuity, whose provisions trigger upon the death, reaching of a certain age, or disability of the contract owner. The is in contrast to typical annuities, which designate an annuitant that may or may not be the contract owner.

Participation Rate: Also called the Index Rate, this refers to the part of the index's increase credited to an equity-indexed annuity's account value. In some contracts, a cap is imposed on this amount.

Payout Period: the period of time during which an annuitant is provided payments from an immediate annuity plan.

Payout Ratio: A calculation achieved by dividing then dividend amount by the earnings amount.

Pension Plan: A qualified plan designed to provide payments upon retirement. Pension plans comprise a yearly funding commitment from employers, no access to funds before retirement. And restrictions on investments in employer stock to ten percent.

Period Certain: An income option in an immediate annuity plan whereby the owner of the annuity contract may choose to receive periodic payments for a set period of time, with the payout amount determined by the contract's value and the length of the period of time chosen.

Perpetuity: A type of investment that has no maturity date.

Point-to-Point: A way of calculating index annuity yield. The total yield is simply the difference in index value from the day the annuity is purchased to the day it expires.

Portfolio: A group of investments considered a unit.

Premature Distributions: The withdrawal of earnings amounts from an annuity program before the annuity contract's owner reaches 59.5 years of age.

Premium Bonus: Additional funds that are credited by an insurer to an annuity, expressed as a percentage of the deposited amount.

Premium Tax: Refers to a separate tax imposed on premiums for life insurance or annuity plan by state governments. While not all states impose this tax, those that do have different regulations for qualified and non-qualified programs.

Prescribed Annuity: Prescribed Annuity Contracts (PACs) offer non-taxable returns on investment, and the annuitant's interest income is included at a steady rate during the entire term of the annuity. The amount taxed is lower than in a non-prescribed annuity early in the term but rises later.

Principal: The total amount of money that an annuity contract owner has put into the annuity, excluding earned interest.

Private Annuity: Refers to a contract to a contract entered into by two people who agree to exchange a valuable asset for payment of income for the duration of life.

Prospectus: A written document that must be provided under federal regulations to the prospective buyer of a variable annuity before the actual sale. The document describes the investment goals of accounts, part performance of any sub-accounts included and defines fees and other expenses.

Qualified Annuity: A type of annuity bought with the intention to fund or distribute money from a tax-qualified plan, generally with paid premiums reducing current income tax and the use of tax-deferred accumulations.

Renewal Rate: The new rate of interest credited to an annuity after the current interest-rate period is over, typically on the anniversary date of the contract. This rate may be higher or lower than the current rate, depending on economic conditions and the investment used by the insurer.

Risk-Return Trade-Off: A way of comparing the risks and returns of a potential investment by considering the age of the investor and the time frame of the investment, with higher risks generating greater returns.

Rollover: Refers to the monies from a qualified retirement plan or IRA that are shifted from one plan to another plan of the same kind, maintaining the tax-deferred status of the funds.

Roth IRA: While similar to a traditional IRA, the Roth IRA's contributions are not deductible. However, account distributions may be obtained free of federal income tax if certain conditions are met.

Simplified Employee Pension (SEP): A type of retirement plan in which an IRA is used to hold contributions; a simpler alternative to a 401(k) or profit-sharing plan.

Single-Employer Plan: A type of pension plan that is sponsored by one employer or a group of employers under a common structure. It may also be a pension program that is not collectively bargained and is sponsored b y a group of unrelated firms.

Single Life Annuity: A type of annuity plan in which the periodic payments are made to the annuity contract owner for life, but end after the owner dies.

Single Premium: A kind of annuity into which funds cannot be deposited after the initial investment (Some may let you make deposits for a year). Fixed-rate annuities are commonly of this type, requiring a second annuity purchase should the contract owner decide to invest more money at a future date.

Single Premium Deferred Annuity (SPDA): A kind of annuity that may be bought into once and whose payments are withheld, compounding interest. Future investments require a new annuity purchase.

Single Premium Immediate Annuity (SPIA): A kind of annuity that may be bought into once and yields periodic payouts (monthly, quarterly, or annually) at the cost of compound interest. Future investments require a new annuity purchase.

