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# ADJUSTING TODAY

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## FROM THE EDITOR

*From leasing to repairing, safekeeping to servicing, the variety of situations in which one business can find itself possessing the property of another is virtually unlimited. With such possession comes risks and responsibilities for which the right insurance protection is a must.*

*But what coverage is best? Why isn't inland marine insurance the obvious choice? Are there differences in covering leased versus non-leased personal property? What causes of loss are covered? How does the legal liability coverage form come into play?*

*These and other factors to be considered when insuring the business personal property of others are discussed in this enlightening article by insurance expert, author and educator Donald Malecki. As part of his analysis, he identifies the most common problems or challenges to be overcome in effecting this protection successfully.*

*It is relevant, informative reading for all whose responsibilities encompass financial, insurance or risk management in today's business world.*

Sheila E. Salvatore  
Editor

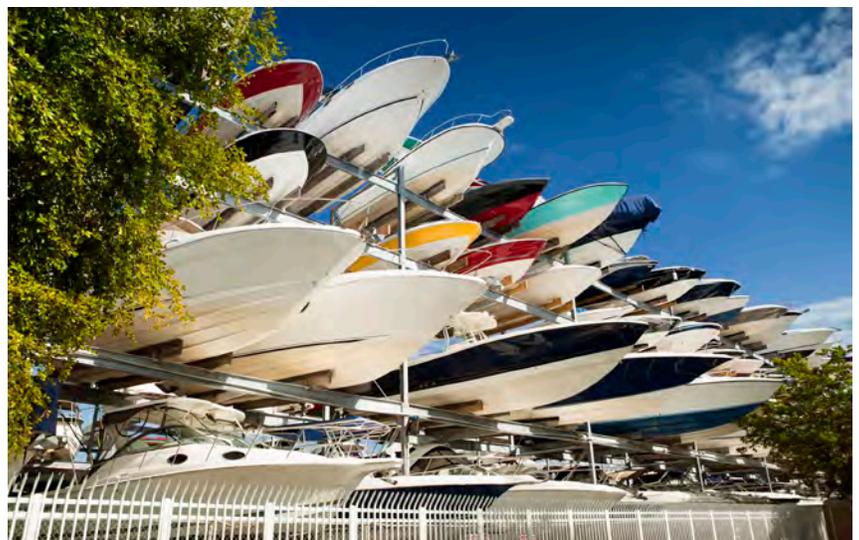


## Business Personal Property of Others: Insuring It Properly Involves Many Considerations

By Donald S. Malecki, CPCU

Bailment situations — where personal property owned by a person or entity is temporarily in the care, custody or control of another person or entity — are very common for businesses today. If one ponders the types of businesses involved in bailments, such as for leasing, safekeeping, or for performing some kind of cleaning, repairing or servicing of personal property, it is an infinite number.

In these bailment situations, the person who owns the personal property or has legal title to it is referred to as the *bailor*; the one who has temporary possession is the *bailee*. In the business world, these





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bailments will likely be for the mutual benefit of both parties, that is, the bailor receives some benefit from the service of the bailee, and the bailee is thereby compensated by the bailor for the service rendered.

Generally speaking, people involved in the insurance and risk management industries are likely to think in terms of inland marine insurance for purposes of covering property involved in a bailment. The reason this might be a natural inclination is that inland marine insurance is ideally suited to personal property that commonly is

moved about. The coverage forms also can be broad in scope with flexible features, including covered causes of loss.

What should not be overlooked, however, is the coverage offered by *property* insurance policies. There are, of course, caveats in dealing with property insurance, but if they are observed, coverage can be provided that can likely meet the expectations of property owners (bailors) and result in less cost to the bailees than what might otherwise apply to inland marine forms. If nothing else, property policies offer the convenience of automatically covering property of others, subject to some restrictions.

A problem with being precise about insurance on personal property in bailment situations is that the policies are likely to differ. Inland marine policies, for example, can be nonfiled, meaning that their terms and conditions will depend on what the underwriter is willing to provide — and not what a state insurance department permits. While property policies need to be filed with state insurance departments for some kind of approval on a state-by-state basis, these policies, too, can vary because many insurers use their own independently filed policies instead of using the standard forms of the American Association of Insurance Services (AAIS) or the Insurance Services Office (ISO).

