



## Inland Marine Coverages and Claim Strategies

**Joseph S. Harrington, CPCU**  
Director, Corporate Communications, AAIS

**Anthony DeCesare**  
VP and Executive General Adjuster  
Charles Taylor Adjusting

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### Introduction

- Joseph S. Harrington, CPCU
  - Director, Corporate Communications, AAIS
  - Former member, Institutes' advisory committee
  - Current member, CPCU Society publications task force
  - Author of numerous articles on inland marine
  
- American Association of Insurance Services
  - P&C advisory organization; product leader in inland marine
  - Provides *Inland Marine Guide* to "nonfiled" classes
  - Provides Commercial Output Program
  - Provides personal, commercial, and farm filed classes

## Introduction

- Anthony DeCesare
  - Executive General Adjuster – Commercial Property Large Loss
  - Past Presenter PLRB Business Income
  - Past Instructor PLRB Business Income Learning Module on Business Income
  
- Charles Taylor Adjusting
  - Charles Taylor PLC is a leading international provider of professional services to clients in the global insurance market. They have been providing services to insurance clients since 1884 and today have around 1,000 staff in 60 offices, spread across 25 countries in the UK, the Americas, Asia Pacific, Europe and the Middle East.

3

## Introduction, cont.

- Today's learning objectives
  - Identify new and overlooked inland marine coverage provisions
  - Describe valuation challenges in inland marine
  - Adjusting losses that involve both property and inland marine policies
  
- Scope of the course: Four key areas
  - Construction classes
  - Cargo and warehouse coverage
  - Electronic Data Processing
  - Difference in Conditions

4

## The Nature of Inland Marine Insurance

- Low-premium, high-margin accounts
- Property in transit subject to different perils
- Property that is changing or in some state of flux
- Combination of exposures that are temporary
- Property outside the control of its owners

5

## Special Considerations

- The “Nationwide Definition”
  - A. Imports
  - B. Exports
  - C. Domestic Shipments
  - D. Bridges, Tunnels, and Other Instrumentalities of Transportation and Communication
  - E. Personal Property Floater Risks
  - F. Commercial Property Floater Risks
    - Difference in Conditions coverage
    - Electronic Data Processing policies

6

## Special Considerations, cont.

- Is a bridge endorsement needed?
  - Common vs. inland marine policy conditions
- Must the forms be filed?
  - Filing requirements on “nonfiled” forms
- Are the forms “Fleming” compliant?
  - Fleming vs. USAA, Oregon Supreme Court, 1999
  - Effectively requires exclusions to be prominently headlined

7

## Builders’ Risk Challenges

- Defining “delay period”
  - “. . . *the period of time the completion* of the construction, erection, or fabrication of a covered “building or structure” *is “delayed”* as a result of direct physical loss or damage caused by a covered peril *to property covered* . . .”
  - Starts *after* planned completion date, not at loss
- Additional Construction Expenses
  - “One-time” added expenses subject to a separate limit and dollar deductible
  - Incurred during the delay period
  - Limited to *additional* advertising, design fees, cost of financing (fees, commissions), lease administration, professional fees, and permit fees

8

## Builders' Risk Challenges, cont.

- Additional Soft Costs
  - Ongoing added expenses with a time element deductible
  - Incurred during the delay period
  - Limited to interest payments, realty taxes, lease expenses, and insurance premiums
- General Administration Expenses
  - Arising from delay during the delay period
  - Separate built-in limit

9

## Builders' Risk Challenges, cont.

- Valuation for renovation exposures
  - Separate limits for existing building and building materials
  - Stated value or ACV valuation on existing building
  - ACV valuation on building materials
  - ACV on building materials includes overhead and profit
- Errors & defects/faulty workmanship exclusions
  - Are “LEG” endorsements coming to the U.S.?
    - LEG 1: “Outright” defects exclusion (narrowest coverage)
    - LEG 2: “Consequences” defects wording
    - LEG 3: “Improvement” defects wording (broadest coverage)

10

## Builders' Risk Challenges, cont.

### ■ Insured Property

- Two-story row house with basement
- Approximately 3,300 sq ft
- Built in early 1900s
- Purchased for \$250,000



