WOODRUFF SAWYER

Guide to Commercial Claims

WOODRUFF-SAWYER & CO. | Insurance Services | Risk Management | Employee Benefits
50 California Street, Floor 12, San Francisco, CA 94111

CA License 0329598 | CO License 78932 | MA License 1908860 | OR License 0100167994 | WA License 43511
AN ASSUREX GLOBAL & IBN PARTNER

woodruffsawyer.com

Table of Contents

LISTEN **Audio Insights About Commercial Claims**

Introduction

Dear Woodruff Sawyer Client:

Claims can be daunting and cause irreparable damage to an organization’s bottom line and reputation. Having a basic understanding of how to identify and handle claims in their early stages can help an organization mitigate a loss and achieve a quick, and often full, recovery.

To that end, the purpose of this Guide is to give you a basic understanding of common coverages and how claims may apply. Each section is designed to provide a brief description of coverage, how it may apply to a loss, common exclusions, potential claim triggers, and best practices to consider when a loss occurs.

Woodruff Sawyer is committed to providing our clients with the highest level of service and expertise. Our Claims Consulting Practice has 30+ claims consultants on staff, which means that regardless of the type of loss your organization sustains, we have the expertise to help you navigate the claims maze. We are here for you, so please feel free to reach out to your Woodruff Sawyer representative at any time for assistance.

Darren Cartwright
Claims Practice Leader

Reading an Insurance Policy: The Basics

Reading the Policy: "DICE"

"DICE" (declarations, insuring agreement, conditions, and exclusions) is an acronym that can help you remember the main parts of an insurance policy.

Declarations

This is where you'll find your name, a statement of the policy period during which you are covered, and the amount of premium you pay. The "dec" page also includes a description of the insurance coverage provided and gives the maximum dollar limit the insurer will pay for a claim under each coverage. It's the portion of the policy that spells out the who, what, when, and where the insurance applies.

Insuring Agreement

This is a broad-based agreement of what the insurer intends to insure and describes what the insurance company will do in exchange for the premium you're paying.

Conditions

This section describes the responsibilities of both you and the insurer when a claim occurs. Common conditions include timely reporting of claims and cooperation with the insurer's investigation of claims.

Exclusions

This is a list of the types of claims or losses that the policy is not intended to cover. Note that exclusions can be added, modified, or altogether removed through the use of endorsements.

Occurrence versus Claims-Made

Occurrence Policy

Coverage is triggered during the policy period in which the event occurred.

Occurrence Policy: Common Types

- Commercial General Liability (for most businesses)
- Auto
- Property
- Cargo
- Stock Throughput

Claims-Made Policy

Coverage is triggered during the policy period in which the claim is made.

Claims-Made Policy: Common Types

- D&O Liability
- Employment Practices Liability
- Professional Liability/E&O
- Fiduciary Liability
- Environmental Liability
- Employee Benefit Liability
- Crime

Claims Roles

Your Company's Role

- Document the incident.
- Prevent further damage to assets.
- Report claims/incidents to Woodruff Sawyer (except Workers' Comp and AD&D—the employer should report directly to carriers) in a timely fashion.
- Cooperate with the insurer in the defense of the claim.
- Provide supporting information/documentation in a timely manner.
- Comply with the terms and conditions of the policy.

Role of the Woodruff Sawyer Claims Department

- Confidential review and analysis of the facts of the incident
- Report the loss/claim to the insurer.
- Monitor and manage the entire process—how is the carrier handling the claim?
- Advocate coverage disputes on behalf of your company if a denial or reservation of rights is issued.
- Moderate any disputes between your company and the carrier.
- Monitor and advise your company of claim updates throughout the life of the claim.
- Facilitate the exchange of information to and from the carrier.
- Facilitate the carrier reimbursing your company for expenses.
- Manage the claim history/loss experience.

Insurer's Response to a Loss/Claim: Typical Steps

- Determine if there is coverage for the loss.
- Obtain supporting documentation regarding the extent of damages or the amount of the loss.
- Develop the defense strategy.
- Develop the litigation strategy, if applicable.
- Evaluate the settlement value of the claim.

General Liability (GL)

What Is General Liability?

General liability covers an insured's legal liability in the event of Bodily Injury, Property Damage, Personal Injury, or Advertising Injury that may arise during normal business operations.

Common Characteristics and Structure of a GL Policy

- Third-party coverage (claims by others brought against the insured) is generally outlined in three sections (A, B, C) within the policy.
- Usually written on an "occurrence" basis, with defense expenses outside the limit of liability and do not apply toward policy limits.
- **Insurance covering many of the basic liability loss exposures faced by an organization related to its premises, operations, and/or products or services**

Coverage A

- Bodily Injury & Property Damage Liability

Coverage B

- Personal & Advertising Injury Liability:
  - False arrest, detention, or imprisonment
  - Malicious prosecution
  - Wrongful eviction, wrongful entry, etc.
  - Defamation (e.g., libel, slander)
  - Violation of the right to privacy
  - Stealing or using advertising ideas
  - Copyright, trade dress, or slogan infringement

The definition of Personal & Advertising Injury can sometimes be amended by endorsement or excluded altogether. Coverage may be provided under a Cyber Liability policy.

Coverage C

- Medical Payments: This is a no-fault coverage for third parties only. It often has a limit of $5,000 or $10,000.

LISTEN **Coverage A and Coverage B Explained**

Common Claim Scenarios

Premises Liability

- A customer slips and falls while shopping on the insured's premises.

Operations Liability

- During the insured's work on a project, the insured's equipment starts a fire and causes damage to neighboring properties.

Products Liability

- The insured's product causes injury to a customer months after it is purchased from the insured.

Completed Operations Liability

- Windows installed by the insured fail and water leaks into the home, causing water damage.

LISTEN	Legal Liability and Whether You Should Pay a Claim

Common Exclusions

- Employee injuries
- Auto, aircraft, and watercraft liability
- Damage to property under the control of the insured
- Damage to the insured's products or work
- Punitive damages
- Intentional injuries
- Pollution
- Mold or asbestos
- Nuclear, biological, or chemical attacks

Best Practices: Actively Manage Your Incidents/Claims

- Train staff to respond to customer accidents and allegations of wrongdoing, but do not admit to liability.
- Establish vendor management guidelines and secure contracts/certificates of insurance from regularly used vendors.
- Report incidents to a Woodruff Sawyer representative for evaluation and carrier reporting.
- Investigate. Generate incident reports and gather supporting documentation and photos.
- Do not engage counsel before speaking with an adjuster, as costs may not be reimbursed.

LISTEN	**Best Practices for General Liability Claims**

Auto Insurance

What Is Auto Insurance?

Think of your auto insurance policy as six separate policies. Some types of coverage may be required by state law, depending on where you live, while others are optional.

- **Bodily Injury Liability (BI)** covers you if you cause an accident in which someone else is hurt or killed.
- **Property Damage Liability (PD)** covers you when you damage someone else's property. Usually, it's someone else's car, but it could apply to buildings, utility poles, garage doors, and other physical property.
- **Collision** coverage covers damage to your car if you run into another car, a brick wall, a fire hydrant, or another object. This also provides coverage if you overturn.

  Auto collision coverage isn't required by law. It also doesn't cover physical damage to employees' cars used for business; employees should have their own coverage and show proof if driving on behalf of the company.

- **Comprehensive** coverage provides protection in the event your vehicle is stolen or damaged in ways that don't involve a collision. Covered risks include hail, fire, theft, flood, earthquake, explosion, falling objects, and encounters with wildlife. Comprehensive is optional coverage. Like collision coverage, it does not cover physical damage to employees' cars used for business.
- **Uninsured/Underinsured Motorist (UM/UIM)** coverage provides medical and other expenses when you are hit by a driver without adequate auto insurance.

  Whether Uninsured/Underinsured Motorist coverage is mandatory or optional depends on your state laws. Check with Woodruff Sawyer to determine if you need it.

- **Medical Payments coverage or Personal Injury Protection (Med Pay, MPC, or PIP)** acts as primary coverage for medical expenses the insured driver and passengers incur if injured in a motor vehicle accident, regardless of fault. States have different laws regarding this coverage.
- Other optional coverages:
  - **Tow & Labor coverage** provides for necessary towing and labor costs if your vehicle is disabled.
  - **Transportation Expenses** is a coverage extension for substitute transportation expenses when your car cannot be used after an accident (a.k.a. "rental coverage").

