LOSS MITIGATION STRATEGIES
FOR PORT AUTHORITIES

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AAPA Marine Terminal
Management Training Program

Renaissance Baltimore Harborplace Hotel
Baltimore, Maryland
September 19, 2012
Disclaimer

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I. Meat and Potatoes (Basic Maritime Primaries)

- Commercial General Liability
- Marine General Liability
- Protection & Indemnity (P&I)
- Legal Liability
- Hull Insurance
Commercial General Liability

• Typical language: coverage for “all sums which the Assured shall become legally liable to pay or by contract or agreement become liable to pay in respect of claims made against the Assured for damages of whatsoever nature, on account of: (1) personal injuries . . . ; (2) property damage . . . .”
Maritime General Liability

• Combines traditional CGL policies with maritime liabilities. Designed to cover land-based and maritime exposures.

• Language can vary, so policies should be reviewed carefully at time of purchase.
Protection & Indemnity (P&I)

• Broad coverage for both personal injury and property damage associated with virtually all operations of a vessel, exclusive of workers compensation insurance.

• Covers liabilities to both the vessel and the crew. Can include wreck removal.
Legal Liability

Coverage for other people’s property in the care and custody of the policyholder, such as:

- Terminal Operators’ Liability
- Marina Operators’ Liability
- Shiprepairer’s Liability
- Stevedores’ Liability
- Wharfingers’ Liability
Hull Insurance

• Coverage for physical damage to an owned or chartered vessel, salvage costs and limited property damage (collision and towers’ liability) for the operation of that vessel.

• Can include coverage for vessels under construction (Builders’ Risk) and marine inventory held for sale (Boat Dealers’ Physical Damage).
II. Side Dishes (Non-Marine Primaries)

- Auto: property damage to own vehicles; bodily injury to third-parties.

- Property: covers buildings, yards, boilers, business interruption.

- Inland Marine: covers mobile equipment, such as cranes and lifts.
Non-Marine Primaries (cont.)

- Liquor Liability
- Workers Compensation
- EPLI; EBLI (Fiduciary)
- D&O; E&O
- Foreign (Property, Liability, Auto, Comp)
III. Doused in Gravy (Marine Excess)

- Bumbershoots

- NOT the annual international music and arts festival held every Labor Day weekend in Seattle, Washington

- A colloquial term coined in the 19th Century, as a combination of “umbrella” and “parachute.”
Bumbershoot Policies

• Excess of primary policies, providing higher limits and filling in gaps.

• Stands over most of the primaries: CGL, Legal Liability, P&I, Hull, Commercial Auto, EPLI, etc.
IV. High-Calorie Desserts
(Coverage for Excluded Risks)

• Flood Insurance: covers physical damage to buildings and their contents, if damaged by flood.

• Pollution Insurance: tailored coverage for risks such as environmental impairment at a site, underground storage tanks, vessel pollution.
V. Loss Mitigation Strategies
(Counting Your Calories)

1. Before or immediately after the loss, when the loss itself can be mitigated: Implicit or explicit loss mitigation provisions in generic property and liability policies.

2. After the damage has been done: Individually tailored Loss Mitigation Insurance (LMI) policies that control policyholders’ financial exposure based on previously occurring loss.
Before the Damage is Done: Loss Mitigation Provisions in Property Policies:

• Typically referred to as “sue and labor” clauses.

• Impose a duty on policyholder to mitigate, and a corresponding duty on insurance company to reimburse policyholder for mitigation costs.
Before the Damage is Done: Loss Mitigation Provisions in Liability Policies:

- Historically, liability policies less likely to address loss mitigation explicitly, however the doctrine of loss mitigation in the liability context is well-developed.

- Potential coverage for mitigating measures taken either before or after the liability-creating event.

- Costs of fixing potentially hazardous plumbing systems before an injury occurred was covered loss mitigation cost even though actual damage had not yet occurred.

- Coverage found despite lack of explicit grant of coverage: loss mitigation costs “are covered by standard-form CGL policies such as the ones at issue in this case absent exclusionary language in the policy.”
After the Damage is Done –
Loss Mitigation Insurance Policies

1. Initially became popular in late 1990s, early 2000s.

2. Purpose of LMI is to provide insurance coverage where a loss has already occurred, but the extent of its financial ramifications is still unclear.
After the Damage is Done – Loss Mitigation Insurance – Benefits

1. Allows risk managers to neatly address long-term outstanding litigation that, without LMI, would produce great uncertainty (could just as easily lead to millions of dollars of liability as to no liability whatsoever).

2. Helpful in context of mergers and acquisitions – LMI policies reassure buyers that a pending loss will not potentially prove so costly as to significantly lessen the selling company’s value.
After the Damage is Done – Loss Mitigation Insurance – Benefits (cont’d)

1. Helps policyholder pay for financially damaging loss via steady, known premium payments, rather than unpredictable lump sum verdicts/damage awards.

2. Policyholders may purchase insurance to cover portions of a damage award exceeding X million dollars, giving policyholder clear understanding of maximum possible exposure.
General Tips When a Loss Occurs or Is Threatening to Occur

1. Always seek to mitigate the loss, even if question of coverage is not clear and you do not hold a LMIP – better safe than sorry, from business and insurance perspectives.

2. Always give insurance company early notice of loss mitigation costs to be incurred.
VI. CONCLUSION:

1. Assess your risks and purchase the policies that you need.

2. Read them!

3. If a loss has occurred already, consider LMI.
Thank You

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