

# **AD COUNSEL**

**Bridging the Gap of Insurance Wisdom**

*for today's commercial producer*

ProSight Specialty Insurance,  
with industry support,  
proudly delivers ***Ad Counsel***  
to independent commercial producers.

*Contributors*

**Matt Miller**, President & CEO, AICP

**Scott Taylor**, President, Taylor & Taylor Insurance

# TABLE OF CONTENTS

|                |  |
|----------------|--|
| <b>SECTION</b> | <b>FOREWORD</b>  |
| <b>1</b>       | Overview:<br>Where the Industry Is Today.....1   |
| <b>SECTION</b> | <b>PRODUCERS' GUIDE TO INSURANCE</b>   |
| <b>2</b>       | Types of Insurance Coverage 2<br>.....<br>Understanding Coverage 6<br>.....<br>What Matters to Underwriters 9                                    |
| <b>SECTION</b> | <b>RISK TRANSFER: INSURANCE<br/>AND CONTRACTS</b>  |
| <b>3</b>       | Contractual Terms 10<br>.....<br>Dealing with Wrap-Up Insurance 11<br>.....<br>Indemnification 15<br>.....<br>Working with a Specialist Agent 17 |
| <b>SECTION</b> | <b>CREATING A SAFE ENVIRONMENT</b>   |
| <b>4</b>       | Examples of Large Losses and Claims 18<br>.....<br>Reduce Your Risk 21<br>.....<br>What Is the Risk Level Now<br>with Controls in Place? 24      |

## FOREWORD

---

### Where the Industry Is Today

#### *Why Production Companies Need to Understand Insurance and Risk Management*

By nature, commercial production is potentially perilous. Over a period of a few days, production companies assemble dozens of highly specialized freelance craftsmen at a set—often outdoors in the elements—teeming with expensive assets, such as cameras, lenses, lighting, trucks, rental cars, heavy machinery, and sometimes star talent. It’s a setting that is inherently prone to mishaps, accidents, injuries, delays, and other costly developments.

And the level of risk is only growing. Storyboards are calling for increasingly daring stunts, often using specialized equipment. Sophisticated digital technologies offer seemingly infinite new possibilities for creativity, but they also create new avenues for intellectual property violations. The sheer value of the assets involved in a shoot has never been higher.

Insuring your productions properly is as important—and complex—as ever, yet it can understandably be challenging for some producers to stay ahead of the curve. Pressure to do more and more with fewer resources leaves less time to spend tending to the underwriting needs of a project. Moreover, with other entities more frequently providing an initiative’s insurance coverage, there could be a temptation to focus attention elsewhere.

ProSight wants to help you protect your business in this fast-evolving industry. With this guidebook, a product of our partnership with AICP, we hope to provide knowledge that will help you navigate a commercial production landscape that is filled with potential vulnerabilities. We want you to understand the basics of selecting your insurance, negotiating contract terms that better protect your business, and providing a safe work environment.

Because in this business, we should always strive to avoid being overexposed.

## Types of Insurance Coverage

### *Basics*

Workers' Compensation  
Automobile  
Nonowned and Hired Auto Physical Damage  
Commercial General Liability  
Umbrella  
Errors & Omissions (E&O)  
Group Travel Accident  
Film Production Package  
Negative Film & Videotape  
Faulty Stock & Camera  
Props, Sets, & Wardrobe  
Third Party Property Damage  
Miscellaneous Equipment  
Extra Expense  
Civil Authority

### *Additional Policies to Consider*

Statutory Disability  
Foreign Voluntary Workers' Compensation  
Foreign Commercial General Liability  
Nonowned and Hired Aircraft/  
Watercraft Liability and Hull Protection  
Railroad Protective Liability  
Political Risk and Confiscation  
Weather  
Employee Dishonesty  
Animal Mortality



#### **Workers' Compensation**

Typically provides coverage for employees when they are injured in the course of their employment. Make sure your Workers' Comp policy includes Employers' Liability as a core component of coverage. Workers' Comp is an absolute must-have if you have people working for you. Employees retained through an industry payroll service company will likely be covered under the payroll service's Workers' Comp policy, but production companies may want to carry a backup policy to make sure no one falls through the cracks, such as volunteers who may not be receiving compensation. (See "Foreign Voluntary Workers' Compensation" below.)



