9 – Fundamentals of Inland Marine Claims

**1 – Transportation Loss Exposures**

**Objective**: Explain how the loss exposure for property in transit is affected by these: Parties involved in the transportation; Ownership of the property in transit; Carrier responsibility for the property in transit.

**Transportation Loss Exposures**

Most inland marine policies include some coverage for property in transit. Some inland marine policies cover nothing but property in transit. Thus, being able to analyze transportation loss exposures is an essential skill for anyone working with inland marine insurance.

Almost all organizations have transportation loss exposures. In this context, the term “transportation exposures” is limited to the possibility of loss to property being transported and not to the conveyances on which it is carried. Manufacturers typically receive raw materials from suppliers and ship finished goods to others. Merchandisers receive goods from manufacturers or distributors and, after selling the goods, may ship or transport them to customers.

Even a service organization that sells no goods, such as an accounting firm or an insurance agency, may be exposed to loss of property in transit during a move from an old location to a new location. These are the issues one should consider when analyzing transportation loss exposures:

* Parties involved in the transportation
* Ownership of the goods in transit
* Carrier responsibility for loss of or damage to the goods

**Parties Involved in the Transportation**

Loss exposures involving property in transit, commonly referred to as cargo, can be uncomplicated or highly complex, depending to a large degree on how many parties are involved in the transportation. A shipment from a manufacturer’s factory to its own retail outlet store on its own truck is an uncomplicated exposure. The manufacturer will bear any loss that occurs to the goods being shipped during the course of transit.

Transit exposures become more complicated as additional parties become involved. **Many shipments of goods are between a seller (often called the shipper) and the buyer (often called the consignee - the person receiving the property).** In addition, many shipments of goods are transported not by the buyer or seller of the goods but by a third party called a carrier (a business in the business of transporting property for others).

Complicating things even further, a single shipment of goods may be transported by two or more carriers using two or more modes of transportation.

**Modes of transportation that can be used to transport property include trucks, aircraft, railcars, river barges, oceangoing cargo vessels, and even oil and natural gas pipelines**.

An auto parts wholesaler in the US might purchase a container load of auto parts from an overseas manufacturer. The transportation of the container might involve these trip segments:

* A carrier transports the container by truck to a seaport in the seller’s country
* The container is left in the custody of an ocean carrier, which loads the container aboard one of its vessels and transports the container across the pacific to Seattle
* In Seattle, a stevedoring company unloads the container from the vessel and places it aboard a railcar operated by an interstate railroad. Who transports it more than 1,000 miles inland
* From the terminal rail, a local trucking firm transports the container by truck to the buyers warehouse.

If the goods are lost in transit between the seller’s factory and the seaport who suffers the loss? The seller? The Buyer? The Carrier? Would the answer differ if the goods were lost while aboard the vessel? Or aboard the train or truck in the US? Answering these types of questions is often required when arranging coverage or handling claims for property lost or damaged while in transit.

**Ownership of the Goods in Transit**

When goods are shipped between a seller and a buyer, either party may be exposed to loss while the goods are in transit**. Generally, the party that own the goods at the time they are damaged bears the loss. If a shipment is damaged in transit after title (ownership) has passed to the buyer, the buyer will suffer the loss**. **The question of who owns the goods during the course of transit is answered by the terms of sale, which are usually stated in the purchase order or contract of sale.** An understanding of common terms of sale in international commerce helps identify who owns the goods.

If the shipment of auto parts had been sold under FOB Vessel terms, title would have passed to the buyer as soon as the goods were loaded aboard the overseas vessel. This, if the goods had been damaged before the reached the vessel, the seller would have borne the direct loss. If the goods had been damaged at any point in transit after they were loaded onto the vessel, the buyer would have borne the direct loss.

* **Ex Point of Origin** – the buyer takes delivery of the goods at the point of origin – “Ex Warehouse”
* **FOB (Free on Board) Vessel – as soon as goods are placed aboard the vessel – “FOB Vessel, port \_ “**
* **FAS (Free Along Side**) – as soon as goods are placed along side the vessel at the port – “FAS Vessel, Port\_”
* **CIF (Cost, Insurance, Freight)** – seller quotes price that includes cost of insurance and all transportation charges incurred to the named destination. The buyer assumes responsibility for loss or damage as soon as the goods are placed into the custody of the ocean carrier or delivered on board the vessel.

In domestic shipments – that is **shipments between two points in the US** – the selling terms of FOB Point of Origin and FOB Destination are often used.

* **FOB Pont of Origin** terms, the title (and the risk of loss) passes from seller to buyer when the goods are accepted by the carrier for transit.
* **FOB Destination**, the title passes when the goods are delivered to the buyers premises.

A store that receives all of its shipments of merchandise on FOB Destination terms is not directly at risk for those shipments. In contrast, a manufacturer that ships its finished goods under FOB Destination terms is exposed to direct loss of all such shipments until they reach their destinations. In any event, **ownership exposures can be identified only after the terms of sale are known**.

