

## **ACC NCR SUMMER SERIES: HOW TO USE CONTRACTS TO TRANSFER RISK**

### **Key Risk Management and Insurance Issues for In-House Counsel**

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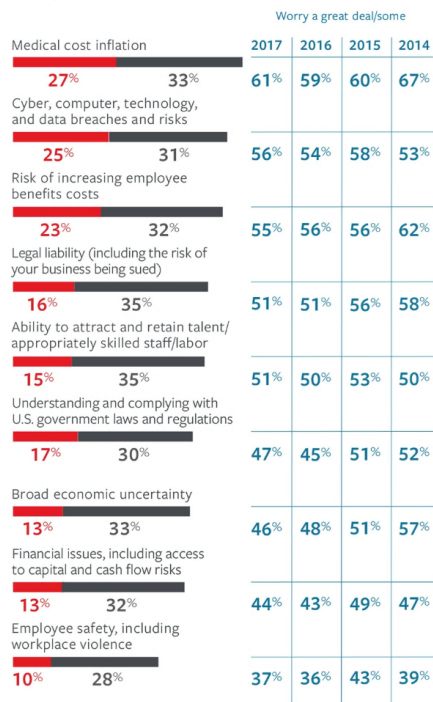
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# Risks Facing Your Businesses

## 2017 TRAVELERS RISK INDEX | THE BUSINESS VIEW

### THE MOST WORRISOME RISKS REMAIN THE SAME AS IN EARLIER YEARS: MEDICAL COSTS, CYBER RISKS AND EMPLOYEE BENEFITS

- Worry a great deal about this affecting my business
- Worry some about this



## ALLIANZ RISK BAROMETER RESULTS APPENDIX 2020

Based on the insight of 2,718 risk management experts from 102 countries and territories

- 02 The most important business risks: Global
- 03 The most important business risks: Europe, Americas, Asia Pacific, Africa and Middle East

Ranking changes are determined by positions year-on-year, ahead of percentages

Rank	Percent	2019 rank	Trend
1 Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	39%	2 (37%)	+
2 Business interruption (incl. supply chain disruption)	37%	1 (37%)	+
3 Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	27%	4 (27%)	+
4 Natural catastrophes (e.g. storm, flood, earthquake) <sup>1</sup>	21%	3 (28%)	+
5 Market developments (e.g. volatility intensified competition/new entrants, M&A, market stagnation, market fluctuation)	21%	5 (23%)	+
6 Fire, explosion	20%	6 (19%)	+
7 Climate change/increasing volatility of weather	17%	8 (13%)	+
8 Loss of reputation or brand value	15%	9 (13%)	+
9 New technologies (e.g. impact of artificial intelligence, autonomous vehicles, 3D printing, Internet of Things, nanotechnology, blockchain)	13%	7 (19%)	+
10 Macroeconomic developments (e.g. monetary policies, austerity programs, commodity price increase, deflation, inflation)	11%	13 (8%)	+
11 Political risks and violence (e.g. geopolitical conflict, war, terrorism, civil commotion) <sup>2</sup>	9%	11 (9%)	+
12 Shortage of skilled workforce	9%	10 (9%)	+
13 Critical infrastructure blackouts (e.g. disruption of power) <sup>3</sup>	8%	17 (2%)	+
14 Product recall, quality management, serial defects	8%	12 (9%)	+
15 Theft, fraud, corruption <sup>4</sup>	7%	15 (7%)	+
16 Environmental risks (e.g. pollution)	7%	14 (7%)	+
17 Health issues (e.g. pandemic outbreak)	3%	16 (2%)	+
Other	3%	-	-

#### KEY

- ➕ Risk higher than in 2019
- ➖ Risk lower than in 2019
- ➔ No change from 2019

(1) 2019 risk ranking

#### Source: Allianz Global Corporate & Specialty

The ninth annual Allianz Risk Barometer survey was conducted among Allianz customers (global businesses), brokers and industry trade organizations. It also surveyed risk consultants, underwriters, senior managers and claims experts in the corporate insurance segment of Allianz Global Corporate & Specialty and other Allianz entities. Figures represent the number of risks selected as a percentage of all survey responses from 2,718 respondents. All respondents could select up to three risks per industry, which is why the figures do not add up to 100%.