These auto symbols dictate what constitutes a “covered auto” for each auto coverage you purchase. Pay attention to these designations!

COMMERCIAL AUTO
CA 00 01 10 01

BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** - Definitions.

SECTION I - COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Nonowned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

Who Is Insured?

- The named insured (i.e., ABC Company, Inc.) for any **covered** auto
- Anyone held liable for the conduct of an insured but only to the extent of that liability
- Anyone other than the named insured is an insured while using—with the named insured's **permission**—a covered auto you own, hire, or borrow, except:
  - The owner or anyone else from whom the named insured hires or borrows a covered auto is not an insured
  - An employee of the named insured is not an insured if the covered auto is owned by the employee or a member of the employee's household

Common Exclusions

Losses that arise from the following are not covered under the auto policy but may be covered under other commercial policies:

- Intentional injuries or accidents
- Liability assumed under contract
- Employee injuries
- Employer's liability
- Care, Custody, or Control
- Pollution
- War
- Racing

Auto policies often exclude employee injuries, which are covered under workers' compensation.

Best Practices: Actively Manage Your Incidents/Claims

Have a policy that outlines vehicle use for company business.

- Train your staff on what to do should an accident occur. The initial investigation and documentation at the time of an accident are important to assess liability and the severity of the loss. Gather details and take photos. Do not admit to liability.
- Consider creating an electronic claim kit for employees that contains an incident report, insurance card, and information on how to report an accident.
- Report incidents to Woodruff Sawyer in a timely manner.
- Provide incident reports, supporting documentation, and photos at the time of claim reporting or as soon as practical.

Workers' Compensation (WC)

What Is Workers' Compensation?

Workers' compensation is a system designed to ensure that employees who are injured or disabled while working in the course and scope of their employment are provided benefits for medical care, payment for lost wages, and compensation for permanent disability restrictions.

Structure of a WC Policy

- **Part I**: Workers' compensation applies to bodily injury by accident or bodily injury by disease, including resulting death, in which bodily injury by accident must occur during the policy period and bodily injury by disease must be caused by or aggravated by the conditions of employment by the insured. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period. The policy provides defense and indemnity.
- **Part II**: Employers' liability pays on behalf of the insured—subject to policy limits, terms, and conditions—all sums it is legally obligated to pay to employees for work-related bodily injury or disease, other than liability imposed on the insured by a workers' compensation law.

LISTEN **The Structure of a Workers' Compensation Policy**

Limits

- **Part I**: Workers' compensation – Benefits as defined by applicable workers' compensation law in each respective state.
- **Part II:** Employers' liability – Limits are outlined in the policy, but generally these are capped at $1,000,000.

Who Is Covered?

All US-based employees who are injured or become disabled during the course and scope of their employment.

Who Is Not Covered?

- Volunteers and/or unpaid interns
- Business owners, sole proprietors, and partners (unless covered by endorsement)
- Ordained/licensed members of religious orders
- Independent contractors
- Other special employment situations (housekeepers, nannies, and gardeners)

If you have any concerns about who is and isn't covered, talk to your Woodruff Sawyer representative to ensure the proper coverages are in place.

LISTEN [Who's Covered and Not Covered Under Workers' Compensation]

How Is It Applied?

Through a "no-fault" system in exchange for "exclusive remedy" protection (i.e., the employee cannot bring a suit in civil court for injuries or damages). Each state has its own benefits system.

Territory

Any workplace in any state of the United States of America, its territories, and the District of Columbia, excluding North Dakota, Ohio, Washington, and Wyoming.

Monopolistic States

Monopolistic states set their own insurance rates, do not allow private insurance companies to sell coverage, and operate their own state fund for all workers' compensation policies in the state. In effect, they have a monopoly on this line of coverage. Because monopolistic states do not use private insurance carriers, employers' liability insurance is not included in their policies. Monopolistic states include:

- Ohio
- North Dakota
- Washington
- Wyoming (most industries/businesses)

Employers who operate in a monopolistic state can seek employers' liability coverage as an endorsement on the general liability policy. This coverage is commonly known as stop gap coverage.

In monopolistic states, employers must place their own employers' liability insurance, and Woodruff Sawyer cannot be involved in the placement.

Claims Reporting

Workers' compensation claims must be reported to the insurer by the employer.

LISTEN	Remote Work and Workers' Compensation

Best Practices

- Have a comprehensive safety program and consider the ergonomics of an employee's workspace in a remote environment.
- Train managers on steps to take when an injury occurs.
- Ensure employees have a release before you allow them to return to work.
- Determine if you can make a reasonable accommodation to keep the employee at work with restrictions or consider having the employee do charitable work.
- Consider FMLA, ADA, EEOC, and other state-specific rules.
- Maintain consistent communication with the adjuster throughout the claim.
- Document, document, and then document more.
- State facts only, minimize commentary, and be objective.

LISTEN	More Audio Insights About Workers' Compensation and Other Types of Claims

Employers' Liability (EL)

What Is Employers' Liability?

- Liability coverage for bodily injury claims brought by employees who get outside the exclusive remedy of workers' compensation
- Also known as Part II of the workers' compensation policy
- "Stop gap" for self-insured entities
- Can appear as a GL coverage via endorsement

How Can Employees Circumvent Exclusive Remedy?

Some states allow employees to file tort claims in lieu of the exclusive remedy of the workers' compensation system. Common claims are made by employees who are:

- Excluded under workers' comp (WC)
- Illegally employed
- Employed by an employer that does not carry WC benefits (e.g., too small)
- Employed by an employer that has elected to reject WC (such as NJ, TX, SC)
- Able to get outside the scope of exclusive remedy. Common examples of this are:
  - Loss of Consortium
    - The spouse of an injured employee can sue the employer for loss of spousal services (companionship, marital relations, etc.)
  - Dual Capacity
    - An employer is found to be in two capacities (i.e., both the employer and manufacturer of the product that caused the injury)
  - Third-Party Action Over
    - An employee is injured while using a welder. The employee files for WC benefits and files a lawsuit against the manufacturer of the welding equipment. The manufacturer files suit against the employer for contributory negligence, alleging it did not properly maintain the equipment to prevent injury.

Best Practices

- Create a company culture of documentation.
- Consider applicable laws and contracts you have in place with others.

Foreign Voluntary Workers' Compensation (FVWC)

What Is FVWC?

FVWC provides coverage for employees working outside of their home country. It provides bodily injury by accident/disease or repatriation arising out of and in the course of employment outside of the employee's home country.

LISTEN	FVWC: Coverage & Claims

When and Where Does FVWC Apply?

Here are the most common situations in which FVWC may apply:

- Short-term business travel for covered employees
- Long-term assignment outside the United States for covered employees
- Travel outside the country of origin (the US or another country) for covered employees

Who Does FVWC Cover?

FVWC can cover a range of employees depending on whether they are currently in their country of origin. Generally, any employee who is covered for injuries occurring during the course of work can be covered by FVWC, including:

- US hires/expats
- Local nationals
- Third-country nationals
- Volunteers
- Independent contractors

The following definitions may provide further clarification regarding the types of individuals who may be covered under FVWC:

- **US hires:** Individuals who travel outside the US for business or who are assigned to work in another country should be covered by FVWC. Foreign-based employees are sometimes referred to as "expats" or "US nationals."
- **Expatriate (Expats):** An individual temporarily or permanently residing in a country other than their native country.

- **Local nationals:** Employees who are hired and assigned to work in their home country (country of origin) are referred to as local nationals. For example, a citizen of the United Kingdom who is hired and assigned to work in the United Kingdom is considered a local national.
- **Third-country nationals:** Employees who are hired in their country of origin and assigned to work outside their home country are called third-country nationals (TCN) and should be covered by FVWC. One example of a TCN is an employee hired in Australia and assigned to work in the Netherlands.
- **Independent contractor:** The client may elect to extend FVWC to an independent contractor when a written contract is in force, and the independent contractor is injured during work outside their home country.

Why Is FVWC So Important?

FVWC is important because it provides unique coverages that complement domestic workers' compensation and business travel accident policies.

