



E-Edition ADJUSTINGTODAY

Adjusters International Disaster Recovery Consulting

FROM THE EDITOR

By its nature, insurance is regarded by many as slow to change. However, that is not entirely true. Changes in policy language, filings, and loss experience are relatively frequent, and when changes come, they should not be lightly regarded.

An important case in point is ISO's (Insurance Services Office) recent revisions to two commercial property insurance forms — the Building and Personal Property Form and the Causes of Loss – Special Form. Involving coverages for business personal property, electronic data, debris removal, business interruption and other key exposures, these changes will impact the protection many businesses have, don't have or need to understand better.

They also encompass six new optional commercial property endorsements, addressing exposures like discharge from sewers and drains, equipment breakdown, food contamination and limitations on coverage for roof surfacing. In this E-Edition of Adjusting Today veteran claims professional and respected author Robert J. Prahl summarizes these latest developments. It's important reading for anyone involved in planning or administering a commercial insurance program.

*Sheila E. Salvatore
Editor*



Be Aware of Recent Revisions to ISO Commercial Property Coverage Forms

By Robert J. Prahl, CPCU

Businesses can vary in size — from a one-person firm to a highly complex industrial operation that employs hundreds or thousands of people. All face property loss exposures that need to be dealt with from an insurance and risk management standpoint. Those property loss exposures include owned and leased real and personal property, as well as property owned by others for which the insured is responsible. While smaller commercial firms typically are covered under a businessowners policy — a package policy that includes coverage for the property, general liability and limited auto exposures — larger commercial businesses need separate general liability, commercial property and commercial auto coverage.



These policies or forms periodically undergo revisions for a variety of reasons; e.g., to reflect changes in the insurance environment, to respond to court decisions that may have altered the meaning of a particular policy provision, or to clarify provisions that previously were unclear.

Commercial property insurance policies are used to insure larger commercial buildings and personal property in those buildings on or within 100 feet of the insured location. These policies or forms periodically undergo revisions for a variety of reasons; e.g., to reflect changes in the insurance environment, to respond to court decisions that may have altered the meaning of a particular policy provision, or to clarify provisions that previously were unclear. Recent coverage changes involving two key commercial property forms — the Building and Personal Property Form (CP 00 10) and the Causes of Loss – Special Form (CP 10 20) — are reviewed here.

The revisions introduced in this filing began taking effect on April 1, 2013, but effective dates vary by state. States must approve the filing before insurers can adopt the form changes included in the filing. Many insurers frequently do not adopt these changes immediately, while some insurers may not adopt them at all.

The Building and Personal Property Policy of the Insurance Services Office (ISO) is the standard contract for insuring building and personal property exposures of commercial insureds. The Causes of Loss – Special Form identifies the perils that are covered by the policy. The Special Form provides coverage on an open-perils basis (formerly referred to as all risks), rather than on a named-perils basis. The Special Form provides the broadest coverage of the causes of loss options.

Although the changes are too numerous to cover in their entirety here, the most important changes are examined.

Building and Personal Property Form – CP 00 10 10 12

- **Your Business Personal Property** — This provision covers the insured's business personal property and personal property of others located within 100 feet of the described premises. The previous language was a problem for a business tenant who may have occupied an office or business in a mid- or high-rise building. If business personal property was damaged or stolen from a loading dock, for example, the tenant's office on the eighth floor would be beyond 100 feet of the described premises. The new wording is revised to extend coverage to such property within 100 feet of the described premises *or* the building, whichever is greater. The business income forms are also revised to track with this change in the property forms.



- **Vegetated Roofs** — “Property Not Covered” includes land (including land on which the property is located), water, growing crops or lawns. Now there is specific language making an exception to the exclusion for lawns that are part of a *vegetated roof*. This is an acknowledgement that environmentally friendly or green construction methods are in use and becoming more popular. However, there are restrictions in that coverage does not apply to loss to vegetation caused by dampness or dryness of atmosphere or soil, temperature changes or extremes, disease, frost, hail or rain, or weight of snow, ice or sleet.

