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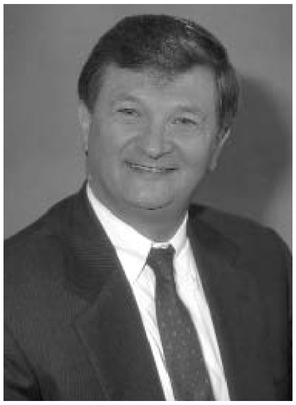
Risk Management Quarterly

RMQ

Volume 21 Number 3 September 2004

From the Chairman's Corner

by George J. Kolczun Jr., CPCU, ARM, AAI



George J. Kolczun Jr., CPCU, ARM, AAI, is account executive and chief operating officer of Rooney Insurance Agency. He has earned a bachelor of arts degree from Heidelberg College; and the Chartered Property Casualty Underwriter (CPCU), Associate in Risk Management (ARM), and Accredited Adviser in Insurance (AAI) designations. He currently serves as chairman of the CPCU Society's Risk Management Section Committee, and has served on many governmental and charitable boards of directors.

Dear Section Members:

We had another great mid-year section committee meeting in April. We had a good turnout of your committee members. The primary topics of discussion during the meeting were the *RMQ* newsletter, the Risk Management Section web site, the seminar planned for the Annual Meeting and Seminars in October, future seminars, and the need for increasing our total membership both for the committee as well as the section.

Your committee continues to try to improve the quality of the *RMQ*. Earlier we had committed to try and keep the quality up even at the price of reducing the number of *RMQ*s we published. We found that the burden of publishing the *RMQ* fell on too few people and you would end up not being served. In New Orleans we shored this up by assigning two committee members as co-editors to assist **Kathleen Murphy, CPCU,** your *RMQ* editor. This is now working. Your co-editors for this *RMQ* are **Trish Hannemann, CPCU,** and **Walter G. York, CPCU**. Future co-editors will be **Jane M. Damon, CPCU, CPIW, CIC,** and **Jim W. Baggett Jr., CPCU, CIC**. All of these committee members will participate in future editions of the *RMQ*. I have seen drafts of some of the articles and am sure you will be pleased with them when published. Some have been specifically written for our *RMQ* and a few others will be reprints.

Our primary focus going forward will be our web site. **Cheryl L. Topham-Coffee, CPCU,** has drafted some enhancements for the web site. I think you will like what you see when it is completed. We believe that your web site should be a resource for you. We are going to try and have some informative articles on the web site. We will be placing various links on the web site to assist you in visiting other web sites that might be of some help to you when needed. Jane Damon has agreed to help Cheryl finished this monumental task. If any of you would like to help please let Cheryl or Jane know. If you have any particular link you might want added or feel would be of some assistance to your fellow section members, let these folks know. We want a quality web site. We really need your input.

The Risk Management Section is co-sponsoring a seminar with the IT folks at the Los Angeles Annual Meeting. It will deal with continuity planning as it relates to IT issues. Should be interesting! We all agreed that we must offer more seminars for you. Various topics have been discussed and will be worked upon in the future. We hope to have one approved for the Atlanta meeting in 2005. If you have any particular topic you would like for us to pursue, let me know and I will forward it to Jim Baggett, Walter York, and Trish Hannemann who will be leading this charge.

Each of the Society sections appears to be losing members. It is probably a sign of the times due to the economy; however, we believe that our section serves a very important role to our members. Therefore, your committee believes we must find ways to increase our services to the membership and to stabilize if not grow our roles. You can help. Give me some input in what you want as a member of the Risk Management Section. Send me an e-mail at gkolczun@rooneyinsurance.com. I promise I will share your thoughts and suggestions with the committee and be sure they address it at the Los Angeles meeting.

Your comments, suggestions, and help would be appreciated! ■

Contractual Risk Transfer

The Shoe Is On the Other Foot Now

by Donald S. Malecki, CPCU

Donald S. Malecki, CPCU, is chairman and CEO of Donald S. Malecki & Associates, Inc., an insurance and risk management consulting firm, and president of Malecki Communications Company, the publisher of a monthly newsletter entitled *Malecki on Insurance*. He has been in the insurance and risk management business for more than 44 years and authored 10 books, including three textbooks used in the CPCU curriculum. Malecki is currently serving on the examination committee of the American Institute for CPCU, is a past president of the CPCU Society's Cincinnati Chapter, and is an active member of the Society of Risk Management Consultants. He is a U.S. Air Force veteran of the Korean War.

