

Common Insurance Terms and Conditions

ACTUAL CASH VALUE (ACV)

"Actual Cash Value" is the **replacement cost** of property damaged or destroyed at the time of loss, **with deduction for depreciation**. Actual cash value cannot exceed the applicable limit of liability shown in the declarations of the policy, nor the amount it would cost to repair or replace such property with material of like kind and quality within a reasonable amount of time after a loss.

ADDITIONAL INSURED

An individual or entity that is not automatically included as an insured under the policy of another, but for whom the named insured's policy provides a certain degree of protection. An endorsement is typically required to affect additional insured status. The named insured's impetus for providing additional insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an insured club) or to comply with a contractual agreement requiring the named insured to do so (e.g., customers or owners of property leased by the named insured).

ADMITTED COMPANY

An insurance company that is licensed (admitted) to conduct business within a given state.

ADVERTISING INJURY LIABILITY

"Advertising Injury" means injury rising out of an offense committed in the course of your advertising activities, if such injury rises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition or infringement of copyright, title or slogan.

AGGREGATE

1. A limit in an insurance policy stipulating the most it will pay for all covered losses sustained during a specified period of time, usually one year. Aggregate limits are commonly included in liability policies. While not often used in property insurance, aggregates are sometimes included with respect to certain catastrophic exposures, e.g., earthquake and flood.

2. The dollar amount of reinsurance coverage during one specified period, usually 12 months, for all reinsurance losses sustained under a treaty during such period.

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ALL RISK

A property policy expression now out of fashion. It was used to designate contracts that promised coverage against "all risks of direct physical loss" in contrast to forms that covered for specific, named perils. The word "all" came to be perceived as open to broader interpretation than insurers intended and it was dropped in favor of the promise to cover "risks of physical loss."

ANNIVERSARY DATE

The anniversary of the original date of issue of a policy as shown in the declarations.

ASSUMED LIABILITY

Liability assumed under contract or agreement. More commonly known as *contractual liability*.

DEFINITION OF INSURANCE AUDIT

Sometimes factors that enter into determining appropriate premiums for insurance coverage can't be known in advance; therefore, accurate premiums for the coverage provided can't be billed by the insurance carrier. This often is true in the case of Worker's Compensation and Product Liability insurance, where such things as payroll and sales can't be determined ahead of time. An audit serves as an examination of the insured's records after the fact to adjust the initial premium billed to reflect the actual coverage.

BASIC NAMED PERILS

Covered perils in a property insurance contract: fire, lightning, windstorm, civil commotion, smoke, hail, aircraft, vehicles, explosion and riot.

BI

A shorthand expression for "bodily injury."

BID BOND

Guarantees an owner, the "obligee," that the accepted contractor will actually undertake the work and that the contractor will furnish performance, payment, and, perhaps, maintenance bonds — or that the

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contractor will pay the owner the difference between the amount of the contractor's accepted bid and the bid of another contractor who has to be called in to complete the project.

DEFINITION OF BINDER

A binder is a legal agreement that serves to effect insurance coverage for a specified period of time until the actual insurance policy can be issued. A binder can be issued by either an insurance agent or company and must provide the following information:

- Name of insured
- Type of insurance coverage
- Limits of insurance
- Covered perils
- Name of insurance company

BINDING AUTHORITY

The authority extended to an agent by an insurer to provide insurance, usually on a temporary basis, until a policy can be written.

BROAD FORM PROPERTY DAMAGE COVERAGE INCLUDING COMPLETED OPERATIONS

This coverage extension is of great value to the general contractor as respects "completed operations" property damage liability claims. Without it, the normal Comprehensive General Liability policy will not respond for "completed operations" claims (i.e., claims rising out of work performed on behalf of the insured by subcontractors or employees). With it, this exposure is covered.

BROADENED NAMED INSURED WORDING (BROAD LANGUAGE)

Regarding liability coverage's, these coverage's will automatically apply to ". . . any affiliated, associated, allied or subsidiary company or entity (including subsidiaries thereof), now held or hereinafter acquired or constituted . . ."

