

BEFORE WE PUT THE PAST BEHIND US

At the end of a decade many would like to forget, we suggest not putting the recent past behind us just yet. If history is a teacher, we all have an opportunity to earn advanced degrees in risk management and the importance of expecting the unexpected.

On December 31, 1999, the stock market was up, the nation was at peace, the federal budget was in surplus and the biggest threat to our civilization appeared to be the Y2K hysteria that fizzled soon after the stroke of midnight.

Ten years later we've learned an entirely new vocabulary to describe risks and developments that didn't exist or were hardly discussed as the new century began: TRIA, SARS, CMBS, ALT-A, H1N1, TARP, TALF, LEED, BRIC, ERM, BCM, subprime, cyber, systemic risk, carbon footprint, climate change and condo-hotels.¹ Certainly, we could all add more terms to this list. We've also been reminded that big companies can fail or need a government lifeline.

The insurance industry has learned the importance of contract certainty and transparency – though it is by no means clear how the industry will apply those lessons. More certain is that the underwriting process will continue to expand the use of scientific models to better predict the impact of catastrophes, a change inspired by the terrifying hurricanes of 2004 and 2005 – especially Katrina. At the same time we've seen how technological advances bring new risks: think of identity theft.

At the start of the last decade, the insurance marketplace was nearing the end of a prolonged soft market (13+ years) that would have come to an end even without the shock of 9/11. The destruction that day accelerated a market turn that was maintained by the hurricane losses a few years later. Booming investment markets brought a return of soft market conditions, which remain, despite the decline of the markets. A light year for losses in 2009 has left the industry with an estimated

¹ The acronyms in this list include TRIA (Terrorism Risk Insurance Act), SARS (severe acute respiratory syndrome), CMBS (commercial mortgage-backed securities), ALT-A (Alternative-A mortgages, one step above subprime in quality), TARP (Troubled Asset Relief Program), TALF (Term Asset-Backed Securities Loan Facility), LEED (Leadership in Energy and Environmental Design), BRIC (Brazil, Russia, India and China), ERM (enterprise risk management) and BCM (business continuity management).

² "Pulling Away from the Pack," *Barron's*, January 18, 2010.



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\$516 billion in surplus – up 20% from year-end 2005 levels.² This capital supply, along with weakened demand due to the recession, indicates that the soft market will continue for the foreseeable future. (See below for more on the real estate and hotel insurance marketplace.)

Overall, the insurance industry faced some major challenges – from huge catastrophic losses to a major investigation by New York's attorney general – and proved that we can perform and reform.

Some of the biggest trends of the past decade are in many ways just getting started. Take globalization. The credit crisis of 2007-2008 sparked the first economic downturn that seemed to impact most of the world almost immediately. Globalization is encouraging industrial development, which will impact the environment. Enemies of globalization – which include many of the world’s leading terrorist organizations – will continue to fight it. Many believe that the attacks of the past decade, in New York, Mumbai, Amman, Bali, London and Madrid, are unfortunately not the last such attacks the world will see.

Globalization, like all of the issues mentioned above, affects the real estate and hotel business profoundly. As the world gets smaller, more people travel, and more development and investment money crosses borders to spur activity.

Another major trend affecting our world and our industry is climate change. Risks of rising seas, along with earthquake risks along the Pacific Rim (and near the New Madrid fault), raise questions about the insurance industry’s ability to withstand mega-disasters that some say may be inevitable. These questions underscore serious challenges to the future of development, tourism and the leisure industry in coastal areas.³

Real estate and hotel people will need to work with their insurance advisers to find the answers.

THE DECADE AHEAD

Before we even get to the insurance questions, we must consider what may happen in the overall economy as the new decade progresses.

- What letter will the economic recover resemble?
 - U – Steady recovery (let’s hope for it)
 - L – The decline stops, but few jobs are created
 - W – The double-dip, which could mean more of the worst
 - V – A robust recovery does not appear to be in the works
- What will happen with health reform?
- Will changes to the financial services industry and to the rules of corporate governance materialize as many expect? What will they look like?
- Will we continue to spend on our infrastructure, particularly the electrical power grid and the transportation systems?
- When will real estate development resume?
- How soon will the employment picture improve and how much improvement will we see?