There are those who can still recall, whereas others must refer to historical documents, that contractual risk transfer was not taken lightly by insurance company underwriters. With some exceptions dealing with the larger and better-than-average risks, each contract containing a hold-harmless and indemnity agreement had to be read and approved by the underwriter before it was considered to be covered by contractual liability insurance.

Experienced casualty insurance underwriters, cognizant of what degree of fault was otherwise valid and enforceable on a state-by-state basis, did the "grunt" work of determining: (1) the nature of the financial consequences being assumed by its insured, and whether it was an acceptable risk for contractual liability insurance; (2) the scope of the contractual risk transfer; and (3) the applicable rate.

The result of these efforts was the issuance of an endorsement activating contractual liability coverage beyond coverage for the traditional contracts consisting of L—leases, E—easement agreements, A—agreements required by municipalities, except work for them, S—sidetrack agreements, and E—elevator maintenance agreements.

Some of the larger and more profitable risks were given preferential treatment in this regard, since they were given blanket, automatic contractual liability coverage for broad form (sole-fault assumptions) without having to obtain prior approval.

This bit of information is all but history now, because insurers began to offer every insured of a business liability policy blanket automatic contractual liability encompassing broad-form coverage. Whether that purchased coverage ever was activated, however, hinged on a contract requiring the assumption of an indemnitee's sole or partial negligence, and a state law that did not otherwise consider the degree of fault assumed to be void and unenforceable by law.

This trend actually began in 1976 with the introduction of the broad-form CGL endorsement, referred to by other insurers with such labels as the broad-form coverage endorsement. After 1976, it was no longer necessary for an underwriter to read contract provisions and issue endorsements with the appropriate kind of contractual liability coverage. Every insured received blanket, broad-form contractual liability coverage automatically as part of an endorsement including other "frill" coverages.

With some exceptions dealing with the larger and better-than-average risks, each contract containing a hold-harmless and indemnity agreement had to be read and approved by the underwriter before it was considered to be covered by contractual liability insurance.

At this point in time, underwriters, indemnitees, and indemnitors all had the best of both worlds, since none of them had to read the contracts! If the financial consequences of an indemnitee's tort liability were to be assumed by an indemnitor, it would not have mattered what degree of fault it was. The CGL policy, amended with this broad form CGL endorsement that included contractual liability, was available. The only persons required to read these contracts—and they would likely have been the first ones to do so following the contracts' execution—would have been insurance claims people whose role was to determine the extent to which contractual liability coverage was owed under the contract and subject to the existing law.

With the introduction of its 1986 easy-to-read and plain-English commercial general liability policy provisions, ISO incorporated all of the coverages contained in that broad-form CGL endorsement into the policy. As a result, every purchaser of the CGL policy received broad-form contractual liability coverage.

This development of obtaining broad-form contractual liability coverage automatically was heralded as a distinct advantage over the way it had to be obtained in the past. However, at the same time the CGL policy was introduced, ISO also made available an exclusion to modify this blanket automatic contractual liability coverage. Entitled "Contractual Liability Limitation Endorsement CG 21 39," it took away coverage for the tort liability assumed in all contracts, other than the five types of agreements noted earlier identified by the acronym: L-E-A-S-E.

Turn of Events

It was at this time in 1986 that it became incumbent upon named insureds—for the first time—to read their contracts to make sure that what coverage was being provided was broad enough to encompass what the named insured contractually assumed by written contract or agreement.

Unfortunately, many of these named insureds took for granted the broad contractual liability coverage and never realized that this coverage, modified with Endorsement CG 21 39, could be cut to the bone. Part of the rationale for overlooking the significance of this limitation endorsement might have been that one of the reasons for that endorsement was to close a gap having to do with CGL policies issued to exclude the products and completed operations hazard.[1]

Briefly, if the "products-completed operations hazard" were to be excluded by endorsement, it might have still been possible to obtain coverage under contractual liability, which applies to liability assumed by the named insured under an "insured contract." As it turned out, however, this Contractual Liability Limitation Endorsement is issued on many occasions, even when the named insured maintains products and completed operations coverages.

Rule 36. C. 8. of ISO's Multistate Commercial General Liability Rules being filed for use in July 2004 states: "Contractual liability coverage may be limited by attaching Contractual Liability Limitation Endorsement CG 21 39." That's for sure! The fact that the rule does prescribe when it should be used means that it is solely the underwriter's discretion.