For purposes of this article, the provisions of the standard ISO property policy consisting of the Building and Personal Property Coverage Form CP 00 10 10 12 and some other forms mentioned later will be used. In this way, readers can then benchmark what ISO provides against the independently filed forms they may rely on for their own insureds.

**Two Classes of Personal Property of Others**

The two classes of personal property of others earmarked for certain coverage by the ISO Building



and Personal Property Coverage Form (BPP) are (1) leased personal property and (2) other personal property in the named insured's care, custody or control. Since both of these types of personal property coverages are treated differently by the BPP Coverage Form, they likewise will be discussed separately.<sup>1</sup>

Exhibit 1 consists of a comparison of coverage between personal property of others under lease, versus such property that is not leased — or is leased but not subject to any contract prescribing the need for certain insurance.

### Leased Personal Property

To qualify for coverage on leased property — such as computers, telephone systems, and photocopiers — there needs to be a contract requiring the bailee to maintain some kind of insurance on the leased property. This means that if there is no contractual responsibility to insure the property while in the temporary possession of the bailee, the property is subject to coverage under the Personal Property of Others section of the BPP coverage form.

Assuming, for a moment, that the business personal property is leased and is subject to a written contract prescribing certain insurance, the BPP coverage form automatically includes coverage as part of the named insured's business personal property coverage. While no separate limit for this leased personal property of others applies, it is necessary that the addition of the values for this property

## EXHIBIT 1

### Leased Versus Non-Leased Personal Property of Others Coverage

Your Business Personal Property	Personal Property of Others
Leased personal property (A)	Non-leased property (B)
No separate limit is necessary (C)	Separate limit must be shown (D)
Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the premises described in the Declarations, whichever distance is greater.	Same
Off-premises coverage subject to a \$10,000 limit (E)	Same
Actual cash value or replacement cost (F)	Actual cash value (G)

#### Notes

- (A) Coverage is contingent on the named insured having a contractual responsibility to insure the leased property; otherwise, the leased property is to be covered under the Personal Property of Others section of the BPP Coverage Form.  
If leased property and less than the other six kinds of personal property exposures are to be covered under the Your Business Personal Property section, the property can be itemized and covered under Your Business Personal Property – Separation of Coverage Endorsement CP 19 10 or under the Leased Property Endorsement CP 14 60.
- (B) The non-leased property has to be in the named insured's care, custody or control. This category also includes leased personal property of others, if there is no contract requiring insurance on that property.
- (C) Although no separate limit needs to be shown for leased personal property, the valuation needs to be added so that the named insured does not become a co-insured under the applicable co-insurance clause.
- (D) A separate limit must be shown on the policy Declarations, along with the appropriate causes of loss form and co-insurance limit. If none is declared, the only coverage that might be available is the automatic maximum limit of \$2,500, but it does not apply to theft loss.
- (E) The territorial limit is the U.S., its territories, possessions, Puerto Rico and Canada.
- (F) If a written contract governs the valuation of personal property, the valuation is based on the amount specified in the contract but not to exceed the lesser of the replacement cost or the applicable limit of insurance.
- (G) Non-leased personal property is covered on an actual cash value basis. The BPP Coverage Form, however, offers a Replacement Cost extension . . . .



*Unlike leased personal property of others, the coverage for non-leased personal property of others applies on an actual cash value basis, even though the named insured's personal property may be covered on a replacement cost basis.*



is sufficient so as not to be in violation of any co-insurance clause.<sup>2</sup>

Depending on the type and value of the leased personal property, the lease agreement may require that the insurance maintained be of a certain amount. When this occurs, it might be advisable to request the issuance of the Leased Property Endorsement CP 14 60. It is here that the personal property is described, including the premises and building number where the property is located, and the agreed value. This endorsement states that if an agreed value is inserted for the scheduled property, this amount is considered to be the value of the described property at the time of loss or damage. However, such amount is still subject to any applicable co-insurance provision. Also, this described property is not included under any Personal Property of Others coverage in this coverage part.