Photo Source: Anthony DeCesare,  
Executive General Adjuster

### ■ Builders' Risk Project

- Convert from two to three condo floors
- \$1.035 million budget for renovation
- \$215,000 profit projected

11

## Builders' Risk Challenges, cont.

### ■ Renovation Plan

- Pull down back wall down to extend the three floors
- Excavate the lowest level from 6' to 9'
- After excavation, underpin the front and two side walls
- Build out all three floors 35 feet into the rear parking area
- Leave the front and two side walls
- Gut everything else, including existing floor and roof joists
- No changes to historic façade



Photo Source: Anthony DeCesare,  
Executive General Adjuster

12

## Builders' Risk Challenges, cont.

- The Loss
  - Occurred around 5 p.m. in mid-January
  - Excavation subcontractor had left at mid-day due to rain
  - Direct result of faulty work in excavation and under-pinning of walls
  - Excavation below the base left soil in an unstable condition



Photo Source: Anthony DeCesare,  
Executive General Adjuster

13

## Builders' Risk Challenges, cont.

- The Claim
  - Cause of loss reported as partial building collapse
- Potential Coverage
  - Builders Risk Property
  - Existing Building
  - Debris Removal
  - Ordinance or Law
- Coinsurance Requirement



Photo Source: Anthony DeCesare,  
Executive General Adjuster

14

## Builders' Risk Challenges, cont.

- Adjustment Issues
  - Coinsurance
  - ACV of existing building
  - Completed building value
  - Codes, including historic preservation requirements
  - Delay in completion coverage
    - Additional expenses
    - "Soft costs"
  - Subrogation



Photo Source: Anthony DeCesare, Executive General Adjuster

## Builders' Risk Challenges, cont.

- Adjuster Considerations
  - Excluded perils (vehicles? flood?)
  - Reservation of rights
  - Advance payments
- Other Experts
  - Engineer: Cause of loss; scope of repair
  - Building consultant: Property value
  - Coverage counsel: Policy analysis; examination under oath

Photo Source: Anthony DeCesare, Executive General Adjuster

### Renovation Loss Settlement

| Loss recovery                        | Standard commercial property form | AAIS Builders Risk Jobsite Form | AAIS Jobsite Form with Renovation Endorsement | AAIS Renovation and Rehabilitation Form |
|--------------------------------------|-----------------------------------|---------------------------------|---|---|
| Emergency stabilization and backfill |                                   |                                 |   |   |
| Shore front wall                     |                                   |                                 |   |   |
| Demo & reconstruction east wall      |                                   |                                 |   |   |
| Reconstruction east brick façade     |                                   |                                 |   |   |
| Reconstruction of header             |                                   |                                 |   |   |
| Reconstruction of west wall          |                                   |                                 |   |   |
| Replacement of back wall             |                                   |                                 |   |   |
| Replacement of roof system           |                                   |                                 |   |   |
| Replacement of floor systems         |                                   |                                 |   |   |
| Replacement of windows and doors     |                                   |                                 |   |   |
| Sub-contractors partial excavation   |                                   |                                 |   |   |
| Required code                        |                                   |                                 |   |   |

17

### Builders' Risk Challenges, cont.

- AAIS Builders' Risk forms
  - Defects, Errors, and Omissions exclusion
    - "We" do not pay for loss . . . resulting from an act, defect, error, or omission (*negligent or not*) relating to: a) design, specifications, construction, materials, or *workmanship*; b) planning, zoning, development, siting, surveying, grading, or compaction; or c) maintenance, installation, *renovation*, remodeling, or repair.
  - Earth movement exclusion
    - Any "earth movement" *whether natural or manmade* and regardless of cause and regardless of whether or not the cause of the "earth movement": 1) *originated at the covered property*; or 2) was being *performed at "your" request* or for "your" benefit.

