2010 BOP Narrows the Gap
By Bob Ford, CIC, CISR

When the Businessowners Policy (BOP) was first introduced in the 1970’s, it was designed for small business. But over the years the class of businesses eligible for the BOP has continued to expand. No longer is the BOP used for just “mom and pop” stores, but in today’s world we see ever larger business operations written on a BOP policy. This has created a bit of a conundrum. While they may be eligible for a BOP, larger, more sophisticated businesses sometimes have needs for coverages that the BOP doesn't address.

Up to now the only solution has been to write that type of business on a Commercial Package Policy (CPP). The CPP traditionally offers more flexibility and a wider range of available coverages. (For example, a CPP can extend Loss of Business Income past 12 months.) So, the BOP with its ever expanding list of eligible classes sees a marketplace that demands that the Businessowners Policy catch up with the coverages that the Commercial Package Policy currently offers. In ISO’s 2010 revision of the BOP we will see that they are “closing the gap” in several areas.

Note that in most states, the ISO BOP changes will become effective by April 2010. Refer to the chart for a state-by-state synopsis of the BOP (and BAP) effective dates.

Important Property Changes

Outdoor Property

As agents visit with prospects and clients, sometimes we tend to be too narrow minded. By that I mean we sometimes tend to direct our conversations with our clients more toward establishing the correct values on buildings and contents, but we miss the big picture. As you drive onto your insured’s property, have you ever given pause to look at the amount of money your client has invested in making their premises look pretty? When programming the insurance policy have you given proper consideration to the client’s investment in landscaping that surrounds the building and makes the premises look more attractive? My wager is that after the fire your client will not only expect to be paid for his building and contents, but also the $25,000 worth of landscaping that was destroyed when the building went up in flames!

In the 2006 version of the BOP we were limited to a $2,500 maximum on trees, shrubs, and plants for loss resulting from fire. The 2010 BOP has recognized this weakness and now offers the ability to increase the limit on the policy for these items. There is one drawback, however, you must keep in mind. While we will now be able to increase the overall limit for trees, shrubs, and plants, the new BOP will contain a maximum limit per tree of $1,000.
Debris Removal

Speaking of a fire, or any other covered loss for that matter, when your client’s property is substantially damaged, the first thing on everybody's mind is getting the property claim settled. But if we step back in time before the loss occurred when we initially programmed the coverages for our client on their insurance policy, did we give adequate consideration to other aspects when a major loss does occur? A case in point would be Debris Removal expense.

There are many things that we have to bring into the picture when considering how much money we want available to us to pay for debris removal at the time of the loss. For purposes of discussion, let's assume our loss is catastrophic.

The first thing that enters my mind is, what was the construction of the building? The next thing I think about is, what was the cause of loss? For instance, if your building was a frame construction and the cause of loss was a fire, then you may not have much left to clean up. However, if the construction of the building was steel or prefab concrete, that can result in quite a different outlook.

Another consideration for debris removal expense is, what are the contents of your client’s building? It is one thing to plan for debris removal expense for a retail clothing store, but quite another to consider a retail hardware store or building material dealer.

In any event, under the 2006 BOP format, the policy provided coverage for up to 25% of the amount of the paid loss (plus the amount of the deductible) as a limit that the policy would pay for debris removal expense. The problem with his philosophy is that policy language was worded so that any payment that would result from the calculation of this formula would be inside the policy limits! That meant that if you had a total loss to your property and the policy limits were paid out in the claim settlement, then there would be nothing left inside the limits to use for debris removal expense! With this scenario in mind, the older version of the BOP came to the rescue by making available an additional payment of up to $10,000 for any debris removal expense if the policy limits are exhausted or the 25% limit is used up.

Now, let me ask this question. If fire melted your steel building into an unmanageable "blob” of metal, is it possible you may have to rent a crane and/or bring in a contractor with cutting torches in order to remove what's left of your client’s property? If that's the case, how far does $10,000 go?

The 2010 BOP now offers a remedy. A new endorsement, the BP 14 09 - Debris Removal Additional Insurance will now allow us to replace the base policy’s $10,000 limit. We can now name a higher limit at any specified location described on the policy. This has been sorely needed and is a much welcome addition to the new 2010 BOP.
Equipment Breakdown

As you may be aware, the BOP policy contains an exclusion concerning damages that result from Artificially Generated Electrical Current and Mechanical Breakdown. These are important areas that need to be addressed when setting up property coverages for any client. Up to now, we have had two different choices to offer the client when trying to eliminate these exclusions. We can offer them the optional coverage of Mechanical Breakdown or are we can offer them the endorsement BP 04 59 - Equipment Breakdown Protection Coverage Endorsement. This has caused some confusion.

When teaching the BOP session in the commercial property CIC institutes, I have been warning agents for years to steer clear of the Mechanical Breakdown Optional Coverage. The problem with this optional coverage has been that it is very limited in scope. That is to say it only covers three specific types of equipment (Boiler Units, Pressure Vessels, and Air Conditioning Units with 60,000 BTU’s or more). It also only covers the peril of Mechanical breakdown. A third problem with this optional coverage has been that coverage is only triggered if the loss manifests itself (makes itself known) immediately!