If the replacement cost option is shown as being applicable in the policy Declarations, the replacement cost also applies to leased business personal property of others. However, if a written lease agreement prescribes the extent of responsibility to the property, the valuation is based on the amount so stipulated, but not to exceed the replacement cost or the applicable limit of insurance.

Leased personal property, subject to a lease agreement, falls into the category of the named insured's business personal property, which consists of seven kinds of property:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) Stock;
- (4) All other personal property owned by the named insured and used in the named insured's business;
- (5) Labors, materials or services having to do with personal property of others;
- (6) The named insured's use interest in improvements and betterments;
- (7) Leased personal property which the named insured has a contractual responsibility to insure.

If a limit is inserted in the Declarations for the named insured's business personal property and not all of the foregoing categories of property need to be covered, the categories of personal property to be covered can be itemized on the Your Business Personal Property – Separation of Coverage Form CP 19 10.

In light of the fact that the subject of coverage for leased personal property is property insurance, coverage applies whether or not the named insured is legally liable for any loss or damage. (One of the ways, discussed later, in which the cost of insurance can be reduced is to cover the leased personal property under the Legal Liability Coverage Form.)

It is important to note, however, that to the extent coverage for leased personal property is covered by the BPP Coverage Form, payment of any loss to the property's owner is made directly by the insurer to the owner of the leased property, or to the one who holds legal title to it.

### **Non-Leased Personal Property of Others**

When personal property of others in the care, custody or control of the named insured is not

leased, meaning there is no contract that requires insurance on that property, it is considered to be subject to Personal Property of Others coverage under the Building and Personal Property Coverage Form (BPP).

To cover non-leased personal property of others, it is necessary that a limit of insurance be shown on the Declarations page of the Commercial Property Coverage Part, along with the kind of covered causes of loss form, i.e., basic, broad or special, and the applicable co-insurance percentage. One of the more common reasons for litigation on this property is the failure to designate the foregoing information on the Declarations page.

One such case dealing with the failure to designate the value of business personal property of others is *AIU Insurance Co. v. Mallay Corporation*, 938 F. Supp. 407 (S.D. Tex. 1996). The named insured was a machine tool company whose largest customer was a chemical company. As part of its business, the named insured would mill and grind parts used by its customer in its chemical processing plant.

The problem arose when the named insured received a turbine from its customer that required burnishing so that it would meet precise specifications. While the turbine was being set into a lathe, it fell, and was so damaged that it could not be used without significant repairs. As a result of this damage, the turbine had to be repaired by another entity and at another location at a cost of \$91,000. Additionally, the customer claimed it had sustained economic losses of \$2.9 million, for which it sought reimbursement. Being uncertain whether it had insurance to cover what had happened, the named insured settled with its customer by paying \$91,000 for release of all claims.

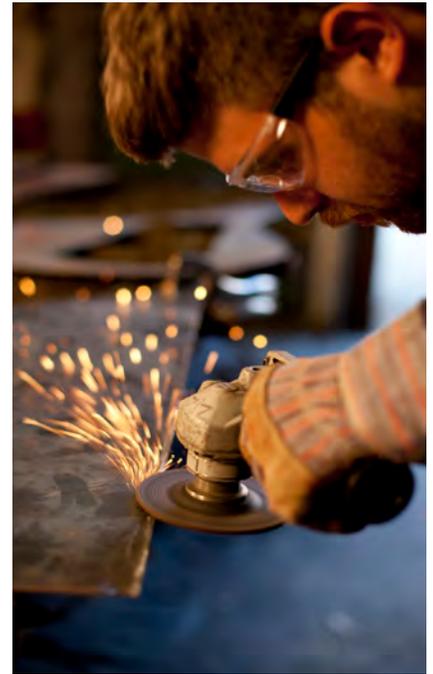
At the time of this incident, the named insured had in effect a CGL policy with AIU Insurance Company that included property coverage. The CGL policy was held not to apply to this accident

because of exclusion j(4) having to do with personal property in the insured's care, custody or control.

The property portion of the policy under the BPP Coverage Form reflected that personal property of others in the named insured's care, custody or control was covered if located in the described building and within 100 feet of the described premises. The insurer, however, argued that the coverage did not apply here, either, because a limit of insurance for personal property of others was not expressed in the Declarations of the policy. The court agreed with the insurer here as well.