**Carrier Responsibility for Loss of or Damage to the Goods**

When a carrier transports good, the carrier may be held responsible for any damage or loss that occurs to the goods, thus providing a source of recovery for the owner. **Carrier responsibility for loss does not eliminate the owner’s loss exposure; it merely provides a possible source of recovery** for the owner or the owner’s insurer. If the carrier is insolvent and unable to pay a cargo claim for which it is liable, the loss still falls on the owner.

The extent of a carrier’s responsibility for loss depends in part on whether the carrier is a common carrier or a contract carrier. A common carrier offers its transportation services to the general public **–** Airlines, railroads, trucking companies. In contrast, a contract carrier carries the goods of certain customers only – (carriers that furnish transportation services to shippers with whom they have contracts), often to meet special needs that common carriers cannot meet. The distinction is sometimes unclear. However, their **liability for cargo loss can differ substantially. Carrier’s cargo liabilities also differ among the various modes of transportation, such as land transit and water and air transit**.

**Common Carriers of Goods by Land – Higher degree of responsibility**

A common carrier ordinarily has a higher degree of responsibility for customer’s property than a contract carrier. **Common carriers, regardless of whether they have acted negligently, are usually liable to the shipper for any cargo losses except those that occur in a narrowly defined circumstances. These are the exceptions to common carrier liability:**

* **Acts of God – an act of God is an occurrence of nature, such as a storm, earthquake, flood**
* **Acts of a public enemy – nation or government at war in the nation the carrier is domiciled**
* **Exercise of public authority – Confiscation of cargo**
* **Shipper’s fault or neglect – shippers negligent packing or property unfit for transporting**
* **Inherent vice – A destructive condition within the property (eggs, lettuce would spoil)**

Outside of these exceptions, a common carrier cannot escape liability for cargo loss. However**,** a common carrier can limit the amount of its cargo liability. Such limitations are usually expressed in the **bill of lading**, which is the contract of carriage between the carrier and the shipper. In a so-called **released bill of lading**, **the carrier charges a lower freight rate (a “released rate”) if, in return, the shipper agrees to accept a limitation on how much the shipper can recover from the carrier if the carrier becomes liable for cargo loss. The limitation is expressed as a dollar amount per pound, package, or other shipping unit.**

**Contract Carriers of Goods by Land**

**A contract carrier’s liability depends on the contract terms agreed to by the carrier and the shipper**. To evaluate the exposure property, one must examine the specific contract of carriage. Typically, a contract carrier’s liability for cargo loss is not as strict as a common carrier’s. A common approach is for the contract carrier to be liable for cargo loss that results from the carrier’s negligence.

If, for example, property being transported by a contract carrier is stolen, despite the carrier’s use of prudent anti-theft measures, the carrier will probably not be held liable for the loss. In contrast, a common carrier can be held liable for theft losses even though it did not act negligently.

**Carriers of Goods by Water**

Carriers of goods shipped by water (either inland waterways or the sea) can also be classified as common carriers or contract carriers.

**A common carrier’s liability for goods shipped in foreign trade to or from the US by sea is specified under the US Carriage of Goods by Sea Act (COGSA).** **Domestic shipments over either inland waterways or the coastwise sea lanes by common carrier are subject to another US law, the Harter Act, unless the carrier and shipper can agree to be subject to COGSA.** COGSA is far less strict than the rules that apply to common carriers of goods in surface transit. It contains a much longer list of exceptions that relive the carrier of liability. In addition to the exceptions applicable to truckers, COGSA excuses the carrier from liability for loss caused by any “act, neglect, or default” of the master or crew in navigation or management of the vessel; perils of the seas and several other occurrences.

COGSA also provides that the carrier will not be held liable for cargo loss arising from unseaworthiness of the vessel unless the loss is caused by “want of due diligence on the part of the carrier” to make the vessel seaworthy. The Harter Act imposes a similar, but slightly more stringent, stand on the carrier. Both laws relieve the carrier of liability in many instances. COGSA provides a package limitation to $500 for loss to a single package or customary freight unit (such as a metric ton of grain). The Harter Act does not provide a package limitation.

Contract carriage by water is called chartering. Chartering is typically used by shippers of bulk commodities such as grain or oil. The shipper obtains a **charter** on the entire vessel (or sometimes part of the cargo space on the vessel) for either a specified voyage or a specified period of time. The vessel is operated by the shipowner, although the shipper (charterer) may have responsibility for loading and unloading. The shipowner’s liability for damage to the charterer’s property is determined by the contract of carriage, which is called the charter party. In many cases, the shipowner and charterer agree to abide by the rules of COGSA.