- **Electronic data** — In previous forms, a \$2,500 electronic data limit applied to all data, including data integrated into building systems such as HVAC, elevators and security systems. Now business personal property and business income coverages allow full coverage (not limited to \$2,500) for data integrated in or controlling these systems.

- **Debris removal** — This coverage has created its share of confusion, particularly with the math involved in combining the coverage limit with the additional coverage for debris removal. In previous forms, debris removal coverage is limited to 25 percent of the loss (including the deductible) plus an additional \$10,000. The \$10,000 figure was considered too low and the additional coverage has been increased to \$25,000. The policy form itself includes two examples of the application of debris removal coverage in claim situations which are helpful in understanding how it is applied. (Note that additional limits over \$25,000 are available if needed. Those insureds needing additional coverage should check with their agent.)

A second problem is that previous forms limited coverage to debris of covered property; that is, the insured's property. Removal of debris from the property of others is excluded. Picture a serious windstorm or tornado where someone else's



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property is blown onto the insured premises; e.g., part of an adjacent roof or fallen trees from a neighboring property, automobiles, or even farm animal carcasses. The revised form now includes coverage for the removal of debris of the property of others, but there are limitations:

- ▶ If no covered property is damaged and the only debris to be removed is the property of others, coverage is limited to \$5,000.
- ▶ Mud or earth deposits are excluded.
- ▶ If the debris is from property listed under Property Not Covered, no coverage applies. (Although the Property Not Covered provision excludes animals, the exclusion does not apply if animals are owned by others and boarded by the insured.)

Newly acquired business personal property is no longer automatically covered ...

- **The Outdoor Property Coverage Extension** is revised to cover removal of trees and plants that are the property of others (except where the insured is a tenant and the property is owned by the landlord). The extension's usual sublimits apply: \$250 per item and \$1,000 per occurrence.

- **Property in Portable Storage Units (PSUs)** — A new extension, Business Personal Property Temporarily in Portable Storage Units (or Pods), is included in the revised form. Note that the contents of the pod are covered, not the pod itself. Contents in a detached trailer are also covered, but the PSU units must be within 100 feet of the described premises and coverage is limited to 90 days. Coverage does not apply if the unit itself has been on the premises for more than 90 consecutive days, even if the contents have been stored there for 90 days or less at the time of loss.

A \$10,000 limit applies, which can be increased. The limit applies regardless of the number of units; thus, this is a per-occurrence limit, not a per-unit limit. The overall policy limit is not increased by this extension.

- **Extended Business Income** — With business income (business interruption) coverage, the period of restoration ends when the insured returns (or should return) to normal operational capacity. At this point, business income payments cease and coverage is picked up under the extended period of indemnity provision in the policy. This provision gives an insured some additional time to get the business up and running again. In reality, net income does not always return to normal as soon as normal operations are restored. For example, a



Specified Causes of Loss – The definition of this term now includes water damage resulting from breaking or cracking of off-premises water or sewer pipes caused by wear and tear.

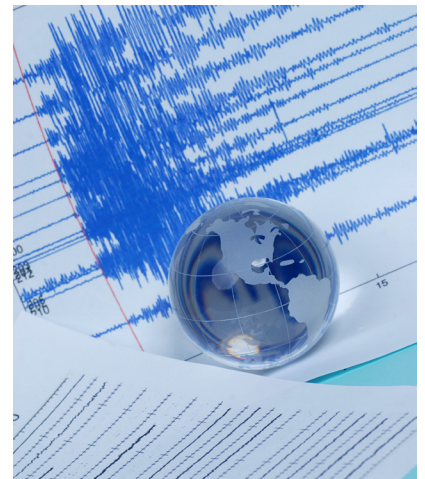


business suffering a serious property loss may not immediately regain all its customers once it reopens for business. Previous forms limited this coverage to 30 days, but the revised coverage increases it to 60 days.