The 2010 BOP is solving this problem by eliminating this optional coverage and replacing it with the more complete Equipment Breakdown Protection Coverage. Now when purchasing the optional coverage of Equipment Breakdown Protection you will see much more comprehensive coverage afforded to your client. You will no longer be limited to only three types of equipment covered and the policy will be much broader in scope for the types of covered losses.

Crime

The 2010 BOP offers an additional coverage that has been up to now only available when purchasing crime coverage on the CPP. The BP 05 47 - Computer Fraud and Funds Transfer Fraud endorsement offers coverage for loss of property, money or securities when someone uses a computer away from your insured’s premises to gain access to these items.

For example, let’s say someone uses a computer to hack into your insured’s computer at their premises or your insured’s bank premises and issues false orders to transfer property or money to someone or someplace other than a messenger outside your insured’s premises.

With the growing sophistication of computer crime these losses are growing harder to track by the day. With easy access to the Internet many of these criminals operate from other continents and once the money is taken it can be impossible to locate and recover.

Business Income and Extra Expense
The BOP policy is perhaps most famously known for its "sky is the limit" coverage for business income and extra expense. In other words, the form shows no dollar limitations when figuring a time element loss. The only limitation is that the policy will pay for any dollar amount the insured can prove or validate and will pay that loss no longer than 12 consecutive months following the date of the loss.

Up to now we have been faced with a tough choice. I like the fact that the policy has no dollar limitations and that my client literally has an unlimited bucket of money to draw from to pay a claim in this area. Any provable loss, no matter how much money is involved, will be paid. The downside to the BOP’s policy wording, however, is that I can collect these funds no longer than 12 consecutive months. The way the BOP is set up gives us a false sense of security. We tend to focus too much on the "unlimited funds" aspect of the policy and forget to think about 12-month time limitation. Many businesses, even small businesses, simply cannot get their doors back open within the 12-month time period. Thanks to two new endorsements we now have the option to extend coverage beyond 12 months.

The first endorsement is a bit of a double-edged sword. On the upside, the BP 14 06 - Business Income and Extra Expense Coverage Limit of Insurance endorsement removes the 12-month limitation that applies to business income and extra expense. The downside of this endorsement, however, requires us to name the dollar limit that the insured will be subject to during the period of restoration. That’s right. Go ahead and read that sentence again. With the use of this endorsement the insured’s "unlimited" bucket of funds would be gone. So the trade-off for removing the 12-month limitation requires the insured to name a dollar limit for business income and extra expense. It should be noted however that the endorsement does not have any coinsurance clause.

The second endorsement that revises the base policy's 12 consecutive months period of indemnity is the BP 14 07 - Business Income and Extra Expense-Revised Period of Indemnity. With this endorsement the insured can customize the period of time that business income and extra expense applies. In other words, instead of the policy paying 12 consecutive months the insured can use any specified number of days he or she chooses. With the use of this endorsement an insured could either reduce or expand the 12 months as they see fit. This endorsement gives an opportunity to customize time element coverages in relation to any unique exposures the insured may have.

**Discretionary Payroll Expense**

Addressing payroll expenses inside a time element claim can be tricky. Currently, the base policy provides only 60 days coverage for "ordinary payroll" expenses. "Ordinary payroll" in a nutshell means all payroll except officers, executives, department managers, etc.
In the real world there may be situations in which you need to have “ordinary” employees’ payroll continue beyond 60 days. For example, you may have invested time, money and training in salespeople for your business. In the event of a fire it will likely take the insured far more than 60 days to open their doors again. These sales people have personal bills to pay and if you cannot continue their payroll expense they will be forced to find a job elsewhere. To protect your investment of time and training in these people the 2010 BOP now offers the solution via endorsement.

The BP 14 30 - Discretionary Payroll Expense Endorsement offers the solution to this problem by allowing the insured to specify either certain job classifications or certain employees that they would like to continue paying beyond 60 days. You may ask the question, "how far beyond 60 days can I extend this payroll?" The endorsement allows the insured to continue the payroll for the entire period of restoration or specify a maximum number of days.

For insureds written on a BOP policy, this endorsement solves a major problem.

**Civil Authority**

Imagine driving to work one morning. You’re making the last turn onto the block where your business is located only to see the street blocked by police cars. Apparently a neighboring business had a fire which has caused the authorities to close down the neighborhood. Because you cannot access your business it is shut down. And with the doors closed you are now losing income. The BOP states that it will pay the insured for loss of business income and extra expense if there is a loss to a neighboring property, which would have been a covered loss if it happened at the insured’s property, and the loss causes the civil authorities to shut down access to your business.

The 2010 BOP policy, however, has changed the coverage trigger. The policy will now state that the location where the loss actually occurred must be within a one-mile radius of the insured’s location. Former versions of the policy did not stipulate any particular distance.

Furthermore, the 2010 BOP policy extends the period of time the insured can collect for a Civil Authority loss. Formerly coverage was given for three consecutive weeks. The new policy will now pay up to four consecutive weeks.