**Carriers of Goods by Air**

The liability of air carriers engaged in international services is governed by the rules of international Warsaw Convention. Under these rules, an air carrier is not liable for loss to property (for example, baggage, or cargo) if it can prove that it took all of the necessary steps to avoid the loss. The bills of lading used for international flights limit the shipper’s recovery for cargo loss to $9.07 per pound of cargo when no value is declared to the carrier. If the shipper declares a higher amount, the carrier will charge a higher air freight rate and will be liable up to the declared amount

Domestic air carriers have considerable latitude in choosing the liability rules under which they operate. They may be subject to negligence standard or to rules like those that apply to common carriers on land. They may also set their liability to a certain amount per pound unless the shipper declares a high value and pays a higher freight rate.

**2 – Handling Transit Insurance Claims**

**Objective**: Describe the key considerations for handling transit Insurance Claims

Transit insurance provides both specialized coverages and unique challenges that claim reps need to be familiar with in order to promptly and effectively deal with transit claims.

**Transit insurance is designed to cover property, typically on an open perils basis, while it’s being transported by carriers or on the insured’s own trucks**. But not all types of transportation or property are covered.

In addition, transit claims can present unique challenges in coverage verification, fact checking, documentation, inspection, salvage, and subrogation.

**Overview of Transit Insurance.**

**Annual transit insurance is designed for an organization that frequently ship or receive property in transit. An annual transit policy covers all shipment made by or received by the insured throughout the policy period, ordinarily one year**. **Trip transit insurance, designed for occasional shippers, covers cargo on a specific trip.** This conversation focuses on annual transit insurance and claims.

The primary purpose of annual transit insurance is to cover property that’s transported by carriers. However, not all types of transportation are covered automatically. When arranging transit insurance, the insured should make sure that all possible modes of transportation that the insured might (such as trucks, aircraft, railcars, and watercraft) are covered and clearly indicated on the Dec as being covered.

Any annual transit policy excludes certain types of property. Contraband for example. Other types of property are commercially insurable, but they are especially attractive to thieves and therefore expensive to insure. Examples are precious metals, furs, jewelry, money and securities. These items are typically excluded. If the insured is willing to pay an additional premium to cover such items, the insurer will usually delete or modify the exclusions to provide coverage.

An annual transit policy typically contains any of several exclusions of property in particular situations. For example, some exclusions are intended to prevent annual transit insurance (an inland marine coverage) from covering ocean marine cargo exposures. Therefore, a policy’s coverage of overseas shipments made by the insured may cease after the property is placed on the overseas vessel or after ocean marine insurance attaches to the shipment (whichever occurs first). Similarly, important shipments are usually excluded as long as ocean marine insurance applies to the shipment. In many cases ocean marine insurance applies on a warehouse-to-warehouse basis, automatically covering shipments until they reach their final destinations by truck, railcar, or other modes of transportation.

**Most annual transit policies cover on an open perils basis**. The approach is similar to that of the commercial property Causes of Loss – Special Form. However, an annual transit policy does not contain as many exclusions as the Special Form and therefore overs a broader scope. For example, flood and earthquake.

Some annual transit policies provide coverage only within the continental US and Canada, including airborne shipments between these places. The continental US does not include Hawaii Puerto Rico, or any overseas possessions. This language prevents the insurer from having to cover air or water shipments to or from overseas locations, which insurers generally prefer to cover under ocean cargo policies. Land shipments to Mexico or other nations south of the US are not within the typical coverage territory either, but some insurers will modify the policy territory for an additional premium.

**Property covered under an annual transit policy is usually valued at the amount of invoice (including shipping charges) when property is being transported between buyer and seller.** When no invoice applies, the property may be valued at actual cash value.

**Challenges in Handling Transit Insurance Claims**

Transit insurance claims handling presents challenges that aren’t found in other types of claims.

When considering coverage, **claim reps need to check for any of the several unique coverages that can be added by endorsement to a transit insurance policy** such as:

* Contingent coverage
* Coverage for spoilage of perishable goods from breakdown of refrigeration
* Value reporting – need to be sure it is up to date

A claim rep typically begins investigating a transit claim by verifying the facts. Time is always of the essence in any type of cargo or transportation loss. **A primary reason most insureds purchase transit insurance is that it helps settle losses faster by allowing insureds to make claim with their own insurance companies instead of dealing with motor carriers or freight brokers**. As with most losses, the claim rep must quickly verify the facts of the loss and ownership of the damaged or destroyed items.

Obtaining and verifying key shipping documents is an essential part of adjusting transit losses. **The bill of lading is the primary document used to evaluate the liability of the carrier and confirm the origin, destination, and other terms of transportation. Other documents needed to settle a claim may include the shipping invoice, purchase documents, shipping instructions, records from a trucker’s refrigeration system, inspection record, and master contract with either a freight broker or trucking firm. If the loss involves an accident or theft, the claim rep should also obtain public records of the local police or fire department**.

It's important to promptly inspect damaged goods and make sure that proper efforts are taken to minimize damage or maximize salvage potential. Many insurance companies have 24 hour emergency hotlines so that policyholders can contact them right at the time of a loss.

