FROM THE EDITOR

Although the medium in which they are kept has evolved from paper to electronic, valuable records remain intrinsic to every organization's existence. But has the insurance that protects them — traditionally known as valuable papers and records coverage — remained as relevant?

If so, how does it relate to more recently developed electronic data processing coverage? What happens when there is crossover between hard copy and electronic data? Where does today's cyber insurance come into play?

These questions and more about this timely subject are discussed in this issue of Adjusting Today *by insurance author Joseph S. Harrington, CPCU, ARP.*

Enhancing his main article is a chart comparing how three types of losses to data and records might be addressed by four potentially applicable coverages.

Rounding out our issue is a sidebar describing how the changing nature of risk has also impacted a companion coverage — accounts receivable insurance.

It is an enlightening package of information for business owners, insurance agents, risk managers and all who want and need to know more about this crucial type of protection.

Sheila E. Salvatore
Editor

Its Role in the Age of "the Cloud"

Valuable Papers and Records Coverage

By Joseph S. Harrington, CPCU, ARP

Young people starting out in insurance today might be puzzled when they first encounter a coverage designed to restore "valuable papers and records" that have been damaged. Those who have grown up in an era of online information are likely to ask, "If it's a valuable record, why is it on paper?"

They would assume that any record worth keeping resides on a network or in "the Cloud" and therefore be easy to retrieve. Indeed, they'd find it hard to imagine creating a document without an electronic trail.

That's not always the case, of course, and it's less and less so the farther back the records go.

Copyrights, patents and mortgages are among the documents whose "hard copies" may be the only versions in existence and enforceable under law. Previous insurance policies are among the most important documents that might not be available electronically. The entire field of "insurance archaeology" exists to locate and, if necessary, reconstruct policies.

Even in situations where electronic copies of paper files are readily available, there are costs for having replacement documents signed, notarized or otherwise made official for public purposes.

That's why coverage to restore damaged records is still relevant — even when coverage is available for losses to electronic data records. The potential convergence and overlap of these coverages can pose quite a challenge to agents, adjusters and risk managers. At the same time, however, understanding and applying them properly can be an opportunity for these professionals to deliver value to their clients.

Evolution of Coverage

If insurance policies are among the most valuable records to reconstruct, it's because coverage grows broader or narrower over time — and insurers don't always use the most up-to-date forms.

Consider a loss insured by the 1994 Building and Personal Property Form issued by Insurance Services Office (ISO), the nation's largest advisory organization for property/casualty insurance. Although ISO has updated the form several times since, the 1994 form or some proprietary offshoots are probably still used by some commercial insurers.

In that form, the additional coverage for "Valuable Papers and Records — Cost of Research" explicitly extended coverage to the cost to research and restore records on electronic media, provided no duplicates existed.

As an extension of coverage for personal property, the valuable papers and records coverage would apply only to losses arising from the perils indicated

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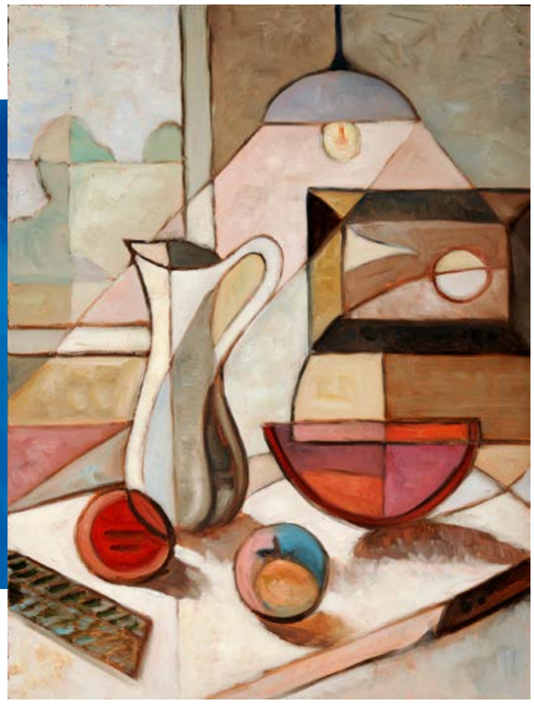

in the accompanying causes of loss form, up to an internal sublimit for each insured location unless a higher limit was indicated in the declarations.

By the early 2000s, ISO had essentially split coverage for loss to records into two coverages.

The coverage extension for valuable papers and records was retained — but only on a named perils basis — and rewritten to explicitly exclude coverage for loss to records existing as electronic data.

