

**IRU/BRMA  
CONTRACT WORDING SEMINAR**

**THE GRADUATE CENTER  
CITY UNIVERSITY OF NEW YORK**

**MAY 17, 2006**

---

**“LOSS OCCURRENCE” DEFINITION PANEL**

---

---

***THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY  
REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---

***“The information contained in this outline and any discussions or statements made during its presentation are intended to be used for informational purposes relating to this Seminar only and are not intended for any particular purpose. This outline contains general and broad information and is not intended to apply to any specific situation or to serve any specific purpose. The views expressed do not necessarily represent the views of Everest Global Services and/or GE Insurance Solutions and/or Towers Perrin and their affiliates and/or subsidiaries. The authors shall not be held responsible in any way for use of any of the information contained in or referenced in this outline. The information contained in this outline is not intended to constitute and should not be considered legal advice, nor shall it serve as a substitute for obtaining legal advice specific to any particular needs that may be presented.”***

---

**THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

## Questions to Be Addressed

### A. *The Basics To Consider In Drafting A Definition Of “Loss Occurrence”*

1. What Is The Purpose Of The Definition Of A “Loss Occurrence”?
  - i. To establish a date of loss?
  - ii. To describe a set of circumstances that will cause assorted losses to be accumulated together that result from a common cause or event for the purposes of applying insurance or reinsurance limits (and retentions)?
2. What Is An “Event”?
3. What Is The Relationship Between The “Loss Occurrence” And The “Event”?
4. What is a “Trigger”?
5. What Is The Relationship Between “Loss Occurrence” And “Trigger?”  
  
“Event” and “Trigger”?

---

**THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

**6. Does A “Loss Occurrence” Definition Set The Parameters For The Cause Or The Result Of The Loss Or Damages Resulting From An Event?**

**i. Property:**

**1. What is the relationship of the definition of risk to the definition of “Loss Occurrence”?**

**2. What is the purpose of the hours clause?**

**ii. Casualty: How does the definition of Occurrence or Risk address the following legal theories?**

**1. Exposure**

**2. Manifestation**

**3. Double Trigger**

**4. Triple Trigger**

**5. Injury in fact**

**7. Is The Definition Of “Loss Occurrence” Always Needed?**

---

**THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

**For example, is a “Loss Occurrence” or “Event” definition needed for a reinsurance agreement covering only claims-made policies?**

**8. Is Consistency Of Definition Between All Reinsurance Coverages or Layers Necessary?**

**9. Why Do Definitions Of “Loss Occurrence” Differ For Property And Casualty Reinsurance Agreements?**

**i. Do the definitions serve different purposes?**

**Does one deal more with establishing a date of loss and the other with accumulating damages?**

**ii. Does the type of cover in each category make a difference?**

**1. Property: For example, per risk excess versus a catastrophe agreement?**

**2. Casualty: For example, professional liability versus commercial auto?**

**10. Why can't the definition of “Loss Occurrence” just follow the definition of occurrence, accident, or etc. in the policies?**

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

- i. Is non-currency between the policy definition of occurrence or accident and the reinsurance agreement definition of the same acceptable?
  
- ii. Is the definition of occurrence subject to a follow-the-fortunes clause?

**11. How Do Loss History and Pricing Affect the Definition of “Loss Occurrence”?**

**12. (Policy) Limits Exposing:**

- i. Clash between insureds covered under the same policy
  
- ii. Clash between insureds covered under different policies

**13. Losses (to the Reinsurance Agreement) Exposing:**

- i. Per Occurrence
  
- ii. In the Aggregate
  
- iii. (Property): Two or more perils
  
- iv. (Casualty): Clash: Same as the sub-bullet points for Limits Exposing – two or more policies and/or insureds

---

**THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

**14. Workers' Compensation and "Loss Occurrence":**

- i. What Is Cumulative Trauma/Occupational Disease?**
  
- ii. Per Employer/Per Employee**
  
- iii. Hours Clause**

**15. "Loss Occurrence" and Products Liability?**

- i. Is a batch clause a variation or modifier of a Loss Occurrence definition?**
  
- ii. Does it make a difference if the reinsured policy limit covers products in the aggregate and the reinsurance agreement covers in aggregate, if applicable?**