- 1 Natural catastrophes ranks higher than market developments based on the actual number of responses
- 2 Political risks and violence ranks higher than shortage of skilled workforce based on the actual number of responses
- 3 Critical infrastructure blackouts ranks higher than product recall based on the actual number of responses
- 4 Theft, fraud and corruption ranks higher than environmental risks based on the actual number of responses

# Top 2020 Risks by Industry

## THE MOST IMPORTANT BUSINESS RISKS BY INDUSTRY SECTOR



### TOP 5 RISKS IN AGRICULTURE

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 62

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Climate change/increasing volatility of weather	45%	1 (46%)	↔
2	Natural catastrophes (e.g. storm, flood, earthquake)	37%	2 (44%)	↔
3	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	31%	4 (28%)	↗
4	Fire, explosion	27%	5 (21%)	↗
5	Business interruption (incl. supply chain disruption)	26%	3 (36%)	↕



### TOP 5 RISKS IN AVIATION, AEROSPACE, DEFENSE

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 95

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	40%	1 (43%)	↔
2	Business interruption (incl. supply chain disruption)	36%	2 (37%)	↔
3	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	27%	3 (36%)	↔
4	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	25%	4 (33%)	↔
5	Loss of reputation or brand value	17%	NEW	↗



### TOP 5 RISKS IN CHEMICALS, PHARMACEUTICALS, BIOPHARMA

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 76

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption)	67%	1 (59%)	↔
2	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	36%	2 (37%)	↔
3	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	33%	3 (27%)	↔
4	Product recall, quality management, serial defects	24%	5 (21%)	↗
5	Fire, explosion	18%	NEW	↗

Allianz Risk Barometer 2020: Appendix



### TOP 5 RISKS IN FINANCIAL SERVICES

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 978

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	46%	1 (46%)	↔
2	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	33%	2 (31%)	↔
3	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	25%	3 (28%)	↔
4	Business interruption (incl. supply chain disruption)	24%	5 (24%)	↗
5	Climate change/increasing volatility of weather	20%	NEW	↗



### TOP 5 RISKS IN FOOD & BEVERAGES (MANUFACTURING & SUPPLY)

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 45

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption)	49%	1 (49%)	↔
2	Loss of reputation or brand value	33%	4 (22%)	↗
3	Product recall, quality management, serial defects	33%	2 (42%)	↔
4	Fire, explosion	29%	NEW	↗
5	Climate change/increasing volatility of weather	27%	NEW	↗



### TOP 5 RISKS IN GOVERNMENT, PUBLIC SERVICES (INCL. HEALTHCARE)

Source: Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected  
as a percentage of all responses for that industry  
sector.

Respondents: 28

Figures don't add up to 100% as up to three  
risks could be selected.

Rank		Percent	2019 rank	Trend
1	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	39%	1 (41%)	↔
2	Climate change/increasing volatility of weather	25%	NEW	↗
3	Health issues (e.g. pandemic outbreak)	25%	NEW	↗
4	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	21%	1 (41%)	↔
5	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	21%	3 (27%)	↔

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# Top 2020 Risks by Industry



## TOP 5 RISKS IN CONSUMER GOODS

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 31  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Loss of reputation or brand value	39%	NEW	⬆️
2	Business interruption (incl. supply chain disruption)	32%	1 (48%)	⬆️
3	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	29%	5 (22%)	⬆️
3	Product recall, quality management, serial defects	29%	2 (35%)	⬆️
5	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	19%	3 (28%)	⬆️



## TOP 5 RISKS IN ENGINEERING, CONSTRUCTION, REAL ESTATE

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 152  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Natural catastrophes (e.g. storm, flood, earthquake)	38%	1 (40%)	⬆️
2	Business interruption (incl. supply chain disruption)	36%	2 (33%)	⬆️
3	Fire, explosion	34%	5 (23%)	⬆️
4	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	24%	NEW	⬆️
5	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	20%	3 (26%)	⬆️



## TOP 5 RISKS IN ENTERTAINMENT & MEDIA

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 49  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Loss of reputation or brand value	39%	4 (22%)	⬆️
2	Business interruption (incl. supply chain disruption)	35%	2 (31%)	⬆️
3	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	29%	1 (40%)	⬆️
4	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	24%	3 (26%)	⬆️
4	Theft, fraud, corruption	24%	NEW	⬆️



