

Property Insurance 101: Ensuring that a particular asset is covered

By Geoffrey J. Greeves

The failure to include or to accurately describe property locations is among the most common points of tension we see in litigation over wide-area catastrophe loss issues (earthquakes, floods, hurricanes) between the insured and its carrier. However, many first-party property policies offer devices to ensure that the policyholder is properly protected. When a location becomes disputed, the policyholder can put pressure on the carrier by resorting to gap filler endorsements that are widely available, if underutilized.

Typically, the first safety net in ensuring adequate coverage against property loss is the broker. An interactive, periodic working relationship between the insured and the broker at, and beyond, yearly renewal is key to making sure that newly acquired locations are added to a master policy and that building values and business interruption ("BI") exposures are updated timely to reflect the current market. It is particularly important, for the reasons explained below, not to wait for renewal to discuss property coverage with you broker and, instead, to contact your broker as often as needed about every newly acquired property location, including substantial additions to existing locations.

In obtaining coverage and working with your broker, be aware that the insurance company may have prospectively protected itself the day your policy went into effect by adding an "occurrence limit of liability" endorsement. This clever insurance carrier device, which has become common in the last decade, is intended to limit the carrier's exposure at each particular location, placing the onus on the insured to put every "location" on a master list with correctly reported values for each category of exposure (e.g., BI, property damage, contents exposure, etc.).

Here's how the occurrence limit of liability endorsement works, and shifts risk to the insured. In the event of loss, this endorsement limits coverage to the least of the following: (1) the actual adjusted loss, (2) the stated property values and/or BI values reported for that location on a "schedule of values" on file with the insurer, or (3) any applicable limit or sublimit of liability. Through this endorsement, the insured is taking on the risk of any underreported, misreported or missing locations as well as the risk of loss to the extent it exceeds the reported stated values for BI and property damage exposure at that location for the current policy year. This endorsement is in marked contrast to the generally more familiar "blanket" arrangement –

a dollar amount that is available to be spread among the entire portfolio in the event of a loss at any particular insured location. Given what they perceive as shoddy reporting of values by owners, carriers are now frequently seeking to place these risks on property owners and managers and are migrating away from the more owner-friendly and familiar blanket arrangements.

It is important to keep in mind that under the occurrence limit of liability endorsement, a location that is acquired after inception of the policy and that is not reported to your carrier has an insurable value of zero as a starting point, as zero is the least of the three scenarios above. This problem can be avoided by creating a standard operating procedure for adding locations and double checking that each appears with corrected and updated exposures representing the replacement cost and BI exposure on the schedule of values or, in the alternate, memorializing the new additions and changes in an endorsement.

If a property location is underreported, misidentified, or, worse yet, missing entirely, there is still hope. Increasingly, insureds and brokers have pushed back against the burdensome occurrence limit of liability endorsement by adding and expanding favorable language in three categories of coverage to fill this gap: (1) errors and omissions clauses, (2) newly acquired property coverage, and (3) unnamed location coverage. Each one of these plays an essential part in a structured program that maximizes first-party insurance protection for the savvy building owner.

The first gap-filler you can ask for and purchase is “errors and omissions clause” coverage. In the context of first-party insurance, errors and omissions clauses generally provide that the “insurance shall not be prejudiced by an unintentional or inadvertent error or omission resulting in incorrect description of the interest, risk or property, provided that notice is given to the carrier as soon as practicable, upon discovery.” This clause allows the insured to get the benefit of its insurance bargain after a loss by promptly reporting its own unintentional error (e.g., the property is listed as leased instead of owned, an incorrect address is assigned to property, etc.). What it generally cannot do is add a property value (or increase coverage) after the loss. While it is not a complete solution, obtaining these clauses can rectify common errors, smooth out the claims process, and save the insured from having to go to court to seek reformation from a misunderstanding or oversight in its policy.

The second gap-filler device is “newly acquired location” coverage, which we often insist on being purchased. Subject to a sublimit determined between the parties at the time of renewal or purchase, building owners can obtain coverage on day one for new properties and locations they choose to add to the portfolio during the coming year. To be effective, owners must generally report the address and exposure data within 90 days of acquisition for acceptance by the carrier. If a quarterly investor meeting is scheduled and a loss occurs right before the meeting, but after the acquisition, owners can seek solace in newly acquired location coverage, subject to the agreed-upon sublimit in the policy.

The final third gap-filler device is “unnamed locations” coverage, which building owners should not be without. Under this coverage, a “location” owned by the insured (acquired either before or after policy inception) that is neither reported to the carrier during underwriting nor listed on a schedule of locations or values can be insured up to an agreed sublimit. This coverage protects the owner against an oversight in reporting values and is generally available by endorsement to a master property policy.

However, even with the additional protections afforded to insureds by these endorsements, issues such as what constitutes a “location,” what constitutes “acceptance” by the carrier of a location, whether certain peril-prone zones are carved out of the effective reach of these endorsements, and what information or documents may be substituted for an updated “schedule of values” will continue to be proposed, developed, and scrutinized by insurance company adjusters and lawyers during the claims process. For

these reasons, it remains imperative that coverage counsel be engaged by the insured to provide timely advice during the claims process and to create a team of forensic professionals to compile and, if necessary, testify about loss details to ensure a complete, or at least reasonable, insurance recovery.

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