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Technical Advisory

TA 246

March 28, 2005

Subject: Described Premises Under Commercial Property Forms

Background: An insured had an open lot business and stored a substantial amount of business personal property (BPP) in an enclosed shed. They did not insure the shed. Thieves stole \$5,000 worth of BPP. The adjuster says it isn't covered because it wasn't in a DESCRIBED building, but it would have been covered if in the open! Is this correct?

Main Points: *This question frequently arises in dealing with commercial insureds who choose not to insure certain small buildings at their location, but store business personal property in the buildings.*

Below is an article from IIABA's Virtual University on the subject. For additional articles on technical insurance subjects, go to www.iiaba.net/vu.

Question to the VU "Ask An Expert": "Our agency has a claim situation that is causing us problems. Attached is the dec page and a few coverage pages for a small commercial client of ours. We wrote no building coverage because their sales office is a manufactured home, which is covered under a separate Open Lot policy.

"In early June of this year, they put a \$3,000 storage shed on the premises. It was placed 20 or so feet behind the sales office. The client did not want coverage for the shed itself. On October 10th, 2004, the customer discovered the shed had been broken into. Over \$5,000 worth of items were stolen, including business personal property (BPP) items and a trailer. We knew the trailer would not be covered under this policy, but thought the BPP would be.

"However, the carrier denied the claim because the BPP was not in or on a building listed in the declarations. The declination letter is attached. We referred the adjuster to the policy wording of '... located in or on the buildings or "mobile homes" at the described premises...', which did not (in our opinion) state that the building had to be specifically listed on the policy to trigger coverage for BPP stored inside.

"The adjuster responded that the shed is not considered to be part of the 'described premises.' He referred us to the Description of Premises on the dec page which lists Prem #1 and Bldg #1, along with the address. He said that since the shed was not Bldg #1, it was not part of the premises. We

have been unsuccessful in our efforts so far to find coverage interpretations regarding this specific question. Your opinion would be greatly appreciated and will help us decide whether or not we should accept the declination or dispute it further."

Answers From VU Faculty Experts: This claim was received by faculty member Chris Amrhein from one of his [American Agent & Broker magazine](#) column readers. Although we have published a [similar article](#), this one has a slightly different twist, so we ran this by the VU faculty and their comments are below.

Faculty Response #1: 1. The ISO [CP 00 10](#) coverage for BPP states that the property is covered if "located in or on the building described in the declarations or in the open (or in a vehicle) within 100 feet of the described premises."

2. A literal reading suggests that BPP is covered only while in or on described buildings, or in the open, or in vehicles.

3. A common sense view is that if BPP is covered in the open, or in a vehicle, within 100 feet of the described premises, what is the logic in not covering BPP while in an undescribed vehicle. Geez, if it's covered in the open, why not in a shed? One of my early mentors said, "If you can't argue the form, argue logic. If you can't argue logic, argue the form."

4. I recently had a similar question involving the Coverage Extension for VPR. Seems an attorney had some records stored in an old building on his premises, which he did not choose to insure. After a loss to the building and its VPR, the insurer denied coverage, citing the lead-in wording in the Coverage Extension (same as in Chris's question): "...the following Extensions apply to property located in or on the building described in the declarations or in the open (or in a vehicle) within 100 ft. of the described premises."

5. On a related issue of the "described premises," the August 23, 2004 edition of [Insurance Journal](#) had an interesting case in the "Legal Beat" section. An insured who owned a tanning salon in a strip mall had a new tanning bed in the back of his pickup truck, which was parked within 100 ft. of the strip mall's property line, but 280 ft. from his actual business site within the strip mall. The insurer successfully denied coverage, holding that the "described premises" was his actual shop, not the strip mall premises.

Faculty Response #2: Great question! When you look at the language in the form (and the very closely related language in the ISO CP 00 10 04 02), it does limit the BPP to items "in or on the buildingor in the open (or in a vehicle) within 100 feet of the described premises." I know that insurance companies have been interpreting that to include items located in other buildings within 100 feet of the property line of the insured. Many agents do not schedule containers that insureds have on their property containing BPP.

While I think this company is taking a hard line on the loss, the form language does limit the coverage. Inside of an undescribed container is not in the open. If it was in a parked semi-trailer, that

is a vehicle and would be covered. I would have to agree that the company is following the contract wording and is correct. You could argue that since the "Property Not Covered" does not include BPP on the premises out of the building in a container, that the policy is at least ambiguous on this point.

I think this has the makings of a great article by Chris or Ace Insura. One of you needs to publish this as many agents do not expect this problem.

Faculty Response #3: I think the company is correct. The Described Premises is the piece of land where "...the building or structure described in the Declarations..." is located.

I think there are two issues mentioned. The premises (land) which outline where the buildings or structure may be situated, including BPP in the open or in a vehicle and within 100 feet of the land, and the actual buildings/structures that are on the land.

The lost contents were not in a described building. This has always seemed strange (wait we are talking insurance)—if the same stuff was scattered all over the land, in plain sight and totally unprotected) maybe with a big sign that says "take me," it is covered—but if the stuff is in a locked building (could have Rambo guarding the mess), but since the underwriter didn't know there was a building, then it is not covered! Sounds like a Amrhein article in the making!

I noticed there is a defined term "Insured Location" in the form but it was not given to us, so I assumed it was not important.

Faculty Response #4: The premises is realty at the address shown, not just the building. If not, why would policies describe coverage for property "in the open"? Regarding the specifics of the claim, the adjuster erred. He shot all around it but missed. The language of the policy is, "in or on the buildings or "mobile homes" at the described premises or in the open (or in a vehicle)...."

The premises is what's described, not the buildings, for the purposes of business personal property. Nowhere does the policy say the personal property must be in a described building. It's not there. It can, but it doesn't have to be. Heck, it can be in the Weinermobile parked on the street that's owned by the king of Siam for crying out loud. So why would it have to be in a described building?

Faculty Response #5: This was a Far West Technical Conference issue with ISO several years ago. One reason for the limitation is to be sure the insured discloses all buildings so the company can charge the appropriate rate for the building the property is located in as well as underwrite the building. I have a building supply center that's always adding new storage buildings. The buildings are inexpensive and the insured often isn't worried about loss to them, but they often house significant values of inventory. I blanketed the buildings and contents which helps a lot, though the company could still balk at paying for undescribed buildings. And having to update the blanket every year with a new statement of values is tedious, though it helps find and insure the new buildings.

Necessary Action: Circulate this Technical Advisory to all appropriate Commercial Lines staff.