**Salvage** is also an important part of handling transit losses. Depending on the commodity and the degree of damage, an insurer may be able to recover half of its loss through salvage receipts alone. But it’s vital to promptly inspect and sell the items that still have value -especially in the case of perishables. Selecting the proper salvage firm is equally important. Example, if the damaged property is rolls of paper, use a salvor in the printing industry.

**Subrogation** is often possible in a transit loss. However, insured shippers often accept a bill of lading that limits the carrier’s liability. In this case, the only recovery available for the shipper’s insurer may be a fixed rate per pound as stipulated in the bill of lading, which may represent only a small fraction of the total loss. In the case of a collision or overturn, the claim rep should consider all sources of recovery. Although the liability carrier may be limited to only a small fraction of the damage, full recovery may be available from another at-fault party.

**3 – Handling Motor Truck Cargo Liability Insurance Claims**

**Objective**: Describe the key considerations for handling motor truck cargo liability

So they can provide quick and accurate service to insured, claim reps nee to know the various factors that can affect how they should handle motor truck cargo (MTC) liability insurance.

Many motor carriers purchase a motor truck cargo (MTC) liability policy to protect themselves financially should they be held legally liable for loss of or damage to cargo they transport. However, the types of property covered can vary from policy to policy, and some policies limit coverage to losses caused by specified perils. As a result, claim reps need to know the specifics of each policy they deal with.

Some insurers assign MTC liability claims to their more experienced property claim reps who are accustomed to handling other types of commercial marine claims that involve transportation loss exposures. When dealing with MTC liability claims, reps need to know how to determine coverage and liability, inspect damaged property, and deal with salvage and subrogation issues.

**Overview of Motor Truck Cargo Liability Insurance**

A motor carrier, commonly referred to as a trucker or trucking company, that transports its customers’ cargo may be held legally liable for loss of or damage to that cargo while in its care, custody, or control. Most carriers can insure this liability loss exposure by purchasing an MTC Liability policy.

**This policy applies only to cargo damage for which the motor carrier is legally liable**. It’s not direct property insurance that benefits the cargo owner. For example, **a cargo loss may have resulted from a natural occurrence such as a hurricane or an earthquake without any negligence on the part of the motor carrier. The motor carrier wouldn’t be legally liable for the cargo loss under those circumstances, and therefore its MTC liability policy wouldn’t cover it**.

In addition to limiting coverage to losses for which the insured is legally liable, some MTC liability policies also limit coverage to losses caused by specified perils. Other MTC liability policies cover any loss for which the insured is liable as long as the loss is not subject to any of the exclusions stated in the form.

**The description of covered property in an MTC liability policy usually encompasses most property that the insured accepts for transportation. However, certain types of valuable property likely to be targeted by thieves are commonly excluded, such as precious metal, jewelry, and fine arts**. Some policies also exclude liquor and cigarettes. A motor carrier that transports such commodities can have the exclusion deleted in return for an additional premium.

**Handling MTC Liability Insurance Claims**

MTC liability coverage has characteristics of both first-party (property) coverage and third-party (liability) coverage. It’s important for claim reps to recognize that MTC liability coverage protects the insured against legal liability as a motor carrier for loss to goods in its possession for transportation. Thus, **claim reps must separate coverage issues and liability issues and examine each thoroughly. The damaged property and the cause of loss may both be covered, but unless the insured is legally liable to pay for the cargo damage, the MTC liability coverage does not apply to the claim. Conversely, the insured can be legally liable for a cargo loss that is not covered under the policy**.

**Determining Coverage**

**Generally, the handling of a MTC claim begins with a review and analysis of the coverage**. In addition to the normal considerations, MTC liability insurance presents several unique areas of focus for the claim rep. The coverage can be written on either a scheduled-vehicle or blanket/gross receipts basis. If the coverage is provided on a scheduled vehicle basis, the claim rep must verify the vehicle involved in the accident is listed on the policy’s schedule. **The identity of the named insurance can also be and issue.** *Because of the variety of legal ownership arrangements, trip-lease agreements, and use of owner-operators, the claim rep must verify that the entity facing legal liability as a motor carrier is, in fact, an insured under the policy*. This is normally done by **reviewing the Carrier section of the bill of lading or master transportation contract in conjunction with the MTC liability policy**.

An MTC liability policy may contain a number of additional coverages, such as debris removal, earned freight charges, and reloading expenses. In addition, an insured may have purchased coverage for one or more terminal locations. Other supplemental coverages, such as refrigeration breakdown, can also be added by endorsement. The claim rep should ensure that he or she is thoroughly familiar with these coverages before contacting an insured, so that the insured can be offered the full benefit of the coverages purchased.

**A common coverage question that arises is whether the cargo was in the “due course of transit” at the time of the loss**. A claim rep should investigate **whether the carrier deviated from the customary route** and made stops or experienced delays that weren’t part of the course of transit. Occasionally, and insured will leave a trailer (without the truck) at a customer’s location for loading or unloading. This practice, called trailer sporting, can greatly increase the exposure of the cargo to theft, and it may also constitute a deviation from the due course of transit.

