

Office of Risk Management

Patrick M. Durbin, CHMM, Assistant Director of Risk Control

Michelle N. Bost, CHMM, Environmental Program Coordinator

Eric Agnew, CPCU, ARM, Risk & Insurance Analyst

U. T. System Real Estate Office Conference

February 9, 2018



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

www.UTSYSTEM.EDU

What are the essential coverages in a UT Lease?

Business Personal Property

Workers Compensation / Employer's Liability

Commercial General Liability

Business Auto Liability

Excess/Umbrella



What is the Purpose of Insurance in a UT Lease?

- To both protect and put UT institutions in the best financial position after a loss occurs.
- Insurance provides a financial mechanism for a Tenant to defend and compensate UT for loss or damage.



Insurance Carrier Requirements

- Only Use A.M. Best A-:VIII rated Carriers
 - Must be financially stable
 - <http://www.ambest.com/home/default.aspx>
- Insurance Companies must be authorized to do insurance business in the State of Texas; or
- Be an eligible surplus lines insurer operating in accordance with the Texas Insurance Code.



Commercial Property Insurance

- Questions to consider for tenant property insurance:
- Is a portion of the building being leased or the entire building?
- Property is a “*First Party*” insurance which compensates the insured for property which has been damaged or destroyed.
- Real Estate professionals are typically concerned with buildings, leasehold improvements, fixtures and equipment located in buildings.



Commercial Property Insurance (cont)

- In most leases we require Business Personal Property (BPP) Insurance;
- This covers the portion of the leased property in the Tenant's care, custody and control, it does not cover the building "shell" or structure;
- The BPP includes: furniture and fixtures; improvements and betterments, machinery and equipment; stock, i.e. merchandise held in storage or for sale; all other personal property owned by the Tenant and used in its business. **The Tenant's "use interest" is covered.**



Contract language for Business Personal Property:

- Property insurance on a Causes of Loss-Special Form, at **100% replacement cost**, including improvements and betterments, Tenants furniture, fixtures and equipment, written on the most current edition of Insurance Services Office (ISO) form CP 10 30
- Ordinance or law coverage endorsement;
- Name Landlord as “additional insured as its interest may appear”;
- Contain only standard printed exclusions;
- Waiver of subrogation in favor of Landlord Parties;
- Require a copy of the policy or certificate of insurance.



Liability Coverages

- Liability Insurance is “third party” insurance that compensates a party injured by the actions or omissions of an insured and is based on tort principles.
- Third Party – Someone other than the insured and the insurer. In liability insurance, the insurer provides defense against claims or suits brought by third parties-hence the term “third-party insurance”;



Workers Compensation

- No-fault coverage that provides statutory benefits for employees;
- WC Policy provides an Exclusive Remedy;
- Bars an injured employee from making a tort claim.



Workers Compensation Contract Language

- Workers Compensation Insurance with statutory limits, and Employer's Liability Insurance **with limits of not less than \$1,000,000**:
 - Employers Liability – Each Accident \$1,000,000
 - Employers Liability – Each Employee \$1,000,000
 - Employers Liability – Policy Limit \$1,000,000
- Must include statutory coverage for states in which employees are engaging in work.



Workers Compensation Contract Language (cont)

- Policy should always provide a waiver of subrogation from the carrier (this is usually done on a blanket basis).
- This bars the insurance carrier from subrogating against the Landlord.
- **Subrogation** – The assignment to an insurer by terms of the policy, after its payment of a loss, its right to recover the amount of the loss from the one legally liable for it.



Workers Compensation Contract Language (cont)

- No “alternative” forms of coverage will be permitted;
- Alternative forms of workers compensation can be accepted;
- This creates more work for the Landlord;
- You must ask many questions when accepting alternatives;
- Is the self-insurance funded or unfunded;
- ORM typically recommends adding the **Self-Insurance exhibit**;
- Alternative forms do not provide the protections of a workers compensation insurance policy – “Exclusive Remedy.”



Commercial General Liability

- Commercial General Liability policy provides coverage for bodily injury, property damage, and personal injury claims, damaging a third party;
- In a lease this is typically in the form of premises liability;
- Slip/Trip and fall exposures.



Commercial General Liability Contract Language

- The required Commercial General Liability policy will be issued on a form that insures Tenant's liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of the Agreement.