³ “A Chill in the Boardroom,” *The Economist*, December 12, 2009.

⁴ “Hotels’ Rev/Par Is Falling Faster,” *The Wall Street Journal*, December 8, 2009.

⁵ “In Pursuit of Loyalty,” *The New York Times*, December 1, 2009.

⁶ “Retail Vacancies on the Rise,” *The Wall Street Journal*, November 11, 2009.

⁷ “Landlords Offer Incentives to Stay Put,” *The Wall Street Journal*, November 2, 2009.

⁸ “Rents Signal Rise of D.C., Fall of N.Y.,” *The Wall Street Journal*, January 8, 2010.

⁹ “Real Estate Faces Tough Recovery Slog,” *The Wall Street Journal*, January 4, 2010.

¹⁰ “Recession Levies Hefty Punishment on CRE,” *The Watch List*, CoStar Group.

¹¹ “Another CMBS Bright Spot,” *The Wall Street Journal*, December 2, 2009.

¹² “Fannie, Freddie Woes Hurt Apartments,” *The Wall Street Journal*, November 18, 2009.

- When will banks once again make credit widely available, especially to small businesses?
- Will the value of the dollar rise or fall, and what will that mean for exports?
- Will inflation rear its ugly head, hiking the cost of labor and materials and, therefore, property replacement values?
- Will predictions of an above-average Atlantic Basin hurricane season be borne out, and if so, will the insurance industry stand up to the test?

HEADWINDS FOR REAL ESTATE AND HOTEL COMPANIES

The real estate sector always suffers when unemployment and weak growth weaken spending. The leisure industry feels the pain especially sharply, as discretionary and travel spending plummet. Several statistics reinforce this gloomy picture.

- Hotel rev-par is down 18.2 % year on year.⁴
- Hotel occupancy fell to 58% in October 2009.⁵
- Shopping center vacancies are expected to hit 12.9% in 2010, surpassing previous peaks, and rents are not expected to rise at malls until 2013.⁶
- Apartment vacancies hit 7.8% in Q3, a 23-year high.⁷
- Average effective office rents fell to \$22.44 per square foot last year, a decline of about 9% from the previous year.⁸
- Office vacancies have hit record highs in many cities.⁹
- The value of loans handled by special services, indicating some sort of trouble, rose to \$46.9 billion in September 2009 from \$8.2 billion in January 2009.¹⁰
- An estimated \$1.4 trillion in commercial mortgages will need refinancing by 2013 and many are unsure that the credit providers will be up to the task.¹¹
- Government-backed Fannie Mae and Freddie Mac accounted for 84% of all multifamily lending in 2008, up from 34% in 2006. Some are concerned that the source of this support may be cut back, which could end up pushing some multifamily owners into default.¹²

- Average industrial, retail and office national sales price per square foot fell between 2007 and 2009¹³:
 - Industrial rates fell from \$75 to \$60
 - Retail rates fell from \$184 to \$157
 - Office rates fell from \$271 to \$194

If, as a *New York Times* editorial recently put it, all roads in and out of the recession run through the housing sector, the data is daunting.¹⁴ One in three homeowners owes more on their mortgage than they have equity in their home. One in ten mortgage payers are one payment or more behind.¹⁵

THE GREEN SHOOTS

The numbers, fortunately, also hold out signs of hope.

- Manufacturing is creeping up after an 18-month slump.
- Job cuts continue but at a much lower level.
- Retail results turned positive in November 2009 for the first time since the Lehman collapse; the crucial holiday retail season produced modest growth (1.8% at same-store sales), but the best results since 2006.¹⁶
- Not everyone is broke. REITs and REOCs have raised billions and are ready and waiting to buy undervalued assets.
- Some believe that TALF could revive the commercial mortgage-backed securities market, which accounts for 21% of outstanding real estate debt.^{17,18}
- Cap rates, lately down as low as 2% by our estimation, may be coming back to normal (around 7%). Rates fell to historic lows in 2004 through 2007, as the real estate markets operated on the same mistaken assumption under which the home mortgage sector operated: that values and rents could only rise.
- De-leveraging is well underway for businesses and consumers, a painful

process many believe will be healthy for the economy in the long run.¹⁹

TRENDS

The economy isn't the only story out there.