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BUILDER'S RISK (COC)

Indemnifies for loss of or damage to a building under construction. Insurance is normally written for a specified amount on the building and applies only in the course of construction. Coverage customarily includes fire and extended coverage and vandalism and malicious mischief. Builders risk coverage can be extended to a "special" form as well. The builders risk policy also may include coverage for items in transit to the construction site (up to a certain percentage of value) and items stored at the site.

CANCELLATION; FLAT, PRO RATA, OR SHORT RATE

In a flat cancellation the full premium is returned to the insured. A pro rata cancellation means the insurer has charged for the time the coverage was in force. Short rate cancellation entails a penalty in excess of pro rata for early termination.

CARE, CUSTODY, OR CONTROL

An expression common to liability insurance contracts. It refers to exclusion in the policy eliminating coverage for damage to property of others that is in the insured's "care, custody, or control." The insured has a bailee relationship to the property, in other words, making the insured liable for the care of the property beyond damage caused by negligence.

CERTIFICATE OF INSURANCE

A written description of insurance in effect as of the date and time of the certificate. The certificate does not ordinarily confer any rights on the holder, i.e., the issuing insurer does not promise to inform the holder of change in or cancellation of coverage.

CLAIM EXPENSE

The expense of adjusting a claim, such as investigation and attorneys' fees. It does not include the cost of the claim itself.

CLAIMS-MADE COVERAGE

A type of liability insurance that responds only to claims for injury or damage that are brought (to the insurer) during the policy period (or during a designated extended reporting period beyond expiration). This development was in response to "long tail" claims, such as those related to asbestosis injury, carrying over many years and multiple layers of coverage limits. However, most public liability policies are written on an "occurrence" basis, covering injury or damage occurring during the policy

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period even if a claim is brought months or even years later. California statute of limitations is ten years.

COINSURANCE CLAUSE

EXPLANATION OF CO-INSURANCE

Co-insurance is an arrangement by which the insured, in consideration of a reduced rate, agrees to carry an amount of insurance equal to a percentage of the total value of the property insured.

An example is if you have guaranteed to carry insurance up to 80% or 90% of the value of your building and/or contents, whatever the case may be. **If you don't**, the company pays claims only in proportion to the amount of coverage you do carry.

The following equation is used to determine what amount may be collected for partial loss:

$$\frac{\text{Amount of Insurance Carried}}{\text{Amount of Insurance that Should be Carried}} \times \text{Loss} = \text{Payment}$$

Example A

Mr. Right has an 80% co-insurance clause and the following situation:

\$100,000 building value
\$ 80,000 insurance carried
\$ 10,000 building loss

By applying the equation for determining payment for partial loss, the following amount may be collected:

$$\begin{array}{r} \$80,000 \times \$10,000 = \$10,000 \\ \text{-----} \\ \$80,000 \end{array}$$

Mr. Right recovers the full amount of his loss because he carried the coverage specified in his co-insurance clause.

Example B

Mr. Wrong has an 80% co-insurance clause and the following situation:

\$100,000 building value
\$ 70,000 insurance carried
\$ 10,000 building loss

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By applying the equation for determining payment for partial loss, the following amount may be collected:

$$\begin{array}{r} \$70,000 \times \$10,000 = \$8,750 \\ \text{-----} \\ \$80,000 \end{array}$$

Mr. Wrong's loss of \$10,000 is greater than the company's limit of liability under his co-insurance clause. Therefore, Mr. Wrong becomes a self-insurer for the balance of the loss-- \$1,250.

COMPLETED OPERATIONS LIABILITY COVERAGE

This form of liability insurance provides coverage for bodily injury and property damage rising from completed or abandoned operations, provided the incident occurs away from premises owned or rented by the insured.

Operations are deemed completed at the earliest of the following items:

- When all operations to be performed by or on behalf of the insured under contract have been completed.
- When all operations to be performed by or on behalf of the insured at the site of the operations have been completed.
- When the portion of work out of which injury or damage rises has been put to its intended use by a party other than the contractor or subcontractor.

COMMERCIAL GENERAL LIABILITY COVERAGE

Under this form of insurance and regarding a covered occurrence, the company will pay all sums the insured becomes legally obligated to pay as damages due to:

1. Bodily Injury (Coverage A)
2. Property Damage (Coverage B)

The insurance company has the right to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of suit are groundless, false or fraudulent, and to make such investigation and settlement of any claim or suit as it deems expedient. However, the company is not obligated to pay any claim or judgment or to defend any suit after applicable limit of the company's liability has been exhausted by payments of judgments or settlements.