Coverage for the costs of replacing or restoring electronic records was shifted to a new, built-in additional coverage for electronic data. That coverage was also provided under a per-location sublimit on a named perils basis — with viruses, harmful coding and similar hazards added as insured perils. Losses caused by employees, persons or entities retained by the insured were excluded.

Under both provisions, coverage for collapse loss was limited to correspond to the collapse coverage provided in the policy's causes of loss form.

The distinction between coverage for valuable papers and records and that for electronic data was carried over into the ISO Businessowners (BOP) Coverage Form, with one potentially important difference: in the 2012 ISO BOP, the valuable papers and records subject to coverage are defined as documents, manuscripts or records that are "inscribed, printed, or written." There is no explicit exclusion of electronic records.

Other Coverage

For some businesses, especially those with a long history, the built-in coverage provided in base property forms can be inadequate to cover the full costs of restoring valuable papers/records or electronic data, so other means of insuring losses to them have been implemented and expanded.

One traditional method of doing so has been the use of separate inland marine insurance forms. Valuable papers and records (VPR) coverage has long been recognized as an inland marine "class" and VPR policies were developed to provide open-perils coverage for an exposure that might otherwise be subject to named perils and scheduled internal limits.

Inland marine insurance also includes "electronic data processing" (EDP) coverage. This coverage emerged at a time when the "hardware" costs of data processing (principally for mainframe computers) approached or exceeded the value of the data, and was focused on physical damage to equipment and on losses to data resulting from that damage.

Over time, as hardware has dropped dramatically in cost and the relative value of data has soared, EDP coverage has been extended to loss due to viruses, hacking and other means employed to corrupt or destroy data in the absence of physical damage.

In special circumstances, fine arts "floaters" are another form of inland marine coverage appropriate for insuring valuable documents. In this case, coverage would be related to the market value of a rare historical document, such as an original U.S. Land Office deed, or a contract signed by a famous person, rather than the cost of reconstructing the record or any economic benefit conveyed by it.

Cyber Insurance

Even with updated features, inland marine coverage for EDP is usually not as comprehensive as the coverage provided under "cyber" insurance policies, which are rapidly becoming fixtures in the commercial insurance market.

Cyber insurance is a complex and unusual type of coverage that emerged in specialty markets as a non-standardized product for specialized IT exposures. It is now marketed to all types of organizations.

Cyber insurance policies combine first-party coverage for loss to data and equipment with liability coverage for losses to third parties, along with coverage for expenses incurred for forensic investigations, notices to affected persons, public relations after an incident, and other purposes.

Coverage is typically triggered by "cyber perils," which include viruses, malicious hacking, "ransomware" attacks, and other causes, deliberate or accidental, that damage or corrupt data, or make it inaccessible.

Perils insured under cyber policies change over time as threats evolve and malicious actors adapt to security measures. Also, some cyber policies explicitly exclude coverage for losses caused by standard property perils, while others cover them.

Cyber policies often have multiple insuring agreements — as many as seven — with corresponding limits. By selecting limits, insureds effectively pick and choose the risks they insure under a cyber policy and those they retain or insure under another policy. Internal cyber limits for different types of losses are often subject to an aggregate limit. Agents and brokers are cautioned to see that individual limits do not seriously deplete the aggregate limit.

> *Cyber insurance policies combine first-party coverage for loss to data and equipment with liability coverage for losses to third parties, along with coverage for expenses incurred for forensic investigations, notices to affected persons, public relations after an incident, and other purposes.*

Still a Critical Coverage
All of these coverages can come into play with a loss to records that have no duplicates and must be reconstructed.

In the case of a loss to paper or other "hard copy" records, only valuable papers and records coverage will respond for the purposes of researching them for restoration. That's why it continues to be a critically important coverage.

It follows, then, that any VPR limit, built in or added by an inland marine policy or endorsement, should be applied first to the costs of reconstituting non-electronic records — even if, as with the ISO Businessowners form, it may be theoretically possible to apply that limit to other types of records.

Losses to electronic records can potentially be addressed under three different coverages, if present:

- A built-in or declared sublimit under the building and personal property coverage, subject to the policy deductible;
- Inland marine coverage, subject to its own limit(s) and deductible; and/or
- Cyber insurance, subject to a specific policy's definition of insured perils and the corresponding sublimits and deductibles.