- **Newly Acquired Business Personal Property** — Newly acquired business personal property is no longer automatically covered under this provision. In previous forms a \$100,000 coverage extension applied to such property. Now insureds will need to notify their agents promptly if they are acquiring new personal property and obtain the necessary endorsement.
- **Covered Causes of Loss** — The lead-in language to the Causes of Loss – Special Form has undergone significant revision over the years, due in large part to the way in which the courts interpreted the language. At one time the coverage provided was referred to as “all risks,” but that term was often construed by the courts to mean much broader coverage than that intended by the drafters of the policy. Consequently, insurers discouraged the use of that term and instead encouraged the use of the term “open perils” to distinguish it from “all risks.” In addition, ISO revised the lead-in language to “risks of direct physical loss.” That phrase, too, generated

litigation and with this latest revision, covered cause of loss means “direct physical loss” unless the loss is excluded or limited in the policy. The new form removes both words “all” and “risks,” with the expectation that the new wording should avoid future action by the courts that interprets coverage beyond that contemplated by the drafters.

- **Specified Causes of Loss**¹ — The definition of this term now includes water damage resulting from breaking or cracking of *off-premises* water or sewer pipes caused by wear and tear. In addition, the wear and tear exclusion does not apply to loss caused by a “specified cause of loss” resulting from wear and tear. While this is a broadening of coverage over previous forms, the broadened coverage does not extend to include losses excluded by the water/flood exclusion.
- **Earth Movement** — The new wording of this exclusion in the Causes of Loss form is not intended to alter its meaning according to ISO, but rather to clarify that the exclusion applies regardless of the cause; that is, whether it is





Limitations on Coverage for Roof Surfacing (CP 10 36) – This endorsement, which has generated considerable controversy, provides two options. The first provides coverage for roof damage on an actual cash value (ACV) basis; that is, with deduction for depreciation, whereas most standard property policies provide such coverage on a replacement cost basis. It is expected that the ACV option will be targeted for risks that have older roofs that are approaching the time when they will need to be replaced.

The second option is to exclude cosmetic damage caused by wind or hail.

Cosmetic damage refers to denting, pitting or marring that affects the appearance of the roof surface but does not prevent the roof from functioning as a barrier to water intrusion.



caused by an act of nature or is caused otherwise. Seemingly, the intent here is to exclude earth movement caused by man-made activity, which in the past has been a source of considerable litigation. The revised language also re-enforces the intent of the exclusion, which is to also exclude tremors and aftershocks.

New Optional Commercial Property Endorsements

- **Discharge from Sewer, Drain, or Sump** (CP 10 38) — This endorsement introduces coverage for backup of water or waterborne material from a sewer, drain or sump. However, the following losses are excluded:
 - ▶ Backup resulting from general flooding.
 - ▶ The insured's failure to perform routine maintenance.
 - ▶ Sump pump failure resulting from power loss unless the policy is endorsed to cover power failure.

The endorsement also extends to business income and extra expense coverage, provided the insured carries those coverages. Thus, loss of revenue from a business shutdown caused by the discharge of a sewer or sump will be covered.

- **Equipment Breakdown** (CP 10 46) — The endorsement includes a wide range of equipment