Commercial General Liability with limits of not less than:

- \$1,000,000 per occurrence
- \$2,000,000 general aggregate
- \$2,000,000 product-completed operations aggregate limit
- \$1,000,000 personal and advertising injury limit
- **\$300,000 damage to premises rented to you limit**
- \$10,000 medical expense limit



Commercial General Liability

- Most current edition of the ISO form CG 00 01;
- **Designated Location(s)** General Aggregate Limit endorsement;
- Primary and non-contributory endorsement must be included;
- Additional Insured and **Waiver of Subrogation** should be included.



Business Auto Liability

- Occurrence Policy covering: All owned, non-owned or hired automobiles;
- With Limits of not less than \$1,000,000 single limit of liability per accident for bodily injury and property damage;
- Business Auto policies do not carry aggregate limits;
- Required coverage should be on an ISO CA 00 01 or equivalent form.
 - **TIP** - If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed onto the Commercial General Liability policy.



Umbrella Liability Insurance

- Umbrella/Excess coverage provides additional limits in case **primary limits are exhausted**;
- Umbrella forms need to provide “coverage as broad as” the primary coverages under (employer’s liability, commercial general liability and business auto liability);
- Excess policies need to provide coverage on a following form;
- Coverage must “drop down” for **exhausted aggregate limits under commercial general liability** insurance;
- Limits will provide a duty to defend;



Umbrella Liability Insurance (Cont)

- \$4,000,000 should be required;
- Should include additional insured status for Landlord.



What language do we use when we are the Tenant

- Standard language;
- **Landlord acknowledges** that Tenant is an agency of the State of Texas and has only such authority to obtain insurance for third parties as is granted to Tenant by state law or as may be reasonably implied by such law. **Tenant shall have no obligation under this Lease to obtain policies of insurance and shall have the right, in Tenant's sole discretion, to determine whether Tenant will maintain policies of insurance, operate programs of self-insurance, or utilize any other program of risk-protection in connection with Tenant's operations.**
- **Landlord acknowledges** that because Tenant is an agency of the State of Texas, **liability for the tortious conduct of the agents and employees of Tenant (other than the medical liability of medical staff physicians) or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101, as amended from time to time.**
- Workers compensation insurance coverage for employees of Tenant will be provided by Tenant as mandated by the **provisions of Texas Labor Code, Chapter 503, as amended from time to time.**



Evidence of Insurance

- Acord Form 28 Evidence of Property Insurance for property coverages;
- Acord Form 25 Certificates of Liability Insurance for liability coverages;
- Evidence should be delivered to Landlord prior to commencing operations at the Property and **at least 30 days prior** to the expiration of current policies;
- Acord forms must:
 - Show the Landlord Parties as Certificate holders (with Landlord's mailing address);
 - Show Tenant as the "Named Insured;"
 - Show the insurance companies providing each coverage and the policy number and policy date for each coverage;



Evidence of Insurance (cont)

- Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
- State the amounts of all deductibles and self-insured retentions;
- Show the primary and non-contributory status and aggregate limit per project where required;
- Be accompanied by copies of required additional insured and waiver of subrogation endorsements;
- **“Notice will be delivered in accordance with the policy provisions.”**



Commercial Certificates

ACORD EVIDENCE OF COMMERCIAL PROPERTY INSURANCE (DATE: 09/01/2015)

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER: CONTRACT NUMBER AND ADDRESS: LAC No.: COMPANY NAME AND ADDRESS: NAIC No.:

TAX ID: POLICY TYPE: # MULTIPLE COMPANIES COMPLETE SEPARATE FORM FOR EACH

LOAN: POLICY NUMBER: POLICY NUMBER

ADDITIONAL NAMED INSUREES: YES (REPLACES PRIOR VERSIONS) OR NO (CONTINUED AUTO) TERMINATED BY CHECKED

PROPERTY INFORMATION (ACORD 191 may be attached if more space is required) BUILDING OR BUSINESS PERSONAL PROPERTY

LOCATION (SUBJECT):

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED: ALL BROAD SPECIAL DEQ

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$

BUSINESS INCOME RENTAL VALUE: YES NO NA IF YES, LIMIT: Adjust Loss Sustained; # of months.