CONTRACTUAL LIABILITY COVERAGE

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It is common in construction and other agreements (written or oral) for one party to "assume" the liability of another. This is sometimes referred to as a "hold harmless" agreement. The extent to which one holds another harmless varies from contract to contract, job to job, etc.

To assume the liability of another, regardless of extent, is a voluntary undertaking which increases your exposure to loss. A standard Commercial General Liability policy does cover this additional exposure subject to certain exclusions.

CONSEQUENTIAL LOSS

An indirect consequence of direct loss to property. Business income may be lost when a store burns down, or frozen goods may spoil when windstorm causes an interruption of power. Consequential or indirect loss is not generally insured by policies covering direct damage (i.e., by fire or wind as in these examples), but insurance is readily obtainable separately for most such consequential exposures — business income coverage being among the most common.

CONSTRUCTION BOND

A bond that guarantees the owner of a building under construction that it will be completed. If the contractor cannot finish the work, the insurer is obligated to see that the work is performed.

COVERAGE TRIGGER

In liability insurance, the "trigger" is the event that brings coverage into play. It may be either an occurrence of bodily injury or property damage; or, in a form with a claims-made trigger, the formal making of a claim.

CROSS LIABILITY COVERAGE

In the event of claim by one insured for which another insured covered by the same policy may be held liable, this endorsement covers the insured against whom the claim is made in the same manner as if separate policies had been issued. However, it does not operate to increase the insurance company's overall limit of liability.

DRIVE OTHER CAR COVERAGE (DOC)

Coverage applicable to employees or executives of a company or any other person who is supplied a company vehicle, but who does not own a personal vehicle, thereby not having personal automobile coverage. An endorsement may be added to the automobile policy of the company that furnishes the automobile, giving protection while the named individual or a member of his family is driving a car

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borrowed from a third party (other than the vehicle named in the policy). Individuals who are owners of the company qualify for the "individual named insured" endorsement, which includes family coverage. The drive other car coverage is usually added at little additional premium charge.

EARNED PREMIUM

The amount of the premium that as been paid for in advance that has been "earned" by virtue of the fact that time has passed without claim. Company fees and State Tax & Stamp Fees are fully earned at inception.

ELECTRONIC DATA PROCESSING (EDP) COVERAGE

A Standard property insurance policy leaves something to be desired in addressing special EDP-related exposures. Electronic data processing equipment and its software is particularly susceptible to damage from electrical or magnetic disturbance and changes in temperature or humidity -- perils which are excluded in a standard "special" perils property policy. Except for prepackaged software programs, which are typically covered on an actual cash value basis, coverage for programs and data in a standard property policy is essentially limited to replacement with blank tapes or diskettes plus transcribing expense. Finally business interruption coverage in connection with damaged EDP Media {not equipment} is limited to 60 days from the date of loss or the time when the other damaged property is repaired, whichever is longer. Therefore, if the building repairs are complete, but normal operations cannot resume because replacement computer programs, data or media are not readily available, an uninsured business interruption loss may result.

The best way to resolve these coverage inadequacies for EDP exposures is to buy a special EDP policy. Typically, EDP policies provide "special" peril coverage similar to that provided by "special" property forms, PLUS coverage for all electrical and magnetic damage, mechanical breakdown and often temperature and humidity changes as well. Some insurers include these perils in the basic form, while others make them available by endorsement for an additional premium. Usually these broader coverages are subject to a higher deductible as well. Valuation can be on either a replacement cost or actual cash value basis, and coverage may be available on a blanket as well as a scheduled basis. Media coverage includes the cost to reconstruct software developed in-house {subject to the limit of liability selected for the coverage}, if necessary.

Perhaps most importantly, an EDP policy will respond appropriately to extra expense or income loss from the loss of EDP equipment, programs and data, provided that these coverage options in the policy have been elected and adequate limits of liability have been established.

ERRORS & OMISSIONS (E & O)

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Coverage for liability resulting from errors or omissions in the performance of professional duties. Applicable as a general rule to professional business activities such as banking, accounting, law, insurance and real estate.