Coverage Considerations
Given the potential for coverage under various policies for loss to business records, there are several key considerations for structuring coverage:

- *What versions of forms are being used?* Older property forms may have a broader application of records coverage than newer ones, but without the additional limit for electronic data.
- *Where might a loss to data occur?* Coverage under property forms may be limited or not apply to losses occurring away from an insured location. That's less likely under inland marine forms, but still possible, and less likely still under cyber policies which are typically written to cover data wherever it is hosted.
- *What about losses due to physical damage?* Some cyber policies will exclude such losses, presuming the property coverage will pick it up.
- *How much will reliance on the cyber policy deplete its aggregate limit?* Can coverage for restoring records be found elsewhere to avoid that?

It's hard to predict how such losses will occur, but insurance and risk management professionals can distinguish themselves and best serve their clients by considering and preparing for the many possibilities.

Coverage Scenarios for Damage to Data and Records

LOSS	VALUABLE PAPERS & RECORDS COVERAGE	ELECTRONIC DATA PROCESSING COVERAGE	CYBER INSURANCE COVERAGE	FINE ARTS COVERAGE
Physical damage to paper records (contracts, customer files, insurance policies, etc.).	Base property policies typically include coverage under a sublimit for cost to restore records damaged by an insured peril. Open perils coverage with its own limit can be added with a Valuable Papers and Records endorsement or inland marine policy.	Typically not covered. Coverage designed for hardware, software and data. Potentially covered if directly tied to data processing loss (e.g., a paper licensing agreement).	Typically not covered. Covers loss to data and equipment arising from "cyber perils" such as hacking, phishing, viruses, ransomware, and others.	Typically would apply only to documents of unique and irreplaceable value described in a schedule or declarations. Coverage would typically be valued at the prospective sale price of a document as a collectible item, not for the economic value it represents.
Loss or damage to electronic records *due to physical damage* to electronic equipment.	Coverage for loss to electronic data typically excluded.	Base property policies typically include coverage under a sublimit for cost to retrieve or restore electronic data lost or damaged due to an insured peril. Open perils coverage with its own limit can be added with an Electronic Data Processing endorsement or inland marine policy.	Varies. Some cyber policies exclude coverage for losses due to property perils; others provide coverage.	n/a
Loss or damage to electronic records due to deletion, theft or corruption of data by *causes other than physical damage.*	Coverage for loss to electronic data typically excluded.	Varies. Sometimes coverage is provided for "cyber"-type perils on an open perils basis; sometimes coverage is extended only to specified causes of non-physical loss.	Typically covered, but subject to a variety of provisions in non-standardized forms.	n/a

Accounts Receivable Insurance: Companion Coverage Expanded in Scope

Insurance for accounts receivable has long been considered a companion coverage to that for valuable papers and records.

After all, what more valuable records can an organization have than those detailing what it is owed? If large enough in dollar volume, the exposure would surely warrant a separate limit, undiluted by coverage for reconstructing other records.

The nature of the risk has changed considerably in the age of networked information, however.

In contrast to contracts, deeds and other documents developed before the computer age, accounts receivable records are, almost by definition, current. It's hard to imagine any organization today not saving them in electronic form, thus making them potentially subject to the coverage for electronic data that has been split off from the coverage for valuable papers and records (see main article).

Moreover, many standard and proprietary commercial property forms now include built-in or optional coverage under its own limit for losses to accounts receivable.

Accounts receivable was one of the classes of inland marine insurance established in the early 20th century — and losses to accounts receivable records have commonly been insured under inland marine policies or endorsements based on those policies.

A typical accounts receivable coverage form provides for open perils coverage, thus surpassing the limitations of a named perils property policy. Limits are usually established for each declared location, with a separate limit for losses occurring away from insured locations.

These forms commonly exclude coverage for damage to electronic records due to errors in installing, programming or maintaining data processing equipment — but not necessarily for losses caused by hacking, viruses or other "cyber" perils originating outside the insured organization.

Like coverage for valuable papers and records, accounts receivable insurance compensates an insured for the cost to research and restore lost records of purchases and amounts owed. It goes beyond that, however, to cover amounts that cannot be collected, interest on loans incurred because accounts were uncollectible, and additional expenses incurred to collect amounts owed, to the extent that these losses and expenses were the result of an insured loss.

Given that accounts receivable coverage addresses economic losses as well as the cost to restore records, agents, adjusters and insureds will want to determine if coverage for the latter is available under another policy. If so, they can devote the accounts receivable limit to the economic losses, which are likely to be more extensive than the costs to reconstruct and less likely to be insured elsewhere.

ABOUT THE AUTHOR

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