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Risk Management Interest Group

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Message from the Chair

by Stanley Oetken, CPCU, ARM

Stanley Oetken, CPCU, ARM, was formerly with Marsh's Risk Management Practice in its Denver office. Throughout his career, he has been involved in assisting clients using large deductible programs, captives and risk retention groups in loss forecasting and cash flow analysis. During his tenure at Marsh, Oetken was actively involved with clients in the oil and gas industry; construction project wrap-ups; electric and gas utilities; environmental remediation; and sports teams and venues. He earned a bachelor's degree in mathematics from Wake Forest University and a master's degree in insurance management from Boston University. Oetken is a member of the CPCU Society's Colorado Chapter. He is currently seeking opportunities in the industry.

As I write this, we are approaching the CPCU Society's 65th Annual Meeting and Seminars, which will be held in Denver, Colo. As Denver is my hometown, it will be exciting to display the summer beauty of Colorado to Society attendees and to contribute to the Annual Meeting as a member of the host chapter.

I hope that you will be able to attend and participate in all the meetings, seminars and other events. I realize in this economy, though, that this will not be possible for everyone. Even I have felt the effects of today's marketplace, as I am currently in the middle of a job search myself.

Historically, at least from my perspective, the insurance industry has been stable and jobs have been available even when other industries have not been able to offer the same opportunities. This time around, however, our industry also seems to be affected.

There are some signs that perhaps the economy in general, and our industry in particular, may be on the road to recovery. Even so, I anticipate that a recovery will take some time.

In any event, I hope you find this issue of the Risk Management Interest Group newsletter helpful to your career, and I offer you best wishes for future success. ■

What's in This Issue

Editor's Note

by Jane M. Damon, CPCU, MBA, CIC, CPIW

Jane M. Damon, CPCU, MBA, CIC, CPIW, is an assistant vice president and commercial account executive with Wells Fargo Insurance Services, Inc. in Dallas, Texas. She earned a bachelor of business administration in management and master of business administration in strategic leadership from Amberton University. Damon has more than 20 years' experience in the insurance industry, and works on large complex accounts in the real estate, construction and technology fields. In October 2001, Damon joined Wachovia Insurance Services, which officially changed its name to Wells Fargo Insurance Services Inc. in July 2009.

We are fortunate to have a great group of articles for you this month.

As many of you have experienced, especially lately, one thing about insurance is that it's always changing. As part of recent shifts, Wachovia Insurance is now Wells Fargo Insurance Services, so my e-mail has changed, as indicated at the end of this article.

Bankruptcies are at a high, and **Joshua Gold, J.D.,** in his article entitled, "Competing Insurance Interests in Bankruptcy," discusses the insurance issues, including D&O claims, that arise in a bankruptcy.

In our June 2009 newsletter, we provided you with "Privacy Liability — Are you Covered?" This article was the first in a series of four articles written by **Robert D. Chester, J.D., Ph.D.,** and **Cindy Tzvi Sonenblick, J.D.** The second in the series, "Filling the Gaps in Your Coverage Portfolio with Cyber Policies — Lost or Damaged Data," appears in this issue.

Consultant, author and risk manager **Nancy Germond, ARM, AIC,** provides an article entitled, "Managing Your Way to Lower Workers Compensation Premiums," and shows that a few small items can make a difference.

Jerome Trupin, CPCU, CLU, ChFC, one of our regular contributors, has contributed "Changes in the Earth Movement Exclusion," which discusses how you can provide coverage for earth movement events.

Please enjoy another wonderful issue provided by our authors. We also have a "Letter to the Editor" with some sound and precautionary advice. As always, please feel free to let us know your thoughts on the articles, what you would like to see, and what you like and don't like.

If you are interested in providing an article, please contact me at jane_damon@wellsfargois.com. We welcome all authors and commentaries. ■

Competing Insurance Interests in Bankruptcy

by Joshua Gold, J.D.

