

DESIGNING YOUR INSURANCE PROGRAM  
**THE FULL PICTURE**



# AN INSURANCE HANDBOOK FOR ARTIST-ENDOWED FOUNDATIONS

Prepared for  
The Aspen Institute Artist-Endowed Foundations Initiative/AEFI

**DeWitt Stern**

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A RISK STRATEGIES COMPANY

## Designing Your Insurance Program – The Full Picture

Originally authored by Mary Pontillo as “Designing Your Insurance Program - Covering Risk from Every Angle” for American Association for Museums conference 2008

### DISCLAIMER

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## INTRODUCTION

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*The diverse assets and activities of artist-endowed foundations – from stewardship of collections to managing charitable programs and operating specialized facilities – create a range of complex, nuanced risk issues and insurance needs. Too often, these needs are addressed in a piecemeal manner that can neglect opportunities to improve coverage and lower costs.*

*As a leader in the artist-endowed foundation space, we developed this handbook as a resource to help you begin understanding your foundation's risk profile from a more comprehensive perspective. When reviewing the risks inherent in your organization, keep in mind the basic tenants of risk:*

*1. Avoid – Remove all chance of anything happening. For example, don't host any school programs, avoid lending your artwork, etc.. In reality, avoiding risk can be impossible/difficult when living the mission of the foundation.*

*2. Minimize – Employ risk management techniques. Put into place clear procedures and protocols for employees (HR Manual), the handling of artwork, artwork loans, emergency plans, physical building maintenance plan, contracts, access to foundation funds, etc.*

*3. Transfer – Purchase insurance coverage, which places the risk with the insurance company.*

*The tools found within this handbook offer information about various dimensions of your risk concerns and how they can be addressed through appropriate insurance solutions.*

### Artist-Endowed Foundations Insurance Checklist

Want to see your world from our perspective? Below is a listing of typical coverages. Check all the items below that you think could apply. We'll review it with you and bring the full coverage picture into focus.

- FINE ART POLICY** –  
Insures your collection
- COMMERCIAL PACKAGE POLICY** –  
Buildings, non-art property, General Liability
- FLOOD & EXCESS FLOOD** –  
A flood is an excess of water on normally dry land. Excess Flood provides coverage above your primary flood policy's limits.
- COMMERCIAL AUTO POLICY** –  
Foundation-owned autos/trucks
- WORKERS COMPENSATION** –  
Statutory coverage for job-related injury/illness
- DISABILITY** –  
Legally required for non-job-related injury/ illness
- UMBRELLA/EXCESS LIABILITY** –  
Coverage beyond Commercial Liability, Commercial Auto and Employers Liability Policy limits.
- DIRECTORS & OFFICERS** –  
Indemnity for alleged wrongful acts occurring in the capacity of a Director or Officer managing the Foundation.
- ERRORS & OMISSIONS** –  
(Professional Liability) - Protection for mistakes made when providing professional services such as authentication, selling of foundation assets, educational advice, etc.
- EMPLOYMENT PRACTICES LIABILITY** –  
For suits by employees (past, current, and applicants) alleging wrongful termination, discrimination, sexual harassment, etc.
- MEDIA LIABILITY** –  
Indemnity for content creation and dissemination.
- CYBER/PRIVACY LIABILITY** –  
Reimbursement for costs incurred to assess and respond to a loss or theft of information or a computer systems breach
- CRIME COVERAGE** –  
Protection against employee theft and fraud
- PENSION AND/OR ERISA BOND** –  
Protects against fraud or dishonest acts by a Pension plan administrator or manager.
- FIDUCIARY LIABILITY** –  
Covers fiduciaries' personal exposure to allegations of errors or omissions or breach of fiduciary duties resulting in losses to a benefit plan.
- EXECUTIVE PROTECTION** –  
Kidnap, ransom, extortion, accidental death and dismemberment
- INTERNATIONAL** –  
Protects in the event of a foreign lawsuit or injury. Coverage for U.S. employees, local nationals or third country national's work-related injury or illness occurring outside the U.S. and its territories.
- BENEFITS PROGRAM** –  
Life, Health, Major Medical, Long Term Care, Disability
- PERSONAL INSURANCE** –  
Transition Artist's Homeowners & Auto to the Foundation

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## INSURANCE TERMS

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### **BROKER**

Your broker is \_\_\_\_\_.

Your broker is your advocate, representing your interests with the insurance company. Their goal is to find you the best coverage at the best price. Brokers also give you entrée to insurance companies you cannot access directly. Some brokers have a Fine Art Practice; a team specifically focused on the Fine Art Insurance industry.

Your broker will assist with day-to-day issues such as Certificates of Insurance, coverage increases, loan agreement reviews and claims assistance, among other services.

### **INSURANCE COMPANY**

Your insurance company for your Foundation Policy is

\_\_\_\_\_. The insurance company provides the actual coverage for artwork and pays claims related to Fine Art losses.

Your Underwriter is the person at the insurance company who makes the decisions regarding the rating and terms provided on your policies.

### **CLAIMS**

In the event of a claim, you should do the following:

- For an art-related claim, move artwork out of harm's way and to a safe place
- Take photos of any damage to the artwork/contents and the situation in which you found damaged items
- Do not throw away any artwork, part of the artwork, packing materials, crates, etc. until formally instructed to do so by the claims adjuster
- Contact your broker or their in-house claims specialist via phone or e-mail
- Ensure that you keep all records related to the claim including any receipts, police reports, photographs, etc.

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## Designing Your Insurance Program – The Full Picture

- If an item is missing, file a police report with your local police department, contact your broker and the Art Loss Register and/or Art Recovery Group

Your broker and/or their in-house claims staff will walk you through each step of your claims process.

### **CLAIMS ADJUSTER**

Claims adjusters work for the insurance company to help resolve claims. Sometimes they are employed directly by the insurance company on a full-time basis (in-house), other times insurance companies outsource (independent adjusters). Adjusters generally come to examine the damaged artwork, site of stolen artwork, etc. They will ask questions regarding the circumstances of the loss and will be the conduit between you, your broker, and the insurance company. Any adjuster used for a Fine Art claim should have extensive specialization within the Fine Art insurance claims field. Because claims adjusters work on behalf of the insurance companies, you and your broker need to closely monitor the claims process.

### **POLICY**

The policy is a two party legal contract between the insurance company and you (the Insured). The policy document outlines all of the terms and conditions of your coverage as well as your rights as the policyholder. In the event of a claim, the policy language dictates what losses are covered and on what basis you would be paid. Not all Fine Art policies are the same; frequently the policies are “manuscripted” and tailor-made to fit the specific institution’s needs.

### **DECLARATIONS PAGE / COVERAGE INFORMATION PAGE**

Generally found in the very beginning of your policy, these pages outline the Insured’s name, mailing address, policy effective dates, premium, deductible, policy limits, etc.

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**ENDORSEMENTS**

Endorsements are formal changes to the policy. Some are added to the original policy as amendments to standard wording. Once the initial policy is issued, any changes to the policy must be made via Endorsement.

Endorsements are numbered and/or dated and you should attach them to your policy when you receive them. The wording in an Endorsement overrides standard policy language where applicable. Endorsements are needed for changes ranging from adding a Loss Payee, to changing the mailing address on a policy, to increasing your policy limits.

**BINDER**

A Binder is a document that proves coverage between the time the insurance company formally puts coverage in place and when you receive the policy paperwork from the insurance company.