#### **Automobile**

Typically provides coverage for liability claims related to bodily injury and property damage to third parties should a vehicle owned, rented, or borrowed by your company be involved in an accident. Generally, you are legally required to carry only Automobile Liability insurance to cover third parties, but you can elect to purchase Comprehensive and Collision coverage that would also cover physical damage to your vehicles.



#### **Nonowned and Hired Auto Physical Damage**

Typically provides coverage for damage to rented vehicles (passenger vehicles, trucks, trailers, mobile studios, etc.) incurred in connection with your production.



#### **Commercial General Liability**

Typically provides coverage for premises and locations (within the United States and Canada) for bodily injury or property damage to third parties arising from your operations. Although there are many exceptions, General Liability policies usually provide a \$1 million limit. Higher liability limits can be obtained through a separate Umbrella policy.

## Types of Insurance Coverage



### **Umbrella**

Typically provides higher limits of liability protection once the limits have been exhausted on a primary policy. Umbrella generally gets applied to Employer's Liability, Commercial General Liability, Automotive Liability, Third Party Property Damage, and Foreign Commercial General Liability.



### **Errors & Omissions**

For production companies, E&O insurance typically protects against losses related to intellectual property violations, as well as libel, slander, and defamation of character, among other causes of loss.



### **Group Travel Accident**

Typically provides coverage for expenses incurred as a result of death or dismemberment of a union worker during the course of a production. (Required by certain unions. Coverages and limits vary by labor association.)



### **Film Production Package**

Typically contains several coverage sections that can be purchased as a whole or à la carte, including but not limited to:

✓ **Negative Film & Videotape**

Typically protects against loss or damage of any film, PC, or other medium for images used in the production.

✓ **Faulty Stock & Camera**

Typically protects against loss or damage from SxS cards, recorders, bad film stock, malfunctioning cameras, and defective recording devices.

✓ **Props, Sets, & Wardrobe**

Typically provides coverage for damage to or loss of props, sets, scenery, costumes, wardrobe, etc., occurring during a production.

✓ **Third Party Property Damage**

Typically provides coverage for damage to others' property while it is in the care, custody, or control of the production company, such as the location itself and its contents, so long as it is not being used as a prop, set, or wardrobe.

✓ **Miscellaneous Equipment**

Typically protects against loss, damage, or destruction of a variety of assets as part of an insured production, including but not limited to cameras, sound and lighting equipment, editing tools, mechanical effects equipment, etc.

✓ **Extra Expense**

Typically reimburses extra expenses incurred to complete a production due to damage or destruction of facilities and/or property used in or to record the insured production.

✓ **Civil Authority**

Typically reimburses extra expenses incurred as a result of the prohibition of access to a facility or location contracted by the production company by police, government, or other authority.

## Types of Insurance Coverage



### Statutory Disability

Typically provides short-term disability benefits if employees are disabled as a result of an accident or sickness that occurs while they are not at work. Required in California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island. (Paid for via a payroll tax in California.)

---



### Foreign Voluntary Workers' Compensation

Typically provides coverage for employees injured working on an insured production outside of the United States if they are brought from the United States to that country or from one foreign country to another. Local hires who work in the country in which the production is being created can only be covered by local insurance in that region.

---



### Foreign Commercial General Liability

Typically provides coverage for losses due to bodily injury or property damage to third parties in connection with operations your organization may have in a foreign country (outside the United States and Canada).

---



### Nonowned and Hired Aircraft/Watercraft Liability and Hull Protection

Liability coverage for bodily injury and/or property damage to third parties caused by air/watercraft used during the course of a production. Hull coverage typically reimburses for damages to the air/watercraft itself.