Joshua Gold, J.D., is a shareholder in the New York office of the law firm of Anderson Kill & Olick PC. He regularly represents policyholders in insurance coverage matters and disputes concerning time element insurance, electronic data and other property insurance coverage issues. Gold can be reached at (212) 278-1886 or jgold@andersonkill.com.

Editor's note: This article originally appeared in the May/June 2009 issue of *Policyholder Advisor,* a bimonthly publication of Anderson Kill & Olick PC. It is reprinted with permission.

As bankruptcy filings rise in this prolonged economic downturn, insurance claims are becoming a focal point for the administration of debtor assets and liabilities. Many insurance claims that arise in bankruptcy — particularly D&O claims — give rise to conflicts issues between competing insureds.

A recurring question in bankruptcy proceedings is whether the benefits of a D&O policy are assets of the estate or personal assets of the insured officers and directors. Creditors of a bankruptcy estate have an obvious interest in keeping available as many assets as possible to satisfy claims. In the Enron case, a state attorney general tried to bar Enron officers and directors from tapping the defense cost insurance coverage of Enron's D&O insurance, arguing that to permit payment of defense costs would siphon off money from the estate that could be used to pay creditors' claims.

The question of whether a D&O insurance policy is property of the estate or the insured officers and directors becomes even more heated when the D&O policy expressly provides so-called "entity" insurance coverage to the company itself, as most now do. Some have argued that a D&O insurance policy, which promises "entity" coverage, transforms the policy into an asset of the bankruptcy estate, with the potential effect of leaving the officers and directors "bare" in the event of litigation. While the bulk of the cases rendered thus far do not necessarily support this conclusion, the issue is still debated. Even insurance companies have seized on this debate as a marketing point for the sale of nonentity D&O coverage and so-called Side A policies.

In a bankruptcy, insurance benefits, like all other assets, become increasingly sought-after by trustees, creditors and other claimants. Different groups of "insured" often vie for limited amounts under the D&O insurance before the well runs dry.

Policyholders in these situations should be aware of certain critical points of potential conflict. One is whether a priority of payments clause is contained in the primary or excess D&O insurance policies. These clauses typically provide a strict formula for divvying up policy proceeds, affording a coverage preference to nonindemnifiable claims first, followed by claims indemnified by the corporation, and then furnishing entity coverage last.

The question of whether a D&O insurance policy is property of the estate or the insured officers and directors becomes even more heated when the D&O policy expressly provides so-called "entity" insurance coverage to the company itself, as most now do.

Priority of payment clauses can generate their own ambiguities, however. In particular, most such clauses purport to have no application until a "loss" exceeds the remaining limits of the policy. Accordingly, the timing of loss payments claimed under the policy often comes under dispute. To figure out whether the clause is triggered, can one extrapolate from a monthly or quarterly burn rate to determine when something such as defense costs will exhaust the policy? If so, can the priority of payments provision be triggered at that moment and require the application of the formula months before the policy limit is actually exhausted? Depending upon the competing interests in the policy, one side will argue yes and the other no. Very little guidance as to which side is correct is provided under the express terms of the clauses I have reviewed.

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Competing Insurance Interests in Bankruptcy

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Also, a question may arise as to whether application of the clause is discretionary or automatic. Both forms exist. If discretionary, which insured has the discretion to invoke it? Typically, the corporation as "Named Insured" will have that right, but it may be charged that there is a conflict of interest even in that scenario, as current management might want to invoke it even if it would be in the entity's coverage interest not to.

In a bankruptcy, insurance benefits, like all other assets, become increasingly sought-after by trustees, creditors and other claimants. Different groups of "insured" often vie for limited amounts under the D&O insurance before the well runs dry.

Where a trustee in bankruptcy brings suit against current or former officers of the bankrupt company, a coverage battle with the D&O insurance company may ensue. Some D&O insurance companies argue that claims made by a trustee on behalf of the estate implicate and otherwise trigger the so-called "insured vs. insured" exclusion.

Most commentators and courts agree that the insured vs. insured clause is designed to prevent collusive lawsuits brought by one insured against another with the purpose of tapping D&O insurance proceeds to bolster the company's bottom line. Despite this historic rationale, too many D&O insurance companies have sought far broader applications — including a forfeiture of coverage for any lawsuit brought by a bankruptcy trustee.