**B. *Advanced Matters to Consider in Drafting a Definition:***

**1. How Do You Address A "Loss Occurrence" That Extends Across Treaty Years And Multiple Policy Periods?**

**How Do You Use Event Covers/Interlocking Covers/Modified Event Covers?**

**2. What is Aggregate Extension?**

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

**What is Aggregate Extraction?**

**How do these terms relate to the “Loss Occurrence” definition?**

**3. What Is The Allocation Issue?**

**C. *Application of Property Definition to Katrina:***

**1. One or Two “Events”?**

**2. Is Wind and Following Riots or Civil Commotion One “Loss Occurrence”?**

---

***THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---

## Definitions

### Basic Definition

*“The term “loss occurrence”, except as otherwise provided herein, shall mean any one accident, disaster, casualty or happening, or series of accidents, disasters, casualties or happenings arising out of or following on one event, regardless of the number of interests insured or the number of policies responding.”*

### More Complex Definition-Casualty

*Except as otherwise provided herein, the term “Loss Occurrence” or “Occurrence” means an accident, incident, disaster, casualty or happening, or series of accidents, incidents, disasters, casualties or happenings arising out of or following on one Event, regardless of (i) the number of interests insured or the number of Policies responding or (ii) whether the claims arising out of the Occurrence are made under Policies issued on an “occurrence” basis and/or “claims made” or other basis. Except where specifically provided otherwise in this Contract, each Loss Occurrence shall be deemed to take place in its entirety as of the earliest date of loss as determined by any Policy responding to the Loss Occurrence. Any claims made under an Extended Reporting Period Endorsement or any other extended reporting and/or discovery period shall for the purposes of this Contract be considered to be made on the last day of the policy period immediately preceding the extended reporting and/or discovery period. When claims-made and/or losses discovered and/or occurrence and/or accident policies are involved in the same Event with other claims-made and/or losses discovered and/or occurrence and/or accident policies, the date of loss for the Event shall be determined as follows:*

- 1. If an occurrence or accident policy is identified as being involved, then the date of “loss” shall be the date as determined under the occurrence or accident Policy; or*
- 2. If no occurrence or accident policy is identified as being involved, then the date of “loss” shall be the date the first claim is made or discovered under a claims-made or losses discovered Policy. If the first claim from an Event is made under an extended reporting period endorsement, the date of loss for the Event shall be the date the first claim is made. If after ten years from the expiration date of this Contract, the Reassured identifies a loss from an occurrence Policy, the date of loss for all claims-made and losses discovered policies shall remain as first established.*

---

**THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

Continuous Or Repeated Injurious Exposure. As respects Liability (bodily injury and property damage) other than Automobile and Products, and at the option of the Reassured, the term "Loss Occurrence" as used in this Contract shall also mean the sum of all damages for bodily injury and property damage sustained by each insured during a Policy period arising out of a continuous or repeated injurious exposure to substantially the same general conditions. For purposes of this definition, the date of loss shall be deemed to be the inception or renewal date of the Policy to which payment of the Loss is charged.

Products. As respects Products liability, and at the option of the Reassured, the term "Loss Occurrence" as used in this Contract shall also mean the sum of all damages for bodily injury and property damage sustained by each insured during a Policy period arising out of the use of the same kind of product made or produced by the same manufacturer or producer. For purposes of this definition, the date of loss shall be deemed to be the inception or renewal date of the Policy to which payment of the Loss is charged.

Aggregate Extension. With respect to business where the Policy is written on an aggregate basis or is subject to an aggregate limit of liability (other than the General Aggregate (all other aggregate) feature of any policy such as the ISO Comprehensive General Liability policy, effective January 1, 1986) and at the option of the Reassured, the term "Loss Occurrence" as used in this Contract shall mean all loss or losses subject to such aggregate limit arising under any one original Policy (or, if such losses arise under two or more Policies issued to the same insured), the Policy period of the Policy chosen by the Reassured) during any one Policy period, and notwithstanding the termination of this Contract, provided the inception of such original aggregate period commences during the term of this Contract. The date of loss shall be the inception date of each Policy year (or if such losses arise under two or more Policies, the inception, anniversary or renewal date of the Policy chosen by the Reassured). Nothing in this Paragraph D shall be construed to require the Reassured to elect this option nor to preclude the Reassured from seeking recovery of a single loss occurrence under Paragraph A or B or C so long as the Reassured does not make a claim for recovery of the same loss more than once.