Another provision of the property coverage form stated that when a co-insurance percentage of 80 percent or more is shown in the Declarations, coverage may be extended to include personal property of others in the insured's care, custody or control. However, the limit was \$2,500 at each described premises, with payment to be made for the account of the owner. Since the named insured's property policy contained a co-insurance percentage of 80 percent, the policy allowed it to receive the benefit of that extension, but only for \$2,500. The remainder, unfortunately, appeared to be the amount that the named insured had to assume.

In another case, a boat owner brought his vessel to a marina for repairs and refurbishment. While it was in the care, custody or control of the marina, it was damaged when a hurricane struck that area. The boat owner maintained that he was entitled to coverage under the personal property of others coverage of the marina's property policy. Unfortunately, the BPP Coverage Form



listed three categories of property: (1) Building (2) Your Business Personal Property and (3) Personal Property of Others, but the only one for which a limit was shown was the first one, which had a limit of \$25,000. The court therefore held that with no limit shown for personal property of others coverage, the marina's insurer had no obligation to pay for the boat's damage.

If, for some reason, a declaration of coverage for personal property of others in the named insured's care, custody or control is omitted, an automatic limit of \$2,500 applies. If that amount is determined to be insufficient, it is likely to generate a dispute.



Unlike leased personal property of others, the coverage for non-leased personal property of others applies on an actual cash value basis, even though the named insured's personal property may be covered on a replacement cost basis. In light of a recent change to the BPP Coverage Form, however, replacement cost can be extended to personal property of others, provided the policy Declarations reflect that this extension is applicable.

A limitation, however, still applies. If an item of personal property of others is subject to a written contract which governs the named insured's liability, the valuation of that property will be based on the amount for which the named insured

is liable under the contract. This amount, however, cannot exceed the lesser of the replacement cost or the applicable limit of insurance.

Like leased personal property, loss or damage to personal property of others is paid for by the insurer directly to the owner of such property or to the one who has legal title to it.

### **Location of Covered Personal Property of Others**

One of the disadvantages of property insurance versus inland marine is that for purposes of business personal property — not necessarily limited to personal property of others — coverage is largely limited to fixed locations at described premises. This is not to say that no coverage applies to such property while off-premises, because some coverage does apply, but the amount is limited to \$10,000, at least under the ISO BPP Coverage Form.

Insofar as business personal property is concerned, whether it belongs to the named insured or is property of others in the named insured's care, custody or control, and whether leased or not, coverage is limited to the property (1) located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater. Some independently filed property policies will cover the named insured's own business personal property to within 1,000 feet of the described premises but limit the personal property of others to within 100 feet.

This 100-foot distance can be confusing. If the described premises were to be shown on the policy as a suite or office number, it would be a mistake to assume that the 100 feet extend from the edge of the building outward in any direction 100 feet, or 100 feet from the boundary of the described premises. The measurement actually will be from the office or suite shown in the policy Declarations.

A case in point is *Evergreen National Indemnity Company v. Tan It All, Inc.*, 111 S.W.3d 669 (Tex. App. Dist. 3, 2003) that involved an appeal by a named insured operating tanning salons against its insurer to recover the cost of equipment stolen from one of its trucks. The issue was whether the policy term “described premises” in a commercial property policy covered the business personal property located “within 100 feet” of any portion of the entire shopping center complex in which the insured leased only a suite as its business premises.

The tanning equipment was stolen from one of its trucks while parked at the shopping center. The named insured operated a tanning salon in Suite C-5 of the shopping center. The parking lot in question was a “common area” of the shopping center. The named insured submitted a claim for the value of the equipment, which was stipulated to be over \$45,000. The claim was denied because the property was not within the coverage area at the time of the theft.

The policy in question was a commercial property policy (ISO BPP Coverage Form CP 00 10 10 91). There was no question that the named insured suffered a direct physical loss and that theft was a type of loss covered by the policy. The coverage form categorized “covered property” at the premises described in the Declarations as: a. Building b. Your Business Personal Property or c. Personal Property of Others. Your Business Personal Property was defined as: “b. Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises ... .”