---



### Railroad Protective Liability

Often required by railroad companies when a commercial shoot utilizes any part of a rail line or related property (e.g., bridge, trestle, track, tunnel, underpass, crossing, etc.), or requires workers to perform duties within a certain distance of a railroad-owned property. Coverage generally includes bodily injury and property damage to third parties, as well as damage to the railroad property.

---



### Political Risk and Confiscation

Typically provides coverage for confiscation or expropriation of assets by a government entity, foreign or domestic.

---



### Weather

Typically provides coverage for losses due to production delays or cancellation caused by weather. Usually needs to be purchased at least 10 days in advance.

---



### Employee Dishonesty

Typically provides coverage for losses due to theft of money (including petty cash) and/or assets by an employee. Can often be extended to losses stemming from computer fraud, wire fraud, and other types of employee malfeasance.

---



### Animal Mortality

Typically provides coverage for losses related to the death of an animal procured for the production during the course of the project (a veterinary health statement is required for sickness coverage).

## Types of Insurance Coverage

---

### *Key Insurance Terms*

---

**Aggregate Limit**

The maximum dollar amount that the insurance carrier will provide over the policy term

---

**Deductible**

Amount of loss that the insured pays before the insurance kicks in

---

**Premium**

The price of insurance protection for a specified period of time

---

**Certificate of Insurance (COI)**

A document that details the specifics of an insurance policy, such as its effective date, the type of insurance coverage purchased, and the dollar amount of applicable liability

---

**Primary**

The first policy used to cover damages before other applicable policies

---

### *Industry-Specific Terms*

---

**Negative Coverage**

Coverage limits for the medium in which you shoot (film, digital, etc.). *Note:* this includes all recording media, not just actual negatives

---

**Production Costs**

Refers to the costs as itemized in the budget for a commercial or series of projects, which may include postproduction costs

---

**For a full list of terms**  
visit [www.ambest.com/resource/glossary.html](http://www.ambest.com/resource/glossary.html)

## Understanding Coverage

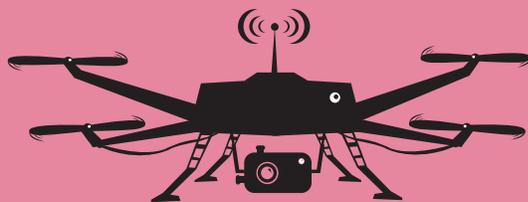
### *Omit an Important Coverage, Leave Yourself Underinsured*

Figuring out the right combination of policies for a given production is no easy task. That's why an experienced agent is so vital to the process. Agents need to investigate how each asset—worker, piece of equipment, location/site, etc.—will be utilized and what the production contract(s) say about who is responsible and how it will be covered. Again, this underscores the importance of sharing as much detail about your production(s) as possible with your agent. If you miss a detail, chances are your agent could omit an important coverage and leave you exposed.

Armed with this information, your agent can help you select the right policies for each situation.

### FOR EXAMPLE

YOU



Using a drone to hold a camera at a crowded film festival

AGENT



- ✓ **Recommends Coverages:**
  - Film Production Package
  - Nonowned Aircraft Liability
  - General Liability
  - Umbrella
  - More
- ✓ Determines necessary limits to adequately protect you

Short-term policies are an option for single productions, but make sure the length of the contract covers the production's entire timeline; for instance, a 30-day contract could cover the shoot but not the editing phase, which also contains potential exposures.

It is very tempting for businesses of all kinds to roll the dice and skimp on insurance; if all goes right with a project, it may seem like you didn't "need" it.

**HOWEVER, DON'T BE PENNY-WISE AND POUND-FOOLISH.**

**WHAT SEEMS LIKE A SUPERFLUOUS EXPENDITURE IN GOOD TIMES MAY END UP BEING THE DIFFERENCE BETWEEN TOTAL RUIN AND SURVIVING A POTENTIALLY CATAclysmic EVENT.**

## Understanding Coverage

### *Examples of Underinsuring*

1

**A customer filming a commercial at a studio takes out a Miscellaneous Equipment limit of \$250,000 for a project.**

A fire breaks out on the premises, wiping out \$5 million worth of equipment, props, rented trucks, and other assets, leaving the policyholder on the hook for \$4.75 million in damages not covered by the policy.

