

INSURANCE 101

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CHAPTER 13.1

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INSURANCE 101¹

I. THE THREE LEGGED STOOL

Every provision of a lease or contract is either (a) restating the rule that would be supplied by the court in the absence of the provision (the “**common law**”) or is supplied by statute or (b) is expressly shifting a risk from one party (the “**protected party**”) to the other (the “**protecting party**”), to the extent permitted by common law and statute. The most common method of risk management are through contractual provisions for (1) **indemnity**², (2) **insurance** and (3) **waiver of subrogation**³ (aka the “**three legged stool**”). Neglecting any one of these three risk management legs may result in a failed risk management program.

II. INSURANCE – A CONTRACTUAL INDEMNITY BY A THIRD PARTY

A. Liability Insurance

1. Some Common Types.

a. Commercial General Liability Insurance

(1) Third Party Coverage

Commercial general liability (“**CGL**”) insurance is termed “**third party coverage**” insurance as it covers liabilities incurred by the named insured to third parties and excludes injuries and damage to the insured (*e.g.*, it excludes coverage for property damage to “property you (the insured) own, rent, or occupy”⁴ and to “personal property in the care, custody or control of the insured.”⁵

(2) Parties

Parties to a CGL policy are the “**named insureds**”⁶ including a “first named insured” if there are more than one named insured on the CGL policy, “**automatic insureds**”⁷ and “**additional insureds**”.⁸

¹ **Insurance 101 and 201.** This article and presentation on insurance is presented from the author’s perspective and experience as a real estate lawyer. This article addresses the insurance leg on a “101” level, addressing some of the basic concepts and terminology involved in commercial real estate transactions. Accompanying this article is an article titled “**Insurance 201**,” which addresses these concepts and terminology on a more detailed and applied level. References are made in this article to Insurance Specifications and the forms attached in the **Appendix of Forms** attached to Insurance 201 and to the **Commentary on Insurance Forms** attached at the end of the Insurance 201. The Commentary on Insurance Forms are Endnotes annotating the Insurance Specifications and the forms in the Appendix of Forms.

² **Indemnity.** See **Insurance 201** at I.D.2. Common Law Indemnity at p. 7 and II. Contractual Indemnity by Party at pp. 8-16; and see Locke, State Bar of Texas, 28th Annual Advanced Real Estate Drafting Course, Drafting Indemnities and their Relationship to Insurance (Houston, Texas, March, 2017).

³ **Waiver of Subrogation.** See **Insurance 201** at I.D.3 Common Law Waiver of Subrogation at p. 8 and IV Contractual Waiver of Subrogation at pp. 56-57.

⁴ **Owned, Rented and Occupied Property Exclusions from CGL Coverage.** See Exclusion 2.j(1) of the ISO Commercial General Liability Coverage Form in the Appendix of Forms to **Insurance 201** at p. 102.

⁵ **Personal Property in Insured’s Care, Custody or Controlled Exclusion.** See Exclusion 2.j(4) of the ISO Commercial General Liability Coverage Form in the Appendix of Forms to **Insurance 201** at p. 102.

⁶ **Named Insureds.** The Declarations Page of a liability policy names the person or organization who is the insured and such person or organization is the “**named insured**”. If more than one person or organization is named in the Declarations Page as an insured, the first person or organization named is the first named insured. See ISO Commercial General Liability Declarations (aka the “**Declarations Page**”) at p. 96 in the Appendix of Forms to **Insurance 201**.

(3) Insurance for Covered Liabilities Arising from an “Occurrence”

Covered liabilities or damages arise from an “**occurrence**” during the policy period which is not excluded by the Exclusions of the policy.⁹ CGL insurance provides protection to the insured for amounts the insured is legally obligated to pay that are caused by physical injury, personal injury (libel or slander), advertising injury and property damage as a result of the insured’s products, premises, or operations, and can be offered as a package policy with other coverages.

(4) Occurrence Policy vs. Claims Made Policy

An “**occurrence policy**” provides liability coverage only for injury or damage that occurs during the policy term, regardless of when a claim is actually made. A claim made in the current policy year could be charged against a prior policy period, or may not be covered, if it arises from an Occurrence prior to the effective date of the policy. A policy written on a “**claims made**” basis covers claims made while the policy is in effect, rather than at the time the event causing the injury or damage occurred. Thus, once a policy period has passed without a claim, if the policy is not renewed or a new policy is not issued, the insured will have no coverage for a claim filed after the policy period even if it arose prior to the end of the policy period unless “tail” coverage is purchased to cover claims made after the policy expires and within a specified number of years after the policy expires.

(5) Indemnity for Defense

The standard CGL policy provide coverage for the cost to defend and settle claims.¹⁰

⁷ **Automatic Insureds.** Additionally, the liability policy may identify other persons or organizations who qualify as insureds on the basis of their relationship to the named insured. For example, a liability policy on which an organization is the named insured, may provide that the organization’s employees are automatically covered and are automatic insureds. The standard CGL policy designates the following persons as automatic insureds: the spouse of an individual named insured; partners and joint venturers in a named insured partnership or joint venture; members and managers of a named insured limited liability company; officers, directors, and stockholders of a named insured corporation or other named insured organization; trustees of a named insured trust; employees and volunteer workers of the named insured business; the named insured’s real estate manager; any person having proper temporary custody of a deceased named insured’s property; the deceased named insured’s legal representative; and newly acquired or formed organizations. See Section II – Who Is An Insured of the ISO Commercial General Liability Coverage Form in the Appendix of Forms to **Insurance 201** at pp. 108-109.

⁸ **Additional Insureds.** An “**additional insured**” is a person other than the named insured who is protected under the terms of the contract. Usually, additional insureds are added by endorsement or referred to in the wording of the definition of “insured” in the policy itself. The reason for including another person might be to protect the other person because of the named insured’s close relationship with that person or to comply with a contractual obligation that requires the named insured to do so (e.g., owner of property leased by the named insured-landlord). Under a CGL policy many types of persons or organizations may be added by endorsement as an additional insured, upon approval of the insurer. Many liability insurers issue blanket endorsements specifying certain parties that are “automatic additional insureds” under their liability policies without the need for further endorsement to actually name the person or organization as an additional insured on the policies if the contract between the insured and the additional insured contractually obligates the insured to cause its insurer to add the person or organization as an additional insured on the insured’s liability policy. A common error in liability insurance specifications is to specify that a party is to be added to the named insured’s policy as an “**additional named insured**”. Persons or organizations are routinely added to a CGL policy as additional insureds by endorsement. There are standard additional insured endorsements to the standard liability policy. See samples of the most commonly issued ISO additional insured endorsement forms to the ISO CGL policy in the Appendix of Forms to **Insurance 201** at pp. 120-129.

⁹ **ISO Definition of an “Occurrence”.** The ISO CGL policy defines an “**occurrence**” in Section V – Definitions to the ISO Commercial General Liability Form in the Appendix of Forms to **Insurance 201** at p. 114 as follows:

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

¹⁰ **Indemnity for Defense.** See the Insuring Agreements for Coverages A and B in the ISO Commercial General Liability Coverage Form attached to the **Insurance 201** at p. 98 *et seq.*, e.g., providing

We will have the right and **duty to defend** the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this

(6) The Policy

Commercial general liability policies typically and the ISO general liability policy form,¹¹ which is the industry standard, is comprised of the following forms:

Commercial General Liability Declarations and Schedule of Forms¹²

Commercial General Liability Form¹³

Section I - Coverages

Coverage A. Bodily Injury¹⁴ and Property Damage¹⁵ Liability

1. Insuring Agreement¹⁶
2. Exclusions¹⁷

Coverage B. Personal and Advertising Injury Liability¹⁸

insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B. (Emphasis added by author.)

¹¹ **ISO Forms.** See the ISO Commercial General Liability Declarations and the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 96 *et seq.*

¹² **Declarations Page.** See the ISO Commercial General Liability Declarations attached to **Insurance 201** at pp. 96 - 97

¹³ **Commercial General Liability Form.** See the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 98.

¹⁴ **Bodily Injury.** "Bodily Injury" means "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." See definition at Section V – Definitions 3. "bodily injury" to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 112.

¹⁵ **Property Damage.** "Property Damage" means "physical injury to tangible property, including all resulting loss of use of that property ... or loss of use of tangible property that is not physically injured." See definition at Section V – Definitions 17. "property damage" to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 115.

¹⁶ **Section I - Coverage A - Insuring Agreement – An Occurrence Policy.** See the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 98 setting out the Insuring Agreement for Coverage A. It provides in part "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies..." and further states in part "This insurance applies to "bodily injury" and "property damage" only if: (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; (2) The "bodily injury" or "property damage" occurs during the policy period...."

