

OVERVIEW OF INSURANCE COVERAGES AND CONCERNS FOR MARINE RISKS

Before we get started, let it be said that the field of commercial insurance, of which I will be speaking today, is not one of those topics that comes up at most social functions or which is known generally, except at times when one is paying their premium or submitting a claim. Neither of these times is usually such as to stir pleasant recollections of our industry. But insurance is a necessary component of commerce, and while it is admitted only grudgingly, sometimes could be thought of as the only thing standing between a business and financial disaster. So I'm hoping to give you a bit of an overview of it – enough to give you the “big picture” so you don't feel too lost when your agent comes in to discuss the renewal of your program. And I'll give you a quick listing of some of things you can do to help prevent losses and thereby help keep your premium down.

While Commercial Insurance may seem to be one big monolithic object, the coverages provided to you can be broken down into the categories on the screen, and we'll go over each of them individually. Each coverage is designed to deal with a particular “exposure” or source of potential loss.

A. The “Package” policy

This consists generally of coverages on your land property, General liability and most times your other main marine-related coverages such as docks, boats and dealer coverages, equipment, Marina Owners' Legal Liability and Protection and Indemnity – we'll discuss them individually.

1. **Property:** Here we are talking about the “land property” – buildings and contents, and business interruption and extra expense insurance. You are probably most familiar with these coverages – they are what you normally think of as your “fire insurance”. Building and contents coverages are pretty self-explanatory, but Business Interruption and Extra Expense are not as obvious. They pay for your loss of income due to discontinued operations after your bldg and contents are damaged or destroyed. When your operation is destroyed by fire or wind or other peril, your income stream may stop altogether...but your expenses don't. This can be vital to get you back on your feet and pay for on-going expenses. It is important to note that coverage on your buildings and contents usually does not cover the perils of flood or earthquake unless you specifically ask for them. Flood insurance can be obtained separately from a federal government program (if they have any money left at this

point) but earthquake is generally available especially where not directly in a fault zone.

2. **General liability:** This is the normal slip and fall and product liability coverage with which you are also probably familiar. We are talking about land-based (or on docks, actually) occurrences involving such operations as sales, repair, restaurant operations, storage and plain existence hazards. Other than the specific instance of damage to the property of others that you have in your possession (think of stored boats), this will usually be the coverage that comes into play when someone sues you.
3. **Inland Marine:** This is kind of a funny name “inland marine”, but basically it covers property items that are things other than buildings or contents: think tools and equipment – HiLos, straddle-lifts and other mobile equipment. It is broken out this way as the types of items insured often can move from place to place and the coverage covers the objects “anywhere”, not just at a single location.
4. **Hull coverage:** This is for physical damage to owned boats, (not boats for sale) whether work boats or boats for rent.
5. **Dealer coverage:** If you are a boat dealer, this is a better, more specific way to insure the “hull” coverage on your inventory. This would also usually include such items as trailers and other boating equipment usually sold with the boats. Basically it is hull coverage, but coverage is based on overall values rather than listing out inventory boats and adding and deleting them from the policy as they are bought and sold. Some carriers make this coverage auditable, some do not. Coverage is usually provided at designated locations, in transit, and at exhibition sites such as boat shows.
6. **Marina Owners Legal Liability (MOLL):** Now we’re getting into the coverages that make this field unique – coverages not needed on most other businesses. General liability has an exclusion for damage to the property of others (customers, for instance) in your care, custody or control – this “exposure” creates what is know legally as a bailment. This is along the lines of the more familiar situation of an auto garage business which has a customer’s car in for repair.
 1. Bailment (or entrustment of property of others) at a marine risk is normally the result of the following kinds of operations:
 - a. Slip rental
 - b. Dry storage
 - c. Repair
 - d. Launching and removal
 - e. Fueling operations
 - f. Transportation

2. The typical deductible (the amount the insured will have to contribute to a loss) is \$1000, but can be higher, especially if they have had a history of loss problems in this area, or if the insured is willing to take a bit more risk for the reduction in premium that comes with the higher deductible.

7. **Dock coverage:** This is, as the name implies, coverage for the property over the water, whether floating or on pilings. Dock coverage is where many losses occur, especially on floating docks with roofs – wind and fire are major perils that can cause major losses in a hurry. Deductibles on docks are accordingly larger to reflect that fact. Dock coverage can be augmented with dock business interruption as well, and consideration should be given to the significant and often overlooked exposure of debris removal...costs to clean up and remove material from the harbor after a claim.

A NOTE CONCERNING DOCK VALUATIONS:

We request dock valuations, especially where replacement cost coverage is requested. It is a good practice for all parties in the insurance transaction: it assures the company is rating on an appropriate value for the asset, it functions to provide the best valuation to put the insured back in pre-loss condition after a claim, and it avoids possible coinsurance penalties or inadequate insurance settlement in the event of a claim. For this reason it is recommended and requested that the insured obtain an estimate of the replacement cost (or actual cash value) at least every three years, as the costs of docks can change over time.