BLANKET COVERAGE: IF YES, (include value(s) reported on property identified above: \$

TERMSHOW COVERAGE: Attach Disclosure Notice (DC)

IS THERE A TERRORISM-SPECIFIC EXCLUSION? YES NO IS DOMESTIC TERRORISM EXCLUDED? YES NO

LIMITED FUNDS COVERAGE: IF YES, LIMIT: DEQ

FUNDS EXCLUSION (IF YES, specify organization's firm name):

REPLACEMENT COST:

AGREED VALUE COVERAGE: IF YES, % DEQ

EQUIPMENT BREAKDOWN (If Applicable): IF YES, LIMIT: DEQ

ORDNANCE OR LAW - Coverage for loss to undamaged portion of stock - Damage Code: IF YES, LIMIT: DEQ

EARTHMOVEMENT (If Applicable) - Int. Cost of Construction: IF YES, LIMIT: DEQ

FLOOD (If Applicable): IF YES, LIMIT: DEQ

WIND/HAIL INCL: YES NO - Subject to Different Provisions: IF YES, LIMIT: DEQ

NAMED-STORM INCL: YES NO - Subject to Different Provisions: IF YES, LIMIT: DEQ

PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGEE: IF YES, LIMIT: DEQ

HOLDER PRIOR TO LOSS

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

CONTRACT OF SALE: LENDER'S LOSS PAYABLE: LOSS PAYEE:

NAME AND ADDRESS: LENDER/SERVICING AGENT NAME AND ADDRESS: AUTHORIZED REPRESENTATIVE:

© 2003-2016 ACORD CORPORATION. All rights reserved.
ACORD 20 (2016/03) The ACORD name and logo are registered marks of ACORD

ACORD CERTIFICATE OF LIABILITY INSURANCE (DATE: 09/01/2015)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: NAME: FAX: ADDRESS: LAC No.: COMPANY: NAIC #:

INSURER(S) AFFORDED COVERAGE: NAIC #:

INSURED: INSURANCE A: INSURANCE B: INSURANCE C: INSURANCE D: INSURANCE E:

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NAIC	TYPE OF INSURANCE	INSURANCE	POLICY NUMBER	PERIOD OF POLICY	TERMINATION DATE	COVERAGE	LIMITS
	GENERAL LIABILITY					EACH OCCURRENCE	\$
	COMMERCIAL GENERAL LIABILITY					PER YEAR PER POLICY	\$
	CLAIMS MADE					PER YEAR PER POLICY	\$
	PERSONAL AND AUTO LIABILITY					PERSONAL AND AUTO LIABILITY	\$
	GENERAL AGGREGATE					GENERAL AGGREGATE	\$
	PRODUCT					PRODUCT - COMPOUND AND	\$
	ADDITIONAL LIABILITY					ADDITIONAL LIABILITY	\$
	PERSONAL AUTO					PERSONAL AUTO	\$
	PROPERTY DAMAGE					PROPERTY DAMAGE	\$
	UMWILLING LAG					EACH OCCURRENCE	\$
	EXCESS LAG					AGGREGATE	\$
	WARRANTY COVERAGE					WARRANTY COVERAGE	\$
	ADDITIONAL COVERAGE					ADDITIONAL COVERAGE	\$
	ADDITIONAL COVERAGE					ADDITIONAL COVERAGE	\$
	ADDITIONAL COVERAGE					ADDITIONAL COVERAGE	\$
	ADDITIONAL COVERAGE					ADDITIONAL COVERAGE	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER

NAME AND ADDRESS: LENDER/SERVICING AGENT NAME AND ADDRESS: AUTHORIZED REPRESENTATIVE:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

© 2003-2010 ACORD CORPORATION. All rights reserved.
ACORD 25 (2010/05) The ACORD name and logo are registered marks of ACORD



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

www.UTSYSTEM.edu

Other TIPS and Ideas about Insurance



- Ask ORM to review the insurance requirements prior to signing the lease;
- Start with higher limits and negotiate down;
- Additional insured and **Waiver of subrogation** should be carried on a blanket basis as required by written contract; There should not be any additional cost to include these endorsements;
- “Limits of not less than” is used to guarantee adequate insurance.



Smile, it's over!!!

Questions?



THE UNIVERSITY *of* TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

www.UTSYSTEM.EDU