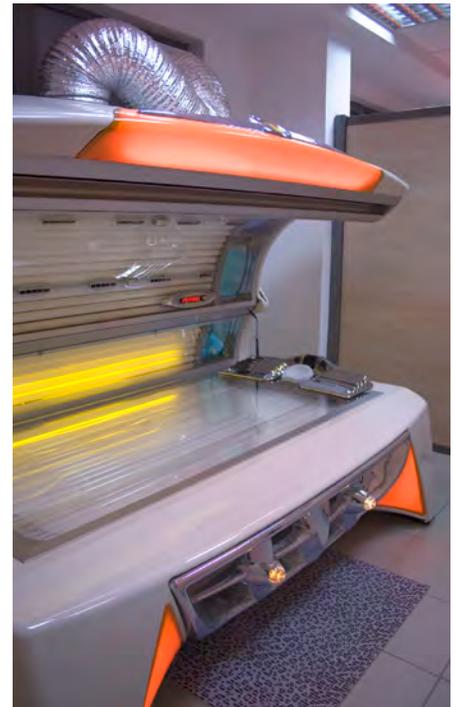
The parties stipulated that the stolen tanning equipment was business personal property within the meaning of the policy. The Declarations page listed a number of different premises locations. The one from which the theft took place read: “04 01 13945 North Highway 183, Suite C-5, Austin, TX 78717; Frame, Tansyou.” The insurer contended that

the policy only covered business personal property within 100 feet of any portion of the shopping center. The truck containing the tanning equipment was parked 280 feet from the entrance of Suite C-5, but in the parking lot and within 100 feet of other shopping center buildings at that address.

Since the named insured leased the premises, the lease agreement was submitted as evidence. This lease gave the named insured certain legal rights regarding the common areas of the shopping center, which included the parking lot in dispute. The named insured paid separately for its proportionate share of the cost of the common area. The landlord required the named insured to park its company-owned vehicles in a certain area in the common area parking lot, and that area was more than 100 feet from the named insured’s storefront.

The named insured was not permitted to park company-owned vehicles within 100 feet of the storefront itself. At the time of the theft, the truck in question was parked in the area designated by the landlord. The lease, however, provided that the common areas were under the “sole management and control” of the landlord. The insurer pointed out that the named insured’s lease granted it only a “nonexclusive right and license” to use the common areas.

The district court granted the named insured’s motion for partial summary judgment. In doing so, the court expressly found that the business personal property that was stolen was taken from



a vehicle parked within 100 feet of the named insured's premises, which included the parking lot. This court also found the policy to be ambiguous and that the definition of the term "premises" for purposes of this cause of action included the common area parking lot where the vehicle was parked at the time of the loss.

On appeal, the decision of the district court was reversed. In explaining its decision, the appeals court stated that the policy provision in question covered "business personal property located ... within 100 feet of the described premises." The pertinent premises described in the policy Declarations included reference to "Suite C-5." The named insured's interpretation, the appeals court explained, requires us to omit "Suite C-5"

from the description of the insured premises in the Declarations of the policy. The district court's ruling, the appeals court said, meant that the policy covered business personal property within 100 feet of 13945 North Highway 183, which could include any portion of the entire shopping center, along with its parking lot and other common areas.

The court went on to say, however, that the parties clearly expressed their intent in the policy that the insurer cover the named insured's salon located in "Suite C-5" of the shopping center. Had the parties intended to cover the entire shopping center, the court added, they would not have inserted "Suite C-5" into the description of the covered premises. The court concluded that it was only the interpretation urged by the insurer that gave effect to all elements of the premises description on the Declarations page.

If the policy Declarations simply gives an address and no suite or office number, the premises includes the building and all of the land at that address. This means that the "100 feet" does not begin at the building's edge. So, for example, if business personal property is in a truck and located 50 feet from the premises boundary, which turns out to be 300 feet from the building, the property is still within the 100 foot limitation.

It is important to remember here that the 100 foot limitation applies not only to the named insured's business personal property, but also when coverage applies to business personal property of others — whether or not leased — that is in the named insured's care, custody or control.

When the covered property is off-premises (at a lower limit), coverage applies within the coverage territory, which is defined in the Commercial Property Conditions CP 00 90 as the United States of America, its territories and possessions, Puerto Rico and Canada.