> ***For those who have been in the business since the early 1970s, this latest development may appear to be "déjà vu."***

Beginning in July 2004 in most states, yet another endorsement is available to modify contractual liability coverage. Entitled "Amendment of Insured Contract Definition CG 24 29," this endorsement reduces broad-form hold-harmless coverage encompassing the indemnitee's sole fault to coverage limited (1) solely to the named insured's (indemnitor's) sole fault, or (2) contractual liability coverage for not more than partial fault of the indemnitee. Its coverage, in other words, is broader than what protection the Contractual Liability Limitation Endorsement affords, but is less than desirable from what the CGL policy provides without any such exclusionary endorsement.

For those who have been in the business since the early 1970s, this latest development may appear to be "déjà vu." The reason is that underwriters have at their disposal the tools to provide one of three types of contractual liability coverage. Leaving the CGL policy unendorsed, contractual liability coverage is available to provide "broad-form" coverage encompassing, at the most, the indemnitee's sole fault. With its newly introduced endorsement CG 24 29, underwriters have the power to convert the coverage to an "intermediate" form or, in other words, honing the broad-form coverage to the level of limiting it to the partial fault of both the indemnitee and indemnitor. Or, at the other extreme, underwriters can rely on the "limited" form of contractual liability coverage, which limits its coverage to the sole fault of the indemnitor.

In a period of a little over two decades, insurance and risk management professionals are back again to the stage where reference to "broad-form," "intermediate-form," and "limited-form" contracts have significance. However, the shoe is now on the other foot, so to speak, because it no longer is the burden of underwriters to read, categorize, and rate contracts of indemnity. This burden of having to read contracts and ensuring the appropriate insurance is to be provided falls instead upon the indemnitors and/or the insurance and risk management professionals serving them.

It is not difficult to envision the consequences if an indemnitor promises contractual liability coverage that falls short because an underwriter decides to modify the CGL policy with one of the two Contractual Liability Limitation Endorsements. From a legal standpoint, this is known as breach of contract based on failure to procure the promised coverage. In risk management parlance, this result is referred to as "passive retention," or surprise! In both cases, the failure to procure coverage is not considered insurable and someone therefore will be left retaining the damages and costs.

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Contractual Risk Transfer

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Rationale

Determing what the driving forces are behind these changes is difficult to speculate. Without a doubt, however, a significant part of the push is based on the kind of additional insured endorsements that have been issued. Currently, the additional insured endorsements of ISO used for construction work are worded so as to cover the additional insureds against their sole fault. Yet many of the contractual risk transfers being imposed by these same additional insureds (as indemnitees) involve less than sole fault. Why, some underwriters have asked, should they give broad additional insured coverage encompassing sole fault when what is being asked by these indemnitees to be assumed by contract is less than sole fault?

■ ***What appears to be a trend of late is the requirement by indemnitees of mutual or reciprocal agreements.***

It is interesting to note, too, that many indemnitees who have the power to transfer the financial consequences of their sole fault to indemnitors do not do so. What appears to be a trend of late is the requirement by indemnitees of mutual or reciprocal agreements. In other words, the indemnitee promises to protect the indemnitor for what the indemnitee does and the indemnitor promises to protect the indemnitee for what the indemnitor does. It may not be readily obvious but this exchange of promises in a construction contract is not even considered to be an "insured contract"! The reason is that neither of the parties is assuming the tort liability of the other.

In fact, many indemnitees, in avoiding to reinvent the wheel when it comes to drafting hold-harmless agreements commonly utilize the wording from the American Institute of Architects General Conditions A 201 Form with a 1997 edition. Close scrutiny of this document, however, reveals that it, too, is nothing more than a "limited-form" contractual agreement encompassing the sole fault of the indemnitor. This is another example of an assumption of liability that falls short of the CGL policy's definition of "insured contract."

Repercussions

If there is going to be any problem here for insurance and risk management professionals representing indemnitors, it will be that they must understand what is being assumed and make certain that the liability being assumed under contracts not only is valid and enforceable, but also potentially covered by the appropriate contractual liability coverage.

What makes this a precarious situation is that there are 13 states that either have no anti-indemnity statutes precluding assumptions of sole-fault or they have statutes that permit broad assumptions so long as the contract's terms are "clear and unequivocal."[2]

An additional 20 states have anti-indemnity statutes that specifically address sole-fault prohibitions either allowing insurance coverage for sole fault or expressly permitting additional insured coverage.[3]

What all of this means is that if underwriters today take the attitude that something less than sole-fault contractual liability coverage will apply to the CGL policies being issued, it becomes especially important for insurance and risk management professionals representing their clients to understand the nature of the liability being assumed and whether it is being covered properly.

