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10/24/2026
1:15 pm - 2:15 pm

Protective Safeguards Endorsements And Other Policy Warranties

Protective Safeguards Endorsements And Other Policy Warranties

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Topics to be Covered

- Protective Safeguards Endorsements
  - Fire
  - Theft
  - Other Perils
- Subcontractor Warranties/Conditions
- Other Conditions/Warranties
  - Applications
  - Cyber
  - Vacant Building Policies

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POLICY NUMBER: COMMERCIAL PROPERTY CP 04 11 09 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number	Building Number	Protective Safeguards Symbols Applicable
Describe Any "P-9":		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

- Protective Safeguards (CP 04 11 09 17) applies to fire.
- Burglary and Robbery Protective Safeguards (CP 12 11 09 17) applies to theft.

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Protective Safeguards - CP 04 11 0 17

P-1 Automatic Sprinkler System

P-2 Automatic Fire Alarm

P-3 Security Service

P-4 Service Contract

P-5 Automatic Commercial Cooking Exhaust and Extinguishing System

P-9 Another described protective system

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Protective Safeguards - CP 04 11 0 17

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order;
2. Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule; and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

However, if part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

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Maintaining the Protective Safeguard

Five Star Hotels LLC ("Five Star") installed an upgraded automatic sprinkler system in a Holiday Inn hotel in Pittsburgh. The property policy issued to Five Star by Insurance Company of Greater New York ("GNY") included a Protective Safeguards Endorsement requiring Five Star to maintain an automatic sprinkler system.

In December 2008, two couplings in the sprinkler system on the tenth and eleventh floors of the hotel burst, causing extensive water damage to the lower floors. It was determined that the loss was caused by the freezing and expansion of water inside the sprinkler system.

GNY denied coverage, in part, because it claimed that Five Star's failure to prevent freezing was a breach of the requirement that it *maintain* the automatic sprinkler system.

Five Star argued that keeping the system in place without removing or disabling it satisfied the requirement to *maintain* the system.

Coverage Applies

***Pennsylvania - Five Star Hotels, LLC v. Insurance Co. of Greater N.Y.*, 09 Civ. 8717 (PGG) (S.D.N.Y. Mar. 25, 2011)**



What is Complete Working Order?

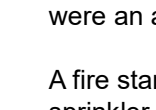
Burmac Metal Finishing Company (“Burmac”) owned a building insured by West Bend Mutual Insurance Company (“West Bend”.) In 1997, the building was damaged by a natural gas explosion and ensuing fire that started near an oven in the building. The property policy’s Protective Safeguards Endorsement warranted an automatic sprinkler system.

Burmac did have an automatic sprinkler system in the building with over 600 sprinklers. Prior to the loss, Burmac removed and capped between 3 and 19 of the sprinklers over an area containing the oven. This was done to prevent the automatic sprinkler system from activating because of the high heat generated by the oven. The sprinkler heads in that area had discharged water in the past, and Burmac was unable to correct the problem with new sprinkler heads. Burmac did not notify West Bend of the capped sprinklers.

West Bend denied Burmac’s claim, claiming that it had not satisfied the condition of the Protective Safeguards Endorsement.

No Coverage

***Burmac Metal v. West Bend Mutual Ins. Co.*, 356 Ill. App. 3d 471, 825 N.E.2d 1246 (Ill. App. Ct. 2005)**



What Can The Insured Control?

The Charles Stores, Inc. (“Charles”) insured its building with Aetna Insurance Company and Hartford Fire Insurance Company (“the insurers.”) The property policies included a Protective Safeguards Endorsement that required the insured to "*maintain so far as is within his control such protective safeguards as were stipulated in the application for this insurance for which credit in rate has been granted*." The protective safeguards to which the endorsement applied were an automatic sprinkler system and fire alarm.

A fire started at the insured property, and firefighters discovered that the water valve to the sprinkler system had been turned off and a screw connection in the alarm system unfastened. The fire was intentionally set by someone outside the insured’s organization, and the arsonist disengaged the protective safeguard devices before starting the fire.