Occupational Disease or Cumulative Injury. An occupational disease or cumulative injury suffered by an employee shall also be deemed to be a "Loss Occurrence" within the meaning of this Contract. Should the Reassured sustain two or more occupational disease losses of one specific kind or class or cumulative injury losses of one specific kind or class suffered by one or more employees of one insured during the same Policy period, such losses shall be accumulated and shall be deemed to constitute one "Loss Occurrence" to which the retention and limit of this Contract shall be applied.

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

1. *The date of loss on which the Reassured has sustained an occupational disease or cumulative injury loss, as respects each employee, shall be deemed to be the date of loss under the original Policy as determined by the Reassured.*

2. *As respects two or more occupational disease losses of one specific kind or class or cumulative injury losses of one specific kind or class suffered by one or more employees of one insured during the same policy period, the date of any loss occurrence shall be deemed to be the inception, anniversary or renewal date of the Policy under which such loss or losses are covered (or if such losses arise under two or more Policies, the inception, anniversary or renewal date of the policy chosen by the Reassured).*

*As respects coverage provided under sub-paragraph 2. of Paragraph E. above, this Contract shall apply to the total of losses sustained during the Policy period (or if such losses arise under two or more Policies, the Policy period of the Policy chosen by the Reassured) under Policies issued to the same insured, notwithstanding the termination or expiration of this Contract provided the inception, anniversary or renewal date of the Reassured's policy (or, if such losses arise under two or more Policies, the inception, anniversary or renewal date of the Policy chosen by the Reassured) commences during the Contract year.*

*“Occupational Disease” shall mean any bodily injury (including resulting death) or disease suffered by an employee which fulfills all of the following conditions:*

1. *It is not traceable to a definite compensable accident occurring during the employee's present or past employment;*

2. *It is not traceable to an event of twenty-four hours or less in duration;*

3. *It has been caused by exposure to conditions present in the workers' occupational environment;*

4. *It has resulted in a disability or death.*

*“Cumulative Injury” means any bodily injury (including resulting death) or disease suffered by an employee which fulfills all of the following conditions:*

1. *It is not traceable to a definite compensable accident occurring during the employee's present or past employment;*

2. *It is not traceable to an event of twenty-four hours or less in duration;*

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

3. *It has occurred from, and has been aggravated by, a repetitive employment-related activity.*

*“Event” means a causative incident, policy adoption or set of related conduct or circumstances that are the common and proximate cause of the accident, disaster, casualty or happening or series of accidents, disasters, casualties or happenings that are an Occurrence.*

*“Loss” means the amount of loss or liability paid or imminently payable by the Reassured to or on behalf of its policyholder under the Policies.*

*For purposes of this Contract, the term “Policy period” shall mean a separate Policy period of twelve months or less commencing at the inception, anniversary or renewal date of a Policy.*

### **More Complex Definition-Property**

*The term "Loss Occurrence" shall mean the sum of all individual losses directly occasioned by any one disaster, accident or loss or series of disasters, accidents or losses arising out of one event which occurs within the area of one state of the United States or province of Canada and states or provinces contiguous thereto and to one another. However, the duration and extent of any one "Loss Occurrence" shall be limited to all individual losses sustained by the Reassured occurring during any period of 168 consecutive hours arising out of and directly occasioned by the same event except that the term "Loss Occurrence" shall be further defined as follows:*

*As regards windstorm, hail, tornado, hurricane, cyclone, including ensuing collapse and water damage, all individual losses sustained by the Reassured occurring during any period of 72 consecutive hours arising out of and directly occasioned by the same event. However, the event need not be limited to one state or province or states or provinces contiguous thereto.*

*As regards riot, riot attending a strike, civil commotion, vandalism and malicious mischief, all individual losses sustained by the Reassured occurring during any period of 72 consecutive hours within the area of one municipality or county and the municipalities or counties contiguous thereto arising out of and directly occasioned by the same event. The maximum duration of 72 consecutive hours may be extended in respect of individual losses which occur beyond such 72 consecutive hours during the continued occupation of an insured's premises by strikers, provided such occupation commenced during the aforesaid period.*

*As regards earthquake (the epicenter of which need not necessarily be within the territorial confines referred to in the opening paragraph of this article) and fire following directly occasioned by the earthquake, only those individual fire losses which commence*

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

during the period of 168 consecutive hours may be included in the Reassured's "Loss Occurrence".