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FINE ART POLICY

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**DEDUCTIBLE**

A Deductible is the amount for which your institution is responsible in the event of a claim. The Deductible on your Foundation Policy is:

- \$ \_\_\_\_\_ Owned Items
- \$ \_\_\_\_\_ Loaned Items
- or \$ \_\_\_\_\_ Combined
- \$ \_\_\_\_\_ Wind
- \$ \_\_\_\_\_ Earthquake

As an example, if your deductible for Owned Items is \$2,500, and there was a \$50,000 loss, the amount paid by your insurance company would be \$50,000 less the \$2,500 deductible, which equals a \$47,500 claims payment. Insurance companies use deductibles as a way for Insureds to take some ownership in the claims process and to avoid a large number of small claims.

Typically Foundation Policies carry a \$0 deductible for Incoming Loaned Items (if applicable) and the deductible of the institution’s choice for Owned Items. Often, Incoming Loan Agreements stipulate that a deductible cannot be present for items on loan to the Foundation.

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**AGGREGATE**

The total amount your Insurance Company will pay for a given coverage (Fine Art property) during one policy period, typically twelve months. You can find this limit on your Declarations/Coverage Information pages.

**ALL RISK**

All perils are covered except those specifically excluded on the policy (see Exclusions on page 14). Most specialty fine art insurance policies are “All Risk”. In comparison, a policy could be “Named Perils” – each cause of loss is listed on the policy. Examples of Perils are fire, flood, windstorm, theft, burglary, etc.

**WALL TO WALL/NAIL TO NAIL**

Under this policy, property is covered from the time it is removed from its original location until it returns back to that original location or to another point the lender/owner designates. This includes while the property is in the possession of freight forwarders, packers, auction houses, storage locations, customs clearing houses, or other bailees.

**BAILEE**

Someone who has artwork of others in their “care, custody, and control”. Examples of Bailees: conservators, framers, packers/shippers, auction houses, etc.

**FREQUENTLY USED ABBREVIATIONS**

- COI Certificate of Insurance
- AI Additional Insured
- LP Loss Payee
- A/P Additional Premium
- R/P Return Premium
- P/R Pro-rata factor (the actual premium you pay for each day of coverage – this is used when you need a short term increase)
- BOR Broker of Record Letter
- LPR Lost Policy Release Form

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## FINE ART INSURANCE INDUSTRY

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On the following page is a flow chart of a typical insurance transaction and how the various participants fit and work together to create the fine art insurance industry.

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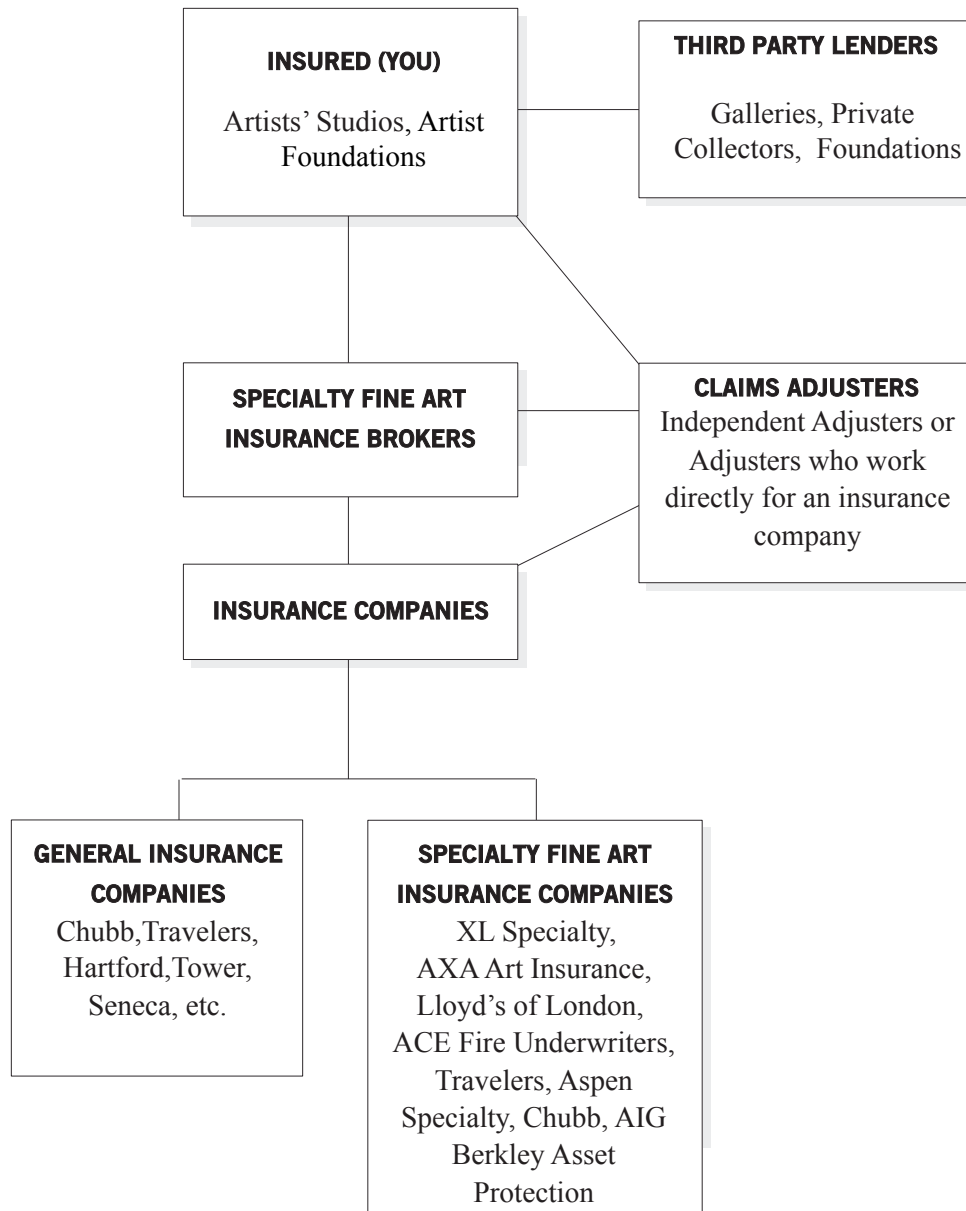
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Designing Your Insurance Program – The Full Picture



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COLLECTION AND TEMPORARY LOANS  
INSURANCE POLICY

The following information will guide you through various insurance inquiries related to the typical Foundation Policy.

This policy covers fine arts and collectible objects of every description including but not limited to paintings, drawings, prints, rare books and manuscripts, rugs, tapestries, antique furniture, photographs, numismatic objects, jewelry, sculpture, ceramics, video artwork, time based artwork and other bona fide works of art of rarity, historic value, or artistic merit. These objects can be owned by your institution, property offered as gifts, partially owned property, property of others, and property for which you have agreed to insure prior to loss.

\_\_\_\_\_ Broker  
\_\_\_\_\_ Insurance Company  
\_\_\_\_\_ Policy Number  
\_\_\_\_\_ Policy Period  
\$ \_\_\_\_\_ Annual Premium  
\$ \_\_\_\_\_ Wind Deductible  
\$ \_\_\_\_\_ Earthquake Deductible  
\$ \_\_\_\_\_ Deductible – Owned Items  
\$ \_\_\_\_\_ Deductible – Incoming Loans (if applicable)

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## Designing Your Insurance Program – The Full Picture

### LIMITS

\$ \_\_\_\_\_ At Named Locations  
\$ \_\_\_\_\_ While in Transit  
\$ \_\_\_\_\_ At Unnamed Locations  
\$ \_\_\_\_\_ Terrorism  
\$ \_\_\_\_\_ Earthquake

### AT NAMED LOCATIONS

The following are the locations listed on your policy (this should include any location where you store/exhibit artwork from your collection on a “permanent basis” including storage facilities, conservators, etc.):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_

The limit on your policy for your named location(s) is \$ \_\_\_\_\_.