Although domestic workers' comp typically covers basic work-related injuries or illnesses, the FVWC can evaluate and pay other related expenses that may not be covered by the domestic comp. In an unfamiliar country, where you're possibly dealing with a language barrier and different standards of care, FVWC can be a much more effective policy to take care of the employee's needs.

- **Repatriation:** FVWC covers the expenses incurred in transporting an injured or ill employee back to their home country. Repatriation costs for an ill or injured employee are often quite high—think helicopter evacuations and emergency medical flights. Some policies include the transfer of family members as part of the repatriation benefit.
- **Endemic disease:** FVWC covers illnesses resulting from endemic diseases, or diseases that are commonly found in a specific area/region. Endemic diseases can pose coverage issues with the domestic workers' comp, depending on the circumstances.
- **War and terrorism:** Events related to war or terrorism are not automatically excluded from coverage in FVWC policies.
- **Medical facilitation/global medical assistance:** Locate providers, medical monitoring, and coordination of medical services.

What Happens After a Claim?

When a covered employee becomes ill or injured abroad within the course and scope of work, the FVWC claim gets to work right away to ensure the employee is safe and receives care.

The insurer coordinates the medical treatment and evaluates expenses for payment. It is the responsibility of the insurer to secure the most appropriate medical facility and provide translation services if needed. Often the insurer can coordinate arrangements for family members who are traveling to support their loved one.

In summary, foreign voluntary workers' compensation provides a broad and unique set of protections. Businesses that have employees traveling internationally or workers assigned to work outside their country of hire/origin should consider adding FVWC and travel assistance to complement their overall risk management and insurance programs.

Woodruff Sawyer's role is to help the parties affected coordinate between all applicable policies (often the FVWC, business travel accident, and domestic workers' compensation) to provide timely benefits and facilitate communication.

Best Practices

- Involve Woodruff Sawyer in a timely manner.
- Coordinate with the domestic workers' compensation carrier.
- Document all details provided by the employee.
- Understand what, if any, restrictions may apply.
- Maintain engagement throughout the process.

Excess/Umbrella Liability

What Is Excess Insurance?

Excess insurance provides additional limits above those covered by the underlying policy; these are typically general liability, auto, and employers' liability.

Unlike umbrella policies, excess insurance does not expand the terms of the underlying policy, but rather provides higher limits to safeguard against catastrophic claims.

For example, if a contractor had a general liability policy with a limit of $1 million per occurrence, and there was a claim for $1.5 million, an excess policy with a limit of $1 million could pay the additional $500,000.

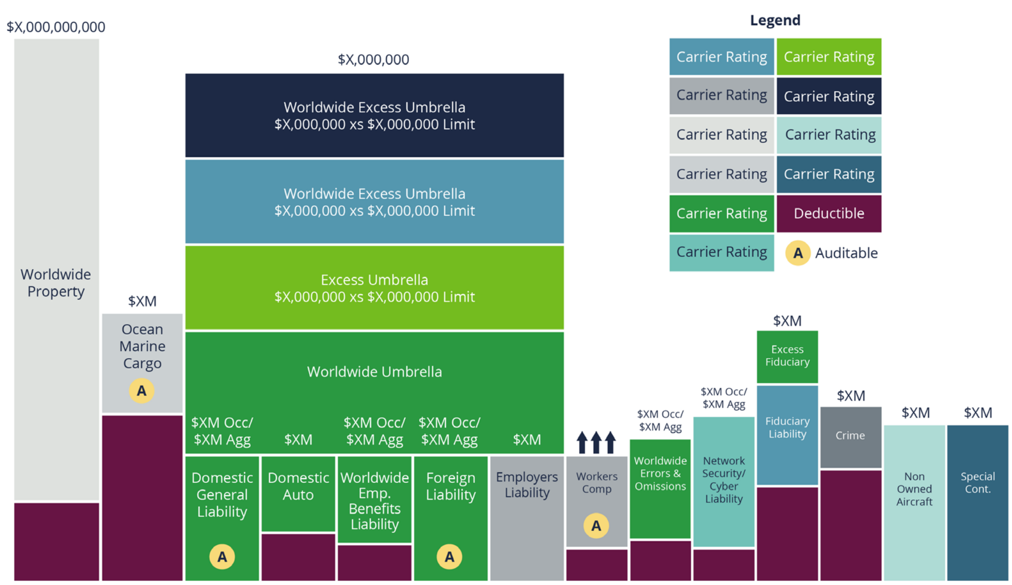
What Is Umbrella Insurance?

A form of excess liability insurance, umbrella policies cover claims exceeding the limits of the underlying policy, while also providing broader coverage for losses outside of those outlined within the underlying policy.

A typical example is that an umbrella policy may cover auto liability in a foreign country even though the commercial auto policy does not extend its territory to foreign countries.

Umbrella insurance can help close gaps in coverage.

Sample Program Chart



Property

What Is Property Insurance?

Commercial property insurance is an essential coverage that helps protect owned or rented property used to operate your business. Property claims involve direct physical damage to buildings and personal property from a covered peril (e.g., water from plumbing, fire, wind, hurricane, collapse, earthquake, theft, burglary, etc.).

Common Categories of Coverage

- Buildings
- Tenant improvements
- Business personal property (e.g., furniture, computers, equipment)
- Loss of income
- Extra expense
- Inventory

LISTEN [How to Complete a Property Inventory Document]

Important Definitions

- **Covered peril:** Cause of the loss to which insurance applies
- **Replacement cost:** Payment for the replacement of damaged property without any deduction for physical depreciation
- **Actual cash value:** Replacement cost minus depreciation
- **Insurable interest:** Interest in property that includes a financial gain or loss
- **Subrogation:** Transferring one's right of recovery of a loss to another party
- **Proximate cause:** The efficient cause of a loss without which the loss would not have occurred (does not need to be immediate)

LISTEN [Replacement Cost Value versus Actual Cost Value]

Elements of a Property Loss Must Be…

- A result of direct physical loss
- To the covered property
- By a covered peril (either a named peril or no exclusion if the coverage is "all risk")

Business Interruption

This can be referred to as business interruption, loss of business income, or time element (BI + EE). This is when your business suffers damage that interrupts its normal operations.

Your policy responds with coverage for (1) the property damage and (2) the loss of business income associated with the damage as long as it is:

- An event of direct physical loss or damage
- To covered property
- From a covered peril
- With no exclusion applying
- Causing an interruption to production or business operations

Then the policy covers:

- The defined loss
- For the defined period
- Subject to the applicable deductibles and limits of liability

Common Additional Coverages and Coverage Extensions

Additional coverage adds a type of coverage otherwise not provided under the policy, while a coverage extension can be added to enhance or extend coverage that already exists. Examples include:

- Loss of income caused by a disruption without physical damage to the insured's property
- Service interruption
- Civil and military authority
- Ingress/egress
- Extra expense

Best Practices

- Assess damage and mitigate loss…
  - But preserve the cause of loss scene or evidence (e.g., fire cause and origin scene)
- Engage a remediation crew
- Instruct tenants…
  - To notify their own property insurance carriers
  - As to remediation and reconstruction plans
  - As to what repairs will be the tenant's responsibility
- Secure copies of leases, vendor contracts, and prior construction invoices
- Compile reconstruction costs, rent abatements, and extra expenses
- Document! Document! Document!

LISTEN	**More Audio Insights About Property and Other Types of Claims**

Cargo and Stock Throughput

Transit exposures and having property off premises are typically excluded or severely sublimited under a property policy, so cargo and stock throughput policies can play an important role when looking at those exposures. It is important to pay attention to underlying contracts and assignment of ownership/duty to insure.

Cargo and stock throughput policies can play an important role when looking at exposures related to transit and off-premises property.

What Is Cargo Insurance?

This policy picks up where a property policy stops to provide coverage such as while goods are “in transit” (not at a scheduled location or within 1,000 feet).

What Is Stock Throughput Policy (STP) Insurance?

An expanded cargo policy to include finished goods or stock in process (also known as work in progress, or WIP) at fixed locations, in the possession of the insured and subcontractors, contract manufacturers, suppliers, or others engaged in producing the insured’s product.