¹⁷ **Section I - Coverage A - Exclusions.** See the Section I, Par. 2. Exclusions to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at pp. 98 – 104 setting out the following exclusions from coverage for the named insured's liability for bodily injury and property damage arising out of: (a) Expected or Intended Injury, (b) Contractual Liability, (c) Liquor Liability, (d) Workers' Compensation And Similar Law, (e) Employer's Liability, (f) Pollution, (g) Aircraft, Auto Or Watercraft, (h) Mobile Equipment, (i) War, (j) Damage to Property, (k) Damage To Your Product, (l) Damage to Your Work, (m) Damage to Impaired Property Or Property Not Physically Injured, (n) Recall of Products, Work Or Impaired Property, (o) Personal and Advertising Injury, (p) Electronic Data, (q) Recording and Distribution Of Material Or Information in Violation of Law.

¹⁸ **Section I - Coverage B – Personal and Advertising Injury Liability.** See the Insuring Agreement at Par. 1 to Section I – Coverage B Personal and Advertising Injury Liability at p. 104 of **Insurance 201**. See Section V – Definitions, Par. 14 at p. 114 of **Insurance 201** defining "Personal and advertising injury" as injury, including consequential bodily injury, arising out of one or more of the following offenses: (a) false arrest, detention or imprisonment; (b) malicious prosecution; (c) the wrongful eviction from, wrongful entry into, or invasion of the right of

1. Insuring Agreement
2. Exclusions

Coverage C. Medical Payments¹⁹

1. Insuring Agreement
2. Exclusions

Section II - Who Is An Insured²⁰

Section III - Limits of Insurance²¹

Section IV - Commercial General Liability Conditions²²

Section V - Definitions²³

Amendments and Endorsements²⁴

(7) Contractual Liability Insurance

The standard CGL policy (the ISO policy) provides an important additional insurance coverage for specified types of indemnities by the named insured in its contracts with third parties. This insurance coverage is provided in the standard CGL policy by virtue of

- (a) a series of “defined terms” used in
- (b) an “exception” (the exception for “**Insured Contracts**”) to
- (c) an “exclusion” to coverage (Exclusion **2.b** excluding coverage for “**Contractual Liability**”) to
- (d) a coverage provision in the CGL policy (Section I - Coverage A - Bodily Injury and Property Damage insuring the named insured for bodily injury and property damage liabilities).²⁵

private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; (d) oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services; (e) oral or written publication, in any manner, of material that violates a person’s right of privacy; (f) the use of another’s advertising idea in the insured’s advertisement; or (g) infringing upon another’s copyright, trade dress or slogan in the insured’s advertisement.

¹⁹ **Section I - Coverage C – Medical Payments.** “**Medical Payments**” is coverage for medical expenses for bodily injury caused by an accident (a) on the premises owned or rented by the insured, (b) on the ways next to the owned or rented premises, or (c) because of the insured’s operations. See the Insuring Agreement at Par. 1 to Coverage C Medical Payments at p. 106 of **Insurance 201**.

²⁰ **Section II – Who Is An Insured.** See Section II – Who is an Insured to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at pp. 108 – 109.

²¹ **Section III – Limits of Insurance.** See Section III – Limits of Insurance to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at p. 109.

²² **Section IV – Commercial General Liability Conditions.** See Section IV – Commercial General Liability Conditions to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at pp. 110 – 111.

²³ **Section IV – Definitions.** See Section V – Definitions to the ISO Commercial General Liability Coverage Form attached to **Insurance 201** at pp. 112 – 116.

²⁴ **Amendments and Endorsements.** See the forms of Amendments (pp. 117, 142) and Endorsements (pp. 118 - 141) attached to **Insurance 201** Appendix of Forms.

²⁵ **Contractual Liability Insurance.** See the ISO Commercial General Liability Coverage Form, Section I – Coverages, Coverage A, Par. 2 Exclusions, Par. **2.b** Contractual Liability at p. 99 of **Insurance 201**. “**Contractual Liability Insurance**” is an “exception” to an “exclusion” from coverage.

The “Insured Contract” exception to the Contractual Liability Exclusion provides coverage to the named insured for its contractual indemnity of a third party for bodily injury liability and property damage liability for five specified types of insured contracts set out in the definition of Insured Contract.²⁶

b. Business Auto Policy

A “business auto policy” (“**BAP**”) is a commercial auto policy that includes auto liability and auto physical damage coverages arising from “covered autos”; other coverages are available by endorsement. Except for auto-related businesses and motor carrier or trucking firms, the business auto policy addresses the needs of most commercial entities as respects auto insurance.

c. Workers Compensation Insurance and Employers Liability Insurance

A “**Workers Compensation and Employers Liability Policy**” is an insurance policy that provides coverage for an employer's two key exposures arising out of injuries sustained by employees. Part One of the policy covers the employer's statutory liabilities under workers compensation laws, and Part Two of the policy covers liability arising out of employees' work-related injuries that do not fall under the workers compensation statute. In most states, the

The exclusion provides:

2. Exclusions. This insurance does **not** apply to:

b. Contractual Liability

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption liability in a contract or agreement. This **exclusion** does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “**Insured Contract**”, provided the “**Bodily Injury**” or “**Property Damage**” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
 - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged. (Emphasis added by author.)

²⁶ **Insured Contracts.** An “**Insured Contract**” is defined in the standard CGL policy as:

9. “Insured contract” means:

- a. A contract for a **lease** of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
- b. A sidetrack agreement;
- c. Any **easement** or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work for a municipality) under which you **assume the tort liability of another** party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement. (Emphasis added by author.)

Also see ISO CG 21 39 Contractual Liability Limitation (form attached to this Article), which when added to the standard CGL policy by endorsement deletes “f” altogether from the definition of an insured contract; and discussion in the article at **Item III.A.11 Exclusions May Be Invisible**.

standard Workers Compensation and Employers Liability Policy published by the National Council on Compensation Insurance (“NCCI”) is the required policy form.

“**Workers Compensation insurance**” is the system by which no-fault statutory benefits prescribed by state law are provided by an employer to an employee (or the employee’s family) due to a job-related injury (including death) resulting from an accident or occupational disease. The standard workers compensation and employers liability policy used in most states was substantially revised in 1984 and again to a lesser extent in 1992. As compared to the previous 1954 policy, these revisions included some slight changes in terminology and coverage approaches that should be reflected in contract insurance requirements. One of these was a change in the name from “workmen’s compensation” to “Workers Compensation.” Another more important change was the inclusion of “other states coverage” in the basic Form and the elimination of the “broad form all states” endorsement, which was previously used to provide this coverage. Workers compensation coverage is usually written in tandem with an employers liability coverage policy. Leases and construction contracts frequently require that a party “maintain Workers Compensation and Employers Liability coverage **as required by law.**” Does this verbiage really require coverage? With few exceptions, Texas does not require an insured to carry Workers Compensation insurance. A statement that coverage shall be provided “as required by law” does not require that the coverage be provided.

“**Employers Liability Coverage**” provides coverage against common law liability of an employer for accidents to employees, as distinguished from liability imposed by a workers compensation law. This is provided by Part 2 of the basic workers compensation and employer’s liability policy and pays on behalf of the insured (employer) all sums the insured becomes legally obligated to pay as damages because of bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of his employment by the insured. Typically triggered by a third party after the insured’s employee (who is barred by workers compensation laws from suing his or her employer) sues a third party for bodily injury suffered while performing duties of his or her employment (*e.g.*, contractor’s employee injured on the premises of that third party).

d. Umbrella and Excess Liability Insurance

The following definitions are found in the on-line IRMI Glossary of Insurance and Management Terms <http://www.irmi.com/online/insurance-glossary/default.aspx>.

“**Umbrella policy**”: “A policy designed to provide protection against catastrophic losses. It generally is written over various primary liability policies, such as the business auto policy (BAP), commercial general liability (CGL) policy, watercraft and aircraft liability policies, and employers liability coverage. The umbrella policy serves three purposes: it provides excess limits when the limits of underlying liability policies are exhausted by the payment of claims; it drops down and picks up where the underlying policy leaves off when the aggregate limit of the underlying policy in question is exhausted by the payment of claims; and it provides protection against some claims not covered by the underlying policies, subject to the assumption by the named insured of a self-insured retention (SIR).”

“**Excess policy**”: “A policy issued to provide limits in excess of an underlying liability policy. The underlying liability policy can be, and often is, an umbrella liability policy. An excess liability policy is no broader than the underlying liability policy; its sole purpose is to provide additional limits of insurance.”

2. Things You Need to Know about Liability Insurance.

a. What You Did Not Know, and Could Have Known, Can Hurt You

It is the author’s opinion and experience that lawyers drafting transactional documents are resistant to undertaking the effort required to understand the insurance provisions they include in their documents and to following up with

their clients to assure that the drafted insurance provisions are fulfilled by the parties and their insurance brokers.²⁷ On occasion this resistance has risen to heated rhetoric to the effect “I only draft the provisions. I am not an insurance person. It is up to the client to understand and implement the provisions.”

