



## Current Articles 2005 – February

### "Same Site" Requirements

All Risk policies have numerous exclusions whether it be a personal or commercial policy. The fact that there are exclusions in the policies must be brought to the attention of the client. To merely state, either orally or in writing that the coverage is on an "All Risk" form would lead the client to believe that he is covered for everything. Any quotation or letter should always include that the coverage is on an "All Risk" basis subject to exclusions, limitations and conditions.

Since the exclusion clauses are numerous, is it a requirement to advise or read all the exclusions to a client? Technically, the answer is "yes" but this may not be practical. However, when an exclusion causes a denial of a claim and the broker may not have brought the clause to the client's attention, the court may rule that the broker did not exercise the standard of care required. When asked by the judge or the plaintiff's lawyer if the applicable clause was pointed out to the client and the answer is "no", how do you think the decision of an E & O will be rendered?

It is the broker's responsibility in his risk analysis to learn of the activities, interests, hobbies, etc. and at least make the client aware of exclusions that may be applicable accordingly. Similarly the risk analysis of a commercial client is no different and even greater, in learning of the business and related activities in order to advise of applicable exclusions.

If a remedy to an exclusion is offered to a client, perhaps by additional coverage or endorsement, and this is refused by the client, it is wise to document your file and advise the client in writing that your recommendation has been refused.

The Commercial Building, Equipment and Stock –Broad Form is a 4 page wording with almost approximately one and one half pages of exclusions. My focus in this article will be on certain exclusions in this form that have given rise to E & O claims in which I have been involved.

In several cases a denial has been because of the exclusion to electrical devices caused by artificially generated electrical currents. This is most important to risks that have extensive computer equipment, computer driven machinery and even modern telephone systems. A recommendation for other coverage such as Equipment Breakdown, EDP policy, is the answer.

The policy also excludes loss or damage by sewer backup. This can be corrected by a suitable endorsement. If you include sewer backup on all your personal property policies, what defense will you have as to why you don't do the same on commercial policies.

A denial of a claim frequently is due to the exclusion for dishonest acts on the part of an employee. Remember, anything that can be taken by an outsider can be more easily taken by an employee. A dishonest employee has time to commit the crime on his side and also may have the means to "cover his tracks". The need to recommend Fidelity coverage is always present as employee theft is rapidly increasing. Similarly, the policy will exclude money and an appropriate

Crime coverage should be recommended. When recommending Crime or Fidelity please remember to research an appropriate limit with your client and not just "throw in" a minimal amount of coverage. An inadequate limit without the proper review with the client can also create a potential E & O.

The above are but a few of the exclusions but other recommendations may include endorsements for by-laws, replacement cost, consequential losses, flood earthquake, etc. A complete review and risk analysis is a "must".

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