Important Characteristics of Cargo/STP Policies

- Stock can be valued at selling price, and WIP at selling price less expenses not incurred.
- Cargo and property policies typically offer replacement cost value.
- Selling price valuation can reduce the dependency on BI/CBI coverage.
- STP market may have broader “all risk” covered perils and manuscript wordings available.
- Effective method to reduce the concentration of values in a property program
- Deductibles tend to be lower than in the property program, particularly for catastrophic perils.
- Pricing that includes catastrophic perils, such as earth movement, wind, and flood, is typically more competitive within an STP.

Common Exclusions

- Losses from intentional/dishonest acts
- Unseaworthiness or unfitness of a shipping vessel or transport vehicle
- Inventory shortages if there is no physical evidence to show what happened to the property
- Nuclear reaction or war
- Acts of terrorism

Information Needed to File a Cargo Claim:

- Were goods purchased or sold to the customer?
- Who owned the goods at the time of the theft or damage?
- What is their approximate value?
- Where were the goods shipped from?
- Where were the goods shipped to?
- What was the shipping method?
- What were the shipping terms?
- Where is the cargo now?
- What is a description of the goods?
- What are the Incoterms?

There is additional information requested by the adjuster when a claim is received. For a comprehensive list and further information on cargo/stock throughput claims, please request the Guide to Reporting Cargo or Transit Insurance Claims from your Woodruff Sawyer property claim consultant.

For further information on cargo/stock throughput claims, request the “Guide to Reporting Cargo or Transit Insurance Claims” from your Woodruff Sawyer property claim consultant.

Best Practices

- Minimize the loss. Take “reasonable steps” to minimize loss of or damage to the cargo. An example of a "reasonable step" is to remove cargo from any packaging that shows evidence of water damage to prevent additional damage from occurring.
- Document the loss as thoroughly as possible.
- Save the packaging and contents until the insurer decides if a surveyor will be assigned to inspect it.
- Notify Woodruff Sawyer as soon as possible after discovering the loss.
- Notify all parties immediately. You also must notify all freight carriers or freight forwarders of the loss or damage through written communication. If more than one carrier is involved, be sure to notify each one.
- Preserve the right of subrogation. Upon acceptance of the delivery of goods, you must note evident damage or shortage of goods on the carrier's delivery receipt. Failure to do so may allow the carrier to legally deny any claims.

Environmental

What Is Environmental Insurance?

Environmental insurance is intended to fill gaps created by pollution exclusions in other policies, namely general liability policies. It provides coverage for losses resulting from the release or escape of a pollutant, which simply put, is any material, substance, or product introduced into an environment for anything other than its intended use or purpose. Examples of pollutants include smoke, odors, fumes, acids, toxic chemicals, petroleum hydrocarbons, mold, and waste materials.

There are several different types of pollution liability insurance policies, and the characteristics of the following three will be described below:

- Pollution Legal Liability ("PLL"): site or premises pollution
- Contractors Pollution Liability ("CPL")
- Combined Policies (i.e., GL + PLL)

Pollution Legal Liability (PLL)

- Coverage for third-party claims for cleanup costs, bodily injury, and property damage because of a pollution condition on, under, or migrating from or through an owned/occupied site, as well as for the first-party discovery of a pollution condition
- Sudden and gradual pollution releases
- Preexisting *and* new pollution conditions
- Defense costs (typically included within the limit)
- Pollution condition definitions are broadened to include risks such as electromagnetic fields, mold, legionella, meth labs, medical waste, and illicit abandonment (also known as "midnight dumping")
- Can cover a single site or a portfolio of locations

Contractors Pollution Liability (CPL)

- Covers third-party claims for pollution conditions caused because of contracting operations
- Can be done as a Controlled Insurance Program ("CIP" or "wrap-up") either for the owner or contractor
- Fills gap of certain risks in a redevelopment:
  - Exacerbation of known contamination by a contractor
  - Off-site work in the right-of-way or on adjacent properties
  - Statute of limitations
- Can be done on a blanket basis for contractors, or on a project-specific basis
- Owners are typically automatically included as additional insureds

Combined GL and PLL Policies

- Geared toward manufacturing-related exposures
- Can provide broad GL coverage, including products **and** the products' pollution
- Can combine broad pollution coverage like stand-alone PLL and CPL policies, but you must know what to ask for, as the basic coverage offered may be limited to sudden and accidental incidents or off-site coverage only
- Only a handful of markets can provide this coverage

Common Claim Scenarios

- A landscaping company uses pesticides that run off into a local stream, making it uninhabitable to wildlife
- A contractor disturbs asbestos during the demolition of a building, causing illness and requiring cleanup
- A plumber incorrectly installs a water system, causing several people to get sick from the water

Best Practices

- Notify Woodruff Sawyer as soon as possible after discovering the pollution loss.
- Do not proceed to remediate or engage counsel without consent.
- Understand your exposures and exactly what your policy is intended to cover.
- Consider retaining Safety Data Sheets (SDS) for chemicals or chemical-containing products used in your operations.
- Effective communication with the insurer is key.

Builder’s Risk

What Is a Builder’s Risk Policy?

A builder’s risk policy is a specialized type of property insurance intended to provide coverage for those with a financial interest in a project during construction. They are temporary in nature and apply during the course of construction, erection, and fabrication. In most cases, builder’s risk coverage stays in force until a construction project is accepted by the project owner, or once construction is considered complete. Once construction is completed, it is up to the owner of the project to secure traditional property insurance.

What Is Covered?

A basic builder’s risk insurance policy helps cover buildings and structures under construction. It also helps protect:

- Materials
- Supplies
- Equipment on site, in transit, or at other locations

Who Is Covered?

Anyone with a financial interest should be added as an insured on the policy. Some of these roles include:

- Property owners
- General contractors
- Subcontractors
- Lenders
- Architects

Common Exclusions

Earthquakes, floods, wind, or beach zones are commonly excluded from coverage, but you may be able to get extensions to help protect projects vulnerable to these kinds of risks. Other builder’s risk insurance coverage exclusions are:

- Wear and tear
- Acts of terrorism and war
- Employee theft
- Rust and corrosion
- Mechanical breakdowns
- Damage due to faulty design
- Planning
- Workmanship and materials
- Engineers

Builder's risk insurance often excludes earthquakes, floods, wind, and beach zones, but you may be able to get extensions to help protect projects vulnerable to these kinds of risks.

Best Practices

- Assess damage and mitigate the loss.
- Document: take photographs, provide an incident report, professional engineering, or damage report.
- Notify Woodruff Sawyer immediately when you learn of the damage.
- Be aware of policy exclusions.

Directors & Officers (D&O)

What Is D&O Insurance?

Directors & Officers (D&O) liability insurance protects the personal assets of corporate directors and officers in the event they are sued by employees, vendors, competitors, investors, customers, enforcement authorities, creditors, or other parties, for actual or alleged wrongful acts in managing a company. The insurance usually provides some protection for the company as well.

Generally, D&O policies pay for loss arising from claims first made during the policy period against directors and officers for wrongful acts they are alleged to have committed in their capacities as directors and officers of the corporation they serve. Loss is typically defined to include damages, settlements and judgments, as well as defense costs. The limit of liability of a D&O policy, therefore, is depleted by incurred defense costs.

Structure of a D&O Policy

A D&O policy is usually structured in three parts, all of which share the same single policy limit. Side A coverage responds when a company is unable to indemnify its directors and officers. Side B coverage reimburses a company for its indemnification obligations to its directors and officers. Side C, known as entity coverage, will provide coverage for securities claims made against a public company. Side A coverage is not subject to a self-insured retention, but Side B and C coverages are.

Personal Protection	Corporate Balance Sheet Protection	
SIDE A **(Non-indemnifiable claims)**	**SIDE B** **(Corporate Reimbursement claims)**	**SIDE C** **("Entity" claims)**
Insures past, present & future directors and officers when indemnification is not available • derivatitive suit settlements and judgments relating to breach of fiduciary duties • company insolvency	Reimburses the corporation for its indemnification obligation to its directors and officers • securities class actions • employment-related actions • most legal defense costs	Reimburses corporate entity for: • Securities Claims (public co.'s) • Non IPO related Securities Liability & other corporate claims (private co.'s) • Employment-related claims (Optional) o Public co.'s – limited o Private co.'s – full
No retention applies	Retention applies	Retention applies

POLICY: Claims-Made and Reported Policy
Defense Costs are included within the Limit of Liability

DERIVATIVE SUITS: Claims brought by shareholders on behalf of the company

What Actions Are Typically Covered?

