



The *Carnivale* of Risk

Am I Covered?

Presented by

Marcus Beverly, CPCU, AIC, ARM-P
Alliant Insurance Services



48TH CONFERENCE & EXPO



30th Anniversary Edition!



Am I Covered?

Salesperson: “Sure”

Underwriter: “I never thought of that”

Claims Examiner: “There must be an exclusion in here somewhere”

You, after this session: **“It Depends”**



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CAVEAT

Coverage for a particular claim is unique, based on the facts of the loss and the insurance contract language.

The legal interpretation of coverage is constantly evolving, and this material is not intended as a substitute for legal advice.

**Ultimately, coverage is what
a judge or jury says it is!**



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OBJECTIVES

- Provide framework for understanding, analyzing & communicating insurance coverage issues
- Understand theory behind coverage
- Extra-contractual issues impacting coverage
- Outline for sending/reviewing coverage letters
- Practice identifying rationale for coverage terms



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Outline



- Insurance Policy Construction
- Coverage Analysis Framework
- Practice Applying Principles
- Issues Outside the Policy
- Denial & ROR Letters



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INSURANCE POLICY CONSTRUCTION



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POLICY CONSTRUCTION - “DICED”

DECLARATIONS - Personalizes Policy

INSURING AGREEMENT - Promise to Pay

CONDITIONS - Mutual Obligations

EXCLUSIONS - Perils or Circumstances *taken away*

DEFINITIONS - Special Terms in **Bold** or “Quotes”



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Declarations

COMMON POLICY DECLARATIONS

POLICY NO. SP 0001

NAMED INSURED: AMR Corporation
MAILING ADDRESS: 2000 Industrial Highway
Workingtown, PA 19000
POLICY PERIOD: From 10/1/98 to 10/1/99 at
12:01 A.M. Standard Time at your mailing address shown above.
BUSINESS DESCRIPTION: Storm Door Manufacturing

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS
FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE
SUBJECT TO ADJUSTMENT.

	PREMIUM
Boller and Machinery Coverage Part	\$ 537.00
Commercial Auto Coverage Part	\$ 7,970.00
Commercial Crime Coverage Part	\$ 780.00
Commercial General Liability Coverage Part	\$ 7,214.00
Commercial Property Coverage Part	\$ 5,168.00
TOTAL	\$ 21,669.00

Forms applicable to all Coverage Parts: See Separate Policy Schedule

COUNTERSIGNED 10/1/98 BY A. M. Abel
(Date) (Authorized Representative)

- Who, What, When, Where
- Limits & Sublimits
- Agent or Broker
- Rating & Pricing
- *Forms & Endorsements*

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Insuring Agreement - “The Promise”



1ST PARTY - *Property* or other claims of Insured
Named Peril vs. “Special” (“All Risk”*) Form

3RD PARTY – *Liability* or other claims v. Insured

- “Occurrence” - *Accident* Resulting in BI or PD *during the policy period*
- Personal Injury - **List** of Offenses
- Public Officials E&O - **List** of Offenses

*Who, if anyone,
is the 2nd Party?*

Supplementary Coverages

Bail Bonds, Interest, Debris Removal

** Unless excluded or limited*



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Conditions



Conditions

Precedent – must be met *before* a loss
Subsequent – must be met *after* a loss

- Payment of Premium
- Duties After Loss
- Proof of Loss
- How Losses Are Settled
- How Disputes Are Resolved
- Separation of Insureds
- Rights of Recovery/Subrogation
- Other Insurance
- Territory Limitations
- Other “housecleaning” items



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EXCLUSIONS

Would be covered except ...

“Take Away” coverage

Must Be Conspicuous, Plain & Clear
– labeled as exclusions

Limitations – not entirely excluded
but capped or otherwise restricted

Excluding something is not the same as not covering it!