This means that \$ \_\_\_\_\_ can be at your main location or any other scheduled location added to the policy in the future. If any of these locations’ limits exceeds \$ \_\_\_\_\_ and you need to increase your insurance limit, contact your broker for a Premises Increase. This request should be given in writing with:

- The effective dates and expiration of the increase
- New total limit required at your Premises
- Facility information for the new location

### WHILE IN TRANSIT

The limit for artwork In Transit is \$ \_\_\_\_\_. This limit is for any one single transit and is usually provided on a worldwide basis. Please note that there may be a list of specific countries excluded from your policy; refer to your policy for a full listing of these countries. If any one transit (vehicle, plane, etc.) exceeds \$ \_\_\_\_\_ then you need to contact your broker for an increase. This request should be given in writing and include:

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**Designing Your Insurance Program – The Full Picture**

- The effective (departure and arrival) dates
- How the works are packed
- Who is shipping
- Required truck information if specified by your underwriter such as: air-ride; dual drivers; climate control; no over-night stops along the way; someone with the vehicle at all times; etc.
- From/to where the artwork will travel
- The new total limit required for the Transit
- Will condition reports be completed?

**AT UNNAMED LOCATIONS**

The limit for artwork At Unnamed Locations is \$ \_\_\_\_\_. This limit is for artwork at the framer, conservator, on loan to another institution, or for any reason you have decided to move a work to a location on a temporary basis. The insurance company provides this limit so you have the flexibility of sending items to other locations without having to contact your broker. Should you require more than \$ \_\_\_\_\_ at Unnamed Locations, you will need to contact your broker for an increase. This request should be given in writing with:

- The effective dates of the increase
- Where the artwork will be temporarily housed
- The security and fire protection of the venue (Underwriters may require a separate Location Questionnaire or Facility Report)
- The new total limit required at the Unnamed Location

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**COMMON REQUESTS UNDER THE FOUNDATION POLICY**

**Certificate of Insurance** If you accept incoming loans or elect to maintain your own insurance while your property is in someone else’s care, often the other party will require a Certificate of Insurance. When you request a Certificate of Insurance from your broker, you should provide the following information:

- Effective dates of consignment/loan
- Name of lender
- Address of lender
- E-mail of lender if you would like your broker to send the certificate directly to the lender
- Artworks loaned and all of their details (artist, title, dimensions, media, year)
- Insurance value for each artwork based on the agreed value noted on your loan agreement
- Any special requests from Lender (Additional Insured, Loss Payees, etc.)
- Tip: Submit the information regarding the certificate holder/lender and the artwork in electronic format to shorten turnaround time and eliminate errors in your certificates

**Loss Payee** Sometimes a Lender will require that they be named Loss Payee under your policy for artworks they loan to you. In most cases, your broker has to change your policy and note special wording on the Certificate of Insurance for such requests. Please ensure that you advise your broker in writing of any Lenders requiring Loss Payee language. This wording allows the insurance company to directly pay the Lender for their insurable interest in artwork rather than paying your institution and then your remitting payment to the Lender.

**Additional Insured** Sometimes a Lender will require that they be named Additional Insured under your policy for artworks they loan to you. In most cases, your broker has to request a change to your policy and note special wording on the Certificate of Insurance for such requests. Please ensure that you advise your broker in writing of any Lenders requiring Additional Insured language.

When you are requested to name someone as Additional Insured under your Fine Art policy, they become subject to all of the terms and conditions under your policy, including premium payment. Some benefits for the Lender/Additional

## Designing Your Insurance Program – The Full Picture

Insured are the insurance company/adjuster is able to talk to/negotiate with the Lender/ Additional Insured directly. The Lender/ Additional Insured would also have the benefit of the “Appraisal Clause” which states that if they do not agree with the insurance company’s settlement, then the Lender/ Additional Insured obtains an appraisal, the insurance company obtains an appraisal and an umpire determines the value of the damaged/missing artwork based on the two appraisals. Also, if a Lender is an Additional Insured, the Lender could be required to sit for an Examination Under Oath by the insurance company. Please note that not all insurance companies will add Additional Insured onto their policies. If this is the case, a Waiver of Subrogation (see below) can achieve most of the goals of Additional Insured status.

**Waiver of Subrogation** Sometimes a framer, conservator, auction house, etc. may ask that you provide this wording for artworks that you entrust to them. The wording prevents your insurance company from trying to recover any claims payment from the third party (conservator, framer, auction house, etc.) in the event of a loss which the insurance company feels is the third party’s fault. Your policy has to be amended for this request and Underwriters may charge an additional premium for this change.

### ENDORSEMENTS

**Note: Please refer to page 3 for the definition of “Endorsement”. Use this page to track the endorsements attached/added to your policy.**

Endorsement #1: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #2: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #3: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #4: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #5: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #6: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #7: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #8: \_\_\_\_\_ A/P: \$ \_\_\_\_\_  
Endorsement #9: \_\_\_\_\_ A/P: \$ \_\_\_\_\_

Total Additional Premium \_\_\_\_\_  
Annual Premium \$ \_\_\_\_\_ + Additional Premium \$ \_\_\_\_\_  
= Total paid throughout entire policy period

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**SOME POLICY CONDITIONS**

**Records Clause** You must maintain an accurate and itemized inventory of all property insured under the policy.

**Packing Clause** To the best of your ability, the insured items will be packed, unpacked, and shipped by competent and/or professional packers and shippers. Some policies contain restrictions for transit via USPS and Express Carriers.

**Stillage Clause** Insured items must be stored at a specified number of inches off of the floor; this is to prevent water damage.

**Alarm Maintenance Clause** The alarm system installed at the premises will be maintained under a contract with the alarm company. If the equipment fails and you were unaware of the failure, then the policy would respond. Whenever the named locations are left unattended, the alarm system must be in full force.

**POLICY EXCLUSIONS**

- Wear, tear, moths, vermin, inherent vice, gradual deterioration
- Damage due to repairing, restoration, or retouching process except if the Insurance Company directed this process as part of a loss settlement.
- War/Warlike action
- Governmental authority including seizure of property
- Radiation/Nuclear
- Basement Flood – Post-Hurricane Sandy, some insurance companies added this exclusion

**TERRITORIAL RESTRICTION**

Many policies have some kind of exclusion for specific countries. Most times excluded countries are places under U.S. sanctions and from where the U.S. government prohibits the Insured and the Company from transacting business. If you need to send artwork to any of these countries, you need to contact your broker immediately to see if your Underwriter/Insurance Company will consider this transaction under your policy.

**VALUATION CLAUSE**

The Valuation Clause on a policy determines the basis in which you will be paid in the event of a claim. Each Foundation should work with their broker to ensure their Valuation Clause is tailor-made for the types of assets, ownership, loans, etc. with which they are involved. The basic Valuation Clause on the policy is:

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## Designing Your Insurance Program – The Full Picture

**Owned Items** Current Market Value at the time of loss.

**Loaned Items** Agreed Value; in the event no Agreed Value is listed, Current Market Value, not to exceed the policy limits.