With so many states still permitting coverage for contractual risk transfers based on sole fault, there are bound to be instances where the coverage will fall short of what should have been provided, unless the contract is read and compared to the policy that has been issued. The burden no longer rests on the sellers of insurance but instead has shifted to the purchasers.

What insurance and risk management professionals can hope for is that some insurers, willing to remain competitive and to write the better-than-average risks, will not automatically issue these limiting contractual coverage endorsements, but instead will look into each situation before deciding what steps to take in making the applicant an acceptable risk.

Endnotes

1. See, for example, Donald S. Malecki, "Dealing With the Contractual Liability Exposure in the Absence of Products-Completed Operations Coverage," *Rough Notes*, August 1989, p. 24.
2. These 13 states are: Alabama, Arkansas, Colorado, Iowa, Kansas, Kentucky, Maine, Missouri, Montana, Nevada, Oklahoma, Wyoming, and Vermont. This information was taken from the February 2004 issue of *Malecki on Insurance*, with permission, and with the additional caveat that readers are advised to consult the individual laws, or case law, addressing this subject.
3. Taken from the same source and subject to the same caveat as in endnote 2, the states in this category are: Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Mississippi, Nebraska, New Jersey, New York, Rhode Island, South Carolina, Virginia, and West Virginia. Ohio's law currently is in the stage of limbo.

Crafting the Best Business Interruption Policy

by David P. Gould, CPA, SPPA

David P. Gould, CPA, SPPA, graduated cum laude from the University of Maryland, College Park, Maryland, with a bachelor of science in economics. He is the founder and president of American Claims Management Services (David P. Gould Associates, Inc.) in Baltimore, Maryland. Gould is licensed as a public adjuster in a number of states, and has written and spoken frequently on the subjects of insurance, claims adjusting, and arson.

After a large property loss is reported to the insurer, one of the adjuster's first tasks is to analyze the coverage and explain it to the insured. It is the adjuster's responsibility to interpret the policy and determine how it responds to the insured's situation. All too often, this becomes the moment of "truth." The adjuster must apply the coverage to the loss *after* the fact.

This is the time when the insured will learn that his or her loss of income is not fully insured because "ordinary payroll" is only insured for 60 days, that there is a coinsurance penalty, or there is no coverage for income loss due to the additional time necessary to comply with the local building code even though there is coverage for the extra cost of the construction.

The agent, broker, risk manager, and underwriter are the architects who must anticipate the needs of the insured and design the proper coverage *before* the policy must respond to a loss. Business is dynamic. Do you remember the UPS commercials that announced, "Brown moves at the speed of business!"? Those on whom the insured depends for insurance protection cannot do less.

The insured generally does not understand insurance and does not alert you to changes in its situation. Nevertheless, the insured still depends on its insurance professionals to provide the proper coverage. The architects depend on a small number of standard ISO (or ISO-based) forms to cover all business interruption risks. Frequently these "plain vanilla" forms require changes to provide proper business interruption or extra expense coverage.

To provide the proper coverage, the insurance professional must question the insured to determine each insured's unique needs. Many businesses qualify for the BOP policy that automatically affords business interruption and extra expense coverage for 12 months in the basic form, without coinsurance. Is it sufficient to just attach the BOP form to the policy and forget it?

No! The form only insures ordinary payroll for 60 days and this is not sufficient for all businesses. It is necessary to discuss with the insured its specific requirements and endorse the BOP policy accordingly. The insurance architect cannot assume that the "one size fits all BOP" is sufficient for every insured.

The agent, broker, risk manager, and underwriter are the architects who must anticipate the needs of the insured and design the proper coverage* before *the policy must respond to a loss.

Another situation that frequently is overlooked in business interruption and extra-expense coverage is the time necessary to bring a property up to code. Most policies today exclude the additional cost of code compliance for the property loss. Others either contain token property code coverage or they are endorsed on as a matter of routine. But, the business interruption associated with the time to do the code-related construction is specifically excluded in *all* standard forms. Consequently, time element coverage for the additional time to complete the code upgrades must be endorsed onto all policies.

Virtually all-standard forms insure the loss of earnings for "the period of restoration." This usually begins with the date of the insured event and ends when damaged property is repaired or replaced. Does every insured return to its preloss sales volume on the day the period of restoration ends? Is there coverage beyond the period of restoration?