- Any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, act, or omission
- Any matter claimed against the directors and officers solely by reason of their serving in such capacity
- With respect to an organization, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, or act by such organization, but solely relating to a securities claim

LISTEN **Allocations Under a Public Company D&O Policy**

Who Is Typically Covered?

- Past, present, and future duly elected or appointed directors and officers of the company
- Functionally equivalent positions for non-US subsidiaries
- Employees of the company, for a securities claim or if a claim is made and maintained with a D&O
- Other optional extensions, including a spousal/domestic partner extension, named position extensions, and advisory board extension
- The organization and its subsidiaries
- In the event of a bankruptcy proceeding, the resulting debtor-in-possession

What Triggers Coverage?

- A written demand for monetary, non-monetary, or injunctive relief
- A civil proceeding commenced by the service of a complaint
- A criminal proceeding
- An arbitration
- A formal administrative or regulatory proceeding typically commenced by the service of a subpoena, service of a complaint, return of an indictment, or similar document
- A formal investigation of an insured person as evidenced by a formal order of investigation (language varies based on carrier)
- A written request to toll or waive the statute of limitations that may be applicable to any of the above

A formal investigation of an insured person can trigger a D&O claim, but the language varies based on the carrier.

LISTEN [Coverage Triggers Under a Public Company D&O Policy]

What Is Paid?

Loss includes:

- Defense expenses
- Settlements
- Judgments
- Other
  - Punitive, exemplary, or multiplied damages, where permitted by law
  - Pre- and/or post-judgment interest

Loss does **not** include:

- Portions of loss allocated to disgorgement or restitution
- Portions of loss allocated to fines or penalties
- Items deemed uninsurable by law

LISTEN [Defense Expenses Covered Under a Public Company D&O Policy]

Common Exclusions:

Four Categories

- Against public policy
  - Criminal, fraudulent, or illegal acts
  - Illegal personal profit or advantage
  - Illegal remuneration
- Insured versus insured

  However, exceptions apply to:
    - Derivative claims
    - Claims by employees
    - Cross-claims or third-party claims

    - Bankruptcy trustee, examiner, receiver, liquidator, or rehabilitator
    - Past director or officer of the corporation (three years)
    - Whistleblowers
- Other insurance available
- Other, as specifically negotiated

Notice and Reporting

D&O coverage is typically "claims made and reported," meaning that a claim must be first made against an insured and reported to the carrier as soon as practicable during the policy period or extended reporting period, if applicable.

Insureds may also report a Notice of Circumstances (NOC). If, during the policy period, an organization or insured person becomes aware of and notifies the insurer in writing of circumstances that may give rise to a claim against an insured and provides the requisite details, then any claim subsequently made and reported that arises from the circumstances initially reported will be interrelated back to the NOC and to the policy period under which the NOC was reported.

To report an NOC, usually the policy requires specificity as to the facts, circumstances, or nature of the anticipated allegations arising from a possible wrongful act and reasons for anticipating such claim, with details as to dates, persons, and entities involved.

Defense

Most D&O policies are non-duty to defend, meaning that insureds must defend claims made against them. The insurer does not assume any duty to defend. Defense counsel selection is, however, subject to the insurer's consent and compliance with the insurer's litigation management guidelines. Some insurers have preapproved panel counsel firms and jurisdiction-specific attorneys from which insureds must choose to defend securities class actions.

Self-Insured Retention (SIR) and First Dollar Coverage

Applicable self-insured retentions must be paid by insureds before coverage is triggered. The insurer will begin to pay covered loss under a D&O policy once the applicable self-insured retention has been exhausted. Retention amounts vary, but no matter how large the retention, carriers should be updated on any erosion of the retention. It is therefore important that insureds regularly submit invoices to the carrier for review and application against the retention.

Retentions are not applicable to non-indemnifiable loss, which is loss for which an organization has neither indemnified nor is permitted or required to indemnify an insured person pursuant to law, contract, or the bylaws of the organization. Non-indemnifiable loss is usually involved when a company is insolvent, when a derivative settlement is involved (individuals' defense costs in derivative suits are indemnifiable by the company in most states), and when a company is prohibited from indemnifying directors and officers.

Under some policies, retentions are also not applicable to derivative investigation costs incurred by an organization, which may include costs incurred in responding to books and records demands, but the coverage is subject to a sublimit of liability, usually of $250,000. In some cases, an organization may be able to stack sublimits available under excess layers of insurance.

Some policies also have no retention sublimits of liability for crisis response costs and reputation costs. Policies may also have first dollar coverage for e-discovery consultant services for class action claims, where no retention applies to the first usually $25,000 in defense costs incurred as e-discovery consultant services. The carrier may provide a list of preapproved e-consultant firms.

Best Practices

- Report all demands, lawsuits, subpoenas, etc., to Woodruff Sawyer as soon as they are received.
- Consult with Woodruff Sawyer and/or the adjuster before engaging counsel.
- If the policy requires you to retain counsel, obtain the name of counsel and firm, and the defense team's hourly rates.
- For publicly traded companies, understand the insurer's defense obligation and if panel counsel is required. If panel counsel is required, select a firm/counsel from the list, advise the insurer/Woodruff Sawyer of your selection, and, if the insurer provides litigation management guidelines, forward the guidelines to the defense team.
- Submit all defense invoices to Woodruff Sawyer and/or the insurers.
- Consult with Woodruff Sawyer and/or the assigned adjuster if any categories of defense costs need to be separated out.
- Provide procedural and other substantive updates to Woodruff Sawyer and/or the insurers.
- Provide copies of additional related demands, lawsuits, subpoenas, etc., to Woodruff Sawyer as soon as received.
- Keep insurers involved in and informed about any settlement discussions, and do not enter into settlement agreements or admit or assume any liability without the insurers' prior written consent. Settlements entered into without the insurers' consent will not be covered.

- Communicate through defense counsel and Woodruff Sawyer.
- Cooperate with the insurer.
- Comply with the terms and conditions of the policy.

Employment Practices Liability (EPL)

What Is EPL Coverage?

An EPL policy provides coverage for businesses against claims by workers that their legal rights as employees have been violated.

What Is Covered?

Covered Acts

- Discrimination
- Wrongful termination
- Harassment
- Workplace tort
- Retaliation
- Third-party claims (can be added by endorsement)

Covered Costs

- Defense costs
- Settlements/judgments//delete “e” like next line//
- Pre/post-judgment
- Interest
- Back pay
- Front pay

Types of Damages

- Liquidated
- Exemplary
- Multiplied
- Punitive (in most cases these are not covered under the policy)

In most cases, punitive damages are not covered under an EPL policy.

LISTEN [Allocations Under EPL]

What Form Do Claims Take?

- Written demand
- Civil lawsuit
- Arbitration
- Administrative and/or criminal proceedings

LISTEN [What Is an EPL Claim?]

Who Is Covered?

Insured Entities

- Your company
- Satellite locations
- Subsidiaries

Optional Entities Covered by Endorsement

- Newly acquired/formed subsidiaries
- Joint ventures
- Partnerships

Insured Employees

- Applicants for hire
- Past or former
- Full-time
- Temporary
- Seasonal
- Part-time
- Volunteer

Optional Employees Covered by Endorsement

- Leased employees
- Independent contractors
- Spouses

Common EPL Exclusions: Three Categories

Business Risk

- Contractual liability
- Prior/pending litigation
- Prior knowledge of a potential claim
- ADA accommodation

Other Insurance

- Bodily injury and property damage
- Libel/slander
- Claims/circumstances noticed to other policies
- Employee Retirement Income Security Act (ERISA)

Legal/Other

- Breach of employment contracts
- Criminal, fraudulent, or intentional injury
- Strikes and lockouts
- Fines and penalties
- Violation of FLSA, OSHA, NLRA, WARN, and similar laws

Types of Defense Obligations in an EPL Policy

Insurer's Duty to Defend

The insurer will defend you using their counsel; you may not hire your own counsel.

Optional Duty to Defend

You, the insured, have the duty to defend any claim and select your own counsel. You have the right to tender defense of the claim to the insurer.