## TOP 5 RISKS IN HEAVY INDUSTRY (E.G. STEEL PLANTS)

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 20  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption)	70%	1 (69%)	⬆️
2	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	30%	NEW	⬆️
3	Fire, explosion	30%	2 (38%)	⬆️
4	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	20%	NEW	⬆️
5	Loss of reputation or brand value	20%	NEW	⬆️



## TOP 5 RISKS IN HOSPITALITY, LEISURE, TOURISM

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 34  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Natural catastrophes (e.g. storm, flood, earthquake)	50%	4 (31%)	⬆️
2	Business interruption (incl. supply chain disruption)	44%	1 (47%)	⬆️
3	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	35%	2 (40%)	⬆️
4	Fire, explosion	35%	3 (38%)	⬆️
5	Loss of reputation or brand value	26%	NEW	⬆️



## TOP 5 RISKS IN MANUFACTURING (INCL. AUTOMOTIVE)

**Source:** Allianz Global Corporate & Specialty.  
Figures represent how often a risk was selected as a percentage of all responses for that industry sector.  
Respondents: 167  
Figures don't add up to 100% as up to three risks could be selected.

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption)	60%	1 (63%)	⬆️
2	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	34%	3 (29%)	⬆️
3	Fire, explosion	29%	4 (26%)	⬆️
4	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	28%	NEW	⬆️
5	Product recall, quality management, serial defects	24%	5 (24%)	⬆️

# Top 2020 Risks by Size

## THE MOST IMPORTANT BUSINESS RISKS BY COMPANY SIZE

### TOP 10 RISKS FOR LARGE-SIZE ENTERPRISES\*

\*>US\$500mn annual revenues

Source: Allianz Global Corporate & Specialty.

Figures represent how often a risk was selected as a percentage of all responses for that company size.

Respondents: 1,348

Figures don't add up to 100% as up to three risks could be selected.

1 Business interruption ranks higher than cyber incidents based on the actual number of responses

2 Climate change ranks higher than market developments based on the actual number of responses

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption) <sup>1</sup>	43%	1 (44%)	↔
2	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	43%	2 (41%)	↔
3	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	27%	4 (28%)	⬆
4	Natural catastrophes (e.g. storm, flood, earthquake)	23%	3 (28%)	⬆
5	Fire, explosion	20%	7 (17%)	⬆
6	Climate change/increasing volatility of weather <sup>2</sup>	18%	8 (13%)	⬆
7	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	18%	5 (22%)	⬆
8	Loss of reputation or brand value	16%	8 (13%)	↔
9	New technologies (e.g. impact of artificial intelligence, autonomous vehicles, 3D printing, Internet of Things, nanotechnology, blockchain)	13%	6 (19%)	⬆
10	Macroeconomic developments (e.g. monetary policies, austerity programs, commodity price increase, deflation, inflation)	10%	NEW	⬆

### TOP 10 RISKS FOR MID-SIZE COMPANIES\*

\*\$250mn to \$500mn annual revenues

Source: Allianz Global Corporate & Specialty.

Figures represent how often a risk was selected as a percentage of all responses for that company size. Respondents: 521

Figures don't add up to 100% as up to three risks could be selected.

1 Natural catastrophes ranks higher than market developments based on the actual number of responses

Rank		Percent	2019 rank	Trend
1	Business interruption (incl. supply chain disruption)	37%	1 (38%)	↔
2	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	36%	2 (32%)	↔
3	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	25%	4 (24%)	⬆
4	Fire, explosion	22%	6 (19%)	⬆
5	Natural catastrophes (e.g. storm, flood, earthquake) <sup>1</sup>	19%	3 (29%)	⬆
6	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	19%	5 (23%)	↔
7	Climate change/increasing volatility of weather	17%	8 (14%)	⬆
8	Loss of reputation or brand value	13%	9 (12%)	⬆
9	New technologies (e.g. impact of artificial intelligence, autonomous vehicles, 3D printing, Internet of Things, nanotechnology, blockchain)	13%	7 (17%)	↔
10	Macroeconomic developments (e.g. monetary policies, austerity programs, commodity price increase, deflation, inflation)	10%	NEW	⬆

### TOP 10 RISKS FOR SMALL ENTERPRISE COMPANIES\*

\*<\$250mn annual revenues

Source: Allianz Global Corporate & Specialty.

Figures represent how often a risk was selected as a percentage of all responses for that company size. Respondents: 849

Figures don't add up to 100% as up to three risks could be selected.