EXCESS INSURANCE

Coverage that applies on top of underlying insurance that is primary, i.e., that pays until its coverage limit is exhausted at which point the excess coverage takes over.

EXCESS OR SURPLUS LINES MARKET

The range of insurance available through non-admitted insurers, i.e., insurance companies that are not licensed in a particular state or territory. Specific provisions of state or territorial law control placements.

FIRE LEGAL LIABILITY

Public liability policies routinely exclude coverage for damage to property in an insured's care, custody, or control. This leaves a big gap in a tenant's coverage, a gap partially filled by an exception in the commercial general liability policy that restores limited coverage for fire damage to the landlord's building.

FIRST NAMED INSURED

An insurance policy may have more than one party named as insured. In such cases, the first named insured attends to policy "housekeeping," i.e., pays premiums, initiates (or receive notice of) cancellation, or calls for interim changes in the contract. This is spelled out in commercial policies in the "common policy conditions."

GARAGEKEEPERS LEGAL LIABILITY

Provides coverage to owners of storage garages, parking lots, etc. for liability as bailees with respect to damage to automobiles left in their custody. Coverage is contingent upon establishing liability on the part of the insured.

HIRED AUTO

Hired auto that may be "hired" to operate for the insured, such as a crane, dump truck, concrete truck, etc. Vehicle may not be owned by the named insured.

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HOLD HARMLESS AGREEMENT

A contractual assumption by one party of the liability exposure of another. Lease agreements, for example, commonly require the tenant to hold the landlord harmless for bodily injury or property damage experienced by others on the premises.

EXPLANATION OF INDEMNIFICATION

When insurance policies are written on an "indemnification" basis, the insurance company will reimburse the insured for claim costs already paid. Technically, the insured must not only suffer a loss, but must also pay the loss before being reimbursed (indemnified) by the company.

INLAND MARINE COVERAGE

Inland marine insurance indemnifies loss to moving or moveable property and is an outgrowth of ocean marine insurance. Historically, ocean marine insurance held the transporter responsible for property loss before, during, and after the completion of the voyage. In the 1800's, the non-ocean portion of the journey grew as cargoes were transferred to barge, etc., and the term "inland marine" was coined. Inland marine policies became known as "floaters" since the property to which coverage was originally extended was essentially "floating."

JACKET (POLICY)

The cover of an insurance policy; it usually contains the name of the insurer, its address, etc.

JOINT AND SEVERAL LIABILITY

A legal doctrine whereby a creditor or claimant may demand payment or sue one or more of the parties separately, or all of them together.

LLOYD'S OF LONDON

An association of individuals, called "names," or groups of individuals who write insurance for their own accounts. Lloyd's had its beginning in 17th century London in Edward Lloyd's coffee house.

The Lloyd's Corp. provides the support facility for their activities.

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LLOYDS ORGANIZATIONS

These organizations are voluntary unincorporated associations of individuals. Each individual assumes a specified portion of the liability under each policy issued. The underwriters operate through a common attorney-in-fact appointed for this purpose by the underwriters. The laws of most states contain some provisions governing the formation and operation of such organizations, but these laws don't generally provide as strict supervision and control as the laws dealing with incorporated stock and mutual insurance companies.

LOSSES AND LOSS-ADJUSTMENT EXPENSES

This represents the total reserves for unpaid losses and loss-adjustment expenses, including reserves for any incurred but not reported losses, and supplemental reserves established by the company. It is the total for all lines of business and all accident years.

LOSS CONTROL

All methods taken to reduce the frequency and/or severity of losses including exposure avoidance, loss prevention, loss reduction, segregation of exposure units and noninsurance transfer of risk. A combination of risk control techniques with risk financing techniques forms the nucleus of a risk management program. The use of appropriate insurance, avoidance of risk, loss control, risk retention, self insuring, and other techniques that minimize the risks of a business, individual, or organization.

LOSS RATIO

The ratio of incurred losses and loss-adjustment expenses to net premiums earned. This ratio measures the company's underlying profitability, or loss experience, on its total book of business.

LOSS RESERVE

The estimated liability, as it would appear in an insurer's financial statement, for unpaid insurance claims or losses that have occurred as of a given evaluation date. Usually includes losses incurred but not reported (IBNR), losses due but not yet paid, and amounts not yet due. For individual claims, the loss reserve is the estimate of what will ultimately be paid out on that claim.