**Packing Crates/Electronic Equipment/etc.** Replacement Cost

**Reference Library, Other Reference material, books, records, archives**  
Replacement Value

**Partial Loss** Costs and expenses for repair and/or restoration + additional expenses + depreciation

### **TERRORISM**

Terrorism insurance has changed significantly since 2002, when the Terrorism Risk Insurance Act (TRIA) was first introduced. Currently, there are a number of Terrorism options including:

- Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) is the new form of TRIA effective 12/31/2007 and then extended on 1/12/2015 through the year 2020. The TRIPRA program summary is as follows:
  - Secretary of Treasury, Secretary of State, and the US Attorney General determine the act to be a terrorism act; and
  - Total insurance losses from the act must exceed \$100 million; and
  - Individual insurance companies have to pay 20% of premiums to trigger TRIPRA payments
  - The maximum paid under this program in one year is \$100 billion
- Certified and Non-Certified Acts of Terrorism – the insurance company will use TRIPRA if a terrorist act is covered by this program. If the act falls outside of this program, they will also pay the claim.

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## Designing Your Insurance Program – The Full Picture

- T3 – London Terrorism – Broader than TRIPRA and is not reliant on any federal program. Exclusions are essentially the same as the Fine Art policy.
- Full Terrorism/No Exclusion – No Terrorism exclusion is placed on the policy

### **BELLS AND WHISTLES**

There are many additional coverages you can add onto your Foundation Policy. Most of these “add-ons” can be made at no additional cost.

**Reference Library** You should ensure that the total limit of your reference library is considered in your policy limits. This coverage may include portfolios, books, exhibition catalogues, manuscripts, letters, documents, slides, photographs, negatives, videos and computer data. If you have significant artist’s archives, you should discuss with your broker the best way to insure this part of your collection.

**Frames, Crates, and Technical Equipment** Provides coverage for display objects, crates and technical equipment associated with artworks. This coverage is especially valuable if your collection includes video art/artwork based in technology. Rather than insuring a DVD player on your Commercial Package, this coverage will help with video art related items your institution owns. You should ensure that the total value of these items is considered within your policy limits.

**Reward Coverage** The Insurance Company offers a monetary reward leading to the successful return of undamaged stolen property to law enforcement agency or the arrest and conviction of any person who has damaged or stolen and covered property. Generally there is a sublimit for this coverage and should be in addition to the policy limits.

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## LENDING YOUR ARTWORK

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### INSURANCE CHECKLIST FOR LENDING YOUR ARTWORK

- Working with your lawyer and fine art insurance broker, create a Loan Agreement outlining your insurance requirements for the Borrower. Endeavor to always use your own Loan Agreement as it will best protect your interests.
- Request a Certificate of Insurance naming the Foundation as Loss Payee and Additional Insured (or a Waiver of Subrogation if Additional Insured is not achievable). If the artwork(s) you are lending could potentially injure someone, ask that you be named as Additional Insured on the Borrower's General Liability policy. Request a copy of the Borrower's insurance policy for your fine art insurance broker to review.
- Have your fine art insurance broker review all Certificate of Insurance submissions to ensure Loan Agreement insurance requirements are met.
- When reviewing a Borrower's insurance/Certificate of Insurance consider:
  - Is Full Terrorism included?
  - Is Earthquake, Windstorm, or Flood covered?
  - Is the carrier known for fine art insurance and for paying claims?
- Put a Universal Commercial Code (UCC) filing in place to protect your interest in the work.
- International policies often have more restrictive coverage than a US Fine Art insurance policy. Require a policy review when lending outside of the country, taking care to note special conditions and subjectivities.
- When lending internationally, ask the Borrower to change their policy's jurisdiction to your state.
- If a Borrower's insurance does not meet your requirements, depending on the Foundation's Mission, your options are:
  - Use your own insurance policy's At Other Locations/In Transit limits
  - Obtain a separate Exhibition policy (see "Policy Structuring Options for Exhibitions" section) through your broker and charge back the Borrower. This protects your claims history while providing access to your own broker, insurance company and familiar policy language and terms.
  - Allow the Borrower to use Government Indemnity if that is an option

## EXHIBITION POLICIES

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***Policy Structuring Options for Exhibitions:*** The following are three insurance options you have when lending your artwork to others:

- Insure the artwork under a separate exhibition policy through your current fine art insurer:

***Pros***

- You have the same exact coverage (and claims handling) you currently enjoy through your fine art insurance company.
- If a claim occurred, it would fall under this separate policy and would not affect your annual policy.
- You can pass the expense onto the borrowing institutions.

***Cons***

- This can be a more expensive option.

- Insure the artwork using your current policy limits and obtain a temporary “In Transit” and “At Other Locations” increase for the exhibition

***Pros***

- Often the most cost effective option.
- Very generous option. Something to consider if you are invested in the loan and want to do the borrowing institution a “favor.”

***Cons***

- You have little control over the artwork while it is on exhibition. If another institution causes damage to your work, the claim is paid under your policy and could potentially affect your annual policy premium. This is a very serious factor to consider.

## Designing Your Insurance Program – The Full Picture

- Allow the borrowing venues to use their insurance

### **Pros**

- Keeps cost down for the borrowing institutions.

### **Cons**

- Quality of Coverage. Fine Art policies outside of specialty insurance companies can vary greatly with the quality of coverage, restrictions/exclusions, and special conditions. Your broker should thoroughly review the insurance policies to ensure that coverage is comparable to what you currently have in place.
- Unsure of Claims Handling. You want to feel secure that a claim will get paid under any policy in place. This is an unknown factor when you are not familiar with the borrower's insurance carrier or policy form.
- Legal jurisdiction. Should a legal dispute arise, you must go to the country in which the policy was issued to defend or bring a suit.

## **LOANS and GOVERNMENT INDEMNITY**

**Government Indemnity and your Foundation:** Many countries have Government Indemnity programs intended to aid in the insurance costs associated with institutions organizing costly exhibitions. You will likely be asked by a Borrower if they can use Indemnity to “insure” a work you lend them.

Indemnity can be granted in the following ways which affects the structure of the insurance coverage:

- Indemnity board agrees to completely cover the work at the value listed – the Borrower's regular Fine Art Policy or Separate Exhibition policy your does not need to apply
- Indemnity board agrees to a different value for a specific work – the Borrower's regular Fine Art Policy or Separate Exhibition policy could insure “excess of indemnity” for these specific items
- Indemnity board declines to cover the item under Indemnity – Borrower's regular Fine Art Policy or Separate Exhibition policy can cover these items 100%
- The Borrower's regular Fine Art Policy or Separate Exhibition policy should cover any Indemnity Deductible. Deductible amounts vary by Indemnity program/total values and can be quite high.

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## Designing Your Insurance Program – The Full Picture

Keep in mind that Government Indemnity programs rely on the government to pay claims for any damaged artwork. Some of these programs have been tested more than others. As a general rule, Museums accept Indemnity for outgoing loans. If the loan is of a philanthropic nature and aligns with your mission, then accepting Indemnity is encouraged by the Museum community.

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# COMMERCIAL INSURANCE

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Commercial Insurance is often used as a blanket term encompassing all insurance products that would be purchased by a foundation. Commercial Policies are insurance coverages that most (if not all) foundations purchase, due to statutory requirements, contractual requirements, or transfer of financial risk.

On its most basic level, insurance is about hedging against Murphy's Law: anything that can go wrong, will go wrong. The things that "can go wrong", are known in the insurance industry as exposures. Exposures are a foundation's potential for accidents and other losses. The exposures of each foundation are measured by insurance companies when determining premiums and whether or not they will offer insurance in the first place. These policies are differentiated by the types of exposures and perils that they insure against.

