



Current Articles 2002 – March

Data Exclusions

Losses that may become catastrophic have never been the subject of insurance. Loss of data, particularly if related to a virus or similar data manipulation, can result from worldwide infiltration which is uncontrollable despite anti-virus software. Many times a new virus can cause damage before the virus software is able to identify or isolate the problem. It is estimated that there are between 4 to 5 new viruses introduced somewhere in the world daily. The worldwide consequences and increasing frequency and severity of virus problems, hacking attacks and the resultant loss of data or its use has mandated that the reinsurers exclude coverage for “cyber risks” on reinsurance treaty renewals. Although some insurers may not exclude data coverage from personal lines, all insurers have introduced Data Exclusions on Commercial Property, Boiler and Machinery, Business Interruption, General Liability including Advertising Liability and with some insurers to Fidelity, Crime and to Intellectual Property wordings.

With insurers that have introduced the Data Exclusion to Personal Lines, the exclusion will apply to Property, Home Businesses and Personal Umbrella policies.

Late last year, the Insurance Bureau of Canada established a committee to draft the definition of a “Data problem” and design a Data Exclusion Endorsement. The definition of “Data Problem” used in these endorsements by most insurers is fairly standard and reads as follows: “Data Problem” means: Erasure, destruction, corruption, misappropriation, misinterpretation of “Data”; Error in creating, amending, entering, deleting or using “Data”; or Inability to receive, transmit or use “Data”

However, the actual exclusion used by various insurers are NOT standard. Although the IBC prepared a draft endorsement, many insurers opted for their own.

The endorsements for property policies exclude loss to data unless caused by named perils which are identified as: Fire, Explosion, Smoke, and Leakage from fire protective equipment. Different insurers may add additional perils, but not all insurers will add the SAME perils. These may include: lightning, impact by aircraft, spacecraft or land vehicle, windstorm or hail, earthquake, tsunami, flood, water damage caused by bursting of frozen pipes and tanks, provided that such perils are included in the policy. Still others add to the list of Named Perils: escape of water from any tank, apparatus or pipe (not just caused by freezing), backing up of sewers (if coverage provided by policy). The property exclusion will not apply to resultant damage.

Business Interruption policies generally follow the exclusionary language of the direct damage forms.

Liability exclusions vary but generally exclude: Coverage for BI & PD Liability and including Tenants Legal Liability for: - erasure, destruction, corruption, misappropriation; misinterpretation of Data erroneously creating amending, entering, deleting or using data including any loss of use

arising therefrom. This latter exclusion is directly aimed at losses caused by viruses whether expected or not. Coverage for Personal Injury Liability arising out of the distribution or display of "data" by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of "data" Similar exclusions will be applicable to Advertising Liability.

It is unfortunate that the industry has not adapted a set of standard exclusions such as authored by the IBC. Brokers must use caution in placing coverage with a market that may have a more restrictive exclusion for data. If a broker is placing personal coverage with a market that has data exclusions but represents a company that is not applying data exclusions to personal lines, it is absolutely essential that the client be made aware, in writing or by an enclosure, of the limitations for data.

In closing, I would like to refer to my article of February 2001.(Jim's Corner - Virus). In this article I referred to the decision that if a virus is deemed to be caused by Vandalism or Malicious Acts, then, subject to policy conditions damage caused by the virus would be covered. This Data Exclusion reverses the entire article since none of the Data Exclusions include Vandalism or Malicious Damage as a "Named Peril."

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