LOSSES INCURRED (PURE LOSSES)

Net paid losses during the current year plus the change in loss reserves since the prior year end.

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LOST POLICY RELEASE (LPR)

A means whereby an insured may cancel a policy by signing a statement to the effect that they wish to cancel the policy.

MANAGING GENERAL AGENT (MGA)

An agent standing between an insurer and other agents. The MGA sells to retail agents, who then sell to the consumer. MGAs often are said to have the "pen" because they are given the authority to accept, underwrite, and price submissions received from retail agents.

MEDICAL PAYMENTS -- GENERAL LIABILITY

A general liability coverage in which the insurer reimburses without regard to the insured's liability, the insured and others (as specifically provided in the policy) for medical and funeral expenses incurred by such persons as a result of bodily injury or death sustained by accident under the conditions specified in the policy.

MINIMUM PREMIUM

An insurer's lowest charge for an insurance policy.

MONOLINE POLICY

An insurance policy covering one subject of insurance, as opposed to a combination or multiline policy.

MOTOR VEHICLE RECORD (MVR)

An official record of a driver's accidents and traffic violations kept by the licensing state(s). Often used to determine eligibility and/or premiums for auto insurance.

EXPLANATION OF NAMED PERIL VERSUS ALL RISK

A "peril" is defined as a cause of damage or loss. To be covered for damage or loss under a "basic" contract, the damage or loss must be caused by a peril that is "named" or listed in the contract.

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Consequently, if damage or loss is caused by a peril that is not named, there is no coverage. In addition, the contract's exclusions must also be considered in determining coverage.

In a "special" contract, it is not necessary to name or list the insured perils since the intent is to cover all risk of damage or loss. Here, too, the contract's exclusions must be considered; however, the "special" form of coverage provides a much greater coverage quality.

Note that "special" coverage should not be construed to mean "all loss" coverage. Certain types of loss are definite and therefore not insurable.

NET PREMIUM

The amount of premium minus the agent's commission.

NET PREMIUMS EARNED

The adjustment of net premiums written for the increase or decrease of the company's liability for unearned premiums during the year.

NOC- RATING PURPOSES

Underwriter's shorthand derived from general liability and workers compensation rating tables that stands for "not otherwise classified" meaning no more specific classification is available — as in "Clerical Office Employees NOC."

NONOWNED AUTO

This term signifies an auto that is neither owned, hired, nor borrowed by the insured under a commercial auto policy. Employees' cars used in company business are commonly classified this way. The employer's auto liability cover for use of nonowned autos is covered by entry of symbol 1 ("any auto") or symbol 9 ("nonowned autos") on the declarations page. They may be an additional premium charged for this coverage.

OCCURRENCE (CGL)

This term 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. In some lines of business, such as liability, an occurrence is distinguished from accident in that the loss doesn't have to be sudden and fortuitous and can result from continuous or repeated exposure which results in bodily injury or property damage neither expected nor intended by the insured

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OWNERS' OR CONTRACTORS' PROTECTIVE LIABILITY COVERAGE

This insurance coverage provides for payment on behalf of the insured of all damages the insured becomes legally obligated to pay due to bodily injury or property damage caused by an occurrence arising from the following:

- Operations performed for the named insured by independent contractors.
- Acts or omissions of the named insured in connection with his/her general supervision of such operations.

This does not include maintenance and repair at premises owned by or rented to the named insured, or structural alterations at such premises that do not involve changing the size of or moving buildings or other structures.

PRIMARY INSURANCE

The first policy or coverage to apply. Contrast with Excess insurance.

PRODUCTS AND COMPLETED OPERATIONS AGGREGATE

Liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned. An aggregate limit in an insurance policy stipulates the most it will pay for all covered losses sustained during a specified period of time, usually one year.

PRODUCTS LIABILITY

The liability for bodily injury or property damage incurred by a merchant or manufacturer as a consequence of some defect in the product sold or manufactured or the liability incurred by a contractor after he has completed a job as a result of improperly performed work. The latter described part of products liability is called Completed Operations.

RAILROAD PROTECTIVE LIABILITY

Liability coverage designed to protect a railroad from liability claims arising out of the operations of others on or adjacent to railroad property.