Exclusions & Limitations

The following exclusion applies to the Medical Expense, Trip Cancellation, Trip Interruption, and Trip Delay coverages:

We will not pay for loss or expense caused by or incurred resulting from a Pre-Existing Condition, as defined in the plan, including death that results therefrom. This exclusion does not apply to benefits under Medical Evacuation and Repatriation Benefits.

The following exclusion applies to the Accidental Death & Dismemberment coverage: We will not pay for loss caused by or resulting from Sickness of any kind.

The following exclusions apply to all coverages:

We will not pay for any loss under the plan, caused by, or resulting from: suicide, attempted suicide, or intentionally self-inflicted injury, while sane or insane (while sane in CO and MO); mental, nervous, or psychological disorders (does not apply to Medical Expense Benefits); being under the influence of drugs or intoxicants, unless prescribed by a physician; normal pregnancy or resulting childbirth or elective abortion; participation as a professional in athletics; riding or driving in any motor competition; declared or undeclared war, or any act of war; civil disorder (does not apply to Trip

any aircraft, as pilot or crew; mountain climbing, bungee cord jumping, skydiving, parachuting, hang gliding, parasailing or travel on any air supported device, other than on a regularly scheduled airline or air charter company; any criminal acts committed by you; a loss or damage caused by detention, confiscation or destruction by customs, elective treatment and procedures; medical treatment during or arising from a covered trip undertaken for the purpose or intent of securing medical treatment; a loss that results from an illness, disease, or other condition, event or circumstance which occurs at a time when the plan is not in effect for you.

Please refer to your Description of Coverage for Ransone/Ransone Delay and Rental



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Definitions



Words in **Bold**, or Quotes

Special Insurance Terms

“Employee”

“Completed Operations Hazard”

“Occurrence”

“Insured Contract”

“Pollutants”

*And **endorsements** can be
any type of policy language*



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COVERAGE ANALYSIS



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Ideal Insurable Loss Exposures



*“You Can’t Insure
A Burning Building”*

- Fortuitous – occurring by chance. *Uncertain* as to whether, when or how will occur.
- Definite – happening, time & cost is clear. *Can be verified & quantified.*
- Large Numbers - as in law of. More similar risks (*homogeneity*) = *greater predictability.*
- No Catastrophes – one event won’t affect many insureds.
- Affordable – economically feasible. *Not too broad for average risk.*



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COVERAGE ANALYSIS FRAMEWORK

“PPPEC”

PERSON - Who has rights to recover?

PROPERTY- Is the Property Covered?

PERIL - Is the Loss Covered?

EXCLUSIONS - Any Provisions “Take Away” Coverage?

CONDITIONS - Have Both Parties Met Their Obligations?



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PERSON COVERED?



- Named Insured – Declarations
- Named Insured Endorsement
- “Who Is an Insured” Section
- Mortgagee
- Lienholder/Loss Payee
- Additional Insured
- Relationship to Insured
 - Employee, resident of household,
permissive user of auto
- Certificate Holder?

Who has more rights?

- First Named Insured
- Named Insured
- Mortgagee



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Person: Liability - Who is an Insured



SECTION II - WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An **individual**, you **and your spouse** are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A **partnership** or joint venture, you are an insured. Your members, your partners, **and their spouses** are also insureds, but **only with respect to the conduct of your business**.

2. Each of the following is also an insured:

- a. Your **"volunteer workers"** only while performing duties related to the conduct of your business, or your **"employees"**, other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), **but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business**.



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Personal Auto “Insured”



Who is covered & which insurance pays when you have an accident in your car while on company business?

While you are driving your friend's car?

"Insured" as used in this Part means:

1. You or any **"family member"** for the ownership, maintenance or use of any auto or "trailer".
2. **Any person using "your covered auto"**.
3. For "your covered auto", **any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.**



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PROPERTY COVERED?