The insurers denied coverage, claiming that the fact the sprinklers and fire alarm were off when the fire was started was a breach of warranty which terminated the coverage.

Coverage Applies

The Charles Stores, Inc., Plaintiff-appellee, v. Aetna Insurance Company, Defendant-appellant. The Charles Stores, Inc., Plaintiff-appellee, v. Hartford Fire Insurance Company, Defendant-appellant, 490 F.2d 64 (5th Cir. 1974)

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What Can The Insured Control?

The court ruled in Charles's favor, stating

"Neither the language of the policy nor the cases cited support an interpretation of the policy so sweeping as that urged by [the insurers] — that the insured is a guarantor of the continuing effectiveness of safeguard devices so long as it is in control of the premises and that such guarantee is breached and coverage suspended if the cause for the inoperative condition of safeguards is the act of persons other than the insured done concurrently with the fire itself. An insured's overall control of the premises does not give it control in the sense that it can prevent the act of an arsonist who cuts off the sprinkler system while setting a fire."

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Turning on the System

Breton LLC et al ("Breton") insured its building with Graphic Arts Mutual Insurance Company ("Graphic Arts.") The property policy included a Protective Safeguards Endorsement which required Breton to maintain any protective safeguard listed, over which it had control, in complete working order. The endorsement listed an automatic sprinkler system, including related supervisory services. Breton leased the building to a tenant who was responsible for the repair and maintenance of the property. Breton did not have access to the building and did not have a key to the sprinkler room.

Fire destroyed the building in December 2007. The fire department found that the supply valve in the sprinkler room was in the closed position so that water could not flow to the sprinkler heads. Graphic Arts denied the claim, stating that Breton had violated the terms and conditions of the Protective Safeguards Endorsement.

Graphic Arts contended that maintaining the system also involved periodically inspecting it and keeping it in good operating order and that Breton *"failed to maintain their sprinkler system because the main control valve was closed and no water entered the system at the time of the fire."*

Breton contends that it maintained the system because it was installed and not removed during the policy term.

Coverage Applies

Breton, LLC v. Graphic Arts Mutual Insurance Company, No. 1:09cv60 (AJT/TRJ) (E.D. Va. Nov. 10, 2009)



Turning on the System

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Paul Berenato owned a vacant building that he insured through Seneca Specialty Insurance Company ("Seneca.") The policy included a Protective Safeguards Endorsement requiring that Mr. Berenato maintain in complete working order an automatic sprinkler system.

In early 2015, the sprinkler system leaked at least three times, and Mr. Berenato turned it off after the third leak, believing the leaks were caused by the cold weather. Seneca was not notified of this.

On March 28, 2015, while the system was still turned off, fire damaged the building.

Seneca denied coverage, claiming that Mr. Berenato had violated the Protective Safeguards Endorsement by disabling the sprinkler system.

Berenato v. Seneca Specialty Ins. Co., 240 F. Supp. 3d 351 (E.D. Pa. 2017)

No Coverage



Must Breach of the Condition be Material to the Loss?

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Vineland 820 N. Main Road, LLC ("Vineland 820") owned a building in Vineland, NJ and insured it with United States Liability Insurance Company ("USLI.") The property policy included a Protective Safeguards Endorsement requiring that *"all electric is on functioning and operational circuit breakers."*

In May 2015, a fire started in the wiring on the second floor of the building. The main electrical panel that caught fire was a fuse panel box with four fuses. The fire department's investigation revealed that the cause of the fire was not the fuses. It was determined that a wire in the ceiling leading to the ceiling fan was the likely cause of the fire, and this cause was not disputed by USLI.

Vineland 820 asserted that coverage should apply because the absence of circuit breakers did not cause the fire.

No Coverage

Vineland 820 N. Main Rd., LLC v. United States Liab. Inc. Co., No. 17-2986, 2018 WL 4693965 (D.N.J. Sept. 29, 2018)

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Must Breach of the Condition be Material to the Loss?