- An hourly rate cap and litigation management guidelines may apply if you defend the claim.
- If you wish to tender defense to the insurer, you must provide written notice of your intent to exercise this right within a specified period.
- Upon becoming aware of a claim, discuss your defense preference immediately with your Woodruff Sawyer Claims Representative or Account Executive.

Insured's Duty to Defend

You, the insured, have the duty to defend any claim. You may select your own counsel subject to the insurer's prior written consent. The insurer will advance defense costs on your behalf. The insurer may impose an hourly rate cap and litigation management guidelines.

LISTEN	Considerations for Providing Notice of a Circumstance

Best Practices

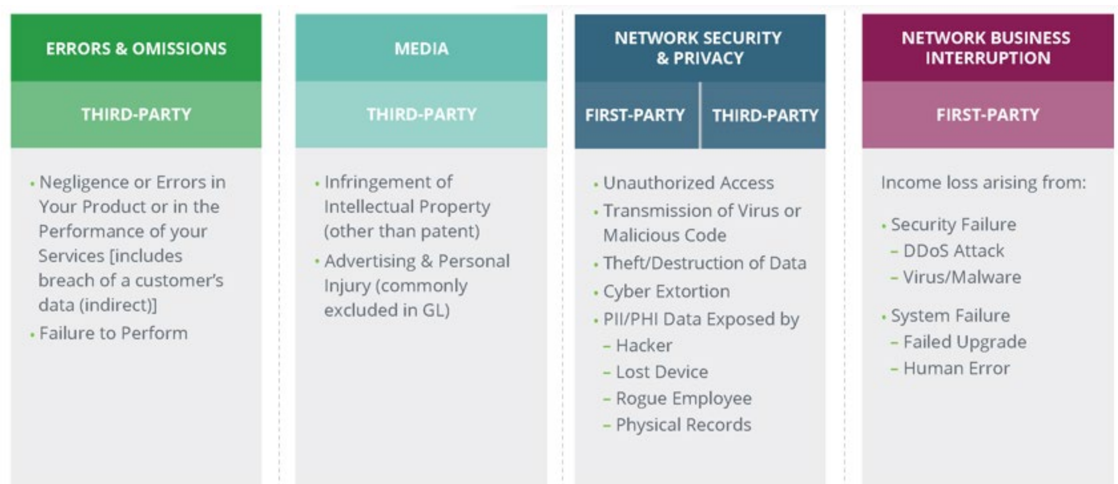
- Document, document, document!
- Make sure all employee handbooks are current and up to date.
- Have a comprehensive program for employees to report employment-related incidents to HR or senior management.
- Internally investigate all incidents reported to HR or senior management.
- Document all interactions with the subject employee/claimant.
- Notify Woodruff Sawyer as soon as possible of any demand, EEOC or state-equivalent discrimination charge, or lawsuit.

Cyber

What Is Cyber Liability Insurance?

Cyber liability insurance is insurance that covers financial loss resulting from data breaches and other cyber events, including any negligent act, error, or omission in the performance of your services. Policies in the marketplace vary widely, as most insurers that write cyber coverage use forms they've developed themselves. Many policies include both first-party and third-party coverages.

Structure of a Cyber Policy



What Is Covered?

First-party coverages that reimburse the policyholder for the following expenses arising from a data breach or privacy event:

- Data breach coach
- Computer/forensics expenses associated with a forensic investigation to identify the nature and extent of the data breach or privacy event
- Notification costs for those individuals whose personal identifiable information (PII) has been compromised
- Crisis management costs for public relations and other professionals to assist in the insured's response
- Credit and fraud identification monitoring for those individuals whose PII was compromised

All cyber insurers have pre-approved vendor panels from which an insured selects a breach coach, computer/forensic IT investigator, and credit/fraud ID monitoring (e.g., Experian)

LISTEN [Coverage Sections for a First-Party Loss of a Cyber Policy]

Third-party coverages provide liability protection for claims by a third party. Most cyber policies include the following liability coverages:

- Errors & Omissions provides coverage for negligence or errors in your product or the performance of your services
- Network Security & Privacy Liability provides coverage for claims alleging failure to properly handle, manage, or store sensitive data; failure to protect sensitive information and data; failure to provide notification of a data breach; and failure to prevent a security breach that results in a DoS attack or introduction of a virus (malware or ransomware)
- Electronic Media Liability covers claims alleging libel, slander, or defamation; copyright infringement; invasion of privacy; and domain name infringement. These acts are covered only if they result from the insured's publication of electronic data on the internet
- Regulatory proceedings/investigations cover claims brought by regulatory agencies for proceedings and investigations

LISTEN [Third-Party Liability Coverage in a Cyber Insurance Policy]

Who Is Covered?

The named insured company and any of the following:

- Past or present employee, director, officer, member, principal, trustee, or leased, temporary, and seasonal employees of the insured
- Any independent contractor who performs services on behalf of the insured under a written contract but solely with respect to such independent contractor's duties on behalf and for the benefit of the insured
- With respect to Media liability, any person or entity that disseminates matter on behalf and for the benefit of an insured where the insured has agreed, in writing, to include the entity or person as an "insured" under the policy

Common Exclusions

GENERAL	MEDIA	NETWORK SECURITY & PRIVACY	NETWORK BUSINESS INTERRUPTION
• Intentional Acts by Senior Employees • Liquidated/ Consequential Loss • Bodily Injury • Property Damage (carve-out intangible property) • Insured vs. Insured	• False/Deceptive Advertising • Trade Secrets • Antitrust/Unfair Trade • Patent Infringement • License Fees/ Royalties	• Lost Value of Own IP • Reputational Harm	• Lost Future Profits • Business Interruption caused by Utility/ISP Failure • Reputational Harm

Notice and Reporting

The coverage is "claims-made and reported," meaning any claim the insured becomes aware of during the policy period must be reported during that policy period, or within a specified amount of time (e.g., 60–90 days) after the expiration of the policy.

Defense

Most cyber policies are indemnity/pay-on-behalf policies, meaning the insured is required to retain counsel, subject to the insurer's consent and compliance with the insurer's litigation management guidelines. Insurers will review counsel's expertise in the subject matter area and hourly rates.

Self-Insured Retention (SIR)

All policies contain a self-insured retention that is completely uninsured and borne by the insured. The insurer will begin to pay reasonable and necessary defense costs and any judgments/settlements once the self-insured retention has been exhausted. Self-insured retention amounts vary but usually are between $25,000 and $500,000.

What Is Paid?

In the event of a data breach or privacy event, first-party costs as outlined above will be paid. Reasonable and necessary defense costs, in excess of the self-insured retention and subject to the policy's terms, conditions, and exclusions, will also be paid.

Damages, which include a monetary judgment, award, or settlement, will be paid. Damages do not include:

- Return of or offset of any fees paid to an insured
- Costs to recall or withdraw technology products
- Civil or criminal fines or penalties
- Liquidated damages
- Punitive damages (except where allowed by law)

Best Practices

- Have an Incident Response Plan ("IRP") in place to address the handling of and the company's response to cyber losses.
- Notify Woodruff Sawyer of any incident as soon as possible.
- Call the insurer's Cyber Hotline as instructed.
- Do not retain any vendors (e.g., breach counsel, forensics investigator) without advising Woodruff Sawyer and obtaining the insurer's consent.
- Mitigate the loss to the extent possible.
- Document all activity.

Commercial Crime Policy

What Is a Commercial Crime Policy?

Commercial crime policies provide coverage for direct losses incurred because of theft, fraud, and forgery. Policies vary in the marketplace, but most policies include coverage for loss of money or securities.

What Is Covered?

The policy provides coverage for the insured's direct loss of and/or direct loss from damage to money, securities, and other property. The loss must be directly caused by one of the following common insuring agreements:

- **Employee Theft:** coverage protects against the loss of property due to theft, burglary, or robbery committed by an employee acting alone or in collusion with others.
- **Premises:** coverage protects against direct loss resulting from robbery, safe burglary, or unlawful taking of money or securities committed by a third party. It also protects against the destruction or disappearance of money or securities on the premises or banking premises.
- **In Transit:** coverage protects against direct loss resulting from robbery committed by a third party while in transit.
- **Fraud:** coverage protects against direct loss resulting from computer fraud, money orders/counterfeit currency, funds transfer, or credit card fraud committed by a third party.
- **Forgery or Alteration:** coverage protects against direct loss resulting from forgery or alteration of a financial instrument committed by a third party.
- **Client Property:** coverage protects against direct loss of money, securities, and property sustained by a client resulting from theft or forgery by an employee.