- Listed in Declarations
 - Building
 - Personal Property
 - Business Income
- Check the Supplementary Coverages
- Check for Sublimits and Valuation
- *Not Applicable in Liability Claims But Sometimes Turn up in Exclusions, if so check property coverage*
 - *Care, Custody, Control*
 - Rented Property
 - Owned Property of Insured or Employee



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Property of Others

B. EXTENSIONS OF COVERAGE:

1. PERSONAL EFFECTS

This Policy is extended to cover only such personal effects and wearing apparel of any of the officials, employees, students and personal effects of the Insured named in this Policy **for which the Insured may elect to assume liability** while located in accordance with the coverage hereof, but **loss, if any, on such property shall be adjusted with and payable to the Insured.**



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PROPERTY NOT COVERED:

This Property Policy does not provide coverage for:

Does Commercial Property
Insurance Cover These?

1. Aircraft, watercraft and rolling stock, *except: Watercraft up to 27 feet*
2. Land, (including land on which covered property is located), growing crops, lawns
4. Property in due course of **ocean marine** transit.
5. Accounts, bills, currency, food stamps, debt evidence, **money**, notes or securities
6. **Contraband**, or property in the course of illegal transportation or trade.
7. **Foundations** of building or structures



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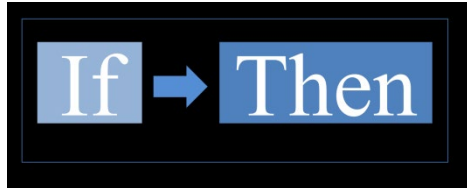
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PERIL

“The Promise” - Insuring Agreement

1ST PARTY

Named Peril vs. “Special” (“All Risk”*) Form



3RD PARTY

- “Occurrence” - **Accident** Resulting in BI or PD *during the policy period*
- Personal Injury - **List** of Offenses
- Public Officials E&O - **List** of Offenses

Supplementary Coverages

* Unless excluded or limited



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Peril – Property – Special Form

Direct Physical Loss or Damage



A. Coverage

We will pay for **direct physical loss of or damage** to Covered Property at the premises described in the Declarations *caused by or resulting from any Covered Cause of Loss.*

CAUSES OF LOSS - SPECIAL FORM

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

Used to say
"all risk of" here.
Some still use the term



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Property – Named Peril Approach “Broad Form” or “Specified Causes”

A. Covered Causes Of Loss

When Broad is shown in the Declarations,
Covered Causes of Loss means the following:

1. Fire; 2. Lightning; 3. Explosion; 4. Hail or Windstorm; 5. Smoke; 6. Aircraft or Vehicles; 7. Riot or Civil Commotion; 8. Vandalism; 9. Sprinkler Leakage; 10. Sinkhole Collapse; 11. Volcanic Action; 12. Falling Objects; 13. Weight Of Snow, Ice Or Sleet; 14. Water Damage



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Peril – Liability - Coverage A

Bodily Injury and Property Damage

“All Risk” or Special Approach



1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. **We will have the right and duty to defend the insured against any "suit" seeking those damages.**

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) **The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"**
- (2) **The "bodily injury" or "property damage" occurs during the policy period**



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Peril – Liability

“Occurrence” Definition



Occurrence means an accident, including continuous, repeated or related exposure to substantially the same general harmful conditions, which results in “bodily injury” or “property damage” neither expected or intended from “your” standpoint



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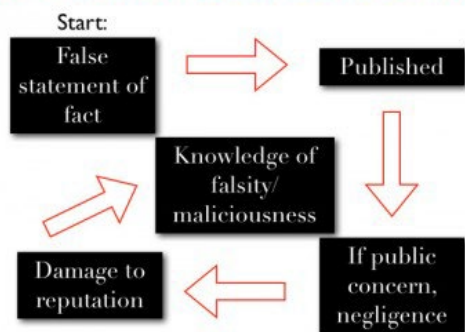
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Peril – Liability - Coverage B

Personal & Advertising Injury

Named “Peril” or *List of Offenses Approach*

DEFAMATION



Libel-Slander

With respect to Personal Injury Liability, the commission of one or more of the following **offenses** by a Covered Party *in the discharge of duties for the Entity*:

- A. **False arrest, detention or imprisonment;**
- B. **Malicious prosecution;**
- C. **Oral or written publication of material that **slanders** or **libels** a person or organization, including disparaging statements concerning the condition, value, quality or use of that person’s or organization's real or personal property;**
- D. **Oral or written publication of material that **violates** a person's right of privacy; or**
- E. **Discrimination or violation of civil rights;**



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EXCLUSIONS

Most Fall Within 4 Major Categories



1. Public Policy Prohibits Coverage
 - Intentional “Acts” (DAMAGE)
 - **Moral Hazard**
2. Other Insurance Applicable
 - *Including higher risk for affordability*
3. Catastrophic Exposure – war, nuclear, EQ
 - Law of “Too Large” Numbers!
4. Business/”Uninsurable” Risk
 - Breach of contract, loss of market
 - **Morale Hazard** – maintenance, neglect



Relate to the Ideal Insurable Loss Exposures



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Understanding the Theory –

Relate Policy Provisions to the “Ideal” Insurable Loss Exposures

Ideal Insurable Loss Exposures

- Fortuitous – occurring by *chance*. Uncertain as to whether, when or how will occur.
- Definite – happening, time & cost is clear. *Can be verified & quantified.*
- Large Numbers - as in law of. More *similar* risks = greater predictability.
- No Catastrophes – one event won't affect many insureds
- Affordable – economically feasible. *Not too broad* for average risk.

Exclusion Categories

- Public Policy Prohibits Coverage
 - Intentional “Acts” (DAMAGE)
 - Moral Hazard
- Other Insurance Applicable
 - Including higher risk for *affordability*
- Catastrophic Exposure – war, nuclear, EQ
 - Law of “Too Large” Numbers!
- Business/“Uninsurable” Risk
 - Breach of contract, loss of market
 - Morale Hazard – maintenance, neglect



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Exclusions – Property

Can you Categorize?



Loss or damage caused by or resulting from misappropriation, conversion, inventory shortage, *unexplained disappearance*, infidelity or **any dishonest act** on the part of the Insured, its employees or agents or others to whom the property may be entrusted (*bailees and carriers for hire excepted*) or other party of interest



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Exclusions – Property

Can you Categorize?



- *Delay or loss of markets*
- Loss or damage caused by **Earthquake**
- Loss or damage caused by **Flood**
- **War**, hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack



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Exclusions – Property

Can you Categorize?



Loss or damage caused by or resulting from moths, *vermin*, termites, or other insects, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, *wear, tear or gradual deterioration*, contamination, *rust, corrosion, wet or dry rot, unless physical loss or damage not otherwise excluded herein ensues* and then only for such ensuing loss or damage.



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Exclusions – Liability

Can You Categorize?



Very important word to look for!

Don't want "any" or "an"

Not intentional "acts"!

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended **Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of **the** insured.

This exclusion **does not apply to** "bodily injury" resulting from the use of reasonable force to protect persons or property.



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Exclusions - Liability

Can You Categorize?



“Insured Contract” is essentially a hold harmless agreement for tort liability

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an **"insured contract"**, *provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.*



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Exclusions – Liability

Can You Categorize?



c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

However, ***this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.***



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Exclusions – Liability

Can You Categorize?



k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "**products completed operations hazard**".

This exclusion **does not apply** if the damaged work or the work out of which the damage arises was **performed on your behalf by a subcontractor**.



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Completed Operations Coverage

Via Definition in Exception to Exclusion

j. Damage To Property

"Property damage" to:

(1) Property you own, rent, or occupy, ...

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (6) of this **exclusion does not apply to "property damage" included in the "products completed operations hazard"**.

SECTION V - DEFINITIONS

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned.