While cases have split on whether a trustee's claims against officers or directors of the company invoke the insured vs. insured exclusion, the majority of decisions rendered on this favor policyholders. As long as the trustees' suit

is not collusive in nature, the exclusion should not apply to the insured officers and directors. Some recent D&O forms have sought to clarify this point and specifically except from the exclusion trustee claims.

Despite this, attorneys representing debtors should be aware of the background and purpose for the insured vs. insured exclusion to combat improper insurance company attempts to apply the exclusion beyond its intended scope.

More broadly, all parties to a bankruptcy with some claim on insurance assets must be aware of the ambiguities, the potential conflicts and the direction from which competing claims are likely to arise. ■

Filling the Gaps in Your Coverage Portfolio with Cyber Policies — Lost or Damaged Data

Part 2 of 4 in a Series

by Robert D. Chesler, J.D., Ph.D., and Cindy Tzvi Sonenblick, J.D.

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Editor's note: This article was originally published by Bloomberg Finance LP in Vol. 2 No. 23 of the *Bloomberg Law Report — Insurance Law*. The views expressed herein are those of the author/s and do not represent those of Bloomberg Finance LP.

Traditional property and liability insurance policies are based explicitly on the concept of physical or tangible property. The insurance industry's historical conception of tangible property is something that you can touch, such as a brick wall. Therefore, a company will be covered under its property policy for loss, for example, to its buildings, fixtures and personal property.

However, our society and economy have moved increasingly toward intellectual property as the basis of value. This has led to substantial litigation over whether data is covered under traditional policies. The insurance industry is currently addressing this issue with a blunt instrument, namely, a total exclusion for data. In the future, companies will only be able to access insurance coverage for data stored in computers through special endorsements or the new cyber policies.

While many people associate cyber coverage with insurance to protect a company's Web site, cyber risks are far more pervasive. Nearly every company has digitized certain types of information, such as accounting data, customer records and employee information, which are available over a computer network through e-mail or other electronic access. All of this digitized data is subject to corruption, loss or theft. A company's operations may come to a halt at the hands of a computer virus, hacking, or disruption of its computer network caused by, for example, the negligence of an IT contractor or malfunctioning software. A recent news article discussed an incident in which a disgruntled worker for an architect destroyed her former company's archive of drawings.[1] Almost every business can suffer this type of catastrophic loss and few businesses have insurance coverage for it.

The New Frontier: Property and Liability Coverage for Intangible Loss

New cyber policies are specifically designed to bridge this gap; these policies are available as a combination of first-party property and third-party liability coverage or as a stand-alone property form.

First-Party Property Losses

First-party cyber losses arise from the loss, destruction or theft of a company's own "digital assets," which includes software on the insured's computer system, and may also include the capacity of the system to store, process and broadcast information over the Internet. First-party cyber policies cover these types of losses as well as losses associated with network security breaches, cyber-extortion or electronic theft.

These policies may also bridge the gap with respect to business interruption losses. Generally, a traditional property policy covers loss of income by an insured that arises out of direct physical damage. Cyber property policies expand this cover to include business income lost due to a network intrusion or other computer event that prevents access to the company's network or causes it to operate slowly.

One policy, for example, defines data as "machine-readable information, irrespective of the way it is used or rendered, included but not limited to text, digital media or images." The policy provides coverage for expenses directly resulting from an "insured event." The definition of an "insured event" is broad, including (i) a network security breach; (ii) unauthorized use of the computer network; (iii) a computer virus; (iv) accidental damage or destruction of "data media" [hardware] so that

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Filling the Gaps in Your Coverage Portfolio with Cyber Policies — Lost or Damaged Data

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stored data is not machine readable; (v) corruption or disruption of data due to human error; and (vi) damage or destruction of data due to a number of other causes as well. Covered expenses include the cost to restore, re-collect or replace data, fees of specialists or consultants, and public relation expenses. The policy also provides coverage for cyber extortion threats and business interruption.