2

**A production company acquires a Nonowned and Hired Aircraft policy with a \$1 million limit.**

In all likelihood, an accident involving a plane or other aircraft will result in damages that far exceed this limit.

3

**A boat careens out of control, causing damage to property and the craft itself,**

but since the producers only bought Nonowned Watercraft Liability and not Hull insurance, the production company was reimbursed only for the third-party damages and not for the boat itself.

4

**A short-term Film Production Package covers the length of a commercial shoot,** but a mishap in the editing phase well after the term expires results in the destruction of several thousand dollars' worth of data and equipment.

5

**A horse brought in for a scene is injured and cannot perform,** but no one purchased Animal Mortality and Extra Expense policies.

6

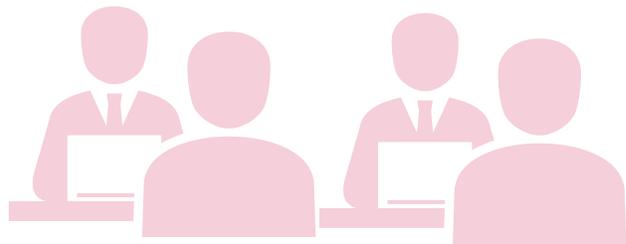
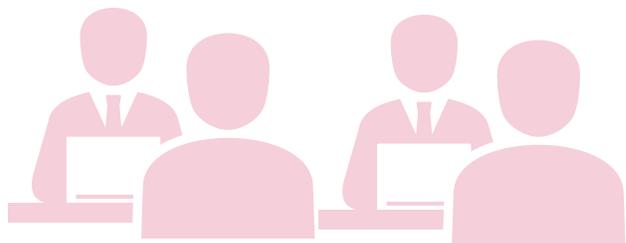
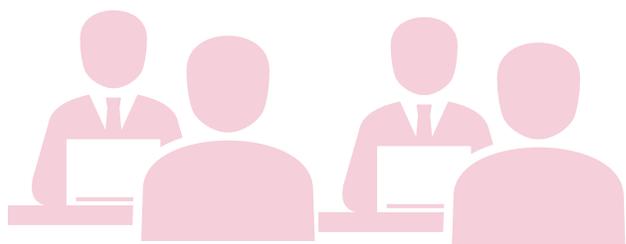
**A small company declines to add Umbrella coverage to its Liability policy.** If a fatality results from its operations, the company will in all likelihood wind up out of business.

## Understanding Coverage

### *Understanding Limitations, Exclusions, and Coverage Interactions*

As you review the policies that could be best for your business, it is equally important that you talk to your agent specifically about what these coverages do not include! Every policy comes with several exclusions and exceptions—too numerous to name them all—and the commercial production industry can potentially touch on every one of them. Your Film Production Package may not reimburse for film or digital recording media damage if the loss stems from use of incorrect raw stock or an error in judgment related to exposure, lighting, or sound recording. A General Liability policy will not cover damages to property in the policyholder's care, custody, and control, such as a rented studio or warehouse; this would fall under Third Party Property Damage coverage provided in a Film Production Package.

Past experiences with claims can be instructive, but could also be misleading. Coverages—including terms, conditions, and exclusions—vary greatly by carrier, and because each production is unique, policies could apply in different ways to situations that might seem similar to you on the surface.



---

**DO NOT ASSUME  
YOU UNDERSTAND  
THE LIMITATIONS OF  
YOUR POLICIES.**

**MAKE SURE YOUR AGENT  
EXPLAINS IN GREAT DETAIL  
WHAT YOUR INSURANCE  
POLICY SHOULD—AND MAY  
NOT—COVER.**

---



## What Matters to Insurance Underwriters for Insuring and Protecting Your Business

*Insurance underwriters have two broad objectives:*

- 1) to ensure the safety of all people and assets at a work site (employees, volunteers, the general public, property, data, equipment, etc.)
- 2) to protect clients should they find themselves in litigation.