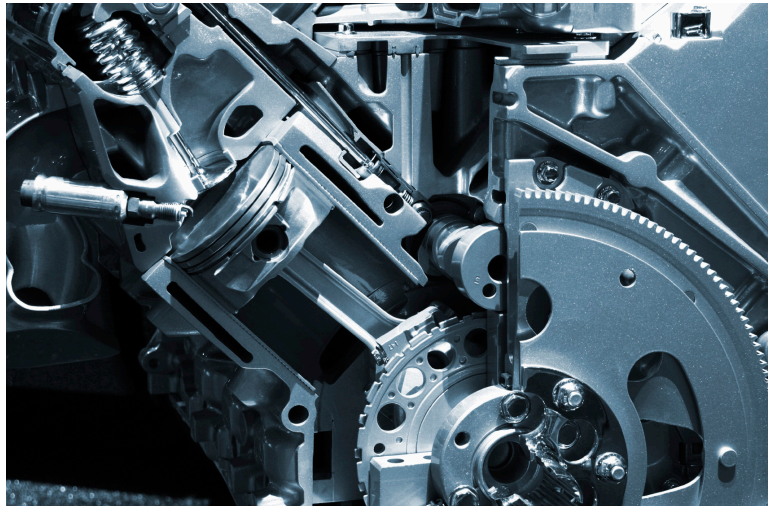
— such as equipment built to operate under internal pressure or vacuum, electrical and mechanical equipment used to generate or use energy, communication equipment and computer equipment. If the insured carries business income and extra expense coverage, those coverages will be available should an equipment breakdown occur. It is important to note, however, that this endorsement is only available with the Special Causes of Loss Form.

- **Increase in Rebuilding Expenses Following Disaster** (CP 04 09) — The endorsement covers the escalation in construction costs resulting from a catastrophe. For the coverage to respond, the event must be a declared disaster by federal or state authorities. The maximum amount payable is a stated percentage of the limit of insurance for specific insurance and a stated percentage of the statement of values for blanket insurance — both being subject to an annual aggregate limit.

- **Specified Business Personal Property Temporarily Away From Premises** (CP 04 04) — The endorsement covers business property while off premises in the course of daily business activities, in the regular coverage territory. For coverage to apply, the property must be scheduled by item or category and must be in the care, custody or control of the insured or an employee. The coverage applies to business personal property such as laptop computers or other similar electronic property used for business.

The following property is excluded: sales persons' samples, except at a trade show or exhibition; property in the custody of a carrier or bailee for hire; and waterborne or airborne property.

- **Food Contamination (Business Interruption and Extra Expense)** (CP 15 05) — Business income and extra expense losses that result from food contamination are now covered if the insured has this optional coverage. This coverage



should be of particular interest to restaurant operations. Coverage applies when the insured is ordered to cease operations by a government authority because contamination is discovered or suspected. It covers the cost to clean equipment, cost to replace food, tests to confirm contamination, medical tests and vaccinations for employees, public relations expenses incurred to restore the insured's reputation, and the loss of business income as a result of the contamination. Costs for fines or penalties imposed on the insured are NOT covered.

- **Limitations on Coverage for Roof Surfacing** (CP 10 36) — This endorsement, which has generated considerable controversy, provides two options. The first provides coverage for roof damage on an actual cash value (ACV) basis; that is, with deduction for depreciation, whereas most standard property policies provide such coverage on a replacement cost basis. It is expected that the ACV option will be targeted for risks that have older roofs that are approaching the time when they will need to be replaced.

The second option is to exclude cosmetic damage caused by wind or hail.

Cosmetic damage refers to denting, pitting or marring that affects the appearance of the roof surface but does not prevent the roof from functioning as a barrier to water intrusion. For a

more detailed analysis of this endorsement, see *Adjusting Today* issue AT15—2004, *Cosmetic Damage Exclusion Stirs Controversy*.

Conclusion

It needs to be emphasized that these revisions are fairly new and it is unlikely that all insurers will adopt them immediately. It is, therefore, important to read the policy when a claim occurs and to be especially mindful of the edition date of the policy. Regardless of when the various states adopt the revisions, the forms will have an edition date of October 2012 (e.g., CP 00 10 10 12).



ABOUT THE AUTHOR



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Robert Pahl has more than 30 years of experience in the insurance business, primarily in claims and claims training. He began his career as an adjuster in the New York metropolitan area and eventually became a claims manager and claims training director. He has written extensively on insurance issues, having authored two text books for the Insurance Institute of America and previously served as a columnist for *Rough Notes* magazine, an insurance trade publication.

¹Specified Causes of Loss include: fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot, vandalism, leakage from fire extinguishing equipment, sinkhole collapse, volcanic action, falling objects, weight of snow, ice or sleet, and water damage.



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