Who Is Covered?

The named insured, parent company, client, and third party (anyone who is not an employee) are covered.

Common Exclusions

- **Prior Dishonesty**: loss or damage from any fraudulent, dishonest, or criminal act committed by a partner or an employee who had committed any criminal, fraudulent, or dishonest act prior to his/her employment with the insured, and the insured had knowledge of such act prior to the inception of this policy.

- **Voluntary Exchange or Purchase: l**oss or damage resulting from the giving or surrendering of money, securities, or property in any exchange or purchase with a third party.
- **Trade Secrets/Confidential Information: l**oss resulting from the unauthorized disclosure of confidential information.
- **Indirect/Consequential: i**ncome, earnings, or profit not realized as a result of a covered loss.
- **Missing Inventory/Inventory Shortage: a**ny portion of loss, the proof of which as to its existence or amount is dependent solely upon an inventory computation or profit and loss computation.

Notice and Reporting

Crime policies provide coverage in two scenarios:

- "Loss Discovered" form, for coverage that applies to a loss that is discovered during the policy period regardless of when the act/loss took place.
- "Loss Sustained" form, or coverage that applies when a loss is sustained.
- Typically, the insurer will request:
- Proof of loss with particulars within 180 days of discovery.
- Production of all relevant records and documents as requested by the insurer.
- Submission to an examination under oath at the insurer's request.
- Cooperation with the insurer in all matters pertaining to the claim.

Endorsements

Social engineering fraud coverage protects against loss resulting from having transferred, paid, or delivered money or securities because of social engineering.

What Is Social Engineering?

Social engineering is intentional misleading and/or manipulation that leads to an individual/employee sending money or diverting a payment based on fraudulent information provided via verbal or written communication such as email, letter, or a phone call.

Self-Insured Retention/Deductible

All policies contain a self-insured retention (SIR) that is completely uninsured and borne by the insured. The insurer's obligation to pay under the policy is excess of the applicable retention.

Best Practices

- Consider installing cameras. Even the sight of a security camera could be enough to deter crime.
- Establish employee bag checks at the start/end of the workday.
- Restrict access to sensitive data to ensure only authorized employees can access it.
- Establish a requirement that payments/deposits over a certain amount necessitate two approvals.
- Confirm any changes of ACH or electronic banking information by phone with the requesting party.
- Implement training programs that build employee awareness and teach employees how to detect phishing emails.
- Promptly notify local police when a crime occurs to obtain a report number.
- Report social engineering fraud incidents to the FBI Internet Crime Complaint Center (IC3).

Professional Liability/Errors & Omissions (E&O)

What Is Professional Liability Insurance?

Professional Liability Insurance (oftentimes referred to as Errors & Omissions or E&O Liability) is insurance that protects certain businesses and professionals against negligence and other claims initiated by their clients. Professionals who have expertise in a specific area require this type of insurance because general liability policies do not cover claims arising out of business or professional practices such as negligence, malpractice, or misrepresentation.

Common types of professional liability insurance policies include:

- Accountants
- Architects & engineers
- Lawyers' professional liability
- Medical malpractice

LISTEN [What is Professional Liability/Errors & Omissions Coverage?]

What Is Covered?

The policy provides coverage for “loss” or damages as a result of a “claim” alleging a “wrongful act,” subject to the policy’s terms, conditions, and exclusions.

A claim under most policies includes the following:

- A written demand for monetary damages
- A lawsuit commenced by the service of a summons
- Demand for arbitration

Loss includes damages and defense expenses, subject to the policy’s terms, conditions, and exclusions. Loss typically does **not** include:

- Fines, taxes, or penalties (with some exceptions)
- Punitive damages (with some exceptions)

- Other amounts deemed uninsurable by law
- Wrongful act means any negligent act, error, or omission in the insured's failure to render "professional services."

Who Is Covered?

The named insured, as it appears on the policy declarations page, is covered. The following are also covered:

- Current and former directors, officers, principals, members, and partners while acting within the course and scope of their duties as such
- Current and former employees while acting within the scope of their employment
- Heirs, executors, administrators, assigns, or legal representatives in the event of death, incapacity, or bankruptcy

Common Exclusions

Most professional liability insurance policies contain the following exclusions:

- Contractual liability (i.e., assumption of liability under a contract or breach of contract)
- Employers' liability
- Insured versus insured
- Intentional and dishonest acts
- Property damage

LISTEN	What Professional Liability/E&O Insurance Doesn't Cover

Notice and Reporting

The coverage is "claims-made and reported," meaning any claim the insured becomes aware of during the policy period must be reported during that policy period, or within a specified amount of time (e.g., 60–90 days) after the expiration of the policy.

Defense

Most E&O policies are indemnity/pay-on-behalf policies, meaning the insured is required to retain counsel, subject to the insurer's consent and compliance with the insurer's litigation management guidelines. Insurers will review the counsel's expertise in the subject matter area and hourly rates.

LISTEN	Duty-to-Defend Policies for E&O Insurance

Self-Insured Retention (SIR)

All policies contain a self-insured retention that is completely uninsured and borne by the insured. The insurer will begin to pay reasonable and necessary defense costs and any judgments/settlements once the self-insured retention has been exhausted. Self-insured retention amounts vary but usually are between $25,000 and $500,000.

What Is Paid?

Reasonable and necessary defense costs, excess of the self-insured retention and subject to the policy's terms, conditions, and exclusions will be paid. Damages, which include a monetary judgment, award, or settlement, can also be:

- Civil fines and penalties where allowable by law
- Punitive damages where allowable by law
- Liquidated damages where allowable by law

Best Practices

- Notify Woodruff Sawyer of any demand, lawsuit, or subpoena as soon as possible.
- Do not admit liability or engage counsel without consent.
- Document, document, document!

Representations & Warranties Insurance (RWI)

What Is RWI?

Representations & Warranties Insurance is breach of contract coverage designed to enhance or replace the indemnification given by the seller to the buyer in a transaction. The value of RWI is that it covers loss caused by any breaches of the seller's representations within the purchase agreement between the parties. RWI policies are "claims made" policies. This means that a claim must both occur and be reported within the policy period for coverage to apply. RWI policies are nonrenewable but have an extended 6-year policy period, providing peace of mind in the years *after* a deal has signed. Likewise, given that the indemnity package is commonly the most contentious part of any M&A negotiation, the peace of mind offered by RWI reduces tension and facilitates a smoother, faster deal negotiation.

Who Is Insured?

While it is always a breach of the seller's representations and warranties that trigger coverage, either the seller or the buyer in an M&A transaction may be insured. Buyers will often present an RWI policy as an incentive to the seller. They can protect a buyer from any seller breaches or fraud while also providing the seller the freedom to be less involved in the event of any claim. A sell-side policy, however, is much more limited in what it offers and is essentially used as a backstop to reimburse the seller for any amounts it may need to remit to the buyer as a result of a claim. It will not provide coverage to the seller in the event of fraud.

What Does RWI Cover?

An RWI policy allows the insured to seek direct recourse from the insurer following a breach of the seller's insured representations and warranties (once the Self-Insured Retention (SIR) is satisfied). These representations and warranties are defined in the purchase agreement along with terms such as "loss" and "damages," which are used to calculate potential exposure; thus, deal team members are encouraged to pay close attention to defined terms. The RWI policy breaks down coverage into three categories: General, Tax, and Fundamental representations. General representations have a coverage period of three years while Tax and Fundamental representations are covered for six years.

General v. Fundamental and Tax Representations

General representations, which have a three-year coverage period, are representations that apply to the operations of the business. These include, but are not limited to, Contracts, Environmental, and IP reps.

Fundamental representations, which have a six-year coverage period, are representations that are fundamental to the company (i.e., its underlying structure). Organization and Good Standing, Compliance with Laws, and Capitalization are examples of common fundamental representations.