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RATE FILING

Documentation filed by an insurer with the state requesting a change in the existing rates.

RATING BUREAU

A private organization that classifies and promulgates manual rates (or loss costs).

REPLACEMENT COST COVERAGE

This form of insurance provides coverage on the basis of full replacement cost without deduction for depreciation on any loss sustained, subject to the terms of the co-insurance clause. This coverage applies to both building and contents items as specified on the face of the policy.

No deduction is taken for depreciation in arriving at the proper amount of insurance needed to comply with the co-insurance clause.

RISK RETENTION GROUPS (RRG)

Liability insurance companies owned by their policyholders. Membership is limited to people in the same business or activity, which exposes them to similar liability risks. The purpose is to assume and spread liability exposure to group members and to provide an alternative risk financing mechanism for liability. These entities are formed under the Liability Risk Retention Act of 1986. Under law, risk retention groups are precluded from writing certain coverages, most notably property lines and workers' compensation. They predominately write medical malpractice, general liability, professional liability, products liability and excess liability coverages. They can be formed as a mutual or stock company, or a reciprocal

SEVERABILITY

A provision that insurance applies separately to each insured under the policy.

SHOCK LOSS

Name given to any large loss that impacts an otherwise profitable book of business.

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SPLIT LIMITS

As in auto insurance, where rather than one liability amount applying on a per-accident basis, separate amounts apply to bodily injury and property damage liability.

SOLVENCY

Having sufficient assets--capital, surplus, reserves--and being able to satisfy financial requirements--investments, annual reports, examinations--to be eligible to transact insurance business and meet liabilities.

STATED AMOUNT

Amends the valuation clause on a policy to include an amount that is "stated" as the value of the item(s) being insured. Usually, these policies pay the lesser of the ACV of the damaged property, the cost of repairing or replacing the property, or the stated amount

STATE OF DOMICILE

The state in which the company is incorporated or chartered. The company also is licensed (admitted) under the state's insurance statutes for those lines of business for which it qualifies.

SUBROGATION

The right of an insurer who has taken over another's loss also to take over the other person's right to pursue remedies against a third party.

TPA - THIRD PARTY ADMINISTRATOR.

A TPA is a contractor that adjusts and ad-ministers insurance claims.

TAIL COVERAGE

Coverage for claims made after a claims-made liability policy has terminated; the extended reporting or discovery period.

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UMBRELLA LIABILITY

A liability contract with high limits covering over top of primary liability coverages and, subject to a self-insured retention (deductible), covering exposures otherwise uninsured.

UNDERINSURED MOTORISTS COVERAGE

Coverage for the insured and passengers whenever the at-fault driver in an accident has auto liability insurance with lesser limits than the insured's. This coverage lies atop "uninsured motorists coverage" or atop the at-fault driver's low limit automobile liability insurance and provides the insured and passengers with protection equal (usually) to the insured's own automobile liability cover.

UNDERLYING INSURANCE POLICY

The policy providing initial coverage for a claim until its limit of liability is reached and an umbrella or excess policy's coverage is triggered.

UNDERLYING LIMITS

The limits of liability of the policy(ies) underlying an umbrella or excess policy.

UNDERWRITER

One who researches and then accepts, rejects, or limits prospective risks for an insurance company. Also, an insurer.

UNDERWRITING

The process of selecting risks for insurance and classifying them according to their degrees of insurability so that the appropriate rates may be assigned. The process also includes rejection of those risks that do not qualify.

UNDERWRITING EXPENSE RATIO

This represents the percentage of a company's net premiums written that went toward underwriting expenses, such as commissions to agents and brokers, state and municipal taxes, salaries, employee benefits and other operating costs. The ratio is computed by dividing underwriting expenses by net premiums written. The ratio is computed by dividing underwriting expenses by net premiums written. A company with an underwriting expense ratio of 31.3% is spending more than 31 cents of every dollar of net premiums written to pay underwriting costs. It should be noted that different lines of

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business have intrinsically differing expense ratios. For example, boiler and machinery insurance, which requires a corps of skilled inspectors, is a high expense ratio line. On the other hand, expense ratios are usually low on group health insurance.