Liability

Third-party cyber liability arises when someone destroys data that belongs to someone else. Many companies store information for other companies in digital format. A company can sell defective software that destroys the purchaser's data. IT professionals have access to their clients' computer systems and the data stored there, with the attendant risk. Additionally, there can be downstream liability to third parties arising from a denial-of-service attack or a computer virus disseminated by the insured's computer system. Third-party liability policies are available that provide coverage for these types of losses, frequently combined with coverage for infringement and other intellectual property causes of action now excluded from the commercial general liability policy.

Policy Exclusions

While cyber policies often contain varied and broad coverage for cyber liabilities, these policies also generally carry a number of exclusions. These may include losses arising due to defects of design, implementation or incompatibility of software, contractual penalties or consequential damages, legal costs or expenses, the use of certain programs or applications, and regular wear and tear on systems and cable lines.

Thus, buyers should be cautious to procure the type of policy that insures the company's most important cyber exposures while avoiding unnecessary protections that drive up the cost of coverage. However, if a catastrophic cyber event hits, a cyber insurance policy could save the company.

Coverage for Data Losses under Traditional Policies

As discussed above, data is both a first- and third-party issue. A company can lose its own data, or it can lose data entrusted to it by a third party. As a result, existing case law involves both liability and property policies. However, the central question remains the same under both types of policies. What does "tangible" or "physical" mean in relation to data stored, usually, on computer tape?

As is often the case with insurance issues, the case law is divided, and the differing interpretations resemble the debate on how to interpret the U.S. Constitution. Courts that favor insurers tend to find that the words used by the insurance policy are clear and have a set meaning — a strict constructionist approach. Courts that favor policyholders look to recent economic and cultural trends that demonstrate how society increasingly considers and defines data as tangible property.

As to the cases favoring the insured, the leading case is *American Guarantee and Liability Insurance Co. v. Ingram Micro, Inc.*, No. 4:99-cv-00185-ACM (D. Ariz. Apr. 19, 2000), involving a property policy. The case concerned loss of computer programming information due to a power outage. The court reviewed various statutes, such as the federal computer fraud statute, and other indicia of how society treats data, and held that the loss of use and functionality constituted physical damage, stating that "[a]t a time when computer technology dominates our professional as well as personal lives, the Court must side with [the insured's] broader definition of 'physical damage.'"

America Online, Inc. v. St. Paul Mercury Insurance Co., 347 F.3d 89 (4th Cir. 2003) is the leading case denying coverage. In that case, involving a liability policy, AOL software disrupted existing computer software. The policy provided coverage for "physical damage to tangible property." Id. at 94. The court reviewed dictionary definitions of "physical" and "tangible" and found no ambiguity. Determining that data was not capable of being touched, the court held that there was no physical damage to tangible property.

Gray areas do exist. Some policies have coverage for valuable papers that can include electronic media. Also, in the context of motions on the "duty to defend," courts will scrutinize whether the underlying complaint can be read to potentially assert a physical loss. In this regard, a complaint may allege damage to intangible property as damage to tangible property.

For example, in *Centillium Communications, Inc. v. Atlantic Mutual Insurance Co.*, No. C 06-7824 SBA, 2007 BL 115039 (N.D.Cal. Oct. 3, 2007), the insured was a developer of electronic semiconductor chips designed to provide high-speed Internet access. These chips were sold by the insured to various companies that produced computer products, such as modems, for wireless Internet access. The chips were then installed in routers and other wireless equipment before being sold to other companies for sale and distribution.

A customer commenced an action against the insured following the malfunction of routers in which it had installed the insured's semiconductor chips. The insured tendered the suit to its commercial general liability insurer, which denied coverage because there was no "physical injury to tangible property, including all resulting loss of use of that property," or "loss of use of tangible property that is not injured." *Centillium Communications, Inc.*, 2007 BL 115039 at 7.