18

## Contractors' Equipment Challenges

- Contractors Equipment coverage within Builders Risk
  - Desired by some insureds
  - No coverage for “machinery, tools, and equipment . . . That will not become a permanent part of the structure”.
  - Different perils and rating factors
  - Available together in Contractors' Combination form
  
- Partial loss issues
  - Loss to parts leading to total losses
  - Loss of warranty following repair

19

## Contractors' Equipment Challenges, cont.

- Commercial Property coverage
  - Your Business Personal Property located in or on the building described . . . [or] . . . within 100 feet . . . consisting of the following unless otherwise specified . . . :
    - (1) Furniture and fixtures; (2) *Machinery and equipment*; (3) "Stock"; (4) All other personal property . . .
  - Covered Property does not include:
    - k. Property . . . covered under another coverage form . . . in which it is more specifically described, except for the excess of the amount due . . . from that other insurance;



Photo Source: Anthony DeCesare,  
Executive General Adjuster

20

## Contractors' Equipment Challenges, cont.

### Other Insurance

- *If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance*, whether you can collect on it or not. But *we will not pay more than the applicable Limit of Insurance of Section I Property*.



Photo Source: Anthony DeCesare,  
Executive General Adjuster

21

## Riggers' Insurance

### Riggers' Coverage

- "We" cover direct physical loss caused by a covered peril to property of others that:
  - a. is in "your" care, custody, and control; and
  - b. "you" have been hired for "rigging".

### Riggers' Legal Liability Coverage

- "We" cover "your" legal liability for loss or damage to covered property while under "your" care, custody, and control.
- "We" only pay those sums that "you" become legally obligated to pay as a rigger, millwright, or contractor:
  - a. by statute or case law; or
  - b. under a "rigging", millwright, or construction contract issued by "you" or issued on "your" behalf.

22

## Motor Truck Cargo & Warehouse Legal Liability

- Motor Truck Cargo Legal Liability Coverage

"We" cover "your" legal liability for loss to covered property:

a. while under "your" care, custody, and control; and

b. that "you" become legally obligated to pay as a common or contract carrier under a bill of lading, contract of carriage, or shipping receipt that is issued by "you" or that is issued on "your" behalf.

23

## Motor Truck Cargo & Warehouse Legal, cont.

- Warehouse Legal Liability Coverage

"We" cover "your" legal liability for loss to covered property:

a. while under "your" care, custody, and control; and

b. that "you" become legally obligated to pay as a warehouse operator under a "warehouse receipt" issued by "you".

24

## Motor Truck Cargo & Warehouse Legal, cont.

- First party perils for third party coverage

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

- Optional defense costs coverage  
(also in Riggers Legal Liability Coverage)

"We" have the option to defend any "suit" brought against "you" as a result of damage to covered property caused by a covered loss. "We" may investigate and settle a claim or "suit".

25

## Electronic Data Processing

- Variety of valuation provisions
  - Hardware and servers replaced:  
Replacement cost of "functionally comparable" equipment
  - Hardware and servers not replaced:  
ACV with deduction for depreciation
  - Software:  
Based on cost to reinstall or cost of current versions (if originals discs are no longer available)
  - Proprietary programs:  
Based on cost to reproduce from duplicate versions or research (if duplicate copies do not exist)

26

## Difference in Conditions

- Two approaches: first dollar or excess coverage
- Both exclude coverage for named (broad form) perils
- First-dollar form can exclude property policy perils
  - Property policy must be scheduled
  - DIC flood and earthquake coverage would be excess over any primary flood or earthquake coverage
- Excess form covers over scheduled limits of property policy
- No drop-down coverage for uncollectable underlying coverage

27

## Difference in Conditions, cont.

- No coverage for policy perils (must be selected):  
"We" do not cover loss . . . from a peril . . . covered by the property policy described in the "schedule of coverages".
- Excess coverage for policy perils (separate form)
- Excess coverage only for flood and earthquake when earthquake or flood are covered in the primary policy

28



## To Follow Up

- Joseph S. Harrington, CPCU
  - Director, Corporate Communications
  - American Association of Insurance Services (AAIS)
  - [joeh@aaisonline.com](mailto:joeh@aaisonline.com)
  - 630-457-3217
  
- Anthony DeCesare
  - Vice President/Executive General Adjuster
  - Charles Taylor Adjusting
  - [Anthony.DeCesare@ctplc.com](mailto:Anthony.DeCesare@ctplc.com)
  - 713-840-1642