UNDERWRITING GUIDE

Details the underwriting practices of an insurance company and provides specific guidance as to how underwriters should analyze all of the various types of applicants they might encounter. Also called an underwriting manual, underwriting guidelines, or manual of underwriting policy.

UNEARNED PREMIUMS

That part of the premium applicable to the unexpired part of the policy period.

VACANT PROPERTY

Once defined as devoid of occupants or contents, a stricter definition is being applied as more and more communities find older buildings of three and four stories that are only one quarter occupied. Property policies impose limitations on coverage of "vacant" buildings so the (changing) definition of vacant property is quite important.

VALUABLE PAPERS COVERAGE

Provides "all risk" coverage on "valuable papers," such as: written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts. It covers the cost of research to reconstruct damaged records, as well as the cost of new paper and transcription.

WAIVERS OF SUBROGATION

Many contracts, including lease agreements, contain provisions for one party to waive its rights of recovery against another. Such provisions are commonly known as "waivers of subrogation."

WRAP UP POLICY

A liability coverage specialty focused on contracting risks, at-tempting to manage in a single contract the broad interplay of exposures and interests among owners, general contractors, and subcontractors.

X, C, AND U EXCLUSIONS

Explosion ("X") Hazard

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Includes property damage rising out of blasting or explosion.

Collapse ("C") Hazard

Includes structural property damage and property damage to any other property rising out of the following:

- Grading of land, excavating, burrowing, filling or backfilling, tunneling, pile driving, or coffer dam or caisson work.
- Moving, shoring, underpinning, razing, or demolition of any building or structure.

Underground ("U") Damage

Includes damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any similar property beneath the surface of the ground or water caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.

WHAT DOES "THIS INSURANCE IS PRIMARY AND NONCONTRIBUTORY" REALLY MEAN?

This statement may be required by a General Contractor or Developer to achieve the assurance that the policy you are providing is primary. Sometimes, the agreement broadens this definition and will require that your policy be primary and noncontributory *with any other insurance coverage that the General Contractor or Developer has*. The intent here is clear; the *General Contractor or Developer* is attempting to make your insurance pay entirely for any claim, whether it is the fault of the facility or not. This significantly increases your risk of a claim and many insurance companies will not agree to such wording. An extra premium for the increased risk is typically charged.

IF I NAME SOMEONE ON MY POLICY AS AN ADDITIONAL INSURED, DOES IT MEAN THEY DON'T NEED THEIR OWN SEPARATE INSURANCE?

No, they would still need their own insurance in order to be properly protected.

A common misconception with additional insureds is the belief that if they are named as additional insured on a policy, they don't have to worry about buying their own insurance. However, an additional insured only has protection under your policy if they are not responsible for the claim. They would not be protected under your policy if they were at fault for a claim.

On the surface, this may not seem to make sense. However, if you are responsible for a claim, your own insurance should provide protection, including providing protection for the additional insureds. If

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an additional insured is responsible, their own insurance would have to be used. If you are both equally or partially responsible for the same claim, then each would rely on their own insurance for protection.

Example 1: You are promoting a festival and name Great Beer Company on your policy as an additional insured as required in your sponsorship agreement. Through no fault of Great Beer, a patron slips and falls and brings suit against you and Great Beer. Your policy would provide coverage for Great Beer.

Example 2: Same scenario as above. But instead of a slip and fall, a patron becomes ill from drinking a bad batch of beer manufactured by Great Beer and sues both you and Great Beer. Your policy would protect you, but would not provide protection for Great Beer. They would have to rely on their own insurance.

ADDING ADDITIONAL INSUREDS TO A LIABILITY POLICY

Many people and business entities seek to transfer risk by negotiating to be named an "additional insured" in various contracts, purchase orders, lease agreements, etc.

Some people mistakenly believe that by achieving additional insured status with adequate limits, they can safely forego the purchase of their own general liability insurance.

In most cases, additional insureds are given coverage only for their vicarious liability arising out of the acts of the named insured. **In other words, if a claim was presented against the additional insured that did not arise out of the activities of the named insured there would be no coverage.** An example might be where the additional insured is the landlord and has achieved additional insured status in a tenant's general liability policy through a lease requirement. If someone were to be injured in the parking lot due to negligence, not maintained or the responsibility of the tenant, the tenant's policy would not respond for the landlord/additional insured's benefit.