Perhaps this choice arises out of concern that professing some knowledge as to one’s craft exposes the practitioner to a greater likelihood of being held accountable in cases where “things go wrong” than being silent. The insurance industry’s forms promote taking this position. The standard certificates of insurance are simple appearing one page documents.²⁸ Industry forms are not readily accessible to the practitioner. Once obtained, they appear complicated.²⁹ They are identified by a seemingly complicated numbering system.³⁰ These circumstances led the author to write Insurance 101 and Insurance 201. It is the author’s hope that exposure to these “traps for the unwary” will result in change in your approach to drafting insurance provisions and will lead to your more active involvement in implementing the insurance program contemplated thereby.³¹

b. Certificates of Insurance Are Not Certificates

(1) An All Too Typical Specification

Specifying appropriate insurance coverages is the first step. The next step is to confirm the insurance has been obtained and is in full force and effect. Many contracts require that a certificate of insurance be furnished as evidence of the existence of the specified insurance. The following is an all too typical specification:

Tenant shall provide Landlord a certificate of insurance certifying the coverages required herein.

Is this sufficient? Unfortunately, **no**. Prior to 2006, the ACORD form of certificate of insurance appeared to be evidence of insurance and appeared to give rights against the insurer (including independent rights to notice upon cancellation). When ACORD changed its certificate forms in 2006 to clearly state that they conferred no rights on the certificate holder, insureds and their attorneys attempted to negotiate with insurers and agents to restore some enforceability to insurance certificates. Unfortunately, these efforts did not succeed. In response to these efforts the insurance industry approached state insurance commissioners and legislatures to gain support for their position that a certificate of insurance could not vary the underlying policy or grant rights that did not exist under the applicable policy. At last count, 42 states have either insurance regulations or statutes on this point.

The result? A certificate of insurance does not provide coverage if coverage is not provided in the underlying policy.

²⁷ **Confession.** “I confess that I fell into the camp that it is better to be ignorant than take the responsibility of education,” Bill Locke. However, he has changed this aspect of his practice due to his unwillingness to continue drafting and providing clients with documents containing provisions neither understood by the client nor himself.

²⁸ **ACORD Certificates.** See the ACORD certificates attached in the **Insurance 201 Appendix of Forms** at pp. 207 – 210.

²⁹ **Industry Forms.** The liability insurance forms published by the Insurance Services Office (“ISO”) are recognized nationally as “the industry standard”. However, they are not freely available to the public or the practitioner. These forms are prepared by an industry trade organization for use by its members. Copies may be purchased by contacting ISO. Neither ISO’s property insurance forms nor the forms promulgated by any other industry trade organization have gained recognition as the industry standard. Also, insurers including some of the leading insurers craft their own liability and property insurance and these forms are not readily available to the public or practitioner in advance of their employment.

³⁰ **ISO Form Numbering System.** See Endnote 1 (ISO) to **Insurance 201 Commentary on Insurance Forms** at p. 218 for an explanation of the ISO form numbering system.

³¹ **Pogo.** “We have met the enemy and he is us.” Pogo by Walt Kelly (1913 - 1973).

(2) It is Not Reasonable to Rely Upon an ACORD Certificate of Insurance

The **ACORD 25** Certificate of Liability Insurance is labeled a certificate, is addressed to a “certificate holder” and states “This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated.” However, it also contains the following disclaimers:

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

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

IMPORTANT: If the certificate holder is an additional insured, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s). If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

Many courts have held that these disclaimers effectively negate reliance by certificate holders.³² See *e.g.*, the following statements by courts: *Prudential Property and Casualty Ins. Co. v. Anderson*, 922 A.2d 236 (Conn. 2007):

Troublesome as it may be that Zurich permits its agents to issue certificates when it knows prior to the certificate’s being issued that coverage was cancelled and lacks an identifiable procedure for notifying certificate holders that coverage has been cancelled, the allegations in plaintiff’s complaint do not state a cause of action against Zurich.

Bradley Real Estate Trust v. Plummer & Rowe Ins. Agency, 609 A.2d 1233, 1235 (N.H. 1992):

In effect, the certificate is a worthless document; it does no more than certify that insurance existed on the day the certificate was issued. We leave it to the legislature or to future bargaining of parties to rectify inequities in the notification process.

TIG Ins. Co. v. Sedgwick James of Washington, 276 F.3d 754 (5th Cir. 2002), *aff’g* 184 F. Supp.2d 591 (S.D. Tex. 2001):

Had Plaintiffs taken the reasonable step of obtaining a copy of (the policy) ... Plaintiffs would have learned that there was no additional insured coverage in the policy at all. Thus, the Court finds that the Plaintiffs’ reliance upon (the insurance broker’s) representation of additional insured status was not reasonable. Accordingly, as a matter of law, Plaintiffs’ claims for negligent and fraudulent misrepresentation fail.

³² **Not Reasonable to Rely Upon an ACORD Certificate.** Macbeth, “It is a tale, told by an idiot, full of sound and fury, signifying nothing.” W. Rodney Clement, Jr., *Is a Certificate of Commercial Property Insurance a Worthless Document?* PROBATE & PROPERTY 46 (May/June 2010); and Alfred S. Joseph III and Arthur E. Pape, *Certificates of Insurance: The Illusion of Protection*, PROBATE & PROPERTY 54 (Jan./Feb. 1995).

A certificate of insurance, if incorrect, may provide a claim against the agent who issued the incorrect certificate, but it does not obligate the underwriter under the policy.³³ A claim against the agent may be of small consolation under the circumstances.³⁴

c. Antiquated, Problematic and Just Plain Wrong Terminology

Even after almost 27 years since the insurance industry changed their policy forms in 1986, leases, construction contracts and other forms drafted by many lawyers still employ “antiquated, problematic and just plain wrong” terminology.

<i>Don't Say This</i>	<i>Say This</i>
"comprehensive general liability policy" ³⁵	commercial general liability policy
"blanket or broad form contractual liability coverage" ³⁶	contractual liability coverage
"broad form property damage" ³⁷	(automatically covered)

³³ **Fictitious Insured Syndrome.** An amazingly common problem in the insurance industry is the issuance by the Producer of a certificate of insurance certifying to a party to be protected that it is an additional insured on the protecting-party's insurance, but then its failure to notify the insurance company of the need to alter or amend the coverage to match the certificate. The result is that the insurance company refuses to provide coverage. As observed by one commentator:

Probably the most common area in which certificates of insurance and insurance policies conflict is with respect to additional insured status. Certificate holders are often listed as additional insureds on certificates without the policy actually being endorsed to reflect that intent. An extreme case of this that often occurs is for a copy of an additional insured endorsement to be attached to the certificate but not the policy. This practice may not provide additional insured status and, thus is sometimes called the “fictitious insured syndrome.” A certificate representing that there is additional insured coverage would be false, but the holder may not be aware of that fact. Because of the disclaimers saying that the certificate conveys no rights upon the holder other than what are granted in the underlying policy, courts usually conclude that the holder is out of luck in this situation Sometimes this problem stems from a lack of communication. The insurance agent, for example may have the authority to add another party to a policy as an additional insured and may issue a certificate indicating that this has been done while forgetting to ask the insurer to issue the endorsement. When the additional insured later seeks protection, the insurer denies such protection, shifting the blame elsewhere.

The ADDITIONAL INSURED BOOK 7th Ed., Malecki, Ligeros, and Gibson, Ch. 20 Certificates of Insurance pp. 361-362 (International Risk Management Institute, Inc. www.IRMI.com 2013).

³⁴ **Benefits From Obtaining A Certificate.** Even though it may not be reasonable to rely upon a certificate of insurance which contains disclaimers, there are benefits to having a certificate and potential detriments from a failure to obtain a certificate. Some courts have held that the party to be protected has waived the protecting party's obligation to procure contractually specified insurance by failing to insist upon being furnished the contractually required certificate. There are benefits arising from the standard certificate, even though it contains disclaimers, which will not obtain in the absence of a certificate. Some of the benefits are the following: (1) the standard certificate sets out important information, which in the event of a claim, may provide a quick means of resolution (e.g., agent and insurer contact information, policy numbers); (2) under particular circumstances a court may be willing to disregard the certificate's disclaimers and find coverage for the party to be protected; (3) an erroneous certificate may provide a basis for recovery on the issuing agent's E & O policy or establish a contractual undertaking by the agent to provide the certificated coverage.

³⁵ **“Comprehensive General Liability Policy.”** A “comprehensive general liability policy” was anything but comprehensive. It was a very basic liability insurance policy to which numerous endorsements had to be added. When the commercial general liability policy was introduced, it incorporated many of those changes that were previously required to be added by endorsement.