- The green movement will continue, as sustainability and LEED certification will move closer to the mainstream. Insurance products are already allowing for the new risks that arise whenever an industry faces a change in business-as-usual.²⁰
- More development is occurring near mass transit, which, along with changing demographics, affects how we use real estate.
- An aging population will demand more long-term and end-of-life health care facilities.
- The outsourcing movement that has impacted so many information-age service industries is beginning to affect real estate: for example, colleges are beginning to hire special housing companies to handle their dormitory needs.

On the whole, our brief review of the decade behind and the murky path ahead has provided more questions than answers. The only certainty is that the coming year, and the coming decade, will test us all. We are committed to finding new solutions to the challenges ahead. We also maintain our faith in the resourcefulness of the people in the insurance, real estate and hotel industries, in the ability of our economy and society to adapt, in the people we work with and the people we serve, and in the system of government that has provided crucial support in such trying times.

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Globalization... affects the real estate and hotel business profoundly. As the world gets smaller, more people travel, and more development and investment money crosses borders to spur activity.

¹³ "Real Estate Faces Tough Recovery Slog," *The Wall Street Journal*, January 4, 2010.

¹⁴ "Housing Weighs on the Economy," *The New York Times*, November 28, 2009.

¹⁵ "As Delinquencies Soar, One in 10 Mortgages Is a Month or More Late," *The New York Times*, November 20, 2009.

¹⁶ "Stores Post Strong Gains in Key Holiday Season," *The New York Times*, January 8, 2010.

¹⁷ "CMBS Savior? Developers Diversified Deal Is Nearer," *The Wall Street Journal*, November 4, 2009.

¹⁸ "PwC: Institutions Keep Waiting for Distress," *Real Estate New York*, September/October 2009.

¹⁹ "Lone Star Cuts Fees to Seed Up New Funds," *The Wall Street Journal*, November 10, 2009.

²⁰ "Green Builders Awaiting the Green," *The Wall Street Journal*, December 16, 2009.

MARKET TRENDS UPDATE

All indications are that the soft market, while expected to moderate somewhat, is here to stay for the near term, if not longer. Major surveys from the Council of Insurance Agents and Brokers Report, Advisen and MarketScout support this viewpoint.

The basic reason is that the supply of insurance – the industry surplus now estimated at \$516 billion²¹ – is more than adequate to answer the demand which has been cut back by the global economic downturn. Put another way, good results for insurers are translating into good news for buyers:

- P&C consolidated net income through the first three quarters of 2009 improved to \$16.9 billion, up from \$4 billion through December 2008.²²
- Losses on underwriting, at \$19.8 billion through year end 2008, dropped to \$3.2 billion through Q3 2009.²³
- The combined ratio for the first three quarters of 2009 improved to 100.7, down from 105.2 at year end 2008.²⁴
- Insured catastrophe losses, through September 30, were estimated to be \$22 billion in 2009, down from \$50 billion in 2008. No single loss caused more than \$3.1 billion in insured losses in 2009. In all, 2009 was a relatively quiet year for cat losses.²⁵
- Reinsurance rates, which often are an indicator of primary insurance trends, are softening.²⁶

Some observers maintain that the market will harden in the coming year, and while we disagree, we recognize that a major surplus-depleting event could change the industry dynamics overnight.



Those who see a hard market also point to a recent report suggesting that one of AIG's core insurance lines needs "billions more in reserves." The report noted however that "when AIG is excluded from the industry data, all other companies appear to have more than enough reserves."²⁷

The buyer's market will persist in 2010 and insureds will continue to reduce their cost of risk – always a plus, but especially so in a time when the prime focus is on economic recovery.

ZONING RESTRICTION PROTECTOR

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Zoning ordinances change continuously. Structures built under one set of rules may fall out of compliance and become "non-conforming" properties. In the event that property damages reach a trigger threshold set by zoning ordinances (usually at least 50% of replacement cost or market value), the building must be rebuilt or repaired to conform to the updated standards – usually at additional expense that can be a burden to both the lender and the owner. This additional cost may or may not be insured.

POTENTIALLY UNINSURED LOSSES

FOR THE OWNER

Equity related to market is lost when insurance fails to cover additional rebuilding/replacement costs due to changes in zoning rules – or when the building or a portion of the building cannot be rebuilt at all under new rules.