There are a variety of different insurance products that can be considered "commercial insurance" and are reviewed in detail in the following sections.

### COMMERCIAL PACKAGE POLICY

The Package Policy does not consist of one specific line (type) of insurance, but rather "packages" several types of coverage into one comprehensive policy with several sections. A Commercial Package Policy provides only the coverages that are selected by the policyholder/insured. It typically consists of at least some of the following coverages:

- General Liability Coverage
- Commercial Property Coverage
- Automobile Liability Coverage
- Crime Coverage

All of these coverages will be explained in the following sections.

### GENERAL LIABILITY INSURANCE

We live in an excessively litigious society. That is an unfortunate fact of life. Foundations need to be prepared for the possibility that they can be sued for a variety of things in connection with the running of the foundation, and they need to be protected. Commercial General Liability is one of the most basic forms of business insurance.

General Liability insurance usually responds to third party (external) lawsuits resulting from claims of property damage and/or bodily injury of which the Named Insured may be found legally obligated to pay.

The numerical values of the protection are expressed via what is called "limits of liability". These limits are either **per occurrence limits**, which are the maximum amount of money that the insurance company will pay for any one covered loss event (usually lawsuit – pays for defense costs and/or monetary damages), or **aggregate limits**, which is the maximum amount of money that the insurance company will pay for covered liability claims within a given policy term (usually 1 year).

Within the blanket term, General Liability Coverage usually covers against the following exposures:

### PREMISES LIABILITY/OFF-PREMISES LIABILITY/OPERATIONS LIABILITY

As a foundation leader (or property owner), you are responsible for things that happen on the foundation's premises, or as a result of the foundation's operations. This type of coverage responds to third party claims of bodily injury and/or property damage that occur on the foundation's premises or due to its operations. If a foundation is sued due to their perceived negligence that is when this coverage is triggered.

- **Example:** A guest slips & falls on your premises and the foundation is sued by the injured party for negligence.
- **Example:** While installing artwork/sculpture in a public place, the work (or some of the associated construction materials) falls and damages several nearby parked cars, resulting in a third party property damage lawsuit.



### PRODUCTS & COMPLETED OPERATIONS LIABILITY

This type of liability insurance covers foundations from third party bodily injury/property damage lawsuits arising out of either a finished project or a product that has been sold.

**Completed Operations** refers to the liability incurred by a business (usually a contractor) for property damage or injuries that may happen to a third party once the project (usually contracting operation) has been completed. Even though the operations are deemed to be "completed", the loss or injury is deemed to be as a result of those operations. Completed operations insurance contracts are applied to construction products or the manufacturing of consumer goods and medicines.

- **Example:** A painting that you installed in a client's premises falls off the wall and hits a guest, causing bodily injury. All parties involved with the installation and ownership of the sculpture could be sued by the injured party. This form of liability coverage would respond and cover any costs incurred as a result of said lawsuit.

**Products Liability** usually refers to potential third party lawsuits arising from incidents such as manufacturing defects, failure to warn on usage or malfunction resulting in harm.

- **Example:** After a painting is sold, if the painting or piece of art contains hazardous paint or other substances/materials, the seller could be held legally liable for any bodily injuries sustained by the buyer. That is when this coverage would respond.

### ADVERTISING AND/OR PERSONAL INJURY LIABILITY

This coverage addresses financial damages your foundation causes to another person or entity as a result of libel, slander, defaming their products or services, or violating their right to privacy. Any of the aforementioned acts can be committed orally or via any media type, such as on television or in a newspaper.

Please note that this coverage within the General Liability policy is for incidental exposure and claims that arise out of the aforementioned types of situations (slander, defamation, violation of right to privacy, etc.). For businesses that are in the business of producing media, there are specific exclusions on the General Liability policy that limit coverage for these types of claims. For businesses that routinely engage in media production and advertising, there are specialized Professional Liability policies that provide tailored yet broader coverage for personal and advertising injuries.

- **Personal Injury:** Invasion of privacy, under the personal injury portion of a commercial liability policy may include publishing personal information about someone in a print journal.
- **Advertising Injury:** Perhaps you pay for advertising space in a local newspaper. You unknowingly use a national company's slogan in your advertisement. If the large national firm finds out that you are using their slogan (without their permission), the company would retain the right to sue you for copyright infringement.

### DAMAGE TO PREMISES RENTED BY YOU (A.K.A. FIRE LEGAL LIABILITY)

If your foundation rents space in a building and there is a fire (or another covered cause of loss) for which your foundation is deemed to be negligent/legally responsible, this coverage would provide your foundation with protection against potential third party lawsuits from your landlord. Coverage only applies to that portion of the real estate owned by the landlord and rented by your foundation.

## Designing Your Insurance Program – The Full Picture

### MEDICAL PAYMENTS

This is coverage in a General Liability policy that pays for the medical bills of a third party if they get injured on your foundation's premises. Usually, in practice, this coverage is used as a mechanism to prevent a lawsuit from an injured party by engendering goodwill.

### EMPLOYEE BENEFITS COVERAGE

This coverage is usually part of the General Liability section of a policy. A foundation establishing and maintaining any program providing benefits to its employees can be subject to claims alleging mishandling of the benefit plan.

Often this coverage is triggered by HR forgetting to enroll a given employee into their healthcare/benefits plan. A typical scenario would be an employee becomes ill, doesn't have medical insurance because their employer did not enroll them in the program (even though they were supposed to), and they bring a subsequent lawsuit against their employer.

### GENERAL LIABILITY AND RISK TRANSFER

As an organization, risk transfer is crucial when it comes to the General Liability coverage for your foundation. You do not want to be held responsible for the negligence of others outside your organization.

When hiring any external vendor, contractor or subcontractor to perform work on your behalf, you should **always obtain a Certificate of Liability Insurance from them, naming your foundation as "Additional Insured" on a Primary/Non-Contributory Basis with regards to General Liability.**

This means that if there are any losses that occur during the course of the vendor/contractor/subcontractor's work for your foundation or on your foundation's behalf, and the foundation is named in a third party bodily injury/property damage lawsuit that arose from the vendor/contractor/subcontractor's services/work, their insurance would respond and cover your defense costs, as opposed to your foundation's insurance responding.

Being an additional insured on an external vendor or subcontractor's policy provides your foundation with protection against claims/lawsuits resulting from actions of an outside party (that are deemed to be legally negligent) that was hired by your foundation, or doing work on your foundation's behalf, in the event that your foundation is named in the lawsuit.

This is an important practice, because you do not want to have your insurance pay for claims due to the negligence of others, as that would adversely affect your foundation's loss history and impact future premiums.

When requesting Certificates of Insurance, we recommend requesting at minimum the following requirements (you can use this as a checklist):

- Policies should be through an insurer with an A.M. Best Rating of no less than A-IV
- Your foundation should be named as **Additional Insured on a Primary/Non-Contributory Basis with regards to General Liability**
- Commercial General Liability Limits of no less than \$1,000,000 per occurrence/\$2,000,000 aggregate
- Commercial General Liability Coverage should include premises/operations, products/completed operations, fire legal liability (i.e. Damage to Premises Rented by You), contractual liability, independent contractors, personal advertising injury
- If using the services of a caterer, you should have them include Liquor Liability
- Umbrella Liability limits of \$5,000,000 or more
- Employers Liability (part of Workers Comp) limits of \$1,000,000 or more.
- Auto Liability Insurance (covering owned, hired, and non-owned vehicles) with a minimum Combined Single Limit of \$1,000,000

### **FLOOD INSURANCE**

Floods are the most common and most destructive natural disaster in the United States. Ninety percent of all natural disasters involve flooding, and all 50 states have experienced floods or flash floods in the past five years.