³⁶ **“Blanket or Broad Form Contractual Liability Coverage.”** Since 1986, “blanket” or “broad form contractual liability coverage” has not existed. The current commercial general liability definition of contractual liability in the standard CGL policy achieves the same result. See Footnote 25 above and discussion at **Insurance 201 Endnote 27** (Contractual Liability Coverage – An Exception to an Exclusion From Coverage) at pp. 223 - 225 in the Commentary on Insurance Forms.

³⁷ **“Broad Form Property Damage,” “Broad Form CGL Endorsement,” and “Deletion of the Personal Injury Employee Exclusion.”** The same thing is true of “broad form property damage,” “broad form CGL endorsement,” and “deletion of the personal injury employee exclusion.” Use of such terminology is indicative of lack of awareness of changes that occurred almost 27 years ago. See **Insurance 201** on pp. **Endnote 21** (Commercial General Liability Insurance (CGL) in the Commentary on Insurance Forms at pp. 223 - 225).

"deletion of personal injury employee exclusion"	(this exclusion no longer exists, automatically covered)
"cross liability or severability of interests endorsement" ³⁸	separation of insureds
"products/completed operations for 2 years following completion of the Work" ³⁹	(See discussion below.)

d. Additional Insureds Are Not Automatically Notified of Cancellation or Modification, and Never Notified of Non-Renewal of Coverage

<i>Don't Say This</i>	<i>Say This</i>
30 day notice of cancellation, amendment, reduction of limits or nonrenewal	30 day notice of cancellation

The standard ISO CGL policy provides that notice of cancellation will be provided to the **first Named Insured**.⁴⁰ Similarly, the ISO Common Policy Conditions, which is a component of the ISO property policy, provides that notice of cancellation is to be given only to the **first Named Insured**.⁴¹ Neither the **ISO CP 12 18 06 07** Loss Payable Provisions nor the **ISO CP 12 19 06 07** Additional Insured – Building Owner endorsement issued to tenants insuring a building on leased premises provides for notice of cancellation to be given to the landlord.⁴² Additional insureds are not first; they are “additional” and, therefore, the standard policy without endorsement does not commit the insurer to give notice to the additional insured if the insurer cancels the policy for nonpayment of premium or for any other reason.⁴³ Some but not all states permit policies to be endorsed with a “notice of cancellation” endorsement obligating the insurer to give Named Insureds other than the first Named Insured or additional insureds

³⁸ **“Cross Liability Endorsement” or “Separation of Insureds Endorsement”**. Requiring a “cross liability endorsement” is even more problematic. A cross liability endorsement in today’s vernacular is an exclusion, not a provision or extension of coverage, the purpose of which is to prevent one insured from being provided coverage when sued by another insured. A “separation of insureds endorsement” or “severability of interests provision” states that each insured against whom claim is made or suit is brought will be provided a separate defense. This protection is automatically included in today’s standard form commercial general liability policy. See **Insurance 201 Endnote 28** (Separation of Insureds) in the Commentary on Insurance Forms at pp. 222 - 223.

³⁹ **Products-Completed Operations**. A requirement that coverage be provided for a specified number of years following substantial completion of a construction job is not a requirement that can be met by any standard insurance program, as all such programs expire annually. A requirement for the continued provision of coverage is instead a performance requirement being placed on the insured. See **Insurance 201 IIIA.7** discussion of Completed Operations Coverage is Important at pp. 34 – 35 and at **Endnote 69** (Products-Completed Operations) in the Commentary on Insurance Forms at pp. 233 - 234.

⁴⁰ **Notice of Nonrenewal to First Named Insured in ISO CGL Policy**. See in **Appendix of Forms**, Section IV – Common Policy Conditions, Par. 9 When We Do Not Renew at p. 112 providing that the CGL policy issuer is to give notice of nonrenewal only to the first Named Insured.

⁴¹ **Notice Only to First Named Insured In ISO Property Policy**. See **Par. A** Cancellation in the ISO IL 00 17 11 98 Common Policy Conditions setting out the notices to be provided by the insurer to the first Named Insured attached in the Appendix of Forms at p. 146. See **Endnote 15** in the Commentary on Forms of **Insurance 201** at p. 221 for a discussion of the change in 2006 to the ACORD Certificate of Insurance deleting the statement that the insurer is to endeavor to give notice of policy cancellation to the certificate holder.

⁴² **No Notice to Landlord**. See ISO CP 12 18 06 07 Loss Payable Provisions and ISO CP 12 19 06 07 Additional Insured – Building Owner attached in the **Appendix of Forms** at p. 196.

⁴³ **The Risk of Failing to Confirm Insured Status**. If you want to find out how bad it can be when you do not insist on confirming the issuance of the requisite additional insured and notice of cancellation endorsements to the tenant’s property policy, read *Scottsdale Ins. Co. v. Mason Park Partners, LP*, 2007 WL 2710735 (5th Cir. – Tex.) – landlord of the Taste of Katy restaurant failed to obtain endorsements on its tenant’s property policy designating it as an additional insured and the insurer’s agreement to give the landlord notice of policy cancellation. Although the landlord was designated as an additional insured on the liability portion of the package policy, the additional insured endorsement on the property policy stated that the name and address of the loss payee was “to follow”. It never did and the insurance company did not send notice of cancellation of the property portion of the policy prior to the fire that destroyed the Taste of Katy restaurant. The court found, “Nothing in the loss payable provision or anywhere else gave Scottsdale notice that (landlord) was the intended loss payee”. The landlord sustained a catastrophic uninsured loss.

advance notice of policy cancellation.⁴⁴ Even in states where some form of notice endorsement has been approved by the state insurance industry regulatory body, it is difficult to get insurers to commit to give notice of cancellation to persons that are not the first Named Insured. Further, insurance companies will not provide a “notice of nonrenewal” endorsement. When any term, condition or verbiage is changed in a policy at time of renewal, that policy is technically no longer a renewal. Hence, every time there is even a minor change (and something is almost always changed), a nonrenewal notice would have to be sent. Insurance companies are unwilling to commit to such a burden and expense.

e. Not All Indemnified Liabilities Are Insured

(1) An Indemnitor is a Private Insurer

An obligation to defend, indemnify and hold harmless another party for risks other than those prescribed by law is a contractual assumption of those risks by the indemnitor. The indemnitor has *agreed* to be liable for those risks. Subject to the limits of anti-indemnification legislation, the scope of risks that can be transferred by indemnity are quite broad, potentially including the indemnitee’s joint, concurrent, sole, strict and even gross negligence. Indemnification agreements can be drafted to include “any and all liabilities including fines, penalties, and all other associated expenses.” Most indemnification provisions are unlimited in amount (*i.e.*, a blank check!). An indemnitor becomes a private insurer of the indemnified liabilities, but usually one under an indemnification agreement not approaching the detail of an insurance policy.

(2) Applying Contractual Liability Coverage to the Indemnification Agreement

What portion of this transferred risk is insured, or even insurable? Contractual liability insurance is the funding mechanism for a portion of the liabilities assumed by an indemnitor by its indemnity. This insurance coverage is provided in the standard CGL policy as (1) a series of definitions to (2) an exception to (3) an exclusion to (4) the coverage provision for bodily injury and property damage liability only.⁴⁵ In other words, contractual liability insurance applies to allegations of bodily injury and physical injury to tangible property, and nothing else. The application of contractual liability coverage to a broad form indemnity provides coverage for a limited portion of the indemnified liabilities. It must be kept in mind that, since insurance potentially covers so few of the exposures for which indemnification may be required, the indemnification provision is potentially bankrupting to the indemnitor. Also, you cannot assume that contractual liability coverage afforded by the standard commercial general liability policy has not been limited or even deleted by endorsement. Furthermore, there is no duty to defend an indemnitee found in the standard commercial general liability policy. When defense is required in the indemnification provision, a funny thing happens. Unlike the way costs of defense is provided in most liability coverages, costs of defense provided on behalf of an indemnitee are deemed to be damages, meaning that those costs are included in the limit of liability (not outside of or in addition to that limit) and therefore erode the limit.

Hypothetical:

If \$400,000 is paid for defending the indemnitee, only \$600,000 is left for payment of settlement. Who wins? Not the indemnitee, who thought it was being provided, for example \$1,000,000, in coverage by the indemnitor. And certainly not the indemnitor (the Named Insured), who not only (1) paid dearly for the coverage but (2) is now

⁴⁴ **Texas: Better Than Most.** The Texas Department of Insurance (“TDI”) currently permits a “notice of cancellation or material change” endorsement. See ISO CG 02 05 12 04 Texas Changes – Amendment of Cancellation Provisions or Coverage Change at p. 117 **Insurance 201**. TDI has not defined what constitutes a “material change”.