As regards "Freeze", only individual losses directly occasioned by collapse, breakage of glass and water damage (caused by bursting of frozen pipes and tanks) may be included in the Reassured's "Loss Occurrence".

As regards firestorms, brush fires and any other fires or series of fires, irrespective of origin (except as provided in subparagraphs 2 and 3 above), which spread through trees, grassland or other vegetation, all individual losses sustained by the Reassured which commence during any period of 168 consecutive hours within a 150-mile radius of any fixed point selected by the Reassured may be included in the Reassured's "Loss Occurrence." However, an individual loss subject to this subparagraph cannot be included in more than one "Loss Occurrence."

A. Except for those "Loss Occurrences" referred to in sub-paragraphs 1 and 2 of this Article, the Reassured may choose the date and time when any such period of consecutive hours commences provided that it is not earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Reassured arising out of that disaster, accident or loss and provided that only one such period of 168 consecutive hours shall apply with respect to one event.

B. However, as respects those "Loss Occurrences" referred to in sub-paragraphs 1 and 2 of this Article, if the disaster, accident or loss occasioned by the event is of greater duration than 72 consecutive hours, then the Reassured may divide that disaster, accident or loss into two or more "Loss Occurrences" provided no two periods overlap and no individual loss is included in more than one such period and provided that no period commences earlier than the date and time of the occurrence of the first recorded individual loss sustained by the Reassured arising out of that disaster, accident or loss.

C. No individual losses occasioned by an event that would be covered by 72 hours clauses may be included in any "Loss Occurrence" claimed under the 168 hours provision.

**AGGREGATE EXTRACTION**

A. The Reinsurers shall be liable for 100% of the net loss in excess of \$5,000,000 each policy each occurrence, but the Reinsurers shall not be liable for more than \$5,000,000

---

**THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.**

---

(except as provided for in Article VIII – Loss in Excess of Policy Limits and Article IX – Extra Contractual Obligations) in any one loss occurrence as respects each occurrence, each policy.

B. Notwithstanding Paragraph A of this Article, where the Company's original policies provide for aggregate limits of liability, this Contract shall cover excess of \$5,000,000 in the aggregate any one original policy each original aggregate period; but the Reinsurers shall not be liable for more than \$5,000,000 in the aggregate any one policy each aggregate period. As respects aggregate coverages afforded in Paragraph B of this Article, this Contract shall apply to the whole of each original aggregate period, not exceeding twelve months, and notwithstanding the termination or expiration of this Contract, provided the inception of such original aggregate period commences during the term of this Contract.

C. The term "original aggregate period" as used above in Paragraphs B, shall mean each separate original policy period, not exceeding twelve months commencing at the inception, anniversary or renewal date of each covered policy on or after January 1, 2006. For purposes of Paragraph B, the date of loss shall be the inception, anniversary or renewal date of the policy as respects business covered on or after January 1, 2006 and thereafter for each separate original aggregate period, not exceeding twelve months. The term "aggregate" shall mean the net loss incurred in the aggregate during any one original aggregate period, unless more specifically defined in the Reassured's policies, in which case this Contract will follow the definitions therein.

H. Notwithstanding the provisions of any other paragraph in this Article, with respect to each and every Occurrence, the Reassured may extract all loss arising from a loss occurrence from any coverage or policy subject to an aggregate limit under any policy in order that the loss(es) from that occurrence can be recovered by the Reassured under the provisions of paragraph A of this Article without reference to paragraph C.

I. The term "Occurrence" shall mean all liability for bodily injury, personal injury and property damage arising from only one accident, offense, disease, casualty, disaster, or occurrence or series of accidents, offenses, diseases, casualties, disasters, or occurrences arising out of, traceable to, or following on one event specifically limited in time and space.