### **Covered Causes of Loss**

Unless there is some underwriting restriction, a named insured has the option of selecting from among three causes of loss forms to cover its property: the (1) basic form (2) broad form and (3) causes of loss-special form.

The basic form is a named peril or named causes of loss form covering loss by fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic eruption, and fungus (provided as an additional coverage).

The broad form includes all causes of loss in the basic form and adds loss or damage from falling objects, weight of snow, ice or sleet, water damage, and collapse (provided as an additional coverage).

Unlike the basic and broad forms, the causes of loss-special form does not list the causes that are considered covered. Instead, all fortuitous (accidental) loss or damage is covered, unless specifically excluded. This form states that the covered causes of loss means "Risks of Direct Physical Loss." This term (in quotes) was replaced by ISO in its 2012 revisions with the words, "Direct Physical Loss or Damage."<sup>3</sup> The reason is, that reference to "Risks of" can also mean an impending or possible loss. If, for example, the named insured takes costly steps to avert an otherwise covered loss and submits a claim for those costs, the named insured has an argument that those costs are covered because the causes of loss-special form also covers risks associated with the chance of a loss occurring.

The cost increases progressively when one goes from basic to the special causes of loss. Price, however, is not always the criterion. If, for example, the named insured leases some office equipment and the lease agreement requires coverage that includes loss from theft, the named insured would have no choice but to select the causes of loss-



special form. The reason is that this form is the only one of the three forms that includes coverage for theft, except theft committed by the named insured's officers, directors or employees. If the named insured is unable to obtain the causes of loss-special form or it is too expensive, a possible alternative might be to look into the purchase of an inland marine floater, since these floaters commonly provide broad coverage having to do with causes of loss.

### **Legal Liability Coverage Form**

As mentioned earlier, another one of the property forms under which business personal property of others can be covered is the Legal Liability Coverage Form. (The ISO version carries the form number of CP 00 40.) Even though the name of this coverage form connotes liability insurance, it actually is categorized as a property form because of its mechanics. In other words, under this form, the insurer agrees to pay sums the named insured is legally obligated to pay as damages to covered property caused by accident and arising out of any covered cause of loss. The covered cause of loss form can be the basic, broad or causes of loss-special form. The cost of this coverage also is likely to be less than the coverage under a property policy because the named insured must be found legally liable for the loss of the property. There is no such requirement under a property policy.

If covered property sustains loss or damage from a covered cause, the insurer is supposed to pay for the loss up to the limit of insurance for that covered property.

Apart from the criterion of legal liability, the Legal Liability Coverage Form has a lot in common with property policies written to cover business personal property, including property of others. In fact, certain portions of the Common Policy Conditions applicable to property policies also apply to the Legal Liability Coverage Form.

An especially notable case that involved a Legal Liability Coverage Form for business personal property, including property of others all in the open, is *QBE Specialty Insurance Company, FSI, Inc., No. 3:09cv435 (U.S. Dist. Ct. W. Dist. N.C. 2011)*.

FSI was engaged in intermodal storage for loaded and empty intermodal shipping containers. In this matter, FSI sought to purchase insurance for containers and their contents while stored at its yard, which was a "holding ground" for cargo. The written proposal referred to coverage for "property of others," with a limit of \$200,000. This proposal, however, did not mention or refer to "property of others in the open" coverage. After the insurer issued the Legal Liability Coverage Form, the insurance agent visited the premises to review security measures and operations.

The following year thieves broke into the premises of FSI and stole an intermodal shipping container filled with 1,920 computer monitors. The cargo in the containers was never recovered, but the container was. When this claim was submitted to the insurer, it was denied. The issue was whether the commercial property coverage provision extended coverage for the loss of cargo stored on FSI's premises. The insurer maintained that the contents of the shipping container was not covered because it was "not in the open."

The Legal Liability Coverage Form, on which the applicable coverage provision was written, provided as follows:

We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage, including loss of use, to Covered Property caused by accident and arising out of any Covered Cause of Loss.

In turn, "Covered Property" was defined to mean:

Tangible property of others in your care, custody or control that is described in the Declarations or on the Legal Liability Coverage Schedule.

