

Proudly presents...

## Property Insurance Policy Potholes

### How to identify, avoid and fix them

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September 10, 2012

# Introduction and Overview

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- Upon the conclusion of this session, from perspective of a former adjuster, a former broker and a risk manager, you will be able to:
  - Avoid common potholes
  - Describe specific issues that may give rise to coverage gaps
  - Ask brokers and underwriters to amend policies
  - Communicate to stakeholders (e.g. management, operations, legal, lenders, others) the potential coverage gaps

# Property Insurance Policy Potholes

From an Oil & Gas Risk Management Perspective



# Risk Management Perspective

- Read the binders prior to the Policy being issued
- Read and understand your own Policy
- Add an “Additional Insured” component to your Declarations
- Include your “Coles Notes version” of the policy wording in your renewal submission
- Understand and clarify coverage “between” policies for eg. Well Control & Pollution
- Request “Priority of Payments” Clause
- Integrity of your data is tantamount to no Co-Insurance Clause being enforced
- Consider Replacement Cost Coverage (*No Margin Clause*)



Read  
Your  
Policy

# Risk Management Perspective

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- Deductibles to be determined as per your appetite for risk combined with the inherent cost if any?
- Provide Due Diligence information
- Negotiate better terms and coverage
- Claims Handling – Include several adjuster options (at least 2) during policy negotiations

**Manage your Risk**  
**Full Transparency**  
**Integrity of Data**  
**Differentiate**

# Risk Management Perspective

- Ensure all policies reviewed by Legal
- Negotiate terms for discovery, waiting and reporting periods
- Evaluate your SLT exposure
- Clarify currency of claims \$ in different countries
- Decision on Gross Earning or Profit and Loss Policy Wording
- Attempt to get wording changes to the policy and not via endorsement
- Know your sub-limits
- Understand “Scaled to Interest” coverage and implications
- ALL policies to be received within 30 days of inception





# Most Common Areas for Potholes

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- Exclusions & Definitions
- Flood
- Valuation
- Coinsurance, margin clauses
- Duplications/gaps with multiple policies
- Policy territories and schedules
- Application of percent and time value deductibles
- Service Interruption
- Time element extensions
- Extended Period of Indemnity
- Ordinary payroll
- Errors in proofreading

# Policy Exclusions - Issues

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- Conflicts between different forms
- Seek “give backs” e.g.
  - Land improvements, landscaping, dikes, dams
  - Water as a raw material
  - Ensuing loss (faulty workmanship, errors in processing, wear & tear)
  - Application to “all risk” and not just fire perils
- Not always found in the Exclusions section of the policy



# Policy Definitions - Issues

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- Need to ensure consistency across all parts of the policy when changing wordings or definitions, for example:
  - Customer and Supplier
  - Named Insured
  - Covered Property
  - Reasonable & Practicable
  - Certain perils

# Flood - Property Policy Issues

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- Typical types of Flood exclusions and limitations
  - Absolute
  - “Critical” [but undefined] zones
  - A, X,V
  - Storm surge? Aggregate limits?
  - “As defined by FEMA or its equivalent”
- Flood deductibles
- Flood sublimits

# Flood - Remember this

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- Understand policy limitations and definitions as respects flood coverage, limits and deductibles
- Lenders may have many requirements about flood coverage
- Flood definitions vary - storm surge, sea surge, tsunami, floods caused by Named Windstorm
- *Flood restrictions should be communicated to stakeholders*

# Coinsurance (C/I) - What is it?

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- Insurers encourage policyholders to insure to value by penalizing those who don't when a partial loss occurs
- It can apply separately to property damage and business interruption
- Avoid coinsurance on any and all policies if possible

# C/I - Where is it and to what does it apply?

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- Where is it found:
  - Declarations page?
  - Location description?
  - Coverage schedule?
  - Separate endorsement?
  - Built into coverage forms?
- To what does it apply:
  - Buildings?
  - Contents?
  - Business Interruption?
  - All of the above? Different percentages?