A flood is generally defined as a general and temporary condition where two or more acres of normally dry land or two or more properties are inundated by water or mudflow.

Flood coverage is available for Building & Contents protection against perils such as unusual and rapid accumulation or runoff of surface waters (from any source), the overflow of inland and tidal waters, or mudflows that are caused by flood.

### **NFIP (NATIONAL FLOOD INSURANCE PROGRAM)**

The damage from a flood can be covered under some Commercial Property policies (subject to underwriting approval), however, there is also specialized Flood insurance that is federally backed by the National Flood Insurance Program (NFIP) through which foundations can hedge against losses caused by flooding.

For foundations, NFIP policies provide flood coverage for up to \$500,000 for building coverage, and \$500,000 for business personal property (contents) coverage. This insurance is intended to furnish as an insurance alternative to disaster assistance and reduces the rising costs of repairing damage to buildings and their contents caused by floods.

### **EXCESS FLOOD INSURANCE**

A foundation is able to purchase excess flood insurance, but they must be covered by NFIP flood insurance first. If the object of the insurance is worth more than the \$500,000 maximum limit, Excess Flood coverage can be purchased, which takes over where regular flood insurance leaves off. Like an Umbrella policy, this flood coverage sits over the underlying flood policy, and is triggered when a flood loss exceeds the aforementioned NFIP limit.

### **STANDALONE FLOOD INSURANCE WITH PRIVATE CARRIERS**

Some private insurance carriers may offer standalone flood coverage, but this is subject to underwriting review and approval on a case by case basis. Private carriers are not subject to the same maximum limit requirements under the NFIP program.

### **COMMERCIAL AUTOMOBILE INSURANCE**

Auto insurance is necessary for any foundation that uses vehicles to conduct foundation operations. Regardless of whether or not your foundation owns the vehicles, if there is ever an instance in which autos are being used (hired autos and rentals included) in the course of foundation business, your foundation has an exposure, and should have some form of Auto insurance.

There are several different types of Commercial Auto Coverage, but the basic coverages are liability and property damage coverages. For example, if a vehicle is being used in the course of your foundation operations and your employee driving has an accident, several things can happen that put your foundation at risk financially. The other party in the accident could sue your foundation, you could be held liable for the medical expenses of any injured third party, and your foundation could be held responsible for property damage to all vehicles and any surrounding structures that are damaged. Car accidents happen, and among insurance companies, auto claims are the largest and most frequently paid claims.

Your foundation has several ways of protecting itself from auto claims...

### **HIRED/NON-OWNED AUTOMOBILE LIABILITY COVERAGE**

Hired Auto and Non-Owned Auto coverages can usually be added as endorsements on a General Liability policy, Commercial Package Policy, or can be a standalone policy. These types of coverage meet contract requirements for Commercial Auto coverage when the company has no vehicles titled in its name.

### **WHAT IS NON---OWNED AUTOMOBILE COVERAGE?**

Non-owned automobile insurance provides liability protection when an employee occasionally has to drive his or her personally owned vehicle for business purposes. It assumes that the vehicle is not owned, registered or contracted in the foundation's name or on the foundation's behalf.

### **WHAT IS HIRED AUTOMOBILE COVERAGE?**

Hired automobile insurance provides liability protection when an employee is driving a rented, hired or borrowed vehicle.

These coverages provide Automobile Liability insurance that protects the foundation from claims alleging bodily injury and/or property damage as respects the foundation's utilization of a non-owned or hired/ rented vehicle.

Non-Owned & Hired Auto Physical Damage is coverage available in the event the foundation may be held responsible for damages to the vehicle itself.

### COMMERCIAL OWNED AUTO INSURANCE

This is insurance for foundations that own and operate their own corporate vehicles in the course of business. On its most basic level, this coverage pays for third party liability claims arising out of car accidents involving insured (foundation) vehicles, as well as damage sustained to the actual owned vehicles themselves, and potentially for damage caused as well. As with Hired/Non-Owned coverage, this can sometimes be added to a Commercial Package Policy, or be a stand-alone policy, depending on the insurance carrier used.

Whether you have a fleet of commercial vehicles, or just one auto, if any of them are registered in the foundation's name, this coverage is mandatory.

### COMMERCIAL PROPERTY INSURANCE

Commercial property insurance protects the property of your foundation from such perils as fire, theft and natural disasters. These policies can be built into a Commercial Package policy, or can be written as standalone policies.

As opposed to General Liability Coverage, which is a third party (external) coverage, Property insurance is a first party coverage, as it indemnifies (pays) the foundation, the owner of property, in the event of a covered loss.

Values are typically assigned when the foundation (with the help of their broker) submit a **Statement of Values**, which is an itemized list of all the property that a business owners wants covered with their corresponding individual values. This statement acts as a baseline for determining which property is “covered” in a property policy.

However, the property itself can actually be insured via several different valuations (i.e. the method of determining how much could be paid in the event of a total loss):

- **Replacement cost (RC):** the total amount it takes to replace damaged or destroyed property with new buildings, equipment and/or furnishings.
- **Actual cash value (ACV):** the total replacement cost of property, less the accumulated depreciation for age and wear.

Property is broken up into several basic insurable “subjects” (property) sections, although others are available:

### BUILDING

This covers damage done to your foundation's building in the event of a partial or total loss. Coverage is typically reserved for owners of a given structure.

Usually, a full Building insurance replacement cost is a value assigned in the policy to cover a specific amount to rebuild your property should a total loss result. However, minor damages to buildings are covered as well, but as with everything else in insurance, the coverage kicks in once your deductible (self-retention) has been exhausted. Hence, some foundations prefer to self-insure some of their minor building losses, so as to avoid blemishing their loss history.

### **BUSINESS PERSONAL PROPERTY**

Otherwise known as “contents,” this term actually refers to tangible property such as furniture, fixtures (defined as Improvements and Betterments if the premises is rented from others), equipment, machinery, merchandise, materials, and all other personal property owned by the foundation and/or used in your foundation’s business.

An easy analogy to think of this is if you turned your building upside down, anything that falls out would be considered contents, and would be covered under the Business Personal Property coverage.

### **BUSINESS INCOME/EXTRA EXPENSE**

Your foundation may sustain a substantial loss of revenue if operations must be discontinued for a period of time due to a major loss. For example, if there was a major fire that made it impossible to continue operations, “**Business Income**” coverage is available for operations that may be forced to shut down for a lengthy period of time during restoration. This coverage indemnifies your foundation for lost income during this dormant period of restoration. Coverage can be tailored to include or exclude payroll, depending on your foundation’s needs.

“**Extra Expense**”, on the other hand, covers foundations for “extra expenses” that they incur to keep the foundation up and running after a major loss. For example, say there is a major fire that renders your workspace or building unusable for the foreseeable future. Extra Expense coverage would cover the cost to find and re-locate to a temporary office space (including rent), set-up of additional phone lines, cables, computers, change mailing addresses, etc. Essentially, this insurance covers expenses to stay in business that the foundation otherwise would not have incurred had the major loss not happened.

### **ACCOUNTS RECEIVABLE AND VALUABLE PAPERS**

There are several other subjects of Property Insurance that are relevant to Artists-Endowed Foundations Insurance programs.