Tax representations also have a six-year coverage period. These include representations that specifically deal with tax-related issues inherent in the purchase agreement. Note, however, that not all tax reps are covered under the policy. For example, non-covered tax items include straddle period, secondary tax liabilities, and known tax issues.

Common Market-Standard Exclusions

- Issues actually known to the buyer's transaction team
- Forward-looking statements and covenants
- Purchase price adjustment
- Any deferred net operating losses or other deferred tax attributes/credits
- Secondary tax liabilities
- Pension underfunding
- Transfer pricing
- Certain fines or penalties uninsurable by law

In addition to the above market-standard exclusions found in all RWI policies, certain deal-specific exclusions may also apply.

Types of Claims

RWI policies are backward-looking. Therefore, they only provide coverage for claims that were discovered by the insured after signing the purchase agreement but were caused by actions or inactions that took place before signing. Note that buy-side RWI policies provide coverage for both first- and third-party claims, whereas sell-side policies cover only third-party claims.

First-party claims, otherwise known as indemnification claims, involve the insured bringing a claim directly for coverage under its own RWI policy. In this scenario the buyer alleges that the seller has breached the representations within the purchase agreement. Some common first-party claims include:

- Non-compliance with laws. For example, if the seller failed to obtain a needed permit before taking actions that required one.
- Breach of the Financial Statements. For example, representations might state that financial statements must be true, correct, and comply with generally accepted accounting principles (GAAP). After purchase, the buyer may discover that such representations were untrue.
- Undisclosed Liabilities. For example, the seller may fail to alert the buyer of a potential lawsuit.
- Failing to Conduct Business in Ordinary Course. The seller must conduct its business in accordance with industry customs and practices.

Third-party claims arise when someone outside of the M&A transaction submits a claim against the target business. Some examples of third-party claims include:

- A governmental investigation into the business
- A tax audit by the IRS
- Employment claims, i.e., harassment, discrimination, or payment issues
- A vendor’s claim to enforce a contract

When RWI Is Considered Excess

LISTEN	[When RWI is Considered Excess]

Types of Loss

1. One-Time Loss
2. Diminution of Value: Applying the EBITDA Multiple
3. Lost Profits

LISTEN	[Types of Loss]

Best Practices When Filing a Claim

RWI policies are nonrenewable policies with an aggregate SIR and a six-year policy period. Unlike a per-claim deductible found in most insurance products, the aggregate SIR is decreased by each submitted covered claim. If a potential claim arises, the insured should notify Woodruff Sawyer as soon as possible; filing a claim can only work in the insured’s favor since each claim, if covered, will serve to erode the SIR.

How to Notify Woodruff Sawyer

If you have determined that a representation or warranty within your purchase agreement may have been breached, please first reach out to Stacey Hammer, Vice President, Transactional Insurance, who oversees all RWI claims. She will analyze the facts and begin the formal notification process to the carrier. She can be reached at:

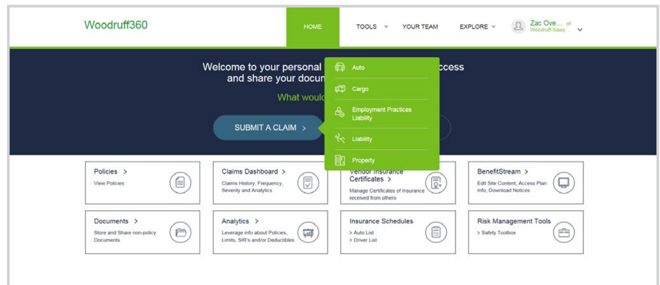
Email: shammer@woodruffsawyer.com
Phone: 415.489.1446

Claims Reporting Made Easy

Option 1: Submit Your Claim on Woodruff360

Woodruff360 is our proprietary insurance program management portal. To submit a claim, fill out a simple online form, upload photos and documents, and submit. We acknowledge receipt and report your claim to the insurer within 24 hours. Other Woodruff360 features include:

- 24/7 access to open claim status
- Export claims data to Excel or PDF format.
- Control user access (what's viewable by others).
- Look up and email your Woodruff Sawyer team.



How to get started on Woodruff360:

Contact your Woodruff Sawyer service team or request access on our website at: woodruffsawyer.com/client-access

Option 2: Submit Your Claim by Email

Simply submit your claim to us by emailing claimfnol@woodruffsawyer.com. Our Claim Intake Center will send you an acknowledgment and, as part of the triage, our Claims Coverage Manager will review the claim to ensure every potential policy that may respond is identified and noticed.

Information to include when reporting by email:

- Date of loss
- Description of loss & location
- Names/contact information of parties involved
- Any supporting documents and photos in your possession
- Primary contact for your company
- Primary contact at the loss location (if applicable)

TYPES OF CLAIMS YOU CAN REPORT VIA WOODRUFF360 AND CLAIMFNOL@WOODRUFFSAWYER.COM:

- Auto
- Cargo
- Property
- General Liability
- Employment Practices Liability
- Directors & Officers Liability
- Errors & Omissions
- Cyber

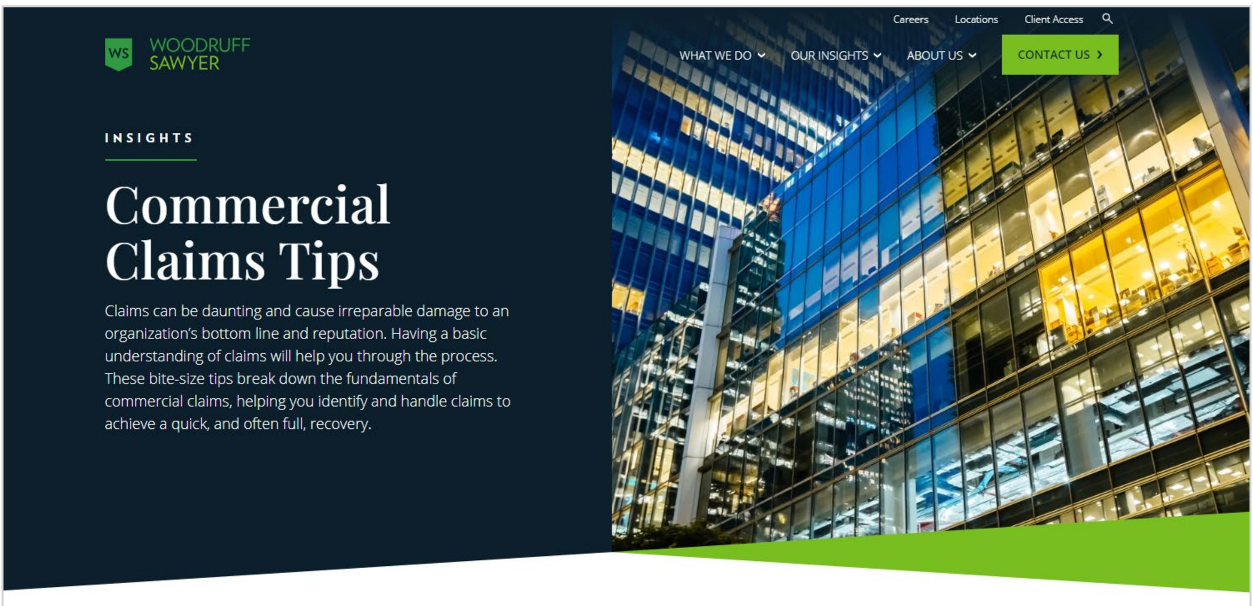
Commercial Claims Tips: Audio Insights

Learn about common insurance coverage to address business risks and how claims apply.

Want more audio insights? Our bite-size tips break down the fundamentals of commercial claims, helping you identify and handle claims to achieve a quick, and often full, recovery. With 30 audio files to choose from, covering seven different types of claims, you'll be sure to learn something new.

---

woodruffsawyer.com/insights/series/commercial-claims-tips



The Brief: Our Business Risk Newsletter

Get the latest insights and exclusive event invitations sent straight to your inbox.
Sign up for The Brief today.

We cover:

- Directors & Officers Liability
- SPACs and IPOs
- M&A and Private Equity
- Litigation and the SEC
- Risk Management
- Property & Casualty

woodruffsawyer.com/business-risk-newsletter-signups

Notes

WOODRUFF-SAWYER & CO.

AN ASSUREX GLOBAL & IBN PARTNER

woodruffsawyer.com