**Determining Liability**

After reviewing and confirming coverage, the claim rep must conduct a thorough investigation to determine whether the insured is legally liable for the loss.

**The key to an effective cargo liability investigation is obtaining documentation**. The claim rep must secure the bill of lading as well as any applicable invoices or master transportation contracts. In many cases, a released value bill of lading may apply (released value bill of lading - a bill of lading in which the carrier charges a lower freight rated (called “released” rate) in return for the shipper’s allowing the carrier to limit its liability for cargo losses.

**Equally important is obtaining a detailed statement by the driver to ascertain the specific facts of the loss and to identify liability defenses or other parties who may share responsibility for the loss**. Fore example, a statement by a driver involved in a loss caused by a tornado may confirm whether the “act of God” defense was triggered. The claim rep may also need to obtain a number of public records -such as police, fire, and governmental inspection reports as part of the investigation.

**Inspecting Damaged Property**

The damaged property should be inspected as soon as possible following a loss to ascertain the amount of damage, aid in mitigation of the damage, and arrange for the preservation of salvation. When inspecting damage, the claim reps should try to determine the cause of the loss. Loss caused by negligent packaging by the shipper, for example, may present a liability defense.

**One problem that frequently arises in connection with ascertaining the amount of damages for which the carrier is legally liable is determining damages for consequential loss, as opposed to direct loss**. For example, the entity that receives the goods may claim loss profits (a consequential loss) if there was a delay that was caused by the damage or destruction of cargo. Consequential loss can create coverage issues as well as legal issues that need to be addressed.

**Salvage and Subrogation**

MTC liability claims present significant possibilities for recovery through both salvage and subrogation. Salvage is a frequent component of MTC liability claims. But addressing salvage can be challenging for the claim rep, especially when perishable commodities are involved. A professional salvor can usually help ensure that salvage is properly protected and marketed.

The insurer may also be able to discover sources of subrogation in cargo losses. For example, a fire that occurs during transit that may be caused by a defective wiring harness in the truck. This could possibly result in a products liability claim against the manufacturer or a repair facility. A claim reps timely and thorough investigation of the loss and prompt recognition and pursuit of subrogation possibilities will maximize the chances for subrogation.

**4 – Handling Contractors equipment Insurance Claims**

**Objective**: Describe the key considerations for handling contractors equipment insurance claims

Because contractors equipment is normally the larges class of commercial inland marine insurance, claim reps who may be assigned to handle commercial inland marine claims should understand the key consideration in investigating and settling contractors equipment claims so they can handle insureds’ losses promptly and professionally.

**A contractors equipment floater – covers mobile equipment or tools located anywhere in the coverage territory** - can be purchased to insure various types of equipment and tools. The types of equipment and perils covered vary by policy and by insured.

Contractors equipment insurance claims can require a unique approach to verifying coverage, investigating claims, determining the proper amount of loss or damage, and recovering payments through subrogation and salvage.

**Overview of Contractors Equipment Insurance**

The equipment used by contractors when constructing buildings, highways, dams, tunnels, bridges, and other structures ranges from small hand tools to large machines worth millions of dollars. The equipment may include cranes, earthmovers, tractors, stone crushers, bulldozers, mobile asphalt plant plants, portable offices, and scaffolding. A contractors equipment floater can be used to insured these types of equipment.

But the property that can be insured under a contractors equipment floater isn’t limited to tools and equipment used by contractors. For example, mobile equipment used in mining and lumbering operations, as well as road-repair equipment owned by municipalities, is commonly insured under contractors equipment floaters as well.

A contractors equipment floater normally contains a schedule that lists each piece of equipment and its corresponding limit of insurance. A policy may also provide a single limit of insurance on all unscheduled hand tools and miscellaneous equipment. But **because maintaining an up-to-date schedule of all items can be difficult for a large contractor that uses hundreds of pieces of equipment, a large contractor may obtain a blanket limit applying to all equipment it uses, whether the equipment is owned, rented, or borrowed**.

Coverage may be on an open perils or a specified perils basis. Common covered causes of loss under specified perils coverage include fire, lightning, explosion, windstorm, hail, vandalism, theft, earthquake, flood, collision, overturn, and collapse of bridges and culverts.

Policies can be designed for equipment used in specialized operations, and they may include some usual perils. For example, a policy covering under-ground mining equipment may cover, in addition to the perils just listed, roof fall, cave-in, and squeeze. Squeeze is the pressure of surrounding rock or coal that can break augers or drill bits being used to bore through the substances. Policies covering exploratory oil or natural-gas well-drilling rigs usually add the perils of blowout and cratering. **Blowout is the uncontrolled flow from inside the well of drilling fluid, oil, gas, or water. Catering is the formation of a basin-like opening around the rig by erosive action of air, oil, gas, or water**.

Contractors equipment floaters frequently include rental reimbursement coverage, which pays the cost of renting substitute equipment when covered property has been put out of service by a covered caused of loss. Rental reimbursement coverage is comparable to the extra expense coverage provided in business income policies.

