Insurance Buyers' News

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Behind the Fine Print

How many contracts does your business enter into every year? You might have one or more property leases, equipment leases, purchase agreements, service agreements, construction contracts, work agreements and more. Although most contracts seem like routine, boilerplate documents, once you sign them, they become legally binding. Do you always know what you're agreeing to?

At its most basic, a contract outlines an agreement between two or more parties. It has three basic parts: an offer (whether a good or a service), acceptance of that offer, and consideration, or what the buyer will exchange for the good or service. A contract is enforceable in a court of law—even an oral contract—so you will want to know what you're signing.

To check:

- Does the contract accurately identify the parties involved, including full legal names, correctly spelled?
- Does it include a full description of the goods or services to be exchanged?
- Does it include the payment terms? You can reference and append price lists, schedules and other related documents.

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This Just In

As this issue goes to press, the National Flood Insurance Program (NFIP) is due to expire…yet again…on November 18. The federal program originally expired on September 30.

Congress is working on reauthorization. The House has already approved a reauthorization bill, the Flood Insurance Reform Act of 2011, which is now under consideration in the Senate.

The bill would enact some reforms on the debt-ridden program. The NFIP currently has about $18 billion in debt, largely due to Hurricane Katrina. That figure will no doubt increase when losses from this summer's floods are tallied.

The reform act would reauthorize the NFIP for another five

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- Does the agreement have a term? If yes, the contract should state beginning and end dates. If you need the product delivered or service completed by a specific date, make sure the contract says so and outlines the consequences of nondelivery (cancellation of the contract, refund of any deposits, etc.).
- Does the contract have a cancellation provision? Many contracts allow one or both parties to cancel the contract for failure to meet the terms of the agreement; some allow cancellation for any reason, usually with notice. If the contract can be cancelled for breach of agreement, does it include a grace period where the party at fault can cure the breach? Is the notice period reasonable?
- Does the contract affect your insurance program? Many contracts contain provisions requiring one or more parties to carry specific types or amounts of insurance coverage. Other contracts will increase your liability exposures and thus affect your coverage needs. Have you asked your insurance broker or risk manager to review important contracts for insurance considerations? Please see Page 3 for specific contract language to check.

Contracts and Your Insurance

Many contracts contain indemnification clauses. These require the undersigned to "indemnify and hold harmless" the other party to the contract. Law.com defines indemnification as a "guarantee against any loss which another might suffer." In other words, you are agreeing to take on liability that you would not otherwise have for losses described in the contract—sometimes even if the other party is at fault. The standard commercial general liability (CGL) policy provides broad coverage for liability you assume through a contract, unless your policy has a contractual liability limitation endorsement.

Contracts often require parties to maintain a specific type or level of liability coverage. Insurance policies and requirements have changed over the years, though, so you find many contracts with outdated language. For example, you might come across a contract requiring a comprehensive general liability policy. However, this type of policy was replaced in 1986 by the commercial general liability policy. Other contracts require a specific policy form, i.e., the 1986 commercial general liability policy, which is also out of date.

Other contracts might require you to maintain additional coverages, such as "comprehensive auto liability" insurance (newer policies are called a "business auto policy") or "workmen's compensation insurance." (Would this cover working women?).

Outdated language or insurance requirements might not invalidate the contract or your liability coverage, but it can cause disputes between the parties to the contract or their insurers if a claim arises. Simply ensuring that your contracts are current can eliminate waste of money and time and aggravation.

This Just In

years and make the program more actuarially sound. A study by the Property Casualty Insurers Association of America (PCI) found that flood insurance costs an average of two times what the NFIP charges for it. In high-risk areas, the true cost exceeds three times premiums.

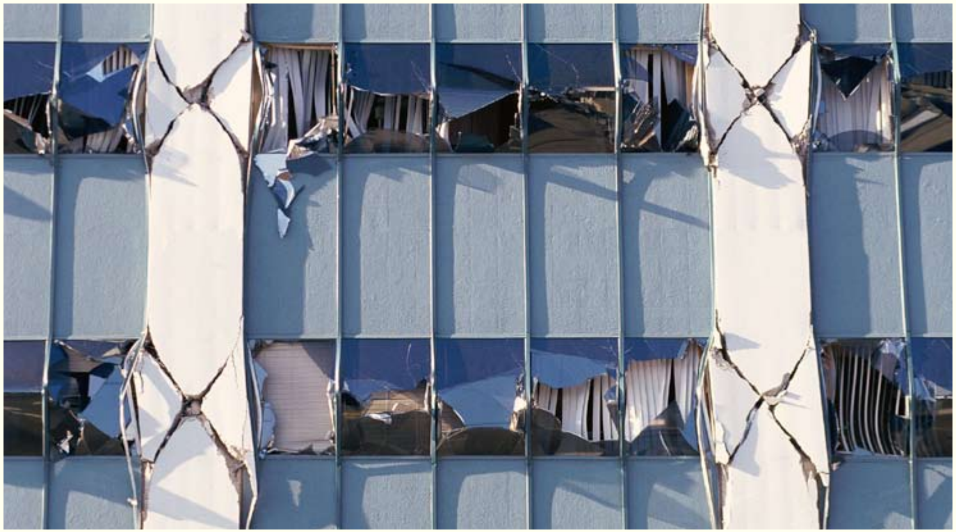
Current law limits flood insurance rate increases to no more than 10 percent per year; the bill would allow increases of up to 20 percent. It would also require more property owners in floodplains to buy coverage and provide for greater enforcement of the mandatory purchase requirement.

