

Risk Monitor



A Quick Guide to Understanding Insurance Policies

There is little disagreement among policyholders that an insurance policy is an insanely boring piece of literature. Too often we get our policy and until we have a claim, it is filed with barely a second glance. Is there a way to make reading insurance policies more interesting and more productive? Let's try.

To make your policy interesting to read, we are going to go on a scavenger hunt. Find a pen, pencil, or highlighter; open up your policy; and let's begin. We will break down the typical insurance policy into the following parts: 1.) Declarations, 2.) Definitions, 3.) Covered Perils, 4.) Exclusions, 5.) Conditions, and 6.) Endorsements or Riders. Get used to looking in this particular order, regardless of how your policy is arranged. Because of the nature of insurance policies, you will not overlook anything by going out of the policy's inherent order; so do not worry about jumping from page to page.

1. **Declarations** – The declarations page(s) comprises the who, what, when, and where of your policy. Look for the named insured, the address, limits of coverage, deductible or retention levels, and listings of forms that might apply to your coverage as well. Make sure that all the personalized information is correct and all the forms match the ones quoted with your policy. This should always be your first stop.
2. **Definitions** – Not all policies have a definition section, but most have defined terms. Hunt down the definitions in your policy, see what the defined terms mean, and to be truly thorough, find those defined terms as they are used in the policy to see if the definitions make sense.
3. **Covered Peril(s)** – Regardless of what type of policy you have purchased, it will always have a specific covered peril or list of covered perils. It may be called "Coverage Agreement," "Covered Perils," or something similar. (NOTE: A

typical auto policy has as many as six distinct coverages, each with their own terms, conditions, exclusions, and so on.) Coverage agreements can also include additional coverages related to the covered peril, i.e., legal defense and other expenses paid by the company in a liability policy.

4. **Exclusions** – Virtually all policies have exclusions, which are usually found in a section entitled "Exclusions" or "What We Do Not Cover." Common exclusions include exposures that are deemed uninsurable by law or uninsurable by the insurance company. Punitive damages, for example, are not insurable in some states because of the act that precipitated the punitive damages. Other exposures, such as asbestos liability, are simply undesirable to the insurer and excluded accordingly. Often, policies have "carve outs" built into the covered peril section or elsewhere in the policy, so look for these exclusions too. For example, the policy might have a definition section with a definition for "Damages" or "Covered Damages." Damages might be stated to include monetary loss suffered by a third party (for a liability policy) and defense costs, but not to include fines, penalties, or punitive damages assessed against the insured.
5. **General Conditions** – All policies have what are called general conditions or common policy conditions if there is more



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Welcome to the Elliot Whittier Insurance Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization. We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.



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Insure Your Construction Project with an Inland Marine Policy

Controlling cost is such an integral part of the success of any construction project. It's not enough, however, to focus only on direct expenses such as materials costs; indirect expenses such as your insurance premiums are also areas for consideration.

Covering builder's risk exposures can be handled in two ways. The first option is through a commercial property policy. The standard policy form only covers alterations and additions to a construction project. Coverage also extends to supplies used for making repairs and alterations within 100 feet of the covered location. However, some insurance carriers offer proprietary programs that cover more than the standard policy. Keep in mind that forms and rates associated with commercial property builder's risk coverage are filed with state insurance regulators. That makes coverage more or less static, virtually one size-fits-all.

Another option to cover builder's risk exposures is with an inland marine policy.

Forms and rates for inland marine policies are not subject to state filing requirements. Insurers have more flexibility in underwriting non-filed forms because they can determine their own coverage provisions and rates. It should be noted that some states have evaluated the non-filed status of inland marine and to date, 23 states require the filing of non-filed inland marine forms. This has not affected the flexibility in the design of these policies.

The most significant aspect of an inland marine policy is available coverage for materials in transit as well as coverage for storage locations other than those at the covered location. Inland marine policies underwrite direct physical loss to the construction and the materials that will become an integral part of the structure when it is completed. In fact, the policy generally covers materials, supplies, temporary structures, alterations and repairs within 1,000 feet of the covered structure. Supplemental provisions can be added that cover business personal property that will not become part of the finished building as long as it's installed or stored in a covered structure. Even trees, shrubs and lawns can be covered while they are in storage at an off-site location.

Insurers can write coverage either on a schedule location basis, which is used for a single project; or they can write it on reporting form basis, which covers a series of projects.

Inland marine coverage is an all risk policy; so covered perils include all types except for those specifically excluded in the policy. The standard exclusions include:

- Civil authority
- Nuclear hazard
- Ordinance or law
- War or military action

Most inland marine policies exclude loss from flooding and earthquakes. However, they usually permit supplemental provisions to the policy to provide limited coverage. The same applies to damage from sewer backup and fungus.

As with any type of builder's risk insurance, there are factors that affect your premiums. If the policy is written as a scheduled location policy, the factors that will mitigate premiums include:

- Accessibility of the location to paved roads
- What type of water supply is present
- Security at the job site

If you have chosen a reporting form policy a carrier will evaluate:

- The types of perils insured
- The deductible amount
- The types of construction
- The number and duration of the projects to be covered
- The contractor's receipts

No matter what form of an inland marine policy you decide upon, your carrier can add optional coverages that could be beneficial to your particular project. It's the customization feature of inland marine coverage that makes it the optimal choice for your exposures.