²¹ "Pulling Away from the Pack," *Barron's*, January 18, 2010.

²² "P&C Industry Net Income Makes Dramatic Turnaround," *National Underwriter*, December 22, 2009.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ "Natural Catastrophe Losses Decrease in 2009: Munich Re," *Business Insurance*, December 29, 2009.

²⁶ "Orderly Softening," *Willis Re: 1st View*, December 30, 2009.

²⁷ "Report Cites Big Shortfall in Reserves at A.I.G.," *The New York Times*, November 30, 2009.

FOR THE LENDER

Cash flow may be reduced if the owner cannot keep up payments – more likely to be an issue if the lender requires the loan to be paid due to property damage or the inability to rebuild or repair the non-conforming building. The insurance proceeds may not be sufficient to pay the loan balance.

AN EXAMPLE

A 10-story, 200,000-square-foot office building in Houston that now exceeds density ordinances is damaged in a hurricane. The owner can only rebuild a 100,000-square-foot building on the site. The replacement cost of the existing building is \$60 million, while the current market value is \$110 million with debt of \$82.5 million. The zoning ordinance provides that if 50% or more of the replacement cost of the building is damaged then a conforming building must be built. The following chart illustrates the potential uninsured loss.

| FACTS | | LENDER PROTECTION | |
|---|-------------|------------------------|--------------|
| Gross square footage | 200,000 | Total debt | \$82,500,000 |
| Allowable square footage if threshold triggered | 100,000 | Ins recovery ½ RCV* | \$30,000,000 |
| Damage threshold based on replacement cost | 50% | Ins recovery ½ ACV | \$22,500,000 |
| | | Total ins payment | \$52,500,000 |
| Market value | 110,000,000 | Lender shortfall | 30,000,000 |
| Debt amount | 82,500,000 | | |
| Owner equity | 27,500,000 | OWNER PROTECTION | |
| Land value based on current zoning | 10,000,000 | Post-loss market value | 55,000,000 |
| Total market value less land | 100,000,000 | New loan | 41,250,000 |
| | | Net equity post loss | 13,750,000 |
| | | Owner equity loss | 13,750,000 |
| PROPERTY INSURANCE | | | |
| Replacement cost value (RCV) (\$300) | 60,000,000 | | |
| Physical depreciation factor (estimated) | 25% | | |
| Actual cash value (ACV) | 45,000,000 | | |

*Replacement cost bonus paid when damages are repaired under most policies forms.

INSURANCE FACTORS

1. REPLACEMENT COST VS. ACTUAL CASH VALUE -

Replacement cost coverage pays a claim based on the cost to rebuild with the same kind and quality, but only to the extent that the building is actually repaired or replaced. If the building or a portion of it is not replaced, the valuation reverts to actual cash value (ACV), which is replacement cost less physical depreciation.

2. REPLACEMENT LOCATION - Traditional Property insurance policies require the damaged building to be rebuilt on the same site, although policies and endorsements allowing for replacement elsewhere are not uncommon. If an owner can rebuild on another site, the replacement cost provision will apply. However, the alternate location may not generate the same cash

flow and the corresponding market value as the original site.

3. BUSINESS INCOME/LOSS OF RENTS -

Loss of rents coverage provides limited protection for a building that cannot be rebuilt. Business income policies respond when there is loss of rental income until the building is either rebuilt or could have been repaired or replaced.

4. BUILDING LAW & ORDINANCE COVERAGE -

Some policies will pay for the loss in value (brick and mortar cost) of the undamaged portion of the

building, which as a consequence of enforcement of a zoning requirement, must be demolished. This is often thought to provide diminution of value protection. However, if the property is not repaired or replaced, replacement cost coverage does not apply and the coverage pays based on ACV.

- Under this coverage extension, if a portion of the building must be rebuilt on another site, the replacement cost for that portion would be paid, minus the extra expenses incurred for building in a different location.
- In addition, an Increased Period of Restoration endorsement can be purchased to extend loss of income or loss of rents coverage for up to one additional year based on the impact of building ordinances.