**Handling Contractors Equipment Insurance Claims**

Claim reps who handle contractors equipment claims must consider several unique factors when verifying coverage, investigating the claim, determining the proper amount of loss or damage, and recovering payments through subrogation.

**Verifying Coverage**

When handling a contractors equipment claim, the claim reps usually **begins** by thoroughly reviewing the coverage. Contractors equipment policies may consist of manuscript forms, endorsements, or both. As with all claims, the claim rep must completely understand the policy’s specific coverage before beginning the claims handling process. **The coverage aspects that reps must take into consideration include whether property is scheduled or unscheduled; the scope of any unique coverages and exclusions contained in the policy; and the valuation, coinsurance, and loss payable provisions included in the policy**.

When a policy provides coverage on a schedule basis, the claim rep must confirm that the damaged equipment is listed on the equipment schedule. **If it’s not listed, the rep should investigate to determine whether this was because of a processing or notification delay. In addition, contractors equipment policies will generally provide a grace period for adding newly acquired equipment and may be written on an automatic-acquisition basis. Therefore, the claim rep should consult with the underwriter and agent before declining coverage because a piece of equipment wasn’t on the schedule**.

Contractors equipment policies contain a number of exclusions and conditions. Some – such as the employee dishonesty exclusion – are common to most property policies. **Other provisions are unique to contractor equipment coverages, particularly the exclusion of losses caused by the failure to use outriggers or other safety equipmen**t. An outrigger on a unit of mobile equipment to a projecting member extended from the unit to provide extra stability and present the unit from overturning.

Claim reps often have to review valuation and coinsurance provisions with insureds as well. **Contractors equipment coverage can be written for actual cash value (ACV), replacement cost, or agreed value**. Replacement cost and ACV are the most common valuation methods. Many insureds believe that scheduled coverage applies on an agreed value basis and the limit of insurance listed will be the amount received after a total loss. But in reality, **the scheduled limit is simply the maximum amount the insurer will pay. The actual amount the insurer will pay depends on the policy’s valuation provisions**. The coinsurance provisions may also create questions about the adequacy of coverage limits for both scheduled policies and blanket policies.

Because equipment is often leased or financed, loss payable provisions are common in contractors equipment policies. The rights of the loss payee can vary depending on the type of form used. A policy’s loss payable provisions may give the loss payee rights similar to those of a mortgagee, or it may simply give the loss payee the right to be named on the settlement check or draft. The claim rep needs to know the insurer’s obligations under any loss payable provision because failure to protect a loss payee can have serious financial consequences for the insurer.

**Investigating the Claim**

Once coverage has been confirmed, the focus of the claims handling turns to investigation of the facts surrounding the loss. In all but the simplest cases, the investigation should begin by taking statements from the insured and the equipment operator. Each statement can be either written or recorded, and it will often create the foundation for other investigative activities.

**Commonly Covered Topics in a Statement of an Insured**

Generally, the topics covered in a recorded or written statement of an insured will be dictated by the nature of the loss. Some commonly covered topics include these:

1. General information about the insured’s business and types of jobs performed, owners and officers associated with the business, the length of time in business and the financial health of the insured’s business
2. General details of the loss, including the name of the operator, the suspected cause of loss, and the level of involvement in the loss of the insured or other persons
3. Description of the damaged equipment, including the type of equipment, serial number, age, and usage
4. Prior losses to the equipment, including the dates and types of loss
5. Purchase and service history of the equipment
6. Description of the particular job the equipment was being used on when the accident occurred
7. Financing details associated with the equipment, including the loan and lease terms, the amount owed by the insured, and whether the insured was current on payments
8. Details of any contracts involving the damaged equipment
9. Any additional facts that are relevant to the specific loss

If the exact cause of loss is in question – such as when a claim rep can’t determine what caused an incendiary fire or a mechanical breakdown – the rep may have to involve an expert early in the process to determine the cause, because the ability to accurately establish origin and cause usually diminishes quickly over time**.**

Accessing and confirming official reports, records, and contracts is another important part of the investigation. When applicable, a copy of the official fire or police report should be obtained. In special cases, claim reps will also want to interview the investigator or investigating police officer**. When the loss appears to be the result of a manufacturer’s or repair facility’s negligence, the claim rep may need to obtain and review a number of documents and contracts relevant to the claim, ranging from production and maintenance records, to financing documents, liens, project specification, and construction contracts**.

Finally, if fraud or arson is suspected, the rep will need to make additional inquiries as part of the investigation. Most insurers have special investigation units (SIUs) dedicated to investigating suspicious claims. An SIU investigation normally supplements the standard claim investigation with a detailed financial review, civil and criminal background investigations, and a detailed factual investigation. As a result of an SIU investigation, the insurer may involve more professionals, including accountants, engineers, and attorneys.

The results of a fraud investigation may include that the insurer needs to exercise its right to examine an insured under oath. In those instances, the insurer will rely on its legal counsel to take the sworn statement and provide advise on how to proceed.