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Other Important Exclusion Exceptions

Intentional Conduct

Claims for injury or *damages* caused by **intentional conduct** done by the *covered party with willful and conscious disregard* of the rights or safety of others, or with **malice**. *However, where the covered party did not authorize, ratify, participate in, consent to, or have knowledge of such conduct* by its past or present employee, elected or appointed official, or volunteer, **and the claim against the covered party is based solely on its vicarious liability** arising from its relationship with such employee, official or volunteer, **this exclusion does not apply** to said covered party.

Example – Sexual Harassment Claim

*Perpetrator not covered (though may get a defense)
but “innocent” employer will be covered*



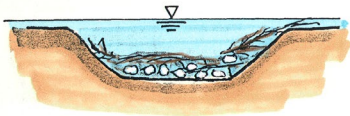
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Inverse Exclusion & Exception

EXAMPLES OF INVERSE CONDEMNATION SUITS AGAINST GOVERNMENTAL AGENCIES



Overflow of Storm
Drainage Facilities
Due to Short Term
High Intensity Rainstorms

Land Use

Claims arising out of or in connection with land use regulation, land use planning, the principles of eminent domain, condemnation proceedings or **inverse condemnation by whatever name called**, and whether or not liability accrues directly against any *covered party* by virtue of any agreement entered into by or on behalf of any *covered party*.

Homework:

Check to see what your MOC says, including any limitations and sublimits!

This exclusion **does not apply to** inverse condemnation liability arising from **accidentally caused physical injury to or destruction of tangible property, including all resulting loss of use** of such property, for which the covered party may be legally responsible.



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CONDITIONS

Have Both Parties Met Their Obligations?

Terms and
Conditions
May Apply

- Precedent - must be met *prior to loss*
 - Payment of Premium
- Subsequent - must be met after loss
 - **Claims Made Policy** or Timeline to Report?
 - **Proof of Loss** required for property loss
 - “Duties after Loss”
 - Resolving Disputes
- “Housecleaning” Conditions
 - Notice of Cancellation
 - Separation of Insureds
 - Other Insurance



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Conditions – Duties After Liability Loss



2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are ***notified as soon as practicable*** of an "occurrence" or an offense which may result in a claim.
- b. If a claim is made or "suit" is brought against any insured, you must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (3) ***Cooperate with us*** in the investigation or settlement of the claim or defense against the "suit" and
- d. No insured will, ***except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.***



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Conditions -



Subrogate =
"to substitute"

7. Separation Of Insureds

*Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the **first Named Insured**, this insurance applies:*

- a. As if each Named Insured were the only Named Insured; and
- b. ***Separately to each insured against whom claim is made or "suit" is brought.***

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. ***The insured must do nothing after loss to impair them.*** At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

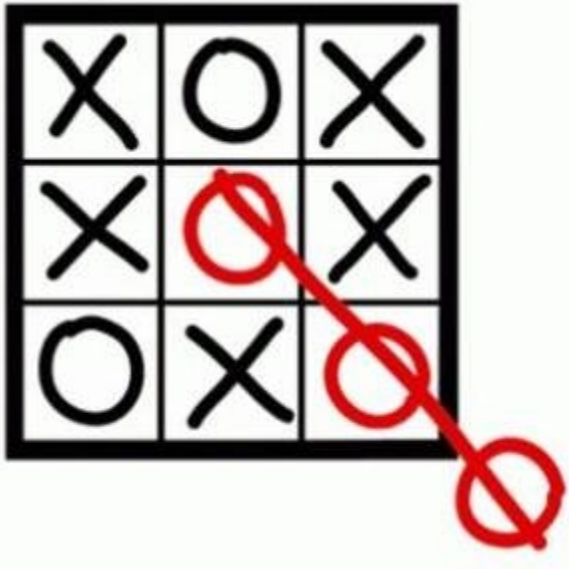


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ISSUES OUTSIDE THE POLICY



- Public Policy
- Insurance Code
- Case Law
- **Contract of Adhesion**
- Burden of Proof
- Reasonable Expectation of Coverage
- Waiver/Estoppel
- Good Faith
- Concurrent Causation
- *Insurable Interest*



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“Adhesion” & Burden of Proof

PERSON

PROPERTY

PERIL

Insured burden to prove they have suffered a covered loss and are entitled to payment.