A COMPLETE SOLUTION

- 1. SPECIAL FORM POLICY** - Start with a special form insurance policy that includes:
 - Replacement cost valuation
 - Building law and ordinance coverage including the Increased Period of Restoration form and includes a provision that permits reconstruction of that portion that cannot be rebuilt on the current site on another site
- 2. ZONING PROTECTOR INSURANCE** - This is an insurance policy that provides additional coverage in excess of the owner's special form Property policy and includes a Law and Ordinance endorsement to fill the gaps for potential losses outlined in the example above for both the lender and the owner. These can be purchased for a multiyear term with fully earned premiums, subject to the terms and conditions of the policy. For more information contact your insurance adviser.

BOILER & MACHINERY COVERAGE FOR RESIDENTIAL PROPERTIES

Electrical systems, HVAC equipment, heating and hot water boilers, elevators, computers, fire detection and security systems and other equipment servicing the building are vital to the operation of a residential property. This equipment is subject to mechanical breakdown, electrical arcing and power surges. Damage to equipment frequently leads to repair or replacement costs that are well beyond the building owner's capital budget. To provide essential services following a breakdown, equipment may need to be rented at significant expense. In addition, failure of equipment can lead to consequential damage to buildings and business interruption losses.

The following real-life loss examples demonstrate the need for Boiler & Machinery coverage, even if there is no boiler or central chiller on the premises.

An *apartment complex's aluminum electrical supply bus shorted out*, severely damaging electrical wires and cables. Angry residents had to be relocated.

| | |
|--------------------|-------------------|
| Property Damage: | \$ 118,681 |
| Relocation Cost: | \$ 72,152 |
| Total Loss: | \$ 190,833 |

An *air conditioning motor breaks down in a high-rise*, senior citizen apartment building. Ninety-plus degree temperatures necessitated setting up four rented "spot coolers." Overtime was required to get the motor back on line.

| | |
|--------------------|-------------------|
| Property Damage: | \$ 83,557 |
| Extra Expense: | \$ 16,794 |
| Total Loss: | \$ 100,351 |

A contractor completing repairs inside the building connected equipment directly into the main electrical service causing a short circuit. The distribution panel, switches and meters were blown for 28 apartment units.

| | |
|-------------------------|-------------------|
| Direct Property Damage: | \$ 131,739 |
| Loss of Rents: | \$ 55,809 |
| Total Loss: | \$ 187,548 |

Again, these are just examples of losses that typically would be covered under a Boiler & Machinery policy. Property owners should review the cost of this coverage with their insurance broker to determine if it is cost beneficial to their operations.

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GETTING YOUR RENTERS COVERED

You can't drive a car or buy a house without insurance. Soon, renters may have to have insurance before they sign a lease, and for landlords, it won't be a moment too soon.

According to a recent Apartments.com **survey**, 20% of renters state that they are required to have renters insurance policies in order to satisfy the terms of their leases. Other surveys show that over 30% of the major property management companies are requiring renters insurance, up from 3% in 2000. Some of the largest multifamily companies in the country require their tenants to carry insurance.

Almost two-thirds of the people living in the country's 35 million rental properties, however, do not carry insurance.²⁸ This translates into increased operating costs for landlords, because when units are damaged, the landlord is often the party responsible for funding property deductibles and legal fees while struggling to re-lease vacant units.

Legal support permitting landlords to require residents to carry insurance has existed for years, but now the practice is catching on. The trend is not necessarily a negative for renters. In this same Apartments.com survey, 36% of respondents said that they are more inclined to rent from landlords who require renters insurance. The appeal to owners is more obvious.

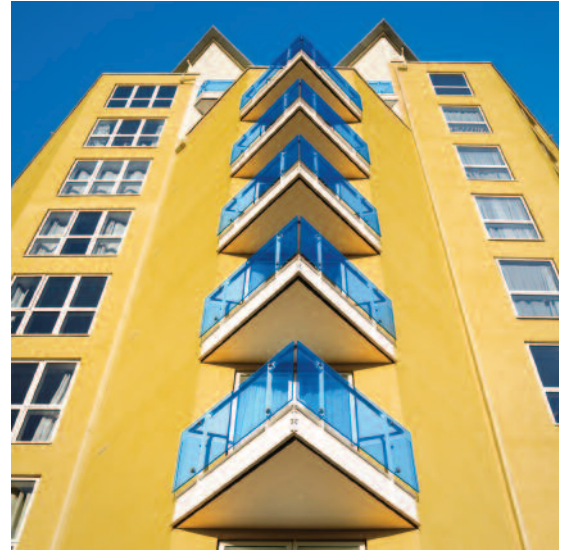
COST SAVINGS – Property owners minimize costs by maximizing subrogation opportunities, staving off frivolous lawsuits and increasing resident retention.