The court ruled that the insured's position is unsupported by policy language.

In ruling in favor of USLI, the court stated

> *"No language requires that the fire be caused by or resulting from use of fuses or an inoperative circuit breaker…to hold otherwise would be to write into the contract a causation requirement where none exists. The Court may not write a better contract for [Vineland 820] than the one it bought merely to allow for coverage."*

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Helping the Insured

- If a protective safeguards endorsement is required only to get premium credit for a safeguard, consider not taking the credit.
- Make sure the insured has been notified of the existence of the endorsement and has been provided with a copy.
- Have the insured confirm, in writing, that the required safeguards are in place and that they understand their duties under the endorsement.
- Emphasize to the insured the importance of immediately notifying the agent or insurer of any changes in the protective safeguards.

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Helping the Insured

- Suggest that the insured make the appropriate personnel at each location aware of the protective safeguard endorsement requirements and set up a system so that any impairment of the safeguard is reported to a designated person within the insured's organization.

- If the building is tenant occupied, particularly in the case of a single-tenant building, make sure the lease is clear as to which party is responsible for maintenance of the protective safeguards. Make sure the lease does not permit the tenant to do anything that impairs the safeguards.

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Helping the Insured

Brainstorm with the insured about what could go wrong so they can develop procedures to avoid problems. For example:

- Have and follow a schedule to change batteries in any battery-operated devices.
- Make sure maintenance contracts are in place for protective safeguards that require them and make sure they are kept current.
- Add signage to protective devices. A sign could be placed over the burglar alarm keypad reminding employees the system must be turned on. A notice could be put near a sprinkler valve warning that it should not be shut off unless a designated person in the insured's organization is notified.

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Helping the Insured

- Suggest that the insured maintain records related to the existence, inspection and maintenance of any of the safeguards.
- Make sure the insured has clear instructions on how and when to report any suspension or impairment in the safeguard to the agent or insurer.
- Repeat at each renewal.

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Subcontractor Warranties/Conditions Inadequately Insured Subcontractors

Premium issue

Coverage issue – endorsements may:

- Eliminate coverage completely
- Give coverage, but with a much lower limit
- Give coverage, but with a much higher deductible
- Include requirements for contract language, coverage features, COIs

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Subcontractor Warranties/Conditions
Sample #1

Additional Conditions - Certificates of Insurance and Hold Harmless Agreements – Deductible Amount Applies if Conditions Not Met

a. You must obtain from all subcontractors or independent contractors, prior to commencement of any work performed on your behalf by that contractor; certificates of Insurance evidencing:

(1) Commercial General Liability limits of insurance of $1,000,000 for Each Occurrence, $1,000,000 for the General Aggregate and $1,000,000 for the Products-Completed Operations Aggregate, and

(2) Workers compensation insurance in compliance with the statutes of the applicable state.

b. You must obtain written hold harmless agreements from subcontractors or independent contractors indemnifying you against all losses for the work performed for you by any and all subcontractors or independent contractors, prior to the commencement of any work performed on your behalf by that contractor; and

c. You must be listed as an Additional Insured on all subcontractors or independent contractor's General Liability policies either by endorsement or by written contract, prior to the commencement of any work performed on your behalf by that contractor.



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Subcontractor Warranties/Conditions
Sample #2

INDEPENDENT CONTRACTORS RESTRICTION

The following Condition is added to section **IV.**:

1. You must see to it that:

a. all independent contractors have inforce, at the time they commence working for you, insurance of the type provided by this Policy and the limits for such insurance are equal to or greater than the Limits of Insurance provided by this Policy;

b. such independent contractors have held you harmless under contract as respects liability arising from their negligence; and

c. the Insured will obtain copies of a Certificate of Insurance from each independent contractor showing inforce insurance Limits of Liability as required in **1.a.** above.

2. Such insurance as is afforded by this Policy will be excess over the independent contractor's insurance Limits of Liability as required in **1.a.** above.