**Liability**

Regarding the liability side of the 2010 BOP, a couple of things are happening that are noteworthy.
Endorsements that Change the General Aggregate

The BP 14 17 - Designated Location (s) General Aggregate Limit Endorsement

In keeping with our overall theme, "narrowing the gap," the 2010 BOP offers two new tools formerly found only on the CPP version of General Liability.

The BP 14 17 - Designated Location (s) General Aggregate Limit Endorsement offers the ability to provide for an aggregate limit on the location basis. The endorsement uses a schedule in which the insured supplies legal locations to the insurance company. That schedule then modifies the policy to provide the aggregate limit for each designated legal location. Coverage applies for Bodily Injury, Property Damage and Medical Payments from losses that occur at the location shown in the endorsement.

BP 14 18 - Designated Construction Project(s) General Aggregate Limit Endorsement

Because of the ever broadening eligible classes of contractors that can be insured on the BOP, the BP 14 18 - Designated Construction Project(s) General Aggregate Limit Endorsement allows the insured to designate specific construction projects in which the General Aggregate limit will apply separately apart from any other General Liability exposures the insured may have.

Coverage is extended for Bodily Injury, Property Damage and Medical Payments at that particular construction location. In other words, any impairment of the General Aggregate due to claims that occur away from that designated construction project will not reduce the available coverage for that designated project shown in the endorsement.

Optional Exclusion for Damage to Work Performed by Subcontractors on Your Behalf

There are two new endorsements that significantly narrow coverage on behalf of the insured. They are BP 14 19 - Damage to Work Performed by Subcontractors on Your Behalf Endorsement and BP 14 20 - Damage to Work Performed by Subcontractors on Your Behalf-Designated Sites or Operations Endorsement.

Liability coverage on the BOP currently excludes property damage arising from the insured’s work. However, this exclusion does not apply if the damage results from work performed on behalf of the insured by a subcontractor.

These two optional endorsements will take away this exception thereby significantly narrowing coverage available to the insured.
The two endorsements are slightly different in that the BP 14 19 eliminates the exception to the exclusion for work performed by a subcontractor and the other endorsement, the BP 14 20, uses a schedule to limit the coverage taken away to designated sites or operations.

**Hired and Non Owned Auto Liability**

This endorsement (BP 04 04) has been revised. It now more clearly addresses the coverage intent to make this endorsement excess over any other insurance that may be covering the hired or non owned auto at the time of the loss.

For example, suppose the boss asks an employee of the business to run down and get the mail at the post office. The employee uses their own vehicle. On the way they have a severe auto accident causing bodily injury to another person and it is determined the employee is at fault. Both the employee and the business are likely to be sued in that situation. The employee’s Personal Auto Policy contains a clause which states it will defend any organization to which the employee becomes legally responsible. So should the employee become "legally responsible" to their employer as determined by the legal system, then the employee’s Personal Auto Policy will become the primary line of defense for the business. Once the Personal Auto Policy limits are exhausted, the business’s Hired and Non-owned Auto Liability endorsement will trigger.

**Snowplow Products -- Completed Operations**

For those of you reading this article who may live in colder climates, here's a new endorsement you can't live without.

Do you have someone insured on the BOP in which all or part of their business may be snow removal? If so, consider this example.

If you've ever watched a snow removal contractor work you will see a common practice among them. In order to remove snow from our insurance agency’s parking lot they will first bring in a piece of equipment with a push blade attached to it. They essentially push all the snow into a pile and will return later with heavy equipment to load the snow into trucks and haul it away. Imagine that before the snow pile has been removed a motorist comes along and crashes into it suffering severe injuries. The injured party brings suit against the contractor. Where will the snow removal contractor get coverage for this incident?

The Business Auto Policy will not cover this incident as it contains a "Completed Operations" exclusion.
The BOP’s liability section will not respond as it also has an exclusion for Bodily Injury and Property Damage that results from the operation of an auto.

The insured is essentially left uncovered for this type of claim!

The 2010 BOP comes to the rescue with a new endorsement, the BP 14-16 Snowplow Products-Completed Operations Hazard Coverage. This endorsement removes the products and completed operations exclusion from the BOP’s liability section therefore giving coverage for an incident like the example shown above.

**Narrowing the Gap**

Because the types of businesses eligible for coverage on the BOP is ever growing, when I teach BOP classes I tend to emphasize the difference between the BOP and the CPP. We often times have a choice to write an account on the BOP or a CPP. Believe it or not, there are many differences between the two. The BOP is not the solution for all classes of business even if they are eligible for it. The 2010 BOP does, however, narrow the gap between the two. The BOP is not the solution for all accounts, but with the addition of the coverages mentioned in this article it certainly makes the new 2010 BOP more flexible than it has ever been before.

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**Learn More, Earn More**

This article discusses the most significant changes to the BOP which will become effective this year in most states. The author focused on the most important changes, but there are still other changes that were not included in this article. To get the most comprehensive and up-to-date material on the BOP, consider attending the Commercial Property CIC Program.