**Determining the Amount of Loss or Damage**

Most contractors equipment insurance claims involve equipment that can be repaired. However, the unit may be considered a constructive total loss – when the cost to repair plus its remaining salvage equals or exceeds the property’s pre-loss value- in some cases. When that happens, the insurer pays the claim as if it’s an actual total loss and takes the damaged property to sell for salvage.

For example, that piece of equipment with a pre-loss value of $80,000 is significantly damaged by a covered cause of loss.

* The cost to repair the equipment is $45,000 plus,
* remaining salvage value is $39,000

The repair cost plus the remaining salvage (a total of $84,000) exceed the property’s per-loss value. As a result, **the insurer would pay the claim as it it’s an actual total loss $80,000 and take the damaged equipment for salvage. This would result in a lower net loss to the insurer, because the insurer can recoup $39,000 in salvage value, making the net loss to the insurer $41,000 (80,000 – 39,000).** Paying to repair the equipment, on the other hand would result in a higher net loss to the insurer.

To determine the value of loss or damage, the claim rep will often rely on several outside experts, including heavy-equipment appraisers (HEAs), engineers, and manufacturer’s representatives. An outside appraiser who is used to help determine damage should be trained as an HEA. To become an HEA, most adjusting and appraisal firms require a minimum level of experience and training in determining heavy-equipment loss values. Given the amounts typically at risk, it’s vital that the people who establish the amount of loss have the proper training.

**In the case of specialized equipment such as cranes or oil-field equipment, claim reps must often obtain the assistance of engineers, manufacturers, or dealers’ representatives to establish repair costs**. In addition, when the focus turns to confirming ACV or salvage value, a number of independent vendors can help. Additional resources include dealer and manufacturer websites, auction reports, and valuation guides.

**Subrogation and Salvage Recoveries**

Subrogation recovery against other contractors or subcontractors, manufacturers, repair facilities, or other negligent parties is often possible. Forums for pursuing subrogation claims include intercompany arbitration and state or federal courts. It is important to seek the advice of legal counsel early regarding subrogation for large losses.

Salvage also offers significant potential for recovery. Salvaged items in contractors equipment insurance claims have traditionally been disposed of using either a local HEA or a professional salvage company. **Increasingly, insurers are turning to alternative markets, such as online salvage pools, to maximize recovery. In either case, the claim reps goal should be to obtain the highest salvage bid possible while keeping the expenses associated with salvage, such as storage charges, at a minimum**.

**5 – Handling Builders Risk Insurance Claims**

Objective: Describe key considerations for handling builders risk insurance claims

Builders risk is one of the largest classes of commercial inland marine insurance. Builders risk policies respond to the property insurance needs of parties that have an insurable interest in construction projects, including owners, lenders, and contractors.

To accommodate the varying coverage needs of owners or builders with projects in progress, the provisions of the builders risk policies also vary. Claims reps assigned to related claims will therefore benefit from knowing about these policies and the key considerations involved in handling builders risk claims.

**Overview of Builders Risk Insurance**

Builders risk (BR) polices cover buildings or other structures while under construction along with temporary structures at the building site and building materials and supplies that have not yet become part of the building. Building materials are covered while on the insured location, in transit, and stored at other locations. Business income and extra expense coverage may be provided as part of the policy.

Most insurer that write BR policies offer an endorsement covering **soft costs (incidental expenses that may result from physical loss or from delay in completion)** resulting from a covered physical loss. Soft costs endorsements differ by insurer, but these are **examples:**

* **loss of rental income resulting from project delays**
* **interest on loans used to finance reconstruction of the building**
* **additional real estate or property taxes**
* **additional advertising and promotional expenses**
* **additional legal and accounting fees**
* **additional architect’s and engineers’ fees**
* **additional building inspection fees**
* **additional insurance premiums**

**Covered Causes of Loss and Exclusions**

Inland marine BR policies usually apply on an open perils basis, covering essentially the same causes of loss as standard commercial property policies, as well as flood, earthquake, theft of building materials that have not been installed, equipment breakdown, and collapse of a building or structure resulting from defective materials or construction methods.

BR policies normally exclude loss resulting from faulty design, specifications, materials, or work. Worded in many different ways, each of these exclusions should be analyzed on its own merits and in the context of other provisions in the same policy.

**The basic intent is to eliminate coverage for the cost of redoing any part of the project that is deficient because of faulty design, materials, or work – but to allow coverage for physical loss resulting from the faulty design, materials, or work.** For example, the entire building burns down because of defective electrical work, the cost of redoing the defective electrical work would be excluded, but fire damage to the rest of the building would be covered.

**Many BR policies also exclude hidden or latent defects and mechanical breakdown of any kind**. A BR policy with such exclusions does not cover many accidents that might occur during operational testing of various systems, such as a building’s steam boiler and piping. During operational testing, the components being tested may be subjected to stresses that are greater than those anticipated in normal use, increasing the possibility of loss. The operational testing exposure can be especially hazardous in occupancies such as chemical plants and electrical generating facilities. Some BR policies provide a coverage extension for loss resulting from operational testing.