⁴⁵ **Contractual Liability Coverage.** See Footnote 25 to this article; ISO Commercial General Liability Coverage Form Section I, Par. 2 Exclusions 2.b Contractual Liability; and Endnote 27 (Contractual Liability Coverage – An Exception to an Exclusion From Coverage) in the Commentary to Forms at pp. 223 – 225 in **Insurance 201** discussing the ISO CGL policy provision granting contractual liability coverage for bodily injury and property damage to the policy’s Named Insured for its contractual indemnities.

having to share its limits of liability with the indemnitee and (3) is having those limits rapidly eroded by the indemnitee's defense costs.

f. A General Specification for "Additional Insured Status" Is Meaningless

(1) Complementary Risk Management Tools

It is not a matter of choosing between indemnification and additional insured status – properly done, you should seek both. Indemnification and additional insured status are two complementary risk-transfer provisions. They perform similarly in most respects but are two totally independent coverage provisions. They act as two separate contracts for coverage.

Many attorneys negotiate long and hard regarding indemnification but fail to take into consideration the ramifications of additional insured status. Do not do that. Require a scope of additional insured coverage that coordinates with the indemnity provision.

(2) Additional Insured Advantages

If the indemnitee is an additional insured, among other advantages it has the following:

- The additional insured party is an insured under the policy. It has the right to contact the insurance company directly and place a claim. It does not have to even notify the named insured of its intent to do so.
- Each insured, including each additional insured, must not only be provided a separate defense but the cost of that defense is unlimited in amount, being outside of or in addition to the limit of liability, until the insurance company's obligations are fulfilled.
- Additional insured status can provide coverages that include the concurrent or sole negligence of the additional insured party.
- In most jurisdictions, there are no "fair notice rules" applicable to drafting of additional insured specifications, substantially reducing the likelihood of litigation to enforce this specification.

Returning to the Hypothetical:

Now, return to the Hypothetical. The additional insured party not only receives the desired limit of liability for settlement, but also has its defense costs paid in addition to that limit. The named insured still has to share its limit of liability with the additional insured, but is no longer having that limit eroded by defense costs of the other protected party. Now who wins? Everybody, except the insurance company. Additional insured status achieves a dramatic shift in coverage for defense costs.

(3) Most Common Drafting Error

Unfortunately, although additional insured coverage is the most common risk management technique, it is also the most commonly misunderstood, even by professionals in the field such as risk managers, insurance agents and lawyers. The most common error is failing to specify the coverage terms to be contained in the additional insured endorsement. Parties commonly cover the additional insured requirement by specifying

(Named Insured) will cause its CGL insurer to list _____ as **an additional insured** on its CGL policy.

A landlord may specify in its lease that the tenant and the tenant's contractors will cause each of their CGL insurers to list the landlord, its lender and management company as additional insureds on the tenant's and the tenant's contractors' CGL policies; a tenant may specify in its contract with its tenant-finish contractor that the contractor is to cause its CGL insurer to list the tenant, its landlord, the landlord's lender and the management company as additional insureds on the tenant-finish contractor's CGL policy; the tenant's contractor may specify in its subcontract with its subcontractors that the subcontractors list the contractor as an additional insured on the subcontractor's CGL policy. Unfortunately, in each of these cases, the person desiring protection as an additional insured has, by this wording of its insurance clause, left it up to the other party's insurance carrier to define the scope of the coverage to be provided. This is equivalent to "*letting the fox determine how, when, and if to protect the chicken.*"

A mistake has been made because there is **no** commonly accepted definition of what is an "additional insured." The above-quoted specification neither specifies the triggers to coverage nor what exclusions to coverage are to be permitted. There are literally hundreds of different additional insured endorsements in current use, each providing a different scope of coverage. Without a detailed specification of the scope of coverage to be afforded by the insurer to the additional insured, you have left it up to the insurer to select the form of additional insured coverage to provide. Simply requiring "additional insured status" may get the additional insured coverage that (1) includes both completed and ongoing operations and concurrent and sole negligence, or (2) includes only ongoing operations and excludes sole negligence of the additional insured, or (3) includes only certain ongoing operations and excludes both concurrent and sole negligence of the additional insured, and has additional exclusions added to it, or (4) innumerable additional options.

(4) What to Look For In An Additional Insured Endorsement

The most common and well recognized additional insured endorsements are drafted for use by the insurance industry by ISO, or Insurance Services Office. ISO endorsements will include a footer that reads "© ISO Properties, Inc., 20__" or © Insurance Services Office, Inc., 20__".⁴⁶

The following are questions to be answered in reviewing an additional insured endorsement (the "Coverage Matrix"):

- Who? Who is being added as an additional insured?
- What? What scope of negligence is being transferred? What activity is covered (*e.g.*, operations, work, ownership, use, maintenance)?
- When? Is there a time period covered?
- Where? Is there a location covered?
- Exclusions? Are there exclusions to coverage?
- Limitations?⁴⁷

⁴⁶ **ISO and ACORD Forms.** See Endnote 1 in the Commentary on Insurance Forms for a discussion of ISO and the ISO insurance form numbering system. See Endnotes 8-11 and 15 - 18 to the Appendix of Forms in **Insurance 201** for a discussion of the ACORD certificate forms. Many insurance companies utilize manuscript additional insured endorsements. A manuscript endorsement is one that an insurance company makes up, which may or may not include some ISO wording. Beware of any endorsement that includes a footer reading "Includes Copyrighted Material of Insurance Services Office, Inc. With Its Permission". All manuscript endorsements require careful scrutiny. They frequently:

- Limit the parties being added as an additional insured;
- Limit the scope of coverage being provided;
- Limit the operations being covered; and
- May add new exclusions.

An example of a new exclusion is "No coverage is provided for damages because of bodily injury to employees of the insured". This obviously adversely affects the risk transfer allowed even under many of the anti-indemnification statutes recently adopted across the nation.

⁴⁷ **Limitations.** Note, some manuscripted additional insured endorsements specify a sublimit for additional insured coverage that is less than the policy limits applicable to the Named Insured. See MALECKI ON INSURANCE, *Additional Insured Coverage – A Critique of a Nonstandard*

Pay careful attention to edition date of the endorsement. Each new edition restricts coverage that was provided in previous edition. Also, confirm that the issued additional insured endorsement is the form specified in the insurance specifications. Two forms of clerical errors of an issuing agent are issuing the wrong additional insured endorsement form and assuming that an existing blanket insured endorsement form appropriately applies to the transaction (for example, the authorized representative signing the certificate of insurance may erroneously believe that the blanket additional insured endorsement attached to the policy applies to a landlord/tenant relationship, but the blanket endorsement covers an owner/contractor relationship).

(5) Recap and Practical Advice

If the insurance provision simply calls for additional insured status to be provided, who decides which one will be provided? The insurance company for the Named Insured gets to make that decision. If an insurance provision fails to specify an adequate scope of additional insured coverage to be provided and a claim occurs that falls outside of the limited scope of additional insured status provide, how is coverage potentially provided? The policy may still have to respond to the indemnification provision, in which case defense costs are shifted from outside the limit to inside the limit. In either case, who wins? The insurance company. Don't let that happen to your client.

Remember your audience. The people that most need to understand what is being required are the Protecting Party's insurance brokers. Make it easy for them to understand. Require a specific ISO endorsement or a specific scope of coverage. If requiring a specific ISO endorsement, do not say "**or equivalent**". What does that mean? What it does not mean is "identical". Make the Protecting Party declare what in fact they do have. Get a copy and read it. Make sure that it complies with your requirement.

g. Primary and Noncontributory Liability

Many agreements call for another party's insurance to be **primary**. The problem with this is that all general liability policies state that they are primary, and that, if two or more policies cover a claim, they will share in payment of that loss. The insurance industry attempted a fix to this by including a provision that states that a Named Insured's coverage is excess where that Named Insured is added to another party's coverage as an additional insured. That works fine so long as the Protecting Party hasn't also modified its additional insured coverage to be provided on an excess liability or other modified basis.

Endorsement (August, 2005, Vol. 14, No. 10, pp. 1-8) which reviews the following manuscripted endorsement to a CGL policy that specified on its Declaration Page a sublimit for additional insured coverage an amount less than the policy limits applicable to the Named Insured:

The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement, if any between you and the additional insured regarding the work described above, or in the Declarations of this policy, whichever is less. The coverage provided to the additional insured by this endorsement and by paragraph f. of the definition of "insured contract" under Definitions (Section V), as amended by this endorsement, does not apply to "bodily injury" or "property damage" beyond: ... d. The effective date of any deletion of, any removal of, or any non-continuance of, this additional insured endorsement from this policy.

Note that this manuscripted language provides that the additional insured coverage can be terminated by the insurer's unilateral issuance of a deletion endorsement. Unless the policy is endorsed to provide the additional insured notice of the insurer's issuance of an endorsement deleting additional insured coverage, the additional insured may never learn of the termination of its coverage.