The court ordered the insurer to defend. Specifically, the complaint alleged that the insured's product damaged "other component parts" of the routers. Id. The court found that the damage to the routers could constitute "physical injury to tangible property." Id.

Conclusion

Disputes have existed over coverage for data for over two decades. As a result, a company could never fully rely on its traditional liability and property policies for coverage. Currently, insurers are resolving these disputes with finality through the use of absolute data exclusions. While no company would think of going without fire insurance, many companies go without insurance for their data, the loss of which may be likelier to occur than a fire and have equally devastating consequences.

A variety of new cyber policies exist that can provide coverage for lost data, often in combination with other cyber-insurance coverages. Companies need to examine their risk profile, and determine which coverage or group of coverages best fits. This is a process in which companies should consider advice from their IT professionals. For many companies, this is a potentially catastrophic exposure for which they have not adequately planned. ■

Reference

1. *Jacksonville News*. "Police: Woman Thinks She's Being Fired, Sabotages Boss." http://www.news4jax.com/news/15121838/detail.html (last visited June 4, 2008).

Manage Your Way to Lower Workers Compensation Premiums

by Nancy Germond, ARM, AIC

Nancy Germond, ARM, AIC, is the founder and president of Insurance Writer, a risk management and insurance firm that specializes in quality writing, consulting and training services. With more than two decades of risk management experience, Germond writes business columns and blogs, and has authored scores of articles on risk management, safety, personnel matters and claims management. She was the first risk manager of the City of Prescott, Ariz. A skilled and experienced consultant and presenter, Germond holds a master's degree in sociology and a bachelor's degree in communications; she also is a certified Insurance Training Professional.

Editor's note: This article was written by Nancy Germond, ARM, AIC, for her regular AllBusiness.com blog, Risk Management for the 21st Century. It was posted on Dec. 20, 2008, at 11:15 a.m., and is reprinted with the permission of AllBusiness.com. Material copyrighted by AllBusiness.com.*

If, like many employers, you struggle with managing your workers compensation program, here are some steps that will help you if you take the time to implement them. Don't expect to reduce your premiums overnight, but instituting these small changes will improve your program and help to reduce costs, as well as make your company more attractive to the insurance marketplace.

First, **assign someone in your company to manage your workers compensation claims.** It may be your personnel director or your office manager, but this person should have some familiarity with workers compensation and safety, because the two go hand-in-hand.

Next, be sure that you provide this coordinator with adequate training. There is ample training from firms that specialize in employment issues, including workers compensation. Also, ask your insurance agent or broker what courses may be available to help train this individual.

Your claim coordinator should **institute a return-to-work (RTW) program**. Given recent changes in the Americans with Disabilities Act (ADA), and also because RTW programs reduce lost-wage compensation and help to decrease depression and improve morale in injured workers, RTW is no longer optional for employers, whether large or small.

Next, **select several medical providers to treat your injured workers.** Especially if you can direct the injured worker's first visit or ongoing care in your state, finding the right medical treatment is critical. Locate an occupational health clinic and discuss its approach to treating your employees. Your workers compensation adjusters may have recommendations. If your employees are spread out geographically, find occupational medical clinics in all the areas where your employees typically work. Occupational doctors are trained to return employees to work at the earliest possible time in an injury, which saves costs. Your claim coordinator should work to build a relationship with these doctors, because many visits to emergency rooms can be avoided when local clinics are utilized. With emergency room bills averaging about $800, it will pay huge dividends if only the most seriously injured employees are treated there.

Then, **develop specific job analyses for each position.** This should include a step-by-step breakdown of the detailed tasks your worker performs and the estimated length of time that task is performed each day. This will help doctors determine how to modify this position so that the injured worker can perform it safely. However, if that position cannot be modified adequately to meet the injured worker's abilities, let your doctors know that you will accommodate injured employees in alternative positions. With layoffs looming, many employers have tasks that still need to be completed but go undone due to downsizing. These tasks may be ideal for either part-time or full-time accommodated duty for your injured workers.