Minimum Limits

Many contracts will require you to carry specific minimum limits on your liability insurance policy or policies. If you are entering a contract with another party, you will want to ensure you have enough coverage. The riskier the venture, the more coverage you will want. We can help you evaluate your contractual relationships and their effects on your insurance and risk management programs.

Earthquake Insurance: The Hidden Risk

When you think "earthquake," you probably think of California, or possibly the New Madrid Fault, if you are located near that seismic area. However, the Insurance Information Institute reports that 92 percent of the U.S. population lives in a seismically active area. Earthquakes have occurred in 39 states and have caused damage in all 50 over the past 100 years. What's your business's risk?



Many highly populated areas of the U.S. are vulnerable to damage from earthquakes or seismic activity. These include many areas of California, coastal areas of Oregon and Washington, along with several cities on the East Coast, including Charleston, S.C. and Boston. Another major earthquake in the New Madrid Seismic Zone in the central Mississippi Valley could devastate Memphis and St. Louis, with damage possible in areas ranging from Arkansas and Mississippi in the south to Illinois and Indiana in the north.

Most business managers wouldn't dream of going without insurance coverage for fire or theft, but a surprising number go without earthquake coverage. Even in "earthquake country," a quake large enough to cause damage occurs infrequently, making it easy to overlook the need for coverage. The California Department of Insurance reported that in 2010, only 11.6 percent of the commercial fire policies issued in the state included earthquake coverage and only 9.3 percent of commercial multiperil policies included this coverage.

Standard commercial property policies exclude coverage for earthquake-related damage. For example, the ISO commercial property policy special causes of loss form (CP 10 30 06 07) specifically excludes damage resulting from earthquakes or any type of earth movement. It defines "earth movement" as:

(1) Earthquake, including any earth sinking, rising or shifting related to such event;
(2) Landslide, including any earth sinking, rising or shifting related to such event;
(3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining has ceased;
(4) Earth sinking (other than sinkhole collapse)…
(5) Volcanic eruption, explosion or effusion…

The policy makes the exclusion airtight by excluding losses involving earth movement "regardless of any other cause or event that

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contributes concurrently or in any sequence to the loss."

The American Association of Insurance Services (AAIS) standard policy also excludes earthquake coverage. These policies will cover fire or explosion resulting from earth movement, so if an earthquake caused gas lines to explode and fire resulted, the policy would pay to repair fire damage.

Where Can Businesses Find Earthquake Coverage?

Businesses can often obtain earthquake coverage by adding an endorsement to their commercial multiperil policy. Smaller businesses often find this the easiest and least expensive source of coverage. Monoline earthquake policies, or standalone policies, can also provide coverage. In California, the California Earthquake Authority (CEA) provides commercial and residential coverage.

Larger businesses often include their earthquake coverage in a difference in conditions (DIC) policy. These non-standard policies provide "all-risk" coverage for exposures (such as earthquake and flood) excluded by the commercial property policy; they can also provide limits over the commercial property policy. As non-standard policies, coverage terms will vary from insurer to insurer, so you will want to review your policy to be sure it specifically includes earthquake coverage.

Other Considerations

Other things to keep in mind when reviewing your earthquake coverage include:

1. Coinsurance and sublimits: One coverage endorsement contains a coinsurance clause, which means the insured will have to pay a specified portion of the loss out of pocket. Another contains no coinsurance clause, but has a lower sublimit than the base policy, so you will have to pay any earthquake losses over the sublimit amount out of pocket. We can help you determine which type best fits your company's loss exposures and financial situation.
2. Deductibles: Unlike your commercial property policy, your earthquake coverage has a deductible that is a percentage of the loss, rather than a specific dollar amount. Deductibles range from 2 to 20 percent of the value of the insured property. Generally, insurers will set deductibles higher where risk of loss is higher. To save money on your premium, you can increase your deductible.

   Deductibles apply to each earthquake or volcanic eruption under the ISO endorsement. The AAIS endorsement considers each volcanic eruption that occurs within a 168-hour period a single loss.

   Adjusting Today notes that earthquake endorsement deductibles are calculated separately for each earthquake or volcanic eruption under the ISO endorsement. However, if the insured property suffers damage from earthquake and another covered cause (such as fire), the insurer will take only the earthquake deductible, which is "significantly higher than the base policy deductible."
3. Shutdowns or slowdowns due to earthquakes (and many other natural disasters) can cause significant business income losses. If you have a business package policy with business interruption coverage or a separate business income policy, coverage will apply to earthquake-related business income losses only if you have property coverage for earthquake.