Terms are **interpreted broadly**, to favor the insured, since they must “adhere” to the language.

EXCLUSIONS –

- *Exception to Exclusion – Insured Burden, Broad Interpretation*

CONDITIONS

Insurer burden to prove that an exclusion or condition applies to rule out coverage.

Terms are **interpreted narrowly**, again to favor the insured who must “adhere” to the language.



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“TRIGGER” OF COVERAGE



- **Claims Made** – when claim made and reported
- **Occurrence**
 - Injury in Fact – when damage occurs
 - **Manifestation**
 - Pure – when loss discovered
 - Relaxed – when discovery possible
 - **Exposure** – to cause of the injury
 - **Continuous Trigger** – damage continues to grow and may involve more than one policy period



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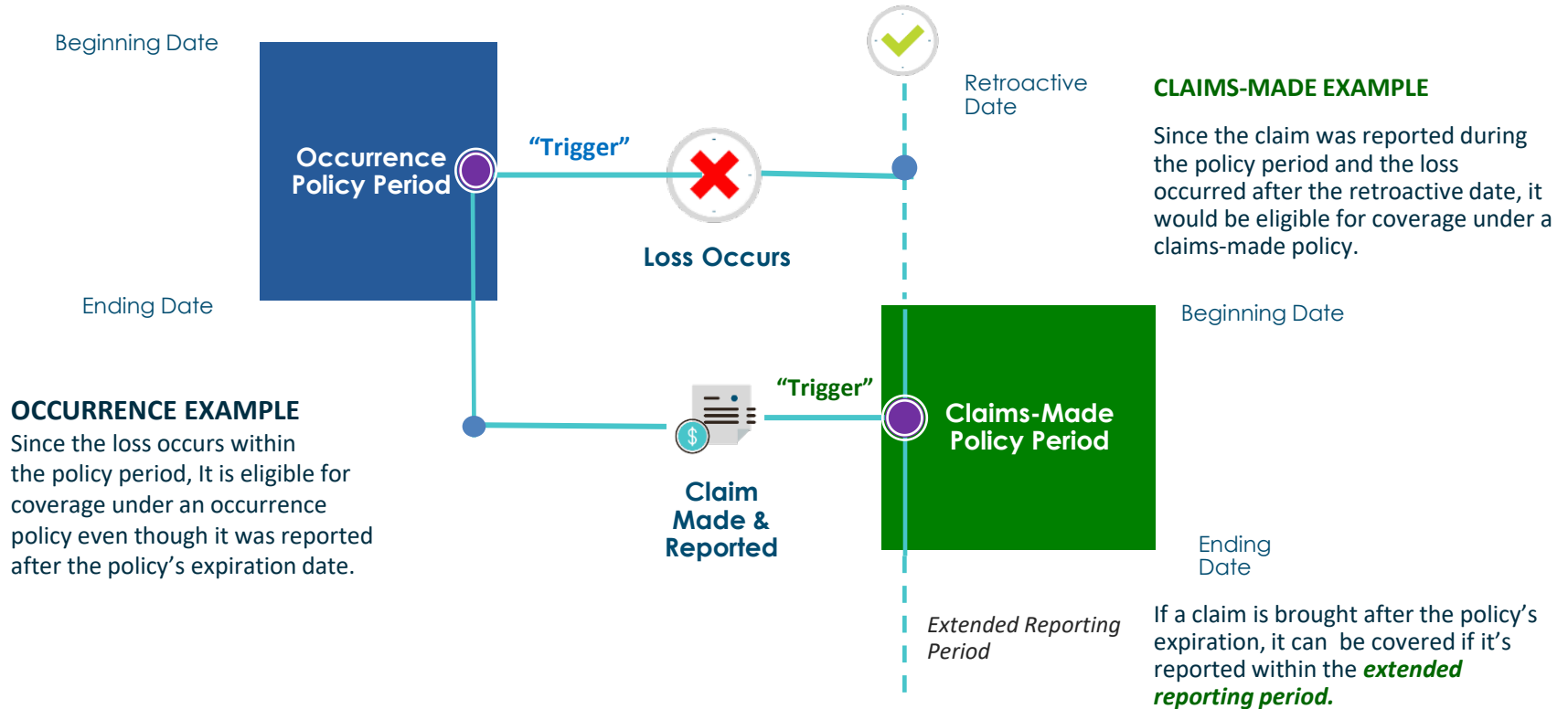
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Trigger of Coverage – Occurrence v. Claims Made