Finally, **supervisors must be trained to promptly report injuries and commit to providing modified duty.** Many will hesitate, saying things like, "I don't have time to baby-sit an employee." Many managers and supervisors feel apprehensive about taking an injured employee back without a full medical release. In today's work environment, it is critical that supervisors learn to overcome this reluctance — and only education will do this. Partner with your broker or carrier to train supervisors.

With budgets shrinking, instituting a well-run workers compensation program has never been more important than it is today. Follow these simple steps and you will find that within a year or two, insurance companies will be more willing to write your business and your premiums will decrease. Who couldn't use a rate reduction? ■

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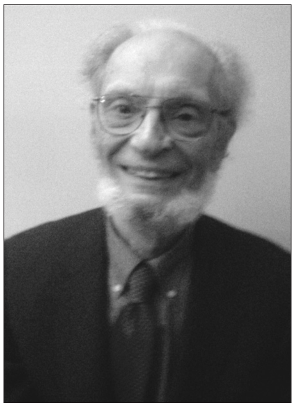
Changes in the Earth Movement Exclusion

by Jerome Trupin, CPCU, CLU, ChFC



Jerome Trupin, CPCU, CLU, ChFC, is a partner in Trupin Insurance Services, located in Briarcliff Manor, N.Y. As an "outsourced risk manager," he provides property-casualty insurance consulting advice to commercial, nonprofit and governmental entities. Trupin regularly writes articles on insurance topics for industry publications and is the co-author of several insurance textbooks published by the AICPCU/IIA. Trupin has been an expert witness in numerous cases involving insurance policy coverage disputes, has spoken on insurance topics across the country, and has taught many CPCU and IIA courses. He can be reached at cpcuwest@aol.com.

You may not have felt it, but there's been a lot of activity in the property insurance earth movement endorsement.

The New York Standard Fire Insurance Policy (also referred to as "165-lines"), which was the basic form for property insurance until the 1980s, makes no mention of earthquake, much less earth movement. Even the extended coverage endorsement is silent on the question.

These were named-peril policies, and because earthquake and earth movement were not covered perils, there was no need to exclude them. (Fire resulting from an earthquake is covered. The fires started by the 1906 San Francisco earthquake bankrupted at least 14 fire insurance companies.)

The advent of "all-risks" coverage for fixed property changed the playing field. To avoid being liable for earthquake damage per se, insurers added earthquake exclusions to their forms. A 1962 version of such an exclusion read as follows:

> This policy does not insure under this form against ... loss caused by, resulting from, contributed to or aggravated by and of the following:
>
> (1) earthquake, volcanic eruption, landslide or other earth movement.

Although earth movement was mentioned in the exclusion, there was no definition. Under the legal doctrine known as *ejusdem generis*,[1] it was argued by policyholders that the exclusion applied only to earth movement that resembled earthquake, volcanic eruption or landslide.

The wording of the exclusion has changed through the years as insurance companies have tried to make it clear that the exclusion applies to more than just earthquake, volcanic eruption or landslide. The latest ISO wording (CP 10 30 06 07) reads, in part, as follows:

B. Exclusions

(1) We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ...

b. Earth Movement

(1) Earthquake, including any earth sinking, rising or shifting related to such event;

(2) Landslide, including any earth sinking, rising or shifting related to such event;

(3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

(4) **Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface ...** [emphasis added]

(5) Volcanic eruption, explosion or effusion ...

It's paragraph 4 that creates the problems for insureds and their representatives. A case illustrating how this exclusion can apply is as follows: The insured made a claim for collapse damage resulting from hidden decay (a covered peril), alleging that decayed wood in the earth beneath the foundation created a void in the soil, which resulted in the collapse of

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Changes in the Earth Movement Exclusion

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the foundation. The insurer disclaimed coverage citing the exclusion for losses due to "earth movement, meaning ... earth sinking, rising or shifting."