**Other Provisions**

Property policies covering completed buildings and their components are usually written for a specific term, usually a year, at the end of which the insurer either offers to renew the policy or gives notice of nonrenewal. **BR polices are handled differently, because the purpose is to cover the insured property only until the building is completed, at which time the building can be insured under a regular commercial property policy. Accordingly, BR policies contain a provision stating when coverage under the policy will end.**

When Coverage Ceases

The insurance provided by the Coverage From will end when one of the following first occurs:

* This policy expires or is cancelled
* The property is accepted by the purchaser
* Your interest in the property ceases
* You abandon the construction with no intention to complete it
* Unless we specify otherwise in writing:
  + 90 days after construction is complete; or
  + 60 days after any building describe in the Declarations is:
    - Occupied in whole or in part
    - Put to its intended use

**BR Policies are sometimes written on reporting basis for contractors that have several projects in progress at once.** A BR Reporting form typically requires the insured to make monthly reports to the insurer showing the estimated completed value of all covered buildings or structures in the course of construction as of the last day of each month. The policy premium is based on the values reported by the insured. Reporting forms contain provisions that penalize the insured for underreporting values or failing to make reports when required.

**Challenges in Handling Builders Risk Insurance Claims**

Handling BR claims involves several special considerations in verifying coverage, investigating the claim, and determining the proper amount to pay under the policy.

**Verifying Coverage**

Aside from following the usual steps for verifying coverage, the claim rep confirms the identity of the insured and the relationship of the insured to the project.

**When a BR policy is written on a reporting basis, the claim rep determines whether the property values have been reported and, if so, whether the values reported are accurate. Substantial penalties may result from late or inaccurate reporting**.

Claim reps pay particular attention to the exclusions that address latent defects or faulty work and to the provisions that specifies when coverage ends. These policy provisions are often the cause of coverage disputes with the policyholder.

BR Policies often contain special endorsements, adding coverage that would otherwise be excluded. For example, of **an occupancy permit allows the insured to occupy the structure before construction is completed.** Without this endorsement, coverage under most BR policies would end as soon as the building is occupied. Knowledge of such provisions allows claim reps to avoid wrongfully declining coverage for a claim.

**Another key concern is whether the policy includes soft cost coverage**. Aa noted, soft cost coverage addresses financial losses such as loss of rental income, interest charges, and professional fees incurred as a consequence of covered physical damage at a construction site. The soft costs portion of a BR claim can be larger than the underlying physical damage loss and therefore requires the claim reps attention and careful management.

**Investigating the Claim**

Investigation of a BR loss usually begins with inspecting the construction site and damaged property. Taking a statement from the site superintendent or **clerk of the works** (an employee of a contractor who has sole responsibility for the daily supervision of each project component to ensure that materials, methodology, and quality of workmanship meet engineering specifications) can help the claim obtain and understand the facts of the loss, parties involved, and extend of the damage.

An important part of a claim investigation involves **gathering all contracts** relevant to the claims handling process. Relevant contracts include the construction contract between the general contractor and owner, as well as those between the general contractor and subcontractors.

Construction contracts often require one part to purchase insurance for the benefit of the other party. In these cases, the claim rep seeks to obtain certificates of insurance verifying that insurance was obtained as required.

In addition, the rep may determine whether the contracts contain agreements for waiving the insurer’s subrogation rights against an at-fault party. Such an agreement between the general contractor and a subcontractor, for example, may prevent the general contractor’s BR insurer from subrogating against a subcontractor whose careless use of a cutting torch resulted in a fire.

**Determining the Amount of Loss or Damage**

**Several documents may directly affect the amount of loss recoverable. In the case of physical loss, receipts, subcontracts, and records of interim payments made by the owner to the contractor can help the claim rep understand the amount of work actually completed at the site before the loss -and this information can help determine the amount of loss payable for a claim**.

When handling a claim that includes soft costs, the claim rep obtains critical-path charts, minutes of site meetings, and other documents that help to establish the status of the project at the time of loss and the impact of the loss on the project’s completion date. If the policy covers loss of rental income or business income, the claim rep will need an estimate of the revenue that the completed building would generate. To substantiate soft costs, an insured must usually produce a great deal of financial documentation, including specifics about the project’s financing package, contracts, and income projections presented to lenders when the project was proposed.

Determining the amount payable in a BR claim often requires the use of experts. When adjusting large losses, the insurer normally hires a construction consultant – frequently an engineer or general contractor skilled in commercial construction.

The consultant helps establish a reasonable amount of loss as well as the length of delay that will result from the loss. If the claim involves soft costs, the claim rep may also need to hire an accountant to analyze the financial documentation and revenue projections and to apply them to the delay estimate prepared by the construction consultant.

**In a large BR loss, a significant portion of the claim reps duties centers on managing the experts and integrating the various options and date into a fair valuation of the insured’s claim**.