The event that “triggers” coverage differs between Occurrence and Claims-Made insurance policies.

- For Occurrence policies the trigger is the *date of loss*.
- For Claims-Made policies the trigger is the date the claim is reported. The loss is covered if it *occurred after the retro date* and the claim is reported *within the policy or extended reporting period*.



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PITFALLS TO AVOID



- *Entire* Policy
 - Look at Endorsements First!
- Stop & Read the Definitions
- *Complete Set of Facts*
- Hypotheticals
 - Frame the Facts
- Never Deny (if not your role)



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DUTY TO DEFEND



- Broader Than Duty to Indemnify
- Is Any Claim Potentially Covered?
 - Insured Must Show *May Be Covered*
 - Insurer Must Show *Cannot Be Covered*
- Reservation of Rights
 - Will defend while/until coverage issues resolved
- Usually No Limit
 - Defense Outside v. Inside Limit



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COVERAGE ISSUE LETTER - Outline



- Brief intro acknowledging claim
- Facts of the claim, *based on investigation*
- Applicable **Coverage Terms**
 - **P**ersons &/or **P**roperties covered, dates, limits
 - **P**erils Covered
 - **E**xclusions that apply
 - **C**onditions that apply



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COVERAGE ISSUE LETTER, Cont.



- Relate coverage terms to facts
- Advise of decision - Denial or Reservation of Rights (ROR)
- *Based on information to date*
- Invite additional info - will reconsider
- Thanks and conclusion

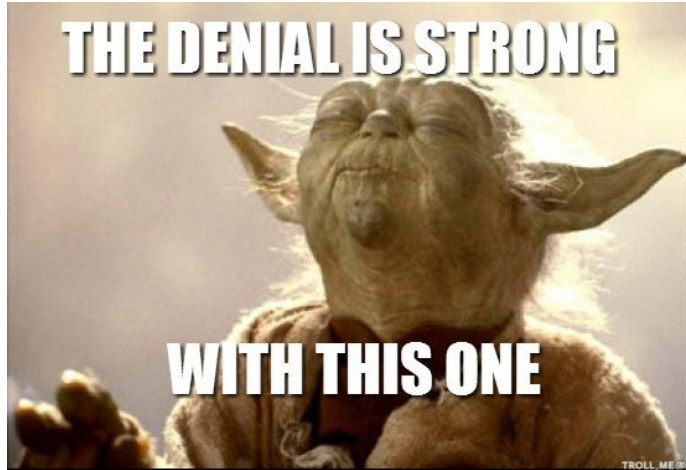


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How to Respond



- Review For Errors or Inconsistencies
 - Facts correct?
 - Additional information to provide?
 - Policy terms cited correctly
 - Denial of previously covered claim type?
- Review for Strength of Position
 - Apply exclusion *broadly*?
 - Ambiguity in the insurance language?
 - Consistent with case law; past practice?
- Seek Assistance
 - Insurance broker (agent?)
 - Insurance attorney



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Resources



- International Risk Management Institute (**IRMI**)
<http://www.irmi.com/>
- Fire, Casualty, & Surety (**FC&S**) **Bulletins**
 - <http://www.nationalunderwriterpc.com>
- **Institutes for CPCU:** <http://www.theinstitutes.org/>
- <http://www.ambest.com/resource/glossary.html>
- **Local coverage counsel newsletters**



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Summary – “Am I Covered”?