8. **Protection and Indemnity:** This is another coverage specific to boat and yacht clubs, boat and yacht dealers and marinas. It is coverage for liability arising from in-water operation of boats other watercraft. Typical types of loss situations that might involve this coverage would be an owned boat hitting another boat or object or hitting a swimmer, or simply a slip/fall within a boat. So you will need to have this coverage if you own or are responsible for:

- a. Owned workboats including barges
- b. Rental boats
- c. Sales test drives of inventory boats in dealer operations
- d. Moving customers' boats around within a marina operation

And that is usually about all the coverages you find on the typical "package" policy. Some companies will lump some others into the package, but we'll deal with them separately now.

- B. Automobile coverage:** This one is pretty self-explanatory and we all insure cars, so I won't dwell on it. Coverages usually cover three types of auto exposure:
- a. Owned autos.
 - b. Employee non-owned coverage – for your exposure created when an employee uses his or her own car for your business. If a serious accident should occur when in the course of their duties for their employer, the employer could also be brought into a lawsuit, especially if the limits of liability on the employee's policy become exhausted.
 - c. Hired car coverage: for the exposure created when you purchase the services of a vehicle or truckman. This exposure may be very small or incidental for most marinas, but more significant in the case of a dealership which is having boats delivered on their behalf.
 - d. Some yacht clubs occasionally get into valet parking, so they might have GKLL (Garagekeepers Legal Liability) for the vehicles parked. I referred to this coverage earlier as another type of bailment coverage.
- C. Workers Compensation:** State act, Federal and Admiralty coverages.
- a. State Act coverage for Work Comp provides very specific statutorily defined benefits for injury on the job for medical cost and wage loss. It covers pretty much all WC exposure on land-based operations. It is “no fault”, as the injured employee does not have to prove negligence on the part of the employer or anyone else. Within statutory limits and definitions, the employee is compensated for WORK-RELATED injuries. It specifically excludes coverage for any federal workers or workers compensation laws including Longshore and Harbor Workers Compensation Act and bodily injury to a master or member of the crew of any vessel.
 - b. United States Longshoremen and Harborworkers act (USL&H). Refer to the magazine article included in the binder for a discussion of whether or not this might be applicable in a particular situation. This coverage is provides benefits to dockside workers engaged in the service a vessel (including providing a safe port for the docking of the vessel. This coverage is similar to State Act WC, but the stakes are higher – premiums and benefits. Benefits are not strictly limited to things like “State average weekly wage” or specific benefits for specific types of injuries. Claims are more like tort lawsuits and many benefit distributions are decided by the courts.
 - c. Coverage under the act is determined by:
 1. Facility is located on the navigable waters of US
 2. Employee is a person engaged in Maritime Employment, including Longshoring, any Harbor Worker, including ship repairman, ship builder, and ship breaker but excludes:

Clerical, Camp, Club or Recreation Duties, Museum, Retail Outlet, and
Employed by a marina but not engaged in the maintenance, repair or expansion of marina and

- d. Individuals employed to build, repair or dismantle any recreational vessel under 65' in length
- e. Admiralty Act:
 - 1. This is for the masters and crews of vessels. Again, much like State Act Work Comp, but the stakes are higher. Provides coverage for a maritime worker who works on a vessel on the navigable waters, contributes to the functioning of the vessel and the accomplishment of its mission and has a connection with the vessel.
 - 2. Typically, employees who work in excess of 33% of their employment in service of a vessel are considered crew (if not Longshoremen)

D. **Umbrella or Bumbershoot:** This is “higher limits” over your liability exposures – General liability, Auto Liability, Employers Liability (part of your Work Comp coverages), Protection and Indemnity, Liquor liability if any, and in the case of a Bumbershoot policy, MOLL.

- a. Limits are provided in increments of \$1,000,000 over the underlying limits – for example if you had a per-occurrence limit of \$1,000,000 on General Liability or Auto Liability and a \$1,000,000 Umbrella policy, you have effectively \$2,000,000 in limits in the event of a claim.
- b. Nowadays, higher limits are more appropriate to consider every day.