Earthquake-related damage can also cause shutdowns or slowdowns at "contingent locations," or locations that your organization depends on as either a supplier or key client. You can tailor your business income coverage to cover earthquake-related losses at these locations as well.

Earthquake coverage can be expensive; the higher your exposures, the more you will pay. We can work with you to evaluate your exposures, tolerance for loss and financial situation to develop a coverage and risk management plan that will help you minimize your losses due to earthquake. For more information, please contact us.

Protect Your Company from Auto Liability Claims

More than 9.5 million motor vehicles were involved in crashes that caused property damage or bodily injury during 2010, according to Census Bureau data. And one in four auto accidents results in an injury claim, found a study by the Insurance Research Council. Protect your organization from this exposure with the right coverage!

If one of your employees causes property damage, injury or death to another while driving on company business, your company could become liable. In addition to the human cost, involvement in an injury or fatal accident can create adverse publicity, cause lost work time and potentially cost thousands of dollars in liability claims.

For many reasons, then, it makes sense to take measures to prevent auto accidents and to minimize the company's liability when an accident does occur. Practical action steps include:

1. Define the jobs that involve driving. If a job requires driving, obtain copies of applicants' motor vehicle records (MVRs) from the state department of motor vehicles before making a job offer. Be sure to obtain applicants' written permission before doing this to avoid violating any privacy regulations. Use the MVRs to screen out any applicants whose records indicate unsafe driving behaviors.
2. Request MVRs on a regular basis—at least once a year—for all employees whose jobs involve driving or who are given company cars.
3. If an employee needs to drive infrequently on business—for example, on a business trip—you might save time by requesting the employee to provide a copy of his or her own motor vehicle record abstract.
4. Develop a company driving policy. Department of Transportation statistics reveal that most accidents involve unsafe driving behavior. Your policy should require seat belt use for the driver and all occupants, prohibit driving while intoxicated (including while under the influence of legally prescribed drugs that can impair reflexes, judgment or vision), and require safe use of cell phones and other mobile devices while driving. Many companies (and some states) allow only hands-free devices or ban the use of mobile devices altogether while the vehicle is moving.
5. Your driving policy should also include a list of disciplinary actions the company will take for violations. This could include a point system, where drivers receive points for various moving violations, along with listing offenses that will result in termination of driving privileges or employment, such as DUIs, reckless driving charges or vehicular manslaughter.
6. To minimize paperwork, have employees sign a consent form at time of hire, authorizing the company to review their MVRs on an annual or as-needed basis, and that they have read and agree to abide by the company's driving policy.
7. Provide written notification to employees who have corporate cars or who rent cars for business purposes that the company's insurance policy will not provide coverage for personal use of these cars, and that the employee should carry personal auto insurance.
8. Require employees who use their own

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cars for business to carry certain minimum liability limits on their personal auto policy. The Insurance Information Institute recommends that individuals buy a minimum of $100,000 in coverage per person and $300,000 per accident; however, employees should consult their personal insurance advisor.

9 Since some accidents involving employees' personal vehicles will exceed the limits of their personal coverage, your company might want to buy additional protection for itself through a difference in conditions (DIC) policy. This nonstandard policy can cover exposures not covered by other policies on either an excess or first-dollar basis, such as first-party physical damage. If you have large numbers of employees who use personal autos for business, you might also want to discuss arranging a group personal umbrella or excess insurance program for these employees, to supplement their coverage under their personal auto policy.

10 Check the limits of your company's business auto policy. Limits that were adequate several years ago might not provide enough protection for today's more litigious environment. For information, please call us.

Don't Toss Those Old Liability Policies

Imagine the worst-case scenario: a customer sues you for injuries allegedly caused by one of your products. Then to make it worse: you can't find the policy that might cover that claim.

Most liability policies today are written on a "claims-made" basis, meaning they cover claims reported during the policy term, as long as they result from incidents occurring after the policy's retroactive date. When you first buy a claims-made policy, your retroactive date will likely be the same as the policy's inception date. Ideally, when you renew or replace that policy, the insurer will use the same retroactive date. This gives you continuous coverage back to the retroactive date of your original policy.

Older liability policies are often written on an "occurrence" basis, which means they cover claims that arise from incidents that occur during the policy period, even if the claim is filed years later. These older policies often come into play in cases involving "long-tail" liability claims, such as environmental, product liability and other claims that can take years to develop.

When you make a claim that might be covered by an old insurance policy, it's your responsibility to prove the policy existed. Having the actual document in hand can prevent coverage disputes with your insurer. For this reason, risk management experts strongly recommend keeping all insurance policies, even expired ones, in a safe place, and maintaining a list of policy information (including insurer name, address, type of policy, policy number and inception/expiration dates) in a separate location.

Even if you can't locate an old policy, you might be able to document its existence. Your broker might have a copy (although brokerage firms have no legal obligation to keep copies of clients' expired policies); your accounting department might have records of premium payments; your risk manager might have notes or correspondence relating to the policy or other claims paid under it.

If your organization has long-tail liability exposures, including pollution liability or products liability exposures, you have special risk management needs. Please contact us for an analysis of your exposures and coverage needs.

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