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Crafting the Best Business Interruption Policy

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Many standard forms today do provide coverage. They may provide a 30-day period of extended indemnity for the income loss only. But, does every insured return to its pre-loss sales volume on or before the thirtieth day? Could your insured be in this situation?

A bowling alley would be a good example. Normally bowling leagues are formed at the beginning of a season: winter and summer. If the insured suffers a fire loss in September that takes 40 days to repair and all its leagues find other facilities and relocate, is all the insured's loss of business income going to be covered?

No. A winter bowling league usually bowls from September through March or April. Therefore, the standard policy would cover the period of restoration and possibly the next 30 days. Assuming the date of loss of September 1, the policy would respond to October 10; the extended period of indemnity would cover to November 9. There is no coverage for the balance of the lost business income from November through April.

This loss could have been completely indemnified by adding an endorsement to make the extended period of indemnity six months or more.

Can you think of any other business to which this would apply?

How is a "72-hour deductible" or an average daily value deduction applied? Many of the current business interruption forms used today provide for this or a similar deductible or waiting period. But, there frequently are no definitions or guidelines provided in the policy to assist in applying it. How would you?

Is it applied to the average sales volume of the entire business entity? What if only a single operation or process out of many is affected? What if the insured works three full production shifts per day in certain operations and one in others? How does the deductible or waiting period apply?

What if the insured were Churchill Downs and a fire destroyed the clubhouse two days before the running of the Kentucky Derby? How would you apply the deductible? Would your answer be different if a fire destroyed the Tote machine after the third race on Derby Day?

How is the entire problem avoided? Remove the deductible or waiting period by endorsing it *off* of the policy *before* the loss occurs. Eliminate as many potential problems as possible before a loss occurs.

The standard forms change periodically. It is the responsibility of the insurance professional, the architect of the insured's policy, to know when this happens and take appropriate action. The newest Business Income and Extra Expense Form CP 00 30 (04 02) drastically changed all losses from computer operations. It limits recovery to ". . . $2,500.00 for ***all*** losses sustained and expenses incurred in any one policy year regardless of the number of interruptions or the number of premises, locations or computer systems involved. . . ." [Emphasis added.] Now, if the insured has a significant business income exposure from loss from computer operations, coverage must be provided via another vehicle.

Every insured is a unique entity and most likely requires some protection not contemplated in the standard forms commonly used to provide time element coverage in the property insurance market. Each insured depends on its insurance professionals to craft an insurance policy that will indemnify it after a loss. It is essential that the professionals who craft the policies have a full and complete knowledge of the forms available and to bring the proper forms with the appropriate endorsements together to provide the insured with the security it seeks.

The insurance professional must obtain sufficient information from the insured to be able to customize the insurance policy using the forms and endorsements currently available to provide coverage necessary to fully indemnify the insured. Changes in an insured business take place all the time. The insurance industry's architects cannot depend on yesterday's information. The dialogue must be dynamic and ongoing to be certain coverage is updated as necessary. Business is dynamic, the insurance policy must be dynamic, and the entire process has to be dynamic. It cannot be assumed that forms and endorsements do not change and yesterday's information is not sufficient to craft today's policy.

Know the forms. Know the insured. Eradicate as many potential problems as possible *before* a loss occurs. Give the adjuster an insurance policy that will fully indemnify the insured. ■

Steps To Take in Presenting and Preparing a Property Insurance Claim

by Walter G. York, CPCU, AIC, CCLA

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York began his insurance career as a claims adjuster for The Hartford. He also worked as a claims supervisor for Reliance Insurance Company, and as an insurance analyst for the Baltimore Gas and Electric Company (BGE) before joining RCM&D. He obtained additional risk management experience at the Insurance Buyer's Council and at the Mass Transit Administration.

York hold a bachelor of science degree in business administration from the University of Maryland and a master of administrative science degree from the Johns Hopkins University. He holds the Chartered Property Casualty Underwriter (CPCU), Associate in Claims (AIC), and Casualty Claims Law Associate (CCLA) designations.

Up until the time a major claim occurs, relationships among insureds, brokers, and carriers are very friendly and cordial. However, once a major claim or disaster occurs, the relationship among the parties can change, particularly if there are different interpretations of the contract.