1 New technologies ranks higher than macroeconomic developments based on the actual number of responses

Rank		Percent	2019 rank	Trend
1	Cyber incidents (e.g. cyber crime, IT failure/outage, data breaches, fines and penalties)	35%	1 (32%)	↔
2	Changes in legislation and regulation (e.g. trade wars and tariffs, economic sanctions, protectionism, Brexit, Euro-zone disintegration)	29%	2 (30%)	↔
3	Business interruption (incl. supply chain disruption)	28%	5 (26%)	⬆
4	Market developments (e.g. volatility, intensified competition/new entrants, M&A, market stagnation, market fluctuation)	27%	4 (27%)	↔
5	Natural catastrophes (e.g. storm, flood, earthquake)	18%	3 (27%)	⬆
6	Fire, explosion	17%	6 (21%)	↔
7	Climate change/increasing volatility of weather	15%	8 (13%)	⬆
8	New technologies (e.g. impact of artificial intelligence, autonomous vehicles, 3D printing, Internet of Things, nanotechnology, blockchain) <sup>1</sup>	14%	7 (19%)	⬆
9	Macroeconomic developments (e.g. monetary policies, austerity programs, commodity price increase, deflation, inflation)	14%	NEW	⬆
10	Loss of reputation or brand value	13%	10 (12%)	↔

## Third-Party Liability



## First-Party Loss



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# Align Insurance Assets with the Risks Facing Your Business



- General Liability
  - Bodily Injury and Property Damage
  - Advertising Injury
- First-Party Property
  - Business Interruption
  - Contingent Business Interruption
- Employment Practices
- Directors & Officers (“D&O”)
- Errors & Omissions (“E&O”) / Professional Liability

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## Align Insurance Assets with the Risks Facing Your Business



- Representation & Warranty
- Cyber & Privacy
- Credit Insurance / Lienholder Interest
- Patent
- Product Recall
- Environmental
- Crime / Fidelity
- Fiduciary
- Event Cancellation
- Title Insurance
- Cargo / Storage
- Wrap Up / OCIP / CCIP
- Political Risk

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# Utilizing Contract Provisions To Mitigate Risks

## Standard Form and Contract

Copyright © 2001 by Reeves Business Forms

Dated at \_\_\_\_\_ Date \_\_\_\_\_

Owner \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_ Address \_\_\_\_\_  
General Contractor or Owner's Agent

The undersigned plumbing contractor offers and agrees to furnish all labor and materials necessary to install a plumbing and sanitary system or the alteration or repair of such a system, in and upon the premises located at \_\_\_\_\_  
in the City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_  
in accordance with the plans and specifications therefor bearing the signatures of the parties and attached hereto as of the date of the acceptance hereof, or, if no such plans and specifications are so attached, then, in accordance with the work to be performed as outlined in the space below, and which said premises are legally described as being Lot \_\_\_\_\_ Block \_\_\_\_\_ Tract or Tract No. \_\_\_\_\_ as per map of the same recorded in Book \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_ Records of \_\_\_\_\_ County, State of \_\_\_\_\_  
Approximate dates when work will begin \_\_\_\_\_ and when work will be completed \_\_\_\_\_  
Substantial commencement of the project shall be defined as (briefly describe) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractors failure to substantially commence work, without lawful excuse, within twenty (20) days from the date specified above is a violation of the Contractors License Law.

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# Mitigating Liability Risks



- Indemnities and Hold Harmless Clauses
- Limitations on Damages/Liability
  - Waivers of Liability
  - Assumption of Risk
  - Special, Consequential, Indirect, Punitive
- Forum and Choice of Law Selection
  - Arbitration/Mediation
  - Jury Trials
- Insurance Requirements for Others
  - Specify the types of policies required.
  - Specify the minimum level of insurance necessary.
  - Request “additional insured” status and waiver of subrogation.
  - Request separate notice of cancellation and the option to continue the policy in the event the vendor fails to pay the necessary premiums.