Many times, valuable papers and accounts receivable can be overlooked in the risk management process as they are not as visible and obvious as other property. A foundation might have a large exposure nonetheless and it could represent a large value to the foundation.

### **ACCOUNTS RECEIVABLE**

If accounts receivable files, paperwork, or software database happen to get destroyed or compromised, this can lead to severe cash flow problems from the inability to collect monies that are due your foundation. The loss of this type of information in any form may have an impact on your foundation collecting accounts receivables. If the accounts receivable documentation is lost, stolen, or damaged, you will have a hard time in a court of law trying to collect monies due your foundation.

This coverage pays for the cost of reconstructing accounts receivable records that have been damaged or destroyed by a covered peril, like a fire. Please note that this does not cover the actual amount receivable itself.



### **VALUABLE PAPERS**

This coverage provides "all risk" coverage for the re-creation "valuable papers," such as: written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts. It covers the cost of research to reconstruct damaged records, as well as the cost of new paper and transcription.

For foundations, often times the items that are considered "valuable papers" are impossible to re-create (i.e. things like handwritten letters from the artists themselves), and hence this coverage becomes inconsequential. For items that cannot be re-created, they should be scheduled (either specifically or on a blanket basis) via All-Risk property insurance (i.e. Fine Art Insurance Policies) policies that assign monetary replacement cost values to these items in the event of a loss.

### **WORKERS COMPENSATION INSURANCE**

Workers Compensation is the insurance that covers a foundation's employees for workplace injuries.

Coverage is fairly comprehensive and offers specific benefits to workers who suffer workplace injury or illness. Benefits include medical expenses, death benefits, lost wages, and vocational rehabilitation. Many of the US States (though not all of them – Texas and Oklahoma being notable exceptions) have minimum requirements on foundation carrying Workers Comp insurance. Failure to carry workers' compensation insurance or otherwise meet a state's regulations in this regard can leave an employer exposed not only to paying these benefits out of pocket, but also to paying penalties levied by the states.

### **WORKERS COMPENSATION INSURANCE AND OUTSIDE VENDORS**

When hiring outside laborers/contractors/vendors, like with General Liability coverage, you should be wary of types of Workers Comp coverage (if any) that these outside parties hold. Independent contractors may be deemed as your "employees" if their time schedules and duties are dictated to a given extent by your foundation, the "employer".

### **EMPLOYERS' LIABILITY COVERAGE**

As an employer, you are responsible for the health and safety of your employees while they are at work. Your employees may be injured at work, or your former employees may become ill as a result of their work while in your employment. They may try to claim compensation from you if they believe you are responsible for things such as providing an unsafe work environment.

Employers' Liability (EL) insurance will cover your legal liability for injury, disease or death sustained by your employees arising in the course of their employment.

This coverage is typically broken up into three limits:

1. Bodily Injury by Accident; each accident
2. Bodily Injury by Disease; policy limit
3. Bodily Injury by Disease; each employee

Example: You tell an employee to hang a large painting on the wall in the office. You give him a rickety, unstable ladder to utilize and the ladder breaks, resulting in the employee falling and becoming seriously injured. The injured employee would potentially have grounds to sue you (his employer) for negligence of having an unsafe workplace. This coverage would pay for the fees resulting from that employee's lawsuit against you, which, especially in NY State, can be significant.

### **DISABILITY BENEFITS LAW INSURANCE (DBL)**

This is insurance that covers statutory non-job related injury/illness (i.e. injuries/illnesses that occur off the job). Some states, such as New York, require that employers carry State Disability Insurance, while other states do not. States like New York place limitations on the amount of weekly cash benefits that.

Disability benefits are weekly cash benefits to replace, in part, wages lost due to illness or injury that do not arise out of or in the course of employment. Disability benefits include cash payments only. Medical care is the responsibility of the claimant. Medical care is not paid for by the employer or insurance carrier.

It is rated based on the number of Male and Female employees, and these figures are audited on an annual basis. This coverage is relatively inexpensive. In order to obtain coverage, all that is needed is the number of employees and how many are male vs. female.

### **UMBRELLA/EXCESS LIABILITY COVERAGE**

This refers to liability insurance that is in excess of other specified policies and potentially primary insurance for losses not covered by the other policies.

When a liability loss is covered, and the foundation's primary insurance policies pay up to their policy limits, any additional amount is paid by the umbrella policy (up to the limit of the umbrella policy). The Umbrella policy typically goes over the limits of liability that are contained in your Automobile Liability, General Liability, and Employers Liability, and may “drop-down” to cover claims excluded by the underlying policies

Say for example you have a car accident, and your Commercial Auto policy has a liability limit of \$1,000,000. If the costs from the third party lawsuit from that accident exceed \$1,000,000, that is when your Umbrella coverage would respond.

### **WHAT IS THE DIFFERENCE BETWEEN “EXCESS LIABILITY AND “UMBRELLA LIABILITY” POLICIES?**

Excess Liability insurance responds after a singular underlying primary policy limit is exhausted, but the critical difference between Excess Liability policies, is that Excess Liability policies are usually **"follow form"** policies that conform exactly to the coverage of the underlying policy, except that they add on their own excess limit which is then stacked on top of the primary policy's limit.

Umbrella policies on the other hand, tend to provide broader coverage over one or more underlying policies, in that they usually lack "follow form" clauses, their definitions of what is covered may be broader than the primary policies.

Thus, an umbrella policy may cover certain risks from the first dollar of loss which were never covered under the primary policies. However, there is what's called a “self-retention”, which is essentially a deductible for those types of risks that are not covered by a primary policy, but are covered by the Umbrella. The self-retention level is usually \$10,000.



## Executive Risk Insurance Policies

### **DIRECTORS AND OFFICERS (D&O)**

Directors and officers liability Insurance is liability insurance payable to the directors and officers of a foundation, or to the foundation itself, as indemnification for damages, settlements or advancement of defense costs in the event your foundation suffers such a loss as a result of a legal action brought for alleged wrongful acts in their capacity as directors and officers. Such coverage can extend to defense costs arising out of criminal and regulatory investigations/trials; in fact, often civil and criminal actions are brought against directors/officers simultaneously. Intentional illegal acts, however, are typically not covered under D&O policies. With respect to foundations, allegations often include restraint of trade and unfair trade practices.

### **ERRORS AND OMISSIONS (PROFESSIONAL LIABILITY)**

Errors and Omissions insurance indemnifies the foundation against loss sustained because of an error or oversight on the foundation's part while conducting or providing certain professional services and/or activities. Lawsuits of this type are not uncommon and can involve tremendous financial consequence for a foundation without adequate protection. This can be particularly relevant to foundations with respect to claims alleging a failure to authenticate. These lawsuits can happen even if your foundation is not in the business of authenticating works.

### **EMPLOYMENT PRACTICES LIABILITY**

Employers face potential liability suits brought by employees alleging wrongful termination, discrimination, sexual harassment, etc. (these types of losses are excluded from general liability and workers' compensation policies). Employment Practices Liability not only provides coverage for these losses, but also allows for the costs of defense. Premiums are based on an underwriting review of the foundation, which requires such items as a completed application, copy of the employee handbook, employment application, and employee evaluation.

### **MEDIA LIABILITY**

Media Liability insurance indemnifies the Foundation and provides reimbursement for legal expenses, damages, and settlements arising out of allegations that content created, distributed, or disseminated by the Foundation has infringed on the intellectual property of others. This policy also covers allegations of libelous or slanderous content.