3. Your failure to comply with the terms of this endorsement will not invalidate this Policy but, in the event you fail to comply, we will be liable only to the same extent we would have been had you complied with the terms of this endorsement.



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Subcontractor Warranties/Conditions Sample #3

"Adequate" insurance means Commercial General Liability, Workers' Compensation and Employer's Liability Insurance written by an insurance carrier with an A.M. Best rating of not less than A-VII and which:

1. Remains in force and effect from the dates in which the contract for work being performed for the insured or on the insured's behalf is executed until the date in which the work is completed and the insurance is not cancelled, discontinued nor does not expire during this period of time;……
5. Does not contain any conditions or provisions that preclude coverage based on requirements for hiring or contracting with subcontractors or independent contractors……

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This is Not Just a Contractor Issue!

EXCLUSION – UNINSURED AND UNDERINSURED TENANTS

We do not cover any claim, loss, cost or expense for "bodily injury", "property damage" or "personal and advertising injury" arising out of any premises you own or lease which you also rent, lease or allow to be used by others, if the tenant has not:

1. maintained their own general liability insurance throughout the entirety of their tenancy(ies) and maintained the following throughout their policy's entirety:
   a. Per occurrence limits no less than the per occurrence limits reflected within this policy; and
   b. The "named insured" and all "insureds" under this policy are added as insureds at such limits in a. above;

   and

2. had a written lease in effect throughout the entirety of their tenancy(ies) for your premises, agreeing to indemnify and hold harmless the Named Insured and all "insureds" under this policy for any claim, loss, cost or expense resulting from the tenant's or any occupant's operations, completed operations or products.

This exclusion does not apply if the claim results from a defect or faulty condition of the premises that was under "your" control or that is "your" legal obligation to maintain according to the lease with the tenant.

This limitation applies exclusively to commercial tenants only.

Applications as Warranties

NOTICE TO APPLICANT – PLEASE READ CAREFULLY

FOR THE PURPOSE OF THIS APPLICATION, THE UNDERSIGNED WARRANTS THAT TO THE BEST OF HIS/HER KNOWLEDGE THE STATEMENTS HEREIN ARE TRUE AND COMPLETE. THE INSURER IS AUTHORIZED TO MAKE ANY INQUIRY IN CONNECTION WITH THIS APPLICATION. SIGNING THIS APPLICATION DOES NOT BIND THE INSURER TO ISSUE, OR THE APPLICANT TO PURCHASE, ANY INSURANCE POLICY.

THE INFORMATION CONTAINED IN AND SUBMITTED WITH THIS APPLICATION IS ON FILE WITH THE INSURER. THIS APPLICATION WILL BECOME A PART OF SUCH POLICY, IF ISSUED. THE INSURER WILL HAVE RELIED UPON THIS APPLICATION AND ATTACHMENTS IN ISSUING THIS POLICY. IN THE EVENT THAT THE APPLICATION CONTAINS ANY MISREPRESENTATION OR MISSTATEMENT OF A MATERIAL FACT, THIS POLICY SHALL NOT AFFORD COVERAGE TO ANY INSURED WHO KNEW OF SUCH MISREPRESENTATION OR MISSTATEMENT.

IF THE INFORMATION IN THIS APPLICATION MATERIALLY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE POLICY, THE APPLICANT MUST PROVIDE WRITTEN NOTIFICATION TO THE INSURER, WHO MAY MODIFY OR WITHDRAW THE QUOTATION.

THE UNDERSIGNED FURTHER AGREES TO AUTHORIZE THE RELEASE OF ANY AND ALL INFORMATION IN THIS APPLICATION TO A LOSS CONTROL PROVIDER THAT PROVIDES LOSS CONTROL SERVICES TO THE INSURER AND TO COMPLY WITH THE TERMS AND CONDITIONS OF THOSE LOSS CONTROL SERVICES.