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than one coverage section to the policy. Typical conditions that apply are "Policy Territory," "Cancellation," and "Other Insurance" clauses.

6. **Endorsements or Riders** – Many policies have endorsements or riders added to the basic policy to account for variations by state, updates to the basic form, or elements

that are peculiar to your situation and require tailoring of coverage.

Now that you have gone through your policy, the final step is to ask questions. If there are no questions, move on to the next policy, start with the declarations and don't stop until you hit the riders. I guarantee it will be a page-turner!

Protect Your Company from Identity Theft Liability

ages as a result of your inaction leading to the identity theft; class action lawsuits, if a large number of employees or customers are involved; and federal fines of up to \$2,500 for each violation, and state fines of up to \$1,000 for each violation.

When implementing information disposal practices, consider the following:

- Have a valid reason for requesting the information that you gather.
- Acquire data in a private manner that cannot be seen or overheard.
- Install effective security on systems that store personal data.
- Make sure that sensitive data is treated as highly classified and is access controlled.
- Make all paper and electronic documents unreadable before disposing of them.
- Train all personnel in proper procedures for identifying, handling and disposing of personal information.
- Consider conducting background checks on all employees with access to identifying information including mailroom staff, clean-up crews, customer service technicians and temporary workers.
- For your protection in case of a lawsuit, formalize your information disposal program including maintaining detailed documentation of each security measure you establish.



If your business does not properly dispose of personal information from customers or employees you could be fined, sued or involved in a costly class action lawsuit. Effective June 1, 2005, the new strict information Disposal Rule changed the way nearly every business in the United States must handle sensitive personal information.

Identity theft is the fastest growing crime in America. The Federal government has recognized that improper disposal of sensitive information is a key cause of identity theft and is firm in its commitment to prevent identity thieves from obtaining personal information.

The Fair and Accurate Credit Transactions Act is an amendment to the Fair Credit Reporting Act. The new Disposal Rule portion of the law requires companies to properly dispose of all paper or electronic personal data by reasonable measures such as shredding or burning for paper records. Third party companies that specialize in proper information disposal can be contracted to handle this responsibility.

If you do not comply with the new Disposal Rule, your company could be subject to civil liability for actual or statutory dam-

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As part of the investigation, the Compliance Officer will request specific materials relevant to the visit. The employee should gather the materials and present them all at once. Using this technique offers two advantages. First, you can be sure the requested materials are pertinent to the investigation; this is not a fishing expedition. The second advantage is that you will have an opportunity to review the materials prior to presenting them so there are no surprises.

The Compliance Officer will undoubtedly want to document certain parts of the investigation scene with photographs. They should be told that taking pictures of the area specific to the complaint is fine, but under no circumstances are panoramas of the entire work area permitted. Allowing the Compliance Officer to spontaneously broaden the scope of the investigation may come back to haunt you at a later date.

You must also be able to accommodate a request made by the Compliance Officer to interview employees. Keep in mind that a management representative or corporate counsel may be present for all interviews of supervisory employees, but the Compliance Officer has the right to interview non-supervisory employees without a management representative present. You

have the right to prohibit the Compliance Officer from interviewing an employee onsite; but this is generally not a good idea. Employees will usually be more direct in their answers and do less embellishing if interviewed onsite rather than in a more relaxed environment such as their home.

You should always try to alert employees of a potential interview request. Stress the importance of listening to the complete question before answering and that responses should be limited to "yes" or "no" whenever possible. Tell them to refrain from speculating even if the Compliance Officer asks for their opinion on what might have happened. The best course of action is to stick to the facts. This of course brings up the most important point of all; they should be reminded to tell the plain, unvarnished truth, even if doesn't put the company in the most flattering light. They should never be worried that telling the truth could cost them their job.

By implementing these guidelines, you can rest assured that you are doing your part to ensure future OSHA inspections go smoothly, and protecting your company from being taken advantage of during an inspection.

Don't Be Caught Off-Guard By an OSHA Inspection

OSHA inspections are all too common in the construction industry. Employers should certainly expect these visits, but should never become too passive. It's much more effective to stop reacting to inspections, and become more proactive by learning how to control them. This is extremely important because the nature of construction work makes your company highly vulnerable to the possibility of being cited. A construction project requires a large number of direct employees as well as indirect employees, such as sub-contractors and their staffs; and as the number of workers increases the number of possibilities for error increases, proportionately. That's why your best defense is a good offense. Knowing how to manage an OSHA inspection is critical.

The first step in maintaining control is to designate an employee who will assist OSHA Compliance Officers during an investigation. This designee should be someone at a managerial level who is familiar with a project's specs. It is also important that this person understands the nature of the work and has the knowledge base to respond to the Compliance Officer's technical questions.

When a Compliance Officer arrives onsite, the designee should request the reason for the inspection to ensure the visit stays focused on that purpose. This means establishing at the beginning whether this is a standard inspection, an evaluation of specific complaints, or an investigation into a reported worker death. Once the purpose for the site visit has been clearly established, the Compliance Officer should be informed that they are being allowed to come onsite for the stated purpose only.

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