# C/I - How to avoid a Potential Penalty

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- Report accurate values
- Obtain an Agreed Amount Clause
  - Agreed amount (if conditions are met - waives C/I for a *stated term*):
    - Applies separately to each section of policy
    - Must be extended by endorsement
    - If policy has a blanket limit, the limit must equal the agreed value
- If C/I cannot be deleted - *COMMUNICATE to stakeholders*

# C/I and International Placements

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- Issues:
  - International underwriters often impose coinsurance
  - Inflation, devaluation, exchange rates can rapidly and adversely affect policyholders' compliance with insurance to value requirements
- Solution:
  - Communicate the issue to stakeholders
  - Regularly update values/limits
  - Obtain coinsurance deficiency wordings where possible



# C/I - Why does it matter?

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- If stakeholders do not understand C/I and there is a penalty at the time of the loss - there will be problems
- Insurers and brokers do not always highlight the C/I requirements
- Have you read and do you understand your own personal policies?

# Margin Clauses

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- Provides a percentage cushion above values reported and location limits - e.g. 125% of reported values
- Where are margin clauses found?
  - Declarations
  - Location Description
  - Coverage Schedule
  - Separate endorsement
  - Built into coverage forms
  - Could apply separately to PD and BI
- If there is a margin clause - *COMMUNICATE it to stakeholders*

# Deductibles

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- Per loss - types
  - \$
  - Average daily value (ADV)
  - Time (waiting period)
  - % of value
- Annual aggregate
  - Application
  - Maintenance
  - Issues

# Waiting Period Deductible - Issues

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- To what do they apply?
  - PD
  - BI
  - EE
  - Each separately?
- How are they calculated?
  - Is 24 hours 1 day or 3 eight hour days?
  - Does \$ amount apply in addition to waiting period?

# % of Value Deductible - Issues

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- % of WHAT values?
  - Values at the time of loss at the location?
  - Reported values?
  - % of PD, BI, both?
  - Units
    - Building, Contents, BI
  - Minimums? Maximums?
  - Per location?
- Compute with the client and the underwriter

# Annual Aggregate Deductibles

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- If using:
  - Identify the perils to which applied
  - Is there a maintenance deductible?
  - What erodes the deductible?
    - Only losses in excess of maintenance?
    - All?
    - Do expenses contribute to the erosion?
  - Multi-year?

# Separate Property and Boiler & Machinery Policies

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- If separate policies exist, each should have the SAME Joint Loss Wording
- Joint Loss Wording is designed to put onus on insurers to pay 50% of estimated loss if there is a dispute about the cause of loss, until dispute can be resolved
- Look out for wording that gives insurers leeway not to pay if there is a potential coverage dispute



# Valuation

- Inventory
  - Generally valued at selling price for goods manufactured by the insured
  - ACV or RCV for other finished goods
  - Understand the operations and exposures. If your organization uses third parties to manufacture products a loss could be underinsured with this valuation
  - Amend the wording to cover all inventory at selling price if that is the exposure
  - If inventory is not valued at selling price, make sure the exclusion in the Business Interruption section of the policy as respects inventory is deleted

# Valuation

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- Buildings
  - Replacement cost if actually replaced otherwise actual cash value (ACV)
  - Add this wording to prevent unintended ACV valuation:  
“However, limitations imposed by federal, state, municipal or other governmental building codes shall not result in actual cash valuation”
  - Historic landmark status - if properties have landmark status - RCV wording may not be adequate to replace to maintain landmark status.

# Transit

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- Business Interruption is often excluded as respects property in transit
- This may be acceptable as respects loss of inventory while in transit and if inventory is valued at selling price
- This is a potential gap as respects contents such as machinery & equipment
- If M&E is damaged while in transit, it could cause a disruption or delay in operations and result in Business Interruption
- Possible duplications or gaps exist with other policies
  - Marine
  - Stock through-put
- Delete the exclusion or *COMMUNICATE* to the stakeholders

# Control of Damaged Merchandise

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- What is it?
- Wording can be limited only to goods “manufactured” by the insured.
- This is a potential gap if you sell products made by third parties
- Coverage should also apply to raw materials and work in process
- Insured should always be judge as to whether or not goods are fit for sale or consumption
- Eliminate the limiting wording or *COMMUNICATE* to the stakeholders

# Business Income/Time Element - Challenges

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- Determining correct values
- Non-profits and start-ups
- Treatment of value of Finished Goods on Gross Earnings vs Loss of Profits forms
- Service Interruption
- Contingent BI
- Interruption by Civil/Military Authority
- Ingress/Egress
- Extended period of indemnity
- Ordinary payroll
- Extra Expense