THE UNDERSIGNED DECLARES THAT THE INDIVIDUALS AND ORGANIZATIONS PROPOSED FOR THIS INSURANCE HAVE BEEN NOTIFIED THAT:

A. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE OR DEEMED MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE; AND

B. THE LIMIT OF LIABILITY IS REDUCED BY AMOUNTS INCURRED AS DAMAGES AND SUCH EXPENSES WILL BE SUBJECT TO THE DEDUCTIBLE AND/OR CO-PAYMENT AMOUNT.

SAMPLE

 © ISO Properties, Inc., 2006

Applications as Warranties

SECTION VI – EMPLOYMENT-RELATED ACTIONS/CLAIM HISTORY

Please attach a listing of all federal, state or local employment-related charges, claims, lawsuits or administrative proceedings (e.g., EEOC) in process or commenced during the past three years. Describe the type of allegation, the court or agency involved and the current status. Include any determination, judgment, defense cost or settlement for each.

Are you presently subject to any judicial or administrative order, decree, judgment or conciliation agreement relating to employment? ☐ Yes ☐ No

If **Yes**, please attach a copy.

Are you aware of any circumstance(s) with the potential to give rise to a claim under this policy? ☐ Yes ☐ No

If **Yes**, please provide details in a separate document.

It is agreed that any claim(s) arising from any facts, circumstances or situations mentioned in Section VI above are excluded from coverage.

Applications as Warranties

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REPRESENTATIONS AND SEVERABILITY

A. The Insured represents that the particulars and statements contained in the Application are true and agree that (1) those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of the Policy; (2) those particulars and statements are material to the acceptance of the risk assumed by the Company; and (3) the Policy is issued in reliance upon the truth of such representations.

B. An Application for coverage shall be construed as a separate Application for coverage by each Individual Insured. With respect to the particulars and statements contained in the Application, no fact pertaining to or knowledge possessed by any Individual Insured shall be imputed to any other Individual Insured for the purpose of determining if coverage is available. However, facts pertaining to and knowledge possessed by the individual(s) signing the Application and the President, Chairperson, Chief Executive Officer, Partner and Chief Financial Officer shall be imputed to the Organization for the purpose of determining if coverage is available.

Sample Cyber Warranty

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Fraudulent Instruction Coverage *To indemnify the* ***Named Insured*** *for loss in excess of the applicable* ***Retention*** *resulting directly from an* ***Insured*** *having transferred, paid, or delivered any* ***Money*** *or* ***Securities*** *as a direct result of* ***Fraudulent Instructions****…..*

Fraudulent Instructions *means a fraudulent written instruction, electronic instruction (including email or web-based instruction) or telephone instruction provided by a person purporting to be a* ***Vendor, Client****, or an* ***Authorized Employee****, that is intended to mislead an* ***Insured*** *through the misrepresentation of a material fact that is relied upon in good faith by such* ***Insured****.*

Note: There is no coverage if the Fraudulent Instruction was not verified with the requestor using an Out-of-Band Authentication.

Sample Cyber Warranty

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Solely with respect to the coverage provided by this endorsement, the following is added to Insuring Agreement I.E.2. Computer Fraud:

However, with respect to **Computer Crimes**, the Sub-Limits of Insurance stated in paragraph 1)b) above will only apply if such **Computer Crimes** arise directly from an email account that is being actively monitored by [redacted] Stance Fraud Defense at the time of such: (a) transfer, payment, or delivery of **Funds or Securities**; (b) account of the **Insured Organization**, or of its customer, is added, deleted, debited, or credited; or (c) release or distribution of any fraudulent invoice or payment instruction to a third party which results in an **Uncollectable Invoice**.

For the avoidance of doubt, if such **Computer Crimes** do not arise directly from an email account that is being actively monitored by [redacted] Stance Fraud Defense, coverage under this endorsement will not apply and instead an otherwise covered **Loss** under Insuring Agreement I.E.2. will be afforded the Included Sub- Limits of Insurance for Insuring Agreement I.E.2. in ITEM 6 of the Declarations.

Common Vacant Building Policy Warranties

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- Maintenance of heat
- Locked/secured building
- Central station alarms
- Certain security measures
- Others

Thank You For Attending!

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