Reference was made to "personal property of others in the open" on the Commercial Property Coverage Declarations page. "Personal property of others in the open" was also listed under the description of property on the Legal Liability Coverage Schedule.

The insurer's key argument was that cargo contained inside the shipping containers stored on the grounds of FSI's property was not covered because it was not in the open. It contended that the computer monitors were not in the open because they were inside the shipping containers. In response, FSI contended that "in the open"



were words of “inclusion” in the policy and terms of inclusion must be broadly read in favor of coverage. FSI also pointed to an e-mail exchange between its insurance agent and the insurer’s underwriter. FSI contended that if these e-mails were admissible, they would show that coverage for cargo or contents of the containers was contemplated. For legal reasons, the e-mails were not admitted as evidence.

The court stated that because the term “open” was not defined in the policy, it must be given its ordinary meaning. Turning to the Merriam-Webster Dictionary, the court found the term “open” in relevant parts as meaning, “having no enclosing or confining barrier; accessible on all or nearly all sides” and as “completely free from concealment; exposed to general view or knowledge.”

When the phrase “in the open” is applied to the undisputed facts in this case, the court explained, it was readily apparent that the policy provided no coverage, duty to defend, or indemnification for this particular loss. FSI admitted that the stolen cargo was locked inside a large intermodal shipping container, which was locked, sealed and weather-tight. Thus, the court said, the goods were contained in an “enclosing or confining barrier” and inaccessible “on all sides.” Further, the court added, the goods were completely sealed and not exposed to general view or knowledge.

Interestingly, when the court reviewed FSI’s prior policy written with a different insurance agent, it revealed that coverage was provided for cargo contained in the stored containers for more value and premium. It was undisputed that despite the insurance agent’s request for a copy of FSI’s prior policy, the former agent did not provide that policy to the current insurance agent. As a result, the policy as issued provided less coverage than the one that it replaced.

There are advantages and disadvantages to relying on current insurance policies that are

“*Even though the name of this coverage form connotes liability insurance, it actually is categorized as a property form because of its mechanics.*”

to be replaced. The disadvantage is that if the coverage is inferior for some reason, the coverage may remain that way if the insurance agent does nothing more than have the new policy issued based on the replacement policy’s terms and conditions, which is often done. An advantage to reviewing the replaced policy, to the extent that the provisions are analyzed, is that it may give the newly appointed insurance agent the opportunity to consider coverages and exposures that have not otherwise been considered in preparing issuance of the replacement policy.

#### **Summary**

If business personal property of others is to be covered under a commercial property policy, one needs to keep in mind the following: Leased personal property of the one who is to retain possession of that property on a temporary basis, subject to a written contract also requiring certain insurance, is handled differently than non-leased personal property.

Leased personal property is considered to be part of the “Your business personal property” coverage and, therefore, subject to the named insured’s selection of the insured amount, causes of loss, and co-insurance percentage. The value of non-leased business personal property, on the other hand, needs to be declared in the policy, along with its value, the kind of covered causes of loss, the applicable co-insurance percentage, and a

designation that coverage is to apply on a replacement-cost basis if, in fact, that basis is desired.

When it comes to determining the nature of problems over insurance of business personal property of others, the issues can be categorized as follows:

- (1) Determining whether the property, in fact, is personal property as opposed to real property;
- (2) Failure of the named insured to designate in the policy the desire to cover business personal property of others;
- (3) Keeping the covered property within the maximum distance permitted from the described premises in a vehicle or in the open;
- (4) Understanding what is encompassed by the coverage of property in the open.

If the proper precautions are not taken, the disputes over coverage can be complex and very costly.

<sup>1</sup> It is important to determine at the outset if the property is still considered personal property. The reason is that personal property that becomes affixed to realty may no longer qualify as personal property, such as air conditioning units.

<sup>2</sup> When a co-insurance clause applies, the insurance limit has to be at least 80 percent, 90 percent or 100 percent of the replacement cost or actual cash value (replacement cost less depreciation) at the time of loss. If the amount is deficient, the insured having the insurable interest is considered a co-insured and must assume the deficient amount.

<sup>3</sup> This phrase "direct physical loss or damage" also is ambiguous for a number of reasons and will likely have to be replaced in the future as well.

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