- Understand how policies are constructed
- Understand theory behind coverage terms
- **Use PPPEC framework for analysis**
- Understand extra-contractual issues impacting coverage
- Apply to sending/reviewing coverage letters
- Get help with responding to coverage issues



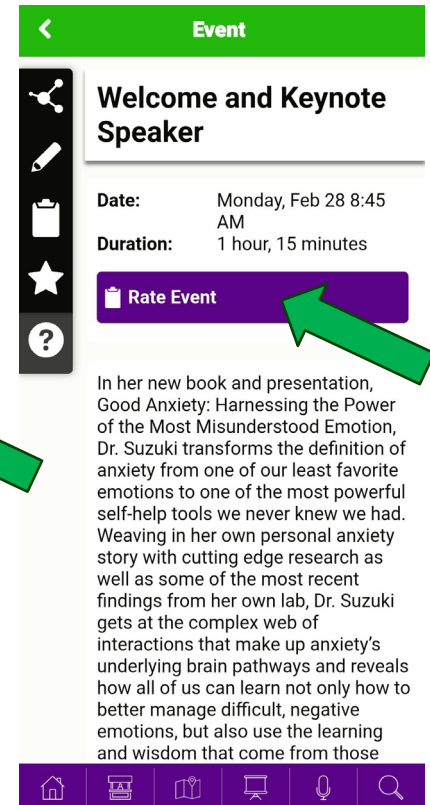
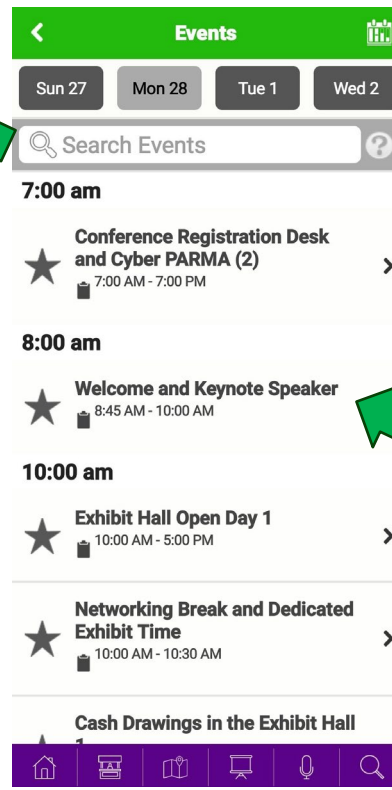
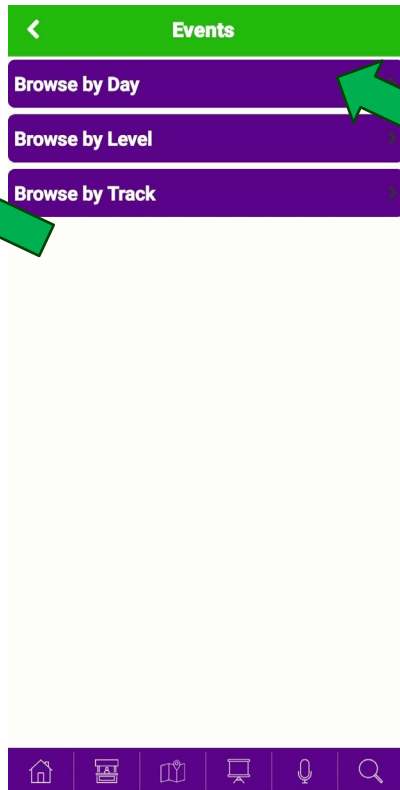
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Questions?

Thank You!

Marcus.Beverly@alliant.com



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