Example – Manuscript Wording:**Primary & Noncontributory Additional Insured Endorsement**

Who Is An Insured is amended to include as an insured the person or organization shown in the schedule of this endorsement, but only with respect to liability arising out of “your work” for that insured by or for you.

As respects additional insured as defined above, this insurance also applies to “bodily injury” or “property damage” **arising out of your negligence** when the following written requirements are applicable: Coverage available under this coverage part **shall apply as primary insurance**.

The first paragraph is the same wording as the CG 20 10 11 85 additional insured endorsement, offering broad coverage that includes coverage for the concurrent and sole negligence of the additional insured. What could possibly be wrong? Examine the second paragraph closely. For what causes of loss is primary coverage provided? Only for liability arising out of the named insured’s negligence – not the additional insured.

We strive to address these issues contractually by calling for the Protecting Party to provide “primary and noncontributory” liability coverage, but isn’t that title nonsensical? ISO has a new endorsement that will resolve some of these problems. ISO’s new Primary and Noncontributory Endorsement **CG 20 01 04 13** reads:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that: The additional insured is a Named Insured under such other insurance; and You have agreed in writing in a contract or agreement that this insurance would be **primary** and would **not seek contribution** from any other insurance available to the additional insured.

This new endorsement will resolve some problems, if the requirement for it is carefully drafted.⁴⁸

h. Umbrella and Excess Liability

Most “**umbrella liability policies**” are not umbrellas. Most are really a form of excess liability policy. Umbrella liability policies are most recognizable by the provision of Parts A and B. Part A is the excess liability over the underlying primary liability coverages, and Part B is the “umbrella” portion. Most “**excess liability policies**” do not provide pure excess liability, meaning that the coverage provided is not usually on a following form basis. Both kinds of policies frequently include gaps with regard to such matters as additional insured status, primary and noncontributory liability, waivers of subrogation and the like.

Recommended Insurance Spec:

Such insurance shall follow form of the underlying coverages. It shall be **excess** over and no less broad than all coverages and conditions described above, including but not limited to the required additional insured status, designated construction projects or locations, or both, general aggregate, waiver of subrogation, notice of cancellation, and prohibited exclusions or limitations and will be **primary** to and **not seek contribution** from any other insurance (**primary, umbrella, contingent or excess**) maintained by [the additional insured].

⁴⁸ **Primary Liability vs. Horizontal Exhaustion.** Neither the recommended insurance spec nor the new ISO endorsement resolves the horizontal exhaustion issue which is beyond the scope of this paper. See Endnote 29 (Primary and Noncontributing) on pp. 225 – 226 of **Insurance 201** for further discussion of the term “**primary and noncontributing**”.

Keep in mind that umbrella or excess liability policies provide additional limits only over those underlying liability policies specifically listed in the policy.

i. Excess & Surplus Lines Insurance

(1) The Difference Between the Admitted Market and the Excess & Surplus Lines Market

(a) The Admitted Market

Most people think of insurance as one large marketplace, but there are really two different marketplaces – the admitted market and the excess and surplus lines market ("**E & S market**"). Insurance companies that participate in the admitted market are licensed and regulated by the state's agency charged with regulating insurers providing insurance coverage in the state (generically called herein the "**State Agency**").⁴⁹ Coverage forms and rates that can be used must be approved by the State Agency.⁵⁰ Insurance agents representing admitted insurance companies commonly have authority to both issue binders and certificates of insurance for those carriers.⁵¹ Carriers in the admitted market include those that most of us have heard of: Allstate, Amerisure, Bituminous, Chubb, CNA, Farmers, Hartford, Liberty Mutual, State Farm, Travelers, Zurich and many more. Many of these companies have subsidiaries that operate in the E & S market for greater flexibility.

(b) The E & S Market

⁴⁹ **The Business of Insurance as a State Matter.** Unlike other financial services, the regulation of insurance has been left to the states. As early as 1868, the United States Supreme Court proclaimed that each state has the power to regulate the insurance industry's activities within that state. See *Paul v Virginia*, 75 U.S. 168 (1868). Congress has also noted the state's role, 15 U.S.C. § 1011 (the McCarran-Ferguson Act: "[T]he continued regulation and taxation by the several States of the business of insurance is in the public interest.") and § 1012(b) "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless the Act specifically relates to the business of Insurance."). In *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, 429 (1946) the United States Supreme Court acknowledged that Congress intended to defer insurance regulation to the states.

⁵⁰ **State Approval of Insurance Forms.** The goal in state regulation of insurers, including requiring state approval of insurer's forms to be used in the state is to assure consumer faith in the insurance business; providing public oversight of insurance form language, public notice of approved issuers, and premiums paid for real risk coverage. See Spencer L. Kimball, *The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law*, 45 MINN. L. REV. 471, 477 (1960-61). The National Association of Insurance Commissioners ("NAIC")-a voluntary association of commissioners from each state-has assured much uniformity in insurance regulation among the states. NAIC has formulated model codes governing insurance companies, brokers, agents, and adjusters. These codes form a template for state legislation, e.g., the NAIC has promulgated the Unauthorized Insurance Process Act and the Non-admitted Insurance Act, which most states have adopted with local variations.

⁵¹ **Authorized and Unauthorized Business of Insurance; What is Not the Business of Insurance.** The following is a brief discussion of Texas statutes. Similar legislation exists in most states. The Texas Insurance Code provides for civil and criminal penalties and the contractual rights of those who issue unauthorized insurance in Texas. An insurer may find itself subject to the "unauthorized practice of insurance" if it commits acts considered to be the "business of insurance" in the state of Texas. TEX. INS. CODE § 101.102(a) a "person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute." Insurers selling insurance within the state must be "admitted" and subject themselves to regulation by the state as to rates, forms, capital requirements, as well as other requirements. TEX. INS. CODE §§ 31.002, 37.001. The Insurance Code contains a lengthy definition of what acts constitutes the "business of insurance" (e.g., "making or proposing to make, as an insurer, an insurance contract" TEX. INS. CODE § 101.105(b)(1)). The Insurance Code lists several actions *not* constituting the "business of insurance", including the following:

- (1) the lawful transaction of surplus lines insurance under Chapter 981; ...
- (4) a transaction:
 - (A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do business in this state through negotiations occurring entirely outside this state;
 - (B) that is reported; and
 - (C) on which premium tax is paid in accordance with Chapter 226;

Insurance companies providing coverage through the E & S market in most states are not licensed by the State Agency but in most states must be authorized by the State Agency to operate in the state.⁵² Insurance companies providing coverage through the E & S market ("**E & S carriers**") include some of the largest insurance companies in the nation but they are not required to file their rates and forms. As a result, manuscript forms abound arising in multitudinous coverage differences when compared to the coverage available through the admitted market.

Additionally, E & S carriers must operate through intermediaries ("**surplus lines insurance agents**"), through whom retail agents can access those insurance companies. Retail insurance agents are not contracted directly with E & S insurance companies and must also use those intermediaries. Retail agents do not have binding authority for these insurance companies and in many cases do not even have authority to issue certificates of insurance.

It is generally easy to identify a policy written in an E & S carrier, as usually the State Agency requires that a disclosure statement be stamped on the policy's Declarations Page. For example, the disclosure statement in Texas the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Texas insurance statutes. The Texas Department of Insurance does not audit the finance or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Texas Insurance Code. Chapter 225, Insurance Code, requires payment of ___ (insert appropriate tax rate) percent tax on gross premium.

(2) The Problem Giving Rise to the E & S Market

The admitted market shies away from providing insurance on a wide array of entities, such as those with:

- Adverse loss experience
- Higher risk that the premium warrants
- Limited experience in field of operations
- Small premium size.

(3) The Resulting Concern

There are a few admitted markets that attempt to limit their exposure in the above situations by using non-ISO, proprietary coverage policy and endorsement forms. More commonly, those businesses that do not qualify for the admitted market are relegated to the E & S market. Coverage issues (disappointments) arise more easily in a market like the E & S market that does not use standardized coverage forms filed with and approved for use by the State Agency. The insureds most likely adversely affected by non-standardized and unregulated coverage forms include small general contractors (especially "**paper contractors**", those that sub out all work) and the vast majority of subcontractors. These contractors are subjected to unregulated insurance coverage forms, just a few of which we will discuss today.

⁵² **When a Surplus Lines Agent May Cause to be Issued a Surplus Lines Policy.** In Texas, the agent procuring the surplus lines insurance must possess a surplus lines license issued by the Texas Department of Insurance. TEX. INS. CODE § 981.202. Texas permits surplus lines insurance only when potential insureds have difficulty obtaining coverage from an admitted carrier. To ensure that the surplus lines insurance is only procured in this situation, a surplus lines agent must (1) make a "diligent effort" to obtain coverage from an insurer authorized to write and actually writing that kind and class of insurance in Texas, and (2) only procure insurance in an amount that exceeds the amount of insurance obtainable from authorized issuers. TEX. INS. CODE §§ 981.004(1), and (b). Further, the agent must make a "reasonable effort" to ascertain a surplus lines carrier's financing condition before placing the insurance and may not knowingly place the insurance with a "financially unsound" insurer. TEX. INS. CODE §§ 981.211.