Split-Funded Annuity: An annuity contract in which the plan's owner divides the initial premium into two separate contracts, one portion of the premium deposit going to a fixed deferred annuity with a guaranteed interest rate over a set period of time, and the other portion going to an immediate annuity that pays income during the same time period.

Standard Termination: Refers to the termination of a plan that holds assets sufficient to pay all benefits.

Straight Life Annuity: A type of annuity plan paying a specific amount over a set period of time until the death of the annuitant. There are no payouts available to survivors after the contract owner dies.

Substandard Health Annuity: A type of straight-life annuity designed for individuals who have serious health problems. The cost of this annuity depends on the life expectancy of the annuitant, with lower life expectancies being more expensive since the insurer has less chance of obtaining a profit from the investor's funds. However, the periodic payouts are much higher for a person with low life expectancies.

Sub-Account: Portion of a variable annuity allocating investment into a specific segment, like a money-market account, the S&P 500, mutual funds, or Pacific Basin stocks. The choice of sub-accounts makes up the variable annuity portfolio.

Surrender Charge: A penalty imposed by the insurer if the contract owner terminates the annuity prematurely, by withdrawing all funds (Can also apply to a partial withdrawal).

Surrender Value: Refers to the amount of money received by a contract owner if the annuity is surrendered and all cash is taken out of it.

Surviving Spouse: The term used to describe the living spouse of a deceased plan participant. Under a Qualified Domestic Relations Order (QDRO), a former spouse may be considered a surviving spouse.

Tax-Deductible: An amount of money deducted from the adjusted gross income of a taxpayer in order to calculate the total taxable income. Medical expenses, paid mortgage interest and charitable contributions itemized on Schedule A of federal income forms are examples of tax-deductible expenses.

Tax-Deferral: Refers to the fact that earnings from an annuity are not taxed until they are withdrawn from the plan.

Tax-Free Transfers: An activity whereby owners of variable annuity contracts may move assets from one sub-account to another without the imposition of tax liability on these funds.

Tax-Sheltered Annuity (TSA): A type of retirement annuity available for purchase only by public school teachers and individuals employed by colleges, hospitals, and other entities {(501(c) nonprofit} that offer qualified retirement programs under IRS Section 403(b).

Temporary Annuity: A type of annuity that is set to expire after the passing of a pre-established period of time.

Term Certain Annuity: A kind of annuity plan in which predefined income payments are provided until the expiration date of the annuity product. Payments are typically made on a monthly basis for the term of the contract. If the expiry date occurs before the annuitant dies that individual no longer receives a steady income stream.

Top-Heavy Plan: A retirement plan in which employees identified as "key:" receive 60 percent or more of the benefits of the plan. Top-heavy plans are subject to additional regulation under the law.

Treasuries: A term that refers to all of the federal government's negotiable securities. Treasury bills (T – bills) have short-term maturities of three and six months and do not pay interest. Instead, they are sold at face value. Treasury bonds may be obtained in $1000 units and have maturities of ten years or more. Treasury notes have medium-term maturities of between one and ten years.

Trustee: The individual or organization charged with receiving, managing and distributing plan assets.

Two-Tier Annuity: A type of annuity that is designed to have a high interest rate, compared to the market, during its first year, based on the assumption that the owner of the annuity contract will remain in the plan through the annuitization period.

Unsecured Loan: A loan that is made on the basis of good credit and the borrower's promise to repay the funds. Does not require a borrower to provide collateral in the form of a tangible asset in order to secure the loan.

Variable Annuity: A kind of annuity contract that allows the owner to allocate the premium amount among several investments, or sub-accounts. The contract value of such a plan may vary according to the performance of these investments.

Vesting: The term used to describe an employee's gaining of the right to be paid a current or future benefit from a pension plan.

Withdrawal Charge: A penalty imposed by the insurer if the contract owner cashes out part of the annuity prematurely. Withdrawal charges typically phase out according to a schedule, e. g., 10% before 3 years, 5% after 4 years, and 0% after 5 years. Withdrawal charges may be waived in the event of death or illness.

Yield: This usually refers to the profit amount from a capital investment. Also, the income portion of the return from a security.


Thank
You!