CLARIFICATION OF COVERAGE – Renters insurance works in conjunction with a lease to establish the party responsible for the loss. This clarity eliminates the need for goodwill payments and the potential for reputational damage.

A MARKETPLACE ANSWER

To assist our clients seeking to implement insurance programs for their renters, Willis recently allied with Effective Coverage, a specialist in renters insurance solutions. With the support of Travelers, Bankers and Great American, Effective Coverage has the capability to write policies in every state and manage insurance for communities with portfolios as small as 50 units or as large as 100,000 units.

While Effective Coverage has the flexibility to offer customized solutions at each community, most owners prefer to require between \$100,000 and \$300,000 worth of liability coverage. Through the quote-to-bind process, Effective Coverage also encourages tenants to purchase enough personal property insurance to protect their belongings. The result is an adequately insured tenant who is well positioned to maintain



financial stability, even after a significant loss. In addition to the various risk management benefits, owners receive an administrative fee for their marketing assistance when they partner with Effective Coverage.

Owners face inconsistent premiums in today's volatile Property and Casualty markets. Effective Coverage's insurance platform is part of a comprehensive risk management strategy that reduces losses and therefore promotes stability in pricing.

PROGRAM MANAGEMENT

One challenge facing property managers is dealing effectively with the logistics of requiring renters insurance. Effective Coverage offers a web-based risk management tool that allows property owners and managers to quickly access pertinent information regarding their coverage. Insurance can be quoted and bound through the system or by telephone.

To learn how this program can be implemented at your communities, contact your Willis Client Advocate® or Eric Narcisco, Mng. Director, Effective Coverage at 800 892 4308 Ext. 7, narcisco@effectivecoverage.com. Click **here** for additional information.

²⁸ Research from the Independent Insurance Agents & Brokers of America (IIABA).

HOTEL OPERATOR LIABILITY DISPUTES: CAN INSURANCE BE PART OF THE SOLUTION?

Owners and operators certainly do not need another thing to argue about, especially in the current economic environment.

New management deals are scarce, but renegotiated contracts, whether with the original owner, the lender or a new owner, are becoming more commonplace every day. Of course, the base management fee and incentive fee terms will be discussed at length. In addition to all of those other issues that we've become accustomed to seeing in term sheets, rights relating to temporary, total or partial shut-downs (ranging from weeks and seasons to indefinite or long-term closures) are being done or considered, and we expect management agreements of the future to contemplate such events.

When times get tough, disputes throughout society become more common. Unfortunately, the hospitality industry is not immune to this side effect of economic duress. Much could be said and written about the underlying causes and motives, but for purposes of this article, let's chalk it up to human nature and let it go at that.

When owners become more litigious, operators and their counsel look for ways to insulate and inoculate against successful claims. Provisions relating to negligence, indemnification and dispute resolution attempt to deal with these issues. Another vehicle is a special-purpose entity created by the operator to have, as its sole asset, the management agreement for this particular property. This should not, in and of itself, be viewed as a new or recent development. Many brand management companies have subsidiaries that operate hotels or resorts of a certain type or in a particular geography. There is nothing inherently invidious in that. It makes good common and business sense.

Owners, on the other hand, are legitimately concerned about having an entity with sufficient assets "on the hook" in case of a major claim that is not excluded by the terms of the hotel management

agreement. Their response is to demand an ultimate parent guarantee or a guarantee from the top tier management subsidiary. That is often a tough pill for the operator to swallow.

If a guarantee is not forthcoming, what could take its place? A letter of credit? Too expensive and requires frequent renewal. Neither side wants to absorb those costs. Requiring the management entity to always maintain no fewer than a specified number of management agreements at all times, failing which the owner has a termination right – that, too, is far less than ideal.

Minimum insurance requirements are specified in detail by the operator in management agreements, generally through an exhibit listing coverages, limits and certificate standards. What is rarely seen, however, is any discussion of operator errors and omission insurance. Could this coverage reduce or eliminate some areas of liability risk allocation that drives owners to seek guarantees or complain about standard negligence provisions of management agreements?