B. Property Insurance

1. Parties.

The following is terminology used in Property Insurance Policies and their endorsements to describe various types of insured parties, each with varying rights and obligations under the Property Insurance:

a. Insureds

In a property policy, the insured is the party identified on the Declarations Page as having an **insurable interest** in the covered property and to whom loss payments will be paid if the property is damaged or destroyed. Third parties may be designated by endorsement to the property policy as an **additional insured** to protect their **additional interests**.⁵³

b. Additional Named Insured

Unlike liability insurance policies, there may be "additional named insureds" on a property policy. The following definition of "**additional named insured**" is found in the on-line IRMI Glossary of Insurance and Management Terms <http://www.irmi.com/online/insurance-glossary/default.aspx>:

(1) A person or organization, other than the first named insured, identified as an insured in the policy declarations or an addendum to the policy declarations. (2) A person or organization added to a policy after the policy is written with the status of named insured. This entity would have the same rights and responsibilities as an entity named as an insured in the policy declarations (other than those rights and responsibilities reserved to the first named insured). In this sense, the term can be contrasted with additional insured, a person or organization added to a policy as an insured but not as a named insured. The term has not acquired a uniformly agreed upon meaning within the insurance industry, and use of the term in the two different senses defined above often produces confusion in requests for additional insured status between contracting parties.

c. Mortgageholder

Similarly, the standard commercial property policy contains the standard mortgage clause providing that loss payments will be made to the insured and the **mortgageholder** as their interests may appear.⁵⁴

d. Loss Payee

A "**Loss Payable Clause**" is an insurance provision authorizing payment in the event of loss to a person or entity (a "**loss payee**") other than the named insured having an insurable interest in the covered property. See **ISO CP 12 18**

⁵³ **Insurable Interest.** Generally, to be eligible for insured status under a property policy, the insured must have an insurable interest in the insured property. The assumption by a tenant of liability for damage to leased premises is recognized as creating an insurable interest in the tenant. Leases for single tenant buildings sometime require the tenant to insure the improvements and to name the owner-lessor as an additional insured. Unlike the standard mortgagee coverage, other additional insurable interests endorsements do not provide coverage despite the acts of the insured, whether the first named insured (e.g., tenant) or the additional insured or loss payee (e.g., landlord). Under current ISO commercial property forms, intentional concealment or misrepresentation of a material fact by any insured voids coverage for the additional insured. In November 2008 ISO issued its form CP 12 19 Additional Insured – Building Owner endorsement to designate a building owner as a "Named Insured" for damage to the building on a tenant's property policy covering the building. It is the "insureds" who receive the loss payment under a property policy. Thus, it is unnecessary to specify that the building owner also be designated as a loss payee when it is designated as an insured.

⁵⁴ **Mortgageholder Rights.** See ISO Building and Personal Property Coverage Form Par. F.2 Mortgageholders setting out the rights of a mortgageholder which is scheduled on the Declarations Page of the ISO property policy in the Appendix of Forms to **Insurance 201** at pp. 162 – 163.

06 07 Loss Payable Provisions, **Optional Clause F** Building Owner Loss Payable Clause.⁵⁵ In November 2008 ISO amended its CP 12 18 Loss Payable Provisions endorsement to permit a building owner to be designated as a loss payee under a Building Owner Loss Payable option, as an alternative to using the **CP 12 19**. Under the Building Owner Loss Payable option, covered loss to the building is adjusted with the building owner and loss to betterments is adjusted with the tenant, unless the lease stipulates otherwise. Notice of cancellation is not granted to the building owner.

2. Antiquated, Problematic and Just Plain Wrong Terminology.

In 1986 the insurance industry ceased using phrases such as “**fire insurance**”, “**extended coverage**”, “**vandalism and malicious mischief**”, and “**special extended coverage**”. Introduced to take their place were policies referred to as “basic causes of loss”, “broad causes of loss”, and “special causes of loss”. That said, the vast majority of insurers in the insurance industry no longer describe coverage as “**all risk**” due to decisions against insurers arising out of the perception created by such terms that the policy did not include the exclusions, conditions, and limitations that all policies have.

<i>Don't Say This</i>	<i>Say This</i>
"fire insurance"	basic, ⁵⁶ broad ⁵⁷ or special causes of loss ⁵⁸ form
"extended coverage"	
"vandalism and malicious mischief"	
"special extended coverage"	
"all risk"	

Outdated terminology requiring that the policy provide “all risks” or “fire and extended coverage” is often used in contracts. “All risks” denoted property insurance covering losses arising from any fortuitous cause except those that are specifically excluded and is currently called “Special Form” or “Special Causes of Loss Form.” “Extended coverage” refers to an endorsement that was once added to a standard fire policy to cover the perils now insured under ISO’s Basic Causes of Loss Form. Since the extended coverage endorsement is no longer used, a better approach to requiring this coverage is to refer to the ISO “Basic,” “Broad,” or “Special” Causes of Loss Form. Prior property insurance forms used the terms “risk” and “perils.” Pre-“causes of loss” property insurance was written either on a “named peril” basis which insured property against loss or damage from causes of loss expressly enumerated in the policy or an “all risks” basis, which insured property against loss or damage from all causes of loss except those which were expressly excluded. “Fire and extended coverage” insurance was a named peril property insurance.

3. The Policy.

Property policies, and the ISO property policy form, are comprised of a the following forms:

⁵⁵ **ISO CP 12 18 Loss Payable Provisions.** See ISO CP 12 18 Loss Payable Provisions form in the Appendix of Forms to Insurance 201 at pp. 196 – 197.

⁵⁶ **Basic Causes of Loss.** A “basic causes of loss” policy is extremely basic in the scope of coverage provided.

⁵⁷ **Broad Causes of Loss.** A “broad causes of loss” policy is broader than a basic form, but is not very broad.

⁵⁸ **Special Causes of Loss.** The most comprehensive ISO property policy is called “Special Form” or “Special Causes of Loss Form.” A “special causes of loss” policy is what most lawyers, laymen and many insurance professionals think of as an “all risk” form and is by far the most common form of property insurance in use. This form is in contrast to “Named Perils Coverage” which applies only to loss arising out of causes that are listed as covered. See Endnote 48 (*Property Insurance – “Causes of Loss”*) in the Commentary on Insurance Forms to **Insurance 201** at pp. 147 - 165.

Commercial Property Coverage Part Declarations Page with Schedule of Forms⁵⁹**Common Property Conditions**⁶⁰**Building and Personal Property Coverage Form**⁶¹Section A – Coverage⁶²

Section B – Exclusions and Limitations

Section C – Limits of Insurance

Section D – Deductible

Section E – Loss Conditions⁶³Section F – Additional Conditions⁶⁴Section G – Optional Coverages⁶⁵

Section H – Definitions

Business Income (And Extra Expense) Coverage Form⁶⁶**Leasehold Interest Coverage Form**⁶⁷Section A – Coverage⁶⁸

Section B – Exclusions and Limitations

Section C – Limits of Insurance

Section D – Loss Conditions

Section E – Additional Condition

Section F - Definitions

Commercial Property Conditions⁶⁹

⁵⁹ **Declarations Page with Schedule of Forms.** See the ISO Commercial Property Coverage Part Declarations Page with Schedule of Forms attached to **Insurance 201** at p. 145.

⁶⁰ **Common Policy Conditions.** See the ISO Common Policy Conditions attached to **Insurance 201** at p. 146. Condition A of this form provides for the policy to be cancelled by the “first Named Insured” and by the insurer upon notice to the “first Named Insured”.

⁶¹ **Building and Personal Property Coverage Form.** See the ISO Building and Personal Property Coverage Form attached to **Insurance 201** at pp. 147 - 176.

⁶² **Coverages.** Section A provides for (1) Covered Property; (2) Property Not Covered; (3) Covered Causes of Loss; (4) Additional Coverages as to (a) Debris Removal, (b) Preservation of Property, (c) Fire Department Service Charge, (de) Pollutant Clean-up And Removal, (e) Increased Cost of Construction, and (f) Electronic Data; (5) Coverage Extensions as to (a) Newly Acquired Or Constructed Property, (b) Personal Effects and Property Of Others; (c) Valuable Papers and Records (Other Than Electronic Data), (d) Property Off-premises, (e) Outdoor Property, (f) Non-owned Detached Trailers, (g) Business Personal Property Temporarily in Portable Storage Units.

⁶³ **Loss Conditions.** The property policy at Section E sets out certain conditions to payment including (6) Vacancy. See p. 160 to **Insurance 201**.