# Extended Period of Indemnity Issues

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- What is it?
- Found on Gross Earnings forms
- *UP TO* the # of days or months
- Often only applies only to Business Interruption
- It should be extended to other Time Element coverages such as Extra Expense, Rents, Royalties
- If the business is regulated by FDA or other regulatory body consider special wording to allow time for recertification by the regulator
- *Communicate* the time period

# Contingent Time Element

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- What is it?
- Suppliers and Customers
- Sometimes limited to “direct” customers or suppliers
- Sometimes limited to “scheduled” customers or suppliers
- Try to include all suppliers and customers. If not available, *DOCUMENT* the limitations to the policyholder



# Loss Adjustment Expenses

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- What is it?
  - it provides coverage for the expenses that are incurred by policyholders for the preparation and submission of an insurance claim
- Insurers will include coverage with sublimit
- Sublimits can be negotiated - discuss sublimits
- Not subject to Adjusters' approval
- About adjusters - with layered and quota shared programs, obtain insurers' agreement on a single adjuster and name in the policies

# Scheduled Locations

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- Flood/EQ often excluded for unscheduled locations or for Contingent TE
- If coverage is subject to schedule of locations or reported locations
  - Regularly update the schedule
  - Include coverage and adequate sublimits for unscheduled and newly acquired locations
  - *COMMUNICATE* the limitation to the stakeholders

# Debris Removal

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- Wording may state that coverage is for removal of “covered property”
- Most policies exclude trees, property of others
- Want coverage for cost to remove trees and/or property of others
- Amend coverage to eliminate the restriction for “covered property.”

# Obligations of the Insured

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- Several sections of policies may state that the “Insured” has obligations to fulfill under the policy
- In some sections this should be amended to refer to “The Insured’s Risk Management Department” - e.g. reporting of losses or duties after a loss

# Service Interruption

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- Type of utility power
- Transmission & distribution lines
- Distance requirement
- Direct coverage/Contractual relationship
- Deductibles/Waiting period
- Sublimit

# Service Interruption

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- Make sure coverage includes property damage and time element
- Make sure coverage is included for all utility services including steam, water, air and telecommunications - phone and internet
- Can often be excluded as a result of flood or earthquake in high hazard zones
- Is there exposure to satellite disruption?

# Ordinary Payroll

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- What is it?
- Is Ordinary payroll defined in the policy?
- What is the time period?
- When is it appropriate to cover ordinary payroll?
  - When contractually required
  - Other?
- Match reported values with coverage
- Triggers



# Global Property Program Design Issues

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- Program typically involves more than one policy
- Controlled Master Programs - describes structure
- Global refers to geography
- Policy territory should match exposure
- Coverage may be provided on a primary, excess and/or DIC/DIL basis
- Coverage can be on an admitted or non-admitted basis
  - Admitted = legally issued in accordance with local laws and issued by an insurer licensed in that country
  - Non-admitted = issued by insurer not licensed in that country

# Global Property Program Design Issues - Local Admitted Insurance

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- Stakeholders need to be aware:
  - Policies may written in local/foreign language
  - Restrictive or unique coverages and unfamiliar terms and conditions may exist
  - No uniformity around the world
  - Insurer solvency governed by unfamiliar standards
  - Potential claim adjustment complications

# Global Property Program Design Issues - Reinsurance

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- If there is a panel of insurers, one insurer is generally asked to issue local policies
- Fronting insurer will likely have reinsurance documentation requirements
- Fronting insurer will likely have capacity limitations for local policy limits
- Fronting insurer will likely have restrictions on reinsurers - who and how much?
- Don't wait until last minute to understand and work out these issues out -*Discuss at renewal strategy and include requirements with submissions*

# Issues With Separate Domestic and International Programs

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- If policy territory is US only, a gap or pothole could exist if:
  - There are operations in other countries and there are interdependencies within production or distribution
  - There are customers and/or suppliers outside the US and CBI coverage is sought when that supplier or customer has a loss
  - *IDENTIFY the policy territories and compare to location schedules*

# The Importance of Policy Checking

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- Read the policy(ies), compare to binders, specifications, proposals and expiring policy(ies).
- Make sure all endorsements and forms that are listed are attached and in order
- Give special attention to
  - Time sensitive reporting requirements
  - Non-concurrencies with multiple policies

# Contact Information

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