## **MODIFIED EVENT**

The term "Loss occurrence" means any one accident, disaster, casualty, or happening, or series of accidents, disasters, casualties, or happenings resulting from the same proximate cause, which proximate cause takes place in its entirety at a discrete time, not to exceed \_\_\_\_\_ days/hours/months, and geographical place, not to exceed an area/a radius of \_\_\_\_\_ miles/State of \_\_\_\_\_, each policy, whether the claims arising out of the loss occurrence are made under a policy issued on an occurrence basis and/or claims-made basis.

The term "event" shall mean ultimate net loss directly resulting from a Loss Occurrence involving any one accident, disaster, casualty, or happening, or series of accidents, disasters, casualties, or happenings directly arising from the same proximate cause, which proximate cause takes place in its entirety at a discrete time, not to exceed 48

---

***THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---

hours and a specific geographical place, whether the claims arise out of the loss occurrence are made under an occurrence or claims-made policy.

### **COMBINATION OF PERILS**

No individual losses occasioned by an event that would be covered by 72 hours clauses may be included in any "Loss Occurrence" claimed under the 168 hours provision.

Vs.

Losses arising from a combination of two or more perils as a result of the same event shall be considered as having arisen from one loss occurrence. Notwithstanding the foregoing, the hourly limitations as stated in paragraphs A, B and C shall not be exceeded as respects the applicable perils and no single "loss occurrence" shall encompass a time period greater than 168 consecutive hours.

---

***THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---

## **“Loss Occurrence” Examples**

### **Dateline:**

**Jack and Jill collided in an intersection. Both Jack and Jill are insured by Circle Mutual for \$50,000/\$100,000/\$25,000 and each makes a claim against the other. Dull Re reinsures both under 50% quota share reinsurance arrangements for the first \$50,000. By the time the cases come to trial, Jack has married Jill. Jill’s mother was in her car and has also sued for her injuries. Circle Mutual’s claims adjuster told Jill’s mother that she was a free loader and denied her claim**

### **Dateline:**

**Humpty Dumpty had a great fall when the wall collapsed. Mother Goose had just purchased the wall from Sturdy Walls, Inc. Sturdy Walls makes several kinds of walls and other portable brick products and has similar problems with all makes of walls and other products due to the cement not holding. In fact, Sturdy Walls has settled 20 other claims this year for an average of \$50,000 each. Sturdy Walls buys the cement (Gripsome Cement) from Holdem, Inc. Both Sturdy Walls and Holdem are insured by Forever Casualty for \$1,000,000/\$3,000,000 who is reinsured by Opportunity Re for \$500,000 per occurrence excess of \$500,000.**

### **Dateline:**

**Thousands of workers from hundreds of employers allege they contracted a life threatening disease through exposure to a product called Gripsome Glue that was used and were exposed to in their work for brick product manufacturers over the years 1940-1980. There were 10 manufacturers of the product. Trackside Special Risk insured Manufacturer A (and others) from 1940-1960. Downside Specialty insured Manufacturer A (and others) from 1960-1980. Both Trackside and Downside were reinsured by many reinsurers during those years, some of which, including Clash Re, were on both insurer’s programs at different layers. Expert opinion indicates that the exposure to the fumes associated with Gripsome Glue caused damage each worker almost on a daily basis.**

---

***THE PANELISTS’ OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---

**Dateline:**

**A massive hurricane hit Blues City for 24 hours (after hitting parts of Puerto Rico two days earlier) with winds of upwards of 150 MPH leading to wind damage, flooding, and riots destroying \$100,000,000 of property. Waterfront Insurance Company incurred \$20,000,000 of total property claims. Its reinsurance program with Cat Re was \$15,000,000 excess of \$5,000,000 per occurrence. Puerto Rico losses for the Company appear to be in the \$20,000,000 range.**

**Dateline:**

**High winds and super dry conditions prevailed over all of California for months. Massive fires broke out in 10 locations across the southern half of the state resulting in \$35 million of property damage insured by Regional Insurance. Regional was reinsurer for Cats with CatFire Re for \$10,000,000 excess of \$5,000,000 and \$20,000,000 excess of \$15,000,000 per occurrence.**

---

***THE PANELISTS' OPINIONS ARE THEIR OWN AND DO NOT NECESSARILY REPRESENT THE OPINIONS OF THEIR EMPLOYERS.***

---