To accomplish this, insurance companies need to know as much as possible about their customers' ongoing operations, so they can uncover as many potential exposures to accident, injury, and mishap in the course of everyday business as possible. (See "What Insurance Companies Want to Know About Your Organization.")

Armed with this information, carriers can provide customers with the right choice of coverage (policies) and help them reduce risk wherever they can.

One might think that divulging your vulnerabilities will empower your carrier to take more money out of your pocket. In reality, the opposite is typically true. Your premium corresponds to your exposure.

**BY CLEARLY UNDERSTANDING ALL OF YOUR POTENTIAL VULNERABILITIES, YOUR INSURANCE AGENT AND CARRIER CAN WORK TOGETHER TO REDUCE AS MUCH EXPOSURE AS POSSIBLE – OFTEN LOWERING YOUR PREMIUM IN THE PROCESS.**

### What Insurance Companies Want to Know About Your Organization

Detailed descriptions of business's activities and productions (television commercials, webisodes, corporate videos, etc.)

Annual gross production costs

Replacement value of owned equipment, office supplies, and technology

Formats used for productions (e.g., film, tape, digital)

Owned vehicles (year, make, model, VIN, location where garaged, etc.)

Rented vehicle information, both types (cars, trucks, trailers, vans, wagons, etc.) and cost of hire

Foreign travel

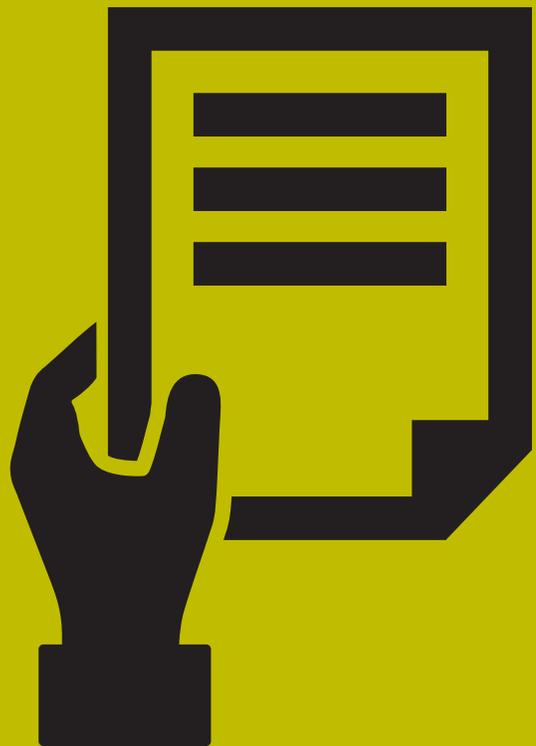
Past insurance coverage history

## Insurance Coverage and Related Contractual Terms

Throughout any given year, producers take on a variety of projects, no two of which are the same. Similarly, the insurance policies and the contractual arrangements pertaining to them may differ greatly from situation to situation. A production company can find itself negotiating contracts with several entities throughout the course of its operations—over assets such as locations, equipment, stock images, one-of-a-kind artwork, and other props, let alone the actual production agreement with the agency/client. Some of these agreements can lock your organization into unfavorable terms if signed without a thorough review by you or your legal counsel.

For example, there are venues that force renters to sign onerous contracts that make the latter liable for mishaps caused by factors that have nothing to do with their actions. Some rental companies want to be indemnified for any incident involving their equipment, unless you can prove their assets were 100 percent culpable for a loss, a near impossibility. As an aside, there is a standard AICP/Production Equipment Rental Group (PERG) rental agreement that is reasonable and should be used whenever possible to appropriately assign risk.