E. There are other coverages that may be needed or at least desirable to consider, including:

- a. **Liquor liability.** This is for liability arising from alcoholic beverage sales. Exposure could arise from beverages sold “package”, as in a marina store, or from served drinks in a restaurant. If you do selling or serving of alcoholic beverages, unless you have it specifically covered on your policy, you could have “no coverage” if someone is injured in a subsequent alcohol-related accident.
- b. **Pollution:** This could be “sudden and accidental”, as a gasoline hose that gets away from someone, or from a leaking underground storage tank. This may be very specifically required by the Corps of Engineers contract of a marina. Claims of this nature can be surprisingly expensive to handle.
- c. **Employee Benefits coverage:** If you have obligations under the ERISA act or other portions of your employee benefits program, errors in its administration can occur. This provides insurance for such events.
- d. **Crime Coverage:** Your business can be robbed – whether by someone outside the business, or by an employee. It can and does happen every day of the week. I have seen large businesses be taken down and have to declare bankruptcy due to employee theft over time.

The other topic I wish to touch on today is that of Loss Control – preventing losses to your business.

It is hard to do a general listing of such items as each business is different – I underwrite, generally, Boat and Yacht Clubs, Boat and Yacht Dealers and Marinas. Each of those is different from the other and each one is capable of an amazing degree of complexity – everything from a mom and pop fishing boat dealer on dry land to a multi-million dollar, multi-faceted marina with a clubhouse with restaurant, rental craft, slip rental, dry storage operation, boat dealership operation, ship store, and more. The best idea is to start with consulting your insurance agent. You may also utilize the services of a Loss Control Consultant – either paid by fee to do so, or “free” from your insurance company.

I’d like to take a few minutes to acquaint you with the concepts of Risk Management and how you may apply them to your operations. All businesses generate risk of loss in the course of their operations. The question is: what to do with those risks? The answer is that the response to risk may be broken into four categories: Transfer, retain, avoid or prevent. Let’s talk about them individually.

- A. **Risk transfer.** This is the contractual shifting of responsibility for risk to others. One main form of this is simply getting an **insurance contract**. That is a contractual transfer of risk from the insured to the insurance company (for a premium). Another method of doing this is through wording in contracts with customers, vendors, etc. This is done via **exculpatory wording and hold harmless clauses**. This can be done in slip rental agreements, dry storage agreements, boat rental agreements, contracts for services, and leases to tenants. The other method of risk transfer, often stipulated in contractual agreements, is to have tenant, customer, contractor who comes on premises, etc., make you an **additional insured** on their insurance policy for the work they do for you or exposure they represent. And related to that is making sure that the people you do business with have insurance in place – **getting a certificate of insurance**. This puts you second in line, at least, in the event they cause a loss, and usually totally out of the loss picture. Without the other party having insurance in place, you might be the only one in the chain of commerce with an insurance policy...guess who’s going to get sued?
- B. **Risk Retention.** This simply means accepting the losses that happen and funding them. You can do it formally with budgeting and putting aside funds for the eventuality of the loss, or simply pay it out of cash flows. As a business gets larger and losses can be expected to occur within a certain range of size and frequency, funding levels can be more predicable and funding budgeted for. For small businesses, retention will have a lot to do with simply funding or anticipating the level of payments to be made under your deductible on your insurance coverages.
- C. **Avoidance.** This means simply stopping doing an activity or owning an asset that causes or could cause loss. That means giving up the value of the asset or activity, but sometimes that is the best trade-off. If the losses and perhaps the cost of insurance are more than the profit to be derived from the activity or asset, avoidance may be the best solution.
- D. **Prevention.** This is a large field and the list of things that could be done would fill pages.. Your best bet is to start with a Loss Control representative or expert,

whether from your insurance company or not, and put together a “program” for your individual enterprise. The aims are two-fold:

- a. To reduce the frequency of loss, for instance by keeping walking surfaces flat and level as much as possible, inspecting equipment for defects or wear that could cause a loss, or disallowing welding in boat storage areas. The aim is to prevent incidents from occurring which might lead to losses.
- b. To reduce severity of loss should one happen. An example of this might be to limit cash on hand in terms of crime exposure, or to install a sprinkler system in a building to contain fires. Also burn-out panels in dock roofs to let out heat and prevent the spread of fire.

Loss Control measures take time and money – keeping your sprinkler system or kitchen fire suppression systems inspected and up to date, providing adequate lighting, handrails, employee training, installing security systems, etc., are not free. But in the end, the benefits will in the end out-weigh the costs and should be considered part of the normal “cost of doing business.”

Losses are often much more expensive than they first appear. There are hidden costs that don’t show up on the insurance company loss runs. Things like tying up management time with an insurance claim or discussions with the aggrieved parties, lost opportunity costs due to handling the situation, image problems in the eyes of customers, and the community, and in the case of worker injuries, eventual increased insurance costs due to elevated future experience modifications factors – and of course the injury to and possible loss of good relationship with employees.

Benefits from an active loss control program are obviously to some extent the other side of the coin from not having one. Things like having lower workers compensation experience modifications, fewer out-of-pocket losses (deductibles and self-funded loss), better image to clientele, employee morale and retention, regulatory compliance and, best of all, desirability in the eyes of insurance underwriters.