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# Mitigating Risks to Your Business



- Term
- Master Agreement vs Single Engagement
- Force Majeure
- Cancellation/Termination Provisions
- Delay Provisions
- Warranties
- Subcontracting
- Priority Protection for AR and Extensions of Financing

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# Interweaving Protections in Practice



Liability Claim – Large gathering event

Breach duty = Negligence claims

## **Layers of Protection:**

- Waivers
- Limitations
- Indemnity
- Insurance
  - Tie indemnity with GL extension of protection to “Insured Contract”

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## Interweaving Protections in Practice



### **Example 1: Unexpected Event Closes Businesses (yours or someone you depend on)**

- Force Majeure to address immediate obligations
- Cancellation to address longer term
- Delay Provisions
- Pursuit of Business Interruption

### **Example 2: Unexpected Non-Payment of Financial Obligations Owed to You**

- Declaration of default and attachment of secured assets/LCs
- Insolvency risk
- Credit Risk Insurance

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# Trending Risks

- Event Cancellation
  - Orders of Civil Authority
- Pandemics
- “Return to Work” Issues
- Supply Chain Disruptions



# Checklists

## Insurance

- ☐ Align insurance to risks (a mix of insight and experience)
- ☐ Engage in active annual audits around renewal
- ☐ Protect yourself from closures
- ☐ Protect yourself from commercial litigation
- ☐ Weave insurance into an overall contractual risk transfer strategy
- ☐ Consider your optimal waterflow of assets
- ☐ Leverage the insurance assets of other contractual parties
- ☐ Give notice quickly
- ☐ Capture and document the circumstances when you discover a loss
- ☐ Don't accept no for an answer, and don't assume a lack of protection

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## Checklists continued

### Contracts

- ☐ Defined/Limited Term and Scope
- ☐ Master Agreement or One-off
- ☐ Force Majeure (bilateral – double edge)
- ☐ Cancellation
- ☐ Delay
- ☐ Waivers
- ☐ Indemnifications
- ☐ Limitations on Liabilities and Actions
- ☐ Forum and Law
- ☐ Leveraging the assets of counter-parties
  - ☐ Additional insured and loss payee insurance status

**QUESTIONS?**

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# APPENDIX

# GL Coverage For Insured Contracts

## b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
  - (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
    - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
    - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.
2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
    - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
    - b. This insurance applies to such liability assumed by the insured;
    - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
    - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
    - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

# Insured Contract and Additional Insured

## 9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## ADDITIONAL INSURED – VENDORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s) (Vendor)	Your Products
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
  - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - b. Any express warranty unauthorized by you;

- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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# Business Income and Loss Payable/Loss Payee



## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F., Definitions.

### A. Coverage

#### 1. Business Income

Business Income means the:

- Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- Business Income Including "Rental Value".
- Business Income Other Than "Rental Value".
- "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- The portion of the building which you rent, lease or occupy; and
- Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

#### 2. Extra Expense

- Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.

- Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.
- Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
BUILDERS' RISK COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM  
STANDARD PROPERTY POLICY

Prem. No.	Bldg. No.	Description of Property	Loss Payee (Name & Address)	SCHEDULE		
				Loss Payable	Lender's Loss Payable	Contract Of Sale

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

The following is added to the LOSS PAYMENT Loss Condition, as indicated in the Declarations or by an "X" in the Schedule:

### B. LOSS PAYABLE

For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

- Adjust losses with you; and
- Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

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# PANELISTS



## Carnot Evans



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Carnot supports Marriott's Global Information Technology team on a wide variety of issues and transactions, including procurement of various technology products and services, advising on new technology initiatives, managing vendor disputes and audits, and providing counsel on regulatory and legal compliance issues.

Prior to joining Marriott, Carnot served as in-house counsel to Software AG, Inc., the North American division of one of Europe's largest software companies. Carnot also worked in private practice handling complex mergers, acquisitions and securities matters, as well as working for the U.S. Securities & Exchange Commission.

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John's national practice focuses on advising corporate policyholders about their insurance policy rights and recovery insurance assets, either through negotiation or trial. He maintains a particularly active trial practice that includes serving as trial counsel for a *Fortune* 100 pharmaceutical company in a four-month trial, a *Fortune* 500 regulated utility in two separate multiweek jury trials, and a large multinational engineering services corporation in a three-judge panel arbitration.

John is ranked in *Chambers USA* and *Legal 500* recommended John for his "subject-matter expertise and business-focused approach." *Benchmark Litigation* also recognized John as a local (Washington, DC) "Plaintiff Litigation Star" and ranked him in the National Tier 1 level (one of only 11 for insurance nationally). He is also recognized in *Best Lawyers in America*.

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