### **CYBER/PRIVACY LIABILITY**

Cyber Risk insurance provides a foundation with access to the proper resources and reimbursement for the costs associated with assessing and responding to a breach of its systems or a potential loss of data. These incidents are occurring frequently due to the value of personal identifiable information on the black market and the ease of perpetrating these attacks. Furthermore, with increased regulatory and media scrutiny businesses need to respond quickly and effectively to protect their reputation and prevent further liability. These policies also provide coverage for damages, settlements, or defense costs for any third party law suit alleging negligence in preventing a breach of systems or data.

### **CRIME COVERAGE/EMPLOYEE DISHONESTY**

Coverage may be purchased for protection against dishonest acts committed by the foundation's employees (covers losses of money, securities and other property, and includes acts such as computer fraud, forgery, and involvement in the circulation of counterfeit money and securities). Broader Crime coverage is also available, extending coverage for protection against other criminal acts (e.g. burglary, robbery, etc.), which may be committed against the foundation by perpetrators other than the foundation's employees. If your foundation conducts fundraising efforts, this coverage is especially important. It is also recommended that this policy includes social engineering fraud. Social Engineering coverage can be added to Crime policies to cover instances where one of your employees voluntarily parts with funds based on what are believed to be legitimate instructions coming from a colleague, client, or vendor.

### **PENSION AND/OR ERISA BONDS**

Pension plans, by law, must be covered against dishonesty. A Pension and/or ERISA Bond is specifically written to address this issue for a foundation providing such a plan to employees. It is important to note that a pension bond will not encompass certain other areas of coverage, such as fiduciary liability, and further risk management may be warranted.

### **FIDUCIARY LIABILITY**

A foundation establishing and maintaining any program providing benefits to its employees is subject to claims alleging mishandling of the benefit plan and should carry insurance providing coverage for this type of loss. Fiduciary Liability must be written (rather than Employee Benefits Liability) when benefit plans are \*ERISA related (\*Employee Retirement Income Security Act) because Employee Benefits Liability excludes plans which are governed by ERISA. Coverage provisions under Fiduciary Liability are much the same as those provided under Employee Benefits Liability, in that they address mishandling of the benefit plan. However, they are specified in further detail in accordance with the mandates of ERISA.

## International Commercial Insurance Policies

Many foundation have operations that occur outside the United States, and hence their insurance programs need to be tailored accordingly to account for these international exposures. Most basic commercial insurance policies (i.e. General Liability, Business Auto, Workers Compensation, etc.) are domestic policies. They typically will only provide coverage for losses that occur within the United States and/or Canada, but the reality is that each foreign country has different laws governing tort/litigation for which domestically placed insurance products may not be in compliance. Therefore, there are International Insurance products to fill this gap when foundation engage in business overseas.

Foundations determine what type of international insurance they need based on what their international exposures are. A foundation that only has one or two employees travelling internationally on an incidental basis (i.e. once or twice a year) will understandably insure their international risk exposure differently than a foundation with several foreign offices and full time foreign and American employees working there.

### **GLOBAL EXTENSION ENDORSEMENT**

For foundations that only have incidental international exposure (i.e. limited foreign business travel by 1 or 2 employees), they can usually add a Global Extension Endorsement to their Domestic General Liability policy. This endorsement can be issued by several carriers who are active in the foreign market, including Chubb, Zurich, C.N.A. and Allianz. This will extend liability coverage (for external third party lawsuits arising from claims resulting from Bodily Injury or Property Damage by the insured) internationally to cover employees during business trips abroad.

For example, if a foundation has no foreign office, but sends one of their employees to a week-long art exhibition or show that is being held abroad, the Global Extension Endorsement would likely be the appropriate coverage to place in order to extend liability coverage internationally.

### **DIFFERENCE IN CONDITIONS POLICY (DIC POLICY)**

For foundations that have physical offices/operations in foreign countries, they will often buy a Master international policy to protect their global operations. These international insurance policies are called Difference in Conditions Policies.

These policies typically cover multinational foundations for General Liability, Employers Liability, and Auto Liability on an international basis. Property coverages can also be added to DIC policies if a foundation owns land or a building in a foreign country.

Difference in Conditions Policies are designed to fill the gaps and “drop down” to provide extra foreign coverage beyond the coverage offered by the locally placed insurance policies. The other benefit of the DIC policy is that they provide coverage in many foreign countries under one simplified policy, so that the foundation has uniformity of coverage regardless of location.

Many foreign countries also have legal requirements concerning the placement of local policies within their country. The coverage provided by the locally issued policies may not provide the same coverage or be as broad as the foundation’s primary insurance policy, as certain coverages may not be locally available. The foundations may therefore be exposed to losses in certain territories as a result of more restricted coverage or lower limits than they would have available under their primary insurance policy.

### **LOCALLY-ADMITTED POLICIES**

For a foundation that has physical offices or operations abroad, often different countries will require that foundations doing business there purchase what is known as “locally-admitted” policies. These are policies that are written through insurance companies that are licensed to do business in a given country (i.e. Chubb France, Chubb China).

Sometimes, these policies can be placed by your domestic American insurance broker, but in some countries your domestic broker will have to go through a local broker to procure a locally-admitted policy. As stated above, these laws vary country to country, so it all depends on what country you are doing business in.

In the event that the locally admitted policy cannot provide coverage, the DIC policy will typically “drop down” to provide the coverage instead.

## PERSONAL INSURANCE POLICIES

### **CHECKLIST FOR TRANSITIONING ARTIST'S PERSONAL POLICIES**

During the transition from the Artist's Personal policies (i.e. Homeowners, Personal Auto, Studio, etc.) to the foundation's insurance program, it is very important to keep the following risk management tips in mind.

- Ensure that the locations are properly supervised and secured (alarms operating, doors and windows locked, etc.) in order to maintain control of the artist's artwork and/or contents. Limit access.
- Ensure that all staff, family members and anyone with access to the artist/estate owned artwork and property (building, contents) understand who is legally responsible to make decisions with regard to these assets.
- Familiarize yourself with the plan for the artwork. Will the works be moved into storage, who is inventorying the works, and who is responsible for the move?
- Ensure the safekeeping of the works. Who is responsible for the maintenance of alarms and climate control? If the works are moving to storage, is the storage facility vetted?
- Ask questions of the storage facility, if works are moving. Who is responsible for the packing and shipping of works to storage? Request facility reports so you fully understand the security and disaster plans.
- It may be wise to appoint a third party professional (collection manager, registrar, art advisor) to oversee the inventory process, movement into storage, etc. Emotions can sometimes run high with family members and long-time staff and a professional approach to these matters is always best.
- With regard to the artist's valuable articles such as jewelry, autos, general contents, ensure these are properly secured to avoid theft. This property should be insured.
- Upon the artist's death, personal policies will need to be transitioned into the Estate or Foundation's name. Depending on the plans for the home, a Commercial insurance policy may need to be put into place.

## CONCLUSION

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*In conclusion, artist-endowed foundations realize their charitable purposes in a variety of ways. They make grants to nonprofits and to artists and scholars, and they steward art collections, operate study centers, conduct scholarship, lend and contribute artwork to museums, manage artist residency facilities, and administer art education programs. Risk is inherent in all of this good work.*

*For the dynamic and rapidly emerging field of artist-endowed foundations, access to knowledgeable innovation in risk protection is crucial to fulfilling its unique mission in cultural philanthropy and art stewardship. This handbook is provided as a resource for foundation leaders working to manage their organizations' risks.*





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