My personal lessons learned from being involved on large property claims as a claims supervisor, risk manager, consultant, and broker are as follows:

1. Protect the property from any additional damage. Notify the police if a law may have been broken.
2. Designate one individual to serve as the claims coordinator, and one as a designated backup.
3. Contact mitigation companies from a pre-approved list of water, smoke, and restoration companies. Contact your carrier in advance of a loss for its recommendations. Keep the emergency contact numbers available for your staff. Consider using a contractor from the carrier's preferred vendor list. This will alleviate any questions on the standard fees charged for the clean up, and ensure that the company is reputable, bonded, insured, and has adequate staff and approved equipment.
4. Report the loss to your broker and insurance company as soon as possible. Maintain a record of toll-free claim reporting numbers of your carriers. Losses occur at any time and it is important to have claim reporting procedures in place as well as direct access to your carriers.
5. Document the loss by taking photographs and videos.
6. Do not discard anything until the insurance adjuster evaluates the damage. Do not destroy any evidence until the cause and the origin of the loss has been determined. The adjuster will want to identify subrogation possibilities.
7. Prepare a written inventory of all damaged property.
8. Review all coverages with your broker or agent. Refer to sublimits concerning extra expense, business interruption, expediting expense, debris removal, etc. Make sure that your organization complies with all the terms and conditions of the policy. Ask the company adjuster to explain all available coverage for this loss, including limitations and exclusions. Any questionable or unclear coverage issues should be discussed with the agent or broker.
9. Work closely with the insurance adjuster to establish the scope of the damages and the repair cost. Keep adequate records of any extra costs necessary to keep the business operating.
10. Make sure your accounting system is in place and establish a charge or job number so that all repairs and labor costs can be tracked. Advise all of your personnel of the accounting procedures that have been implemented.
11. Develop a spreadsheet to keep track of repair costs.
12. Request an advance payment on large claims. This can improve your organization's cash flow after a catastrophic loss. Prepare documentation necessary to support the requested advance.
13. Obtain invoices for all repair costs. Remember, it is up to the insured to prove the loss. Make sure the invoices supply enough information to detail what is being repaired and why. If invoices are not readily available, written estimates may be sufficient for work not yet completed. This will avoid a potential dispute on scope and cost of restoration.
14. Your broker or agent is an important resource to help you through the process and should be kept apprised of the claim's progress. If coverage questions arise, your broker or agent can be of assistance to you in addressing the issue with the adjuster.
15. Consider the use of a public adjuster if the loss involves major inventory damages or extensive repairs. From a time management/cost-benefit standpoint, this practice could considerably reduce your in-house personnel man hours needed to substantiate the loss as well as reduce your organization's administrative burden.

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Steps To Take in Presenting and Preparing a Property Insurance Claim

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16. Consider the use of a Certified Public Accountant if there is a substantial business interruption or extra expense claim. As in item #15 above, in-house personnel man hours and administrative burdens could be reduced with the use of an outside expert. When considering a CPA, I would use ***only*** a firm or an individual with experience and knowledge of the insurance contracts. There are too many otherwise qualified CPAs who have no idea how to work within the bounds of the insurance contract especially in the area of business interruption.

17. If there is extensive structural damage issues, consider the use of a professional engineer to provide an expert report on the scope of the damages.

18. Keep your insurance carrier adjuster advised in writing as to the progress of the claim and the associated repairs. Insurance adjusters do not like surprises.

19. Prepare a claim submission that details all repairs, has detailed back-up material, and is easy to understand. Make sure that you respond in a timely manner to any requests that the carrier would make for filing a proof of loss. If the claim is submitted with all the necessary information, the adjustment will be settled faster and more amicably.

20. Once a claim is submitted, be prepared to negotiate and compromise on certain issues concerning coverages and damages. The insurance contract is subject to individual interpretation, and it is important to keep that in mind while negotiations are being held. Your broker or agent can act as your advocate in presenting a fair and reasonable claim to the carrier.

21. If a coverage question arises, you may want to consult with legal counsel. The earlier that counsel is retained on a significant coverage issue, the more likely that there will be a prompt resolution. Use ***only*** counsel experienced with commercial property policies. Do not use a general corporate counsel; use only a specialist in this area.

22. If there is a disagreement with regard to the amount of loss, refer to the appraisal section of the policy. The appraisal process is also a requirement prior to suit and should only be used if settlement negotiations cannot be reached.

In summary, when a major loss occurs, your risk management and insurance program must respond. Therefore, the various departments of your organization must work together to solve problems that will arise. Teamwork, clear and accurate record-keeping practices, and communication are the key factors involved in an insurance adjustment that is fair, reasonable, and timely. ■

Risk Management Quarterly
is published by and for the members of the Risk Management Section of the CPCU Society.

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Volume 21 Number 3 September 2004

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