- An additional insured does not receive any notice as to a policy's change, non-renewal, etc.
- The other party's policy could exhaust its aggregate limits without the additional insured being aware that all or part of the policy protection has been "used up."
- When your organization (corporation, partnership, etc.) is named as an additional insured, your employees, officers, partners, etc., are probably not!
- If you have achieved additional insured status then two policies can potentially cover a claim. Which one pays? Is one primary and the other excess? The answer is that the "Other Insurance" clause decides. The "Other Insurance" provisions are pretty much standardized in general liability policies. Basically, this clause often states that each policy is primary cover. Please consider the following example of the problems associated with the "Other Insurance" clause and note that there are additional even more technical circumstances under which coverage may also be prohibited:

You contract with another party to be named as an additional insured in their liability policy. You have your own \$1,000,000 liability policy; the other party has its own \$1,000,000 liability policy. The other party had the following claims under their policy: \$300,000 on January 20; \$450,000 on April 19; and \$200,000 on July 9. The total claim settlement is \$950,000. Most

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liability policies are subject to an aggregate limit. Therefore in this case, the other party's \$1,000,000 policy limit must be reduced by the \$950,000 in claims, leaving a reduced limit of \$50,000 remaining for further claims. A \$200,000 loss occurs on September 15 which, due to each policy's "Other Insurance" requirements, must be settled as follows:

Your Policy's Share of the Loss:

50% of \$200,000 loss = \$100,000

The Other Party's Policy's Share of the Loss:

50% of \$200,000 loss = \$100,000

Note: Your policy limit of \$1,000,000 adequately covers your \$100,000 share of the loss. However, the other party's policy will only pay subject to the available limit. The \$1,000,000 limit has been reduced to \$50,000 by the first \$950,000 in claims settled earlier in the year. **Therefore, the most that can be paid is \$50,000, resulting in a \$50,000 uninsured loss!**

The use of additional insured status can be a valuable risk management tool if properly designed with appropriate policy modifications.

Better yet, consult with your agent or broker before contract terms are established.

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SAMPLE INDEMNIFICATION CONTRACT

Contractor

Name: _____ Title: _____

Signature: _____ Date: _____

Tenant (if applicable)

Name: _____ Title: _____

Signature: _____ Date: _____

EXHIBIT A

INDEMNITY AGREEMENT

1. To the fullest extent permitted by law, Contractor will indemnify and hold Figueroa at Wilshire, LLC and Hines Interests Limited Partnership, collectively herein "Owner", and their agents and employees harmless from and against liability claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of, resulting from, or in any way related to the performance of work by Contractor, its subcontractors, or persons directly or indirectly employed by any of them on or about the project site pursuant to Contractor's contract with Owner, provided that such liability, claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death of any person (including Contractor's employees), or injury or destruction of tangible property, including the loss of use resulting there from. Contractor's aforesaid indemnity and hold harmless agreement shall apply to any acts or omission, willful misconduct, or negligent conduct, whether active or passive, including Contractor's agents, subcontractors, or employees except that said agreement shall not be applicable to injury, death, or damage to property arising from the sole negligence or willful misconduct of the Owner or its officers, agents, and servants. Notwithstanding the foregoing, however, this paragraph shall not be construed to negate, abridge, or otherwise reduce any right to indemnity, defense or protection which Owner or its agents, affiliates, Owners, partners, officers or employees would otherwise have.
2. In any and all claims against the Owner or its agents or employees by any employee of Contractor, or of its subcontractors, anyone directly or indirectly employed by any of them, or anyone for

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whose acts any of them may be liable, the indemnification obligation set forth in Paragraph 1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for Contractor or any of its subcontractors under workers' compensation acts, disability benefits acts, or other employee benefit acts.

3. Contractor will name the Owner and Owner's agents as additional insured on Contractor's bodily injury and property damage liability insurance policy or policies and will also require that each of its subcontractors also name the Owner as additional insured on their bodily injury and property damage liability insurance policies. All such liability insurance policies shall include the further provision that such insurance as is afforded by those policies shall be primary insurance as respects the interest of the Owner and that any other insurance in force for the Owner shall not be required to contribute with such insurance.