Let's examine what hotel operator Errors and Omissions coverage does and does not do.



Hotel operator E&O policies provide assurance to the owner that the owner has recourse against the policy and not just the assets of the special purpose entity established for a hotel property. These policies generally provide that the insurer will:

- Pay on behalf of the insured all sums that the insurance company shall become legally obligated to pay by reason of any act, error or omission rising out of services an insured negligently rendered or failed to render, subject to the limitations and exclusions of the policy
- Pay for the defense of any claim or suit that is covered by this insurance

When an owner is in the process of selecting a hotel management company, it is important to have the owner’s insurance and risk management consultant review all E&O policies the management company has in force. Most E&O policies cover all current and past

Hotel operator E&O policy limits generally range from \$2.5M to \$10M limits with retentions/deductibles from \$10,000 to \$500,000 per claim. Deductibles and retentions vary depending on the management company’s ability to retain or self-insure risks.

Underwriters offering these policies include:

- AIG/Chartis
- ACE
- Chubb
- Hartford
- London (Beazley)
- Zurich
- XL

| EXAMPLES OF ACTS COVERED BY POLICY | EXAMPLE OF ACTS EXCLUDED BY POLICY |
|--|---|
| <ul style="list-style-type: none"> ■ Mishandling of accounting and financial matters ■ Mismanagement of the asset/hotel ■ Exceeding authority under the contract ■ Failure to perform under the contract subject to policy terms and conditions ■ Failure to maintain adequate insurance limits or maintaining inappropriate insurance coverages ■ Mishandling of insurance renewal in which you procure insurance that results in uninsured losses or excessive premiums ■ Invasion of privacy ■ Theft of guest’s identity ■ Breach of network security operations | <ul style="list-style-type: none"> ■ Any fraudulent, criminal, dishonest, malicious act or omission ■ Warranty, guaranty or promise as to the future value of any investments or the failure of property/hotel to perform as expected or desired ■ Commingling, improper use, failure to properly segregate or safeguard funds ■ Any intentional or knowing violation of the laws ■ Discrimination on any basis ■ Price fixing, restraint of trade, monopolization and unfair trade practices ■ ERISA-type claims ■ Copyright, trademark, trade names, or intellectual property rights ■ Any bodily injury/property damage claim ■ Employee theft or dishonesty |

Hotel operator E&O coverage is not a silver bullet that eliminates all concerns about special-purpose entities or limited-asset entities being the operator of a hotel or resort. However, it can be a partial solution. As with most insurance, knowledgeable consultants are an essential part of the negotiating team, as issues from “does it matter whether the owner or operator employs the employees” to “what if the operator files bankruptcy” ripple through the negotiation of the management agreement, and the uses of insurance to find a negotiated middle ground are considered.

This relatively inexpensive insurance may be part of the solution to the operator/

assets that the operator has managed, and there is a risk that the policy limits may have been exhausted or reduced by prior claims. The owner may request a separate and dedicated policy for the specific property, which is also known as a “Project/Asset Specific E&O” policy. With a project/asset specific E&O policy, the owner is assured that the policy limits are dedicated to its property and not shared over other managed properties. Project/asset specific programs are typically a bit more expensive and premiums are based on contract/agreement scope and size, revenues and the operator’s claim experience.

parent guaranty demand an owner makes, but only if the provisions of the management agreement and certain legal issues are covered through management agreement language or insurance policy endorsements.

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INFLUENZA A (H1N1) UPDATE

While the threat is easing, H1N1 is still a dangerous contagion, and the possibility of another pandemic wave worse than the two that hit in 2009 is still very real. Another risk, and in many ways just as dangerous, is that of complacency. Pandemics are inevitable, and organizations of every kind should be prepared. Willis brought a number of our experts in this area together recently to create a comprehensive update titled, *Preparing Your Pandemic Response: The Time is Now*, available by clicking [here](#).

For the latest statistics on the current impact of H1N1, visit the [Pan American Health Organization's web site](#). For help on your business continuity planning, please contact your Willis Client Advocate® or Jeffrey Seibert, National Technical Director Casualty and Critical Incident, at 757 628 2304 or jeff.seibert@willis.com.

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