⁶⁴ **Additional Conditions.** The property policy provides in Section F for certain additional conditions applicable to payment including (1) Coinsurance (see p. 161) and (2) Mortgageholders (see p. 162),

⁶⁵ **Optional Coverages.** The property policy addresses at Section G selected valuation methods if selected on the Declarations Page: (1) Agreed Value (see p. 163 to **Insurance 201**); (2) Inflation Guard (see p. 163); and (3) Replacement Cost (see pp. 163 – 164); and (4) Extension of Replacement Cost To Personal Property Of Others (see p. 164).

⁶⁶ **Business Income Insurance.** See the ISO Business Income (And Extra Expense) Coverage Form attached to **Insurance 201** at p. 166..

⁶⁷ **Leasehold Interest Coverage Form.** See the ISO Leasehold Interest Coverage Form attached to **Insurance 201** at p. 202.

⁶⁸ **Leasehold Interest Coverage Form - Coverages.** This endorsement is to insure the Tenant for its “Covered Leasehold Interest” lost due to the cancellation of its lease resulting from physical loss of or damage to property at the premises caused by a Covered Cause of Loss in the amount of the “net leasehold interest” shown in the Leasehold Interest Coverage Schedule for the following as designated on the Declarations Page: (a) Tenants’ Lease Interest; (b) Bonus Payments; (c) Improvements and Betterments; and (d) Prepaid Rent.

Endorsements ⁷⁰

4. Coverage under Each Causes of Loss.

The following are the perils covered by each of the Causes of Loss Forms:

PERILS COVERED UNDER ISO CAUSES OF LOSS FORMS	
<p>Basic Causes of loss Form (CP 10 10)</p> <ul style="list-style-type: none"> • Fire • Lightning • Explosion • Windstorm or hail • Smoke • Aircraft or vehicles • Riot or civil commotion • Vandalism • Sprinkler leakage • Sinkhole collapse • Volcanic action 	<p>Broad Causes of Loss Form (CP 10 20)</p> <p>Basic causes of loss form perils, plus:</p> <ul style="list-style-type: none"> • Breakage of glass • Falling objects • Weight of snow, ice, or sleet • Water damage from leaking appliances • Collapse from specified causes
	<p>Special Causes of Loss Form (CP 10 30)</p> <ul style="list-style-type: none"> • All perils except as excluded • Collapse from specified causes

5. Exclusion from Causes of Loss.

The following are excluded perils from Causes of Loss coverage, including from Special Causes of Loss:

- Law and Ordinance;
- Earth Movement, Governmental Action;
- Nuclear Hazard;
- Utility Service;
- War and Military Action;
- Water;
- Fungus, Wet Rot, Dry Rot, and Bacteria, Boiler and Machinery Failure;
- Wear and Tear or Lack of Maintenance;
- Continuous Seepage or Leakage Over a Period of 154 Days or More;
- Dishonest Acts;
- Pollutants; and
- Faulty Design or Workmanship.

⁶⁹ **Commercial Property Conditions.** See the ISO Commercial Property Conditions attached to **Insurance 201** at p. 177 addressing among other matters authorizing pre-loss waiver by landlord or tenant, and authorizing post-loss waiver by landlord of tenant.

⁷⁰ **Endorsements.** See the following Endorsements to the ISO Commercial Property attached to **Insurance 201** at p. 177 as follows: Ordinance or Law Coverage at p. 178; Debris Removal Additional Insurance at p. 183; Loss Payable Provisions at p. 196; Scheduled Building Property Tenant’s Property at p. 198; Unscheduled Building Property Tenant’s Policy at p. 200; Additional Insured – Building Owner at p. 201.

Also, in special hazard areas certain causes of loss may be excluded from coverage by endorsement with specialty insurance being required to cover the hazard (e.g., windstorm).

6. Difference in Conditions Insurance.

“**Difference in Conditions Insurance**” is the industry term for property policies purchased in addition to the Causes of Loss policy to cover perils not covered by the property policy (usually, flood, wind and earthquake).

7. Valuation Terminology.

Whether the policy is a “**Replacement Cost**” policy or an “**Actual Cash Value**” policy, the loss paid will be limited to the policy limits.

a. **Replacement Cost**

“**Replacement Cost**” is the cost of repairing or replacing insured property at time of the occurrence of the loss, without reduction for loss of value through depreciation or age. Recovery is limited to the lesser of (a) the policy limit, (b) the cost to replace the lost or damaged property with other property of comparable material and quality and used for the same purpose, or (c) the amount actually spent to repair or replace the damaged or lost property. The policy proceeds are not paid until the property is actually repaired or replaced, and only if replacement occurs as soon as reasonably possible after the loss or damage. Notice of intent to replace must be given to the insurer within 180 days of loss. Replacement cost coverage does not prohibit recovery if the insured rebuilds at a new location, but the coverage is limited to what it would have cost to replace the improvements at the original premises. Replacement cost coverage does not cover the added costs of construction due to changes in laws and ordinances except if the policy is endorsed with an Ordinance or Law Coverage Endorsement (See Endnote 59 to **Insurance 201**). In the past replacement cost coverage was an option provided by endorsement. Now it is an optional coverage built into the ISO form policy. The option coverage is selected by notation on the Declarations Page. See **ISO CP DS 10 00** Declarations Page at Optional Coverages.⁷¹

b. **Actual Cash Value**

“**Actual Cash Value**” or “**ACV**”. The ISO policy does not define “actual cash value”. The definition of this term is left up to case law. The term has generally been defined by cases to mean replacement cost of the covered property at the time of loss with like-kind and quality less physical depreciation. Depreciation may be determined by consideration of age, condition at time of loss, obsolescence and other factors causing deterioration. The term is seldom defined in the policy, but is used in property and automobile physical damage insurance and is generally considered in the industry to be the cost to repair or replace the damaged property with materials of like kind and quality, less depreciation of the damaged property. In other words, the sum of money required to pay for damages or lost property, computed on the basis of replacement value less its depreciation by obsolescence or general wear and tear (i.e., physical depreciation). This is one of several possible methods of establishing the value of insured property in order to calculate the premium and determine the amount the insurer will pay in the event of a loss. ACV coverage applies if Replacement Cost coverage is not affirmatively selected on the Declarations Page of the policy.⁷²

⁷¹ **Replacement Cost.** See Building and Personal Property Coverage Form, **Par. G.3** Optional Coverages – Replacement Cost at pp. 163 – 164 and Declarations Page at p. 145 of Insurance 201.

⁷² **ACV.** See Building and Personal Property Coverage Form, **Par. G.1** Agreed Value – Replacement Cost at p. 163 and Declarations Page at p. 145 of **Insurance 201**.

c. Inflation Guard

“**Inflation guard**” is an optional endorsement designed to offset potential inflation by specifying a percentage in the Declarations Page by which the coverage will increase annually as to the portion of the covered property specified.⁷³

III. INSURANCE SPECIFICATION

A. Two Approaches

Included in this article are two approaches to writing insurance specifications, a narrative approach and an exhibit checklist approach. There are drafting advantages and disadvantages to each approach (one’s vice is the other’s virtue).

Narrative	Exhibit
General	Specific
Brief	Detailed
Paragraph Style	Checklist Style

The author encourages the use of the exhibit checklist approach. In the author’s experience providing a specific, detailed, checklist style set of insurance specifications facilitates delivery of insurance meeting the parties’ insurance requirements.⁷⁴

B. The Protecting Party’s Insurance Broker is the Audience for the Insurance Specifications

The author urges “Remember your audience,” which this author proposes is the insurance agents issuing and reviewing the insurance to be obtained, and not only the Protecting Party’s insurance counsel. The people that most need to understand what is being required are the Protecting Party’s insurance brokers. Make it easy for them to understand. Require a specific ISO endorsement or a specific scope of coverage. If requiring a specific ISO endorsement, do not say “or equivalent”. What does that mean? What it does not mean is “identical”. Make the Protecting Party declare what in fact they do have. Get a copy and read it. Make sure that it complies with your insurance specifications.

The author encourages the use of the exhibit checklist approach. In the author’s experience providing a specific, detailed, checklist style set of insurance specifications facilitates delivery of insurance meeting the parties’ insurance requirements. Inform your client of the severity of the exclusions that are so widely and increasingly utilized by the insurance industry, yet are invisible to most certificate holders. Inform your client that a review of the coverage being provided must be performed, either by you, your client’s insurance agent, or an independent consultant.

⁷³ **Inflation Guard**. See Building and Personal Property Coverage Form, **Par. G.2** Optional Coverages – Inflation Guard Cost at p. 163 and Declarations Page at p. 145 of **Insurance 201**.

⁷⁴ **Specific Specifications Are Better than General Narrative Specifications**. See pp. 55 – 56 and pp. 69 *et seq.* of **Insurance 201**.