The lower court awarded judgment to the insured, but on appeal the Appellate Division reversed. The appeals court held that even though the cause of the earth movement might be a covered peril, under the plain language of the exclusion, losses due to earth movement were excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.[2]

Courts are not in complete agreement on this issue. Nevertheless, it's clear that insurers assert that currently worded exclusions preclude coverage for many types of losses that might once have been covered. In addition to the loss cited above, losses resulting from excavation work on adjoining premises that destabilized the foundation of the insured's building are often denied. There have even been declinations of coverage for claims of damage resulting from blasting, based on the allegation that the shock waves that did the damage were transmitted through the earth even where there was no permanent displacement of earth. In a Florida case involving such a situation, a decision in favor of the insurance company was reversed on appeal.[3]

Hoping for a favorable court ruling is not the way to structure an insurance program. What's an agent or broker to do? The answer is an endorsement or a separate policy that plugs the gap.

Because the exclusion is still generically referred to as the "earthquake" endorsement, many insureds and their producers just look for "earthquake" insurance — and that's all they get. For example, the ISO earthquake endorsement adds the following coverages:

C. Additional Covered Causes Of Loss

(1) The following are added to the Covered Causes of Loss:

a. Earthquake.

b. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.

The balance of the ISO earth movement exclusion, including the troublesome paragraph 4 shown above, remains in effect. Better coverage is available. Difference-in-conditions (DIC), or DIC-type, endorsements can be a good alternative. For example, the AAIS DIC Form IM 7800 10/99 does not exclude earth movement, although it does limit earth movement coverage with respect to damage to masonry veneer construction. A later AAIC DIC form (IM 7800 04 07) is not as broad in the earth movement coverage that it provides.

Some forms for both primary and DIC coverage developed by insurance companies don't follow ISO or AAIS wording but offer an opportunity to close this gap. Many brokers' manuscript forms do not exclude damage caused by earth movement when the earthquake exclusion is removed.

A producer's goal should be either no earth movement exclusion in the primary property policy or "earthquake" coverage, whether provided as an endorsement to the primary policy or in a DIC-type policy, covering all the types of earth movement loss that are excluded by the primary policy. As is true with so many insurance policies, you have to "read the fine print" to get the best coverage that you can. ■

References

1. Latin for "of the same kind." Where specific classes of persons or things are listed, and the document then refers to them generally, the general statements only apply to the same kind of persons or things specifically listed. For example: If an exclusion refers to automobiles, trucks, tractors, motorcycles and other motor-powered vehicles, the exclusion might be held to not include airplanes, despite the fact that an airplane is a vehicle, because the list consists of land-based vehicles. Derived from Legal-Explanations.com (Accessed 9/3/08)
2. Adapted from "Earth Moved, House Damaged, Exclusion Applied." *Cali v. Merrimack Mut. Fire Ins. Co.,* 2007 NY Slip Op 06415 (2d Dept. Aug. 14, 2007). *New York Insurance Coverage Law Update.* Rivkin Radler LLP: September 2007.
3. *Armando Castillo, Mercedes Castillo, and Carlos Castillo vs. State Farm Florida Insurance Company and State Farm Fire & Casualty Company.* Third District Court of Appeal, State of Florida, July 2007 3D06-2874. This decision includes material from State Farm's internal operating guidelines that details the extent of coverage for earth movement that State Farm will provide. (Accessed 4/20/08)

Letter to the Editor

Dear Editor:

I read the article in the June issue on "Spear Phishing," by **Jerome Trupin, CPCU, CLU, ChFC,** with great interest. I agree with Mr. Trupin that computer fraud and funds transfer fraud are vital coverages in today's society and that crime exposures are commonly underinsured, or even uninsured, by most enterprises.

The article could have been even better by reviewing some loss prevention tips for avoiding Internet crime:

1. Be suspicious — be very suspicious — of any unsolicited e-mail purporting to be from a financial institution asking for sensitive private information.

2. Check the financial institution's Web site for any information about recent scams. Alternatively, call your own contact to verify that a message is genuine. **Don't respond to the e-mail or a phone number in it — you will be playing into the hand of the perpetrators.**

3. Check with your information professional — in-house or outsourced — about any suspicious messages or pop-ups on your computer.

The bottom line — Caution is the best policy!

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