Prior to signing these contracts, producers, and wherever possible their attorneys, should always review the fine print to unearth potential risks and limitations. You may discover unreasonable requests to waive certain rights or give away valuable intellectual property, or be put at some other legal disadvantage. If nothing else, producers need to understand how they can and cannot use the items they are renting. In short, you never want to sign a contract you have not read.



## Dealing with Wrap-Up: How to Protect Your Organization When Agencies or Clients Supply Insurance

The world of commercial production is unique in that producers often engage in projects for which another entity takes on underwriting responsibility. Advertising agencies or large client companies commonly provide “Wrap-Up” insurance to cover the organizations and individuals charged with bringing their initiatives to life. In these instances, production companies do not get the chance to review the full policy itself. They receive only a summary of coverage, the contract (with either the agency or client), and addenda to the advertising contract revising the insurance provisions.

Ideally, producers and their brokers should be able to review all policies being applied to an initiative so that they may evaluate the coverage and its exclusions. However, in the world of Wrap-Up, producers only get to see contract addenda and the COI related to the policy. Production companies ultimately are left exposed if they do not know what is (or isn't) covered under the actual Wrap-Up policy for the job they have taken on. It is critical for them to understand that they could ultimately be held responsible if the Wrap-Up coverage is not broad enough, utilizes unknown exclusions, or contains contract language that holds you the producer responsible for claims where you are considered to be “at fault.”

### *Problem Contract Language*

To protect their business, production companies should take an active role in negotiating insurance-related terms with the Wrap-Up provider. Even when all parties have the best of intentions, unbalanced contract language can still creep into agreements in many forms. Here is a sample of some of the disadvantageous stipulations we have observed in recent years, and some suggested concessions you should aim to obtain in order to ensure a mutually beneficial agreement for everyone playing a role in carrying out a commercial production:

---

**Insurance not activated until agency or client notifies broker.**

---

### **The Problem**

Production companies often have to begin location scouting and other prep work very shortly after being awarded a project. The problem: oftentimes, there is a gap between the moment producers start their pursuit of these activities and the point when brokers are notified to begin insurance coverage for the project. Thus, producers could be at risk of not being covered for losses that result from mishaps that take place prior to the insurance kicking in.

### **What to Negotiate**

**Work does not begin until the producer receives a copy of the Wrap-Up policy, a policy endorsement listing the producer as a named insured with an effective date, and a signed contract.** In this industry, it has been difficult to obtain these items swiftly or at all. However, this is the most prudent practice for the production company from a risk mitigation standpoint.

---

## Dealing with Wrap-Up: How to Protect Your Organization When Agencies or Clients Supply Insurance

---

**Coverage is insufficient and/or the producer is responsible for identifying insurance deficiencies.**

---

### The Problem

In instances where they are not the primary insured, producers should only be required to carry Workers' Comp and Employers' Liability to cover their own employees. Otherwise, the Wrap-Up provider must deliver all other necessary coverages (see "Types of Insurance Coverage" on page 2) and maintain the appropriate limits on them. The policyholder's broker should know how to adequately insure initiatives involving stunts, pyrotechnics, air and watercraft, railroads, animals, foreign locations, one-of-a-kind or expensive goods, and other elements that might come into play in creating a commercial. Simply put, producers cannot point out shortcomings of policies they have never seen.

### What to Negotiate

**Wrap-Up policies must meet or exceed producer's standard of coverage.** Until now it has not been common practice for the Wrap-Up provider to share the full policy, but the production company has every right to see the details of the insurance that is intended to cover it throughout the course of a project. The producer should request to see a copy of the policy, have its broker verify it is as or more comprehensive than its own insurance, and negotiate changes to fill gaps in coverage, if necessary. (The production company should first request a copy of the policy from the policyholder's broker. It can then contact the insurance company providing the Wrap-Up coverage if the broker does not supply it.) At the very least, the policyholder should agree to a Difference in Conditions clause to protect you in instances where the Film Production Package does not meet or exceed your coverage. (Please note that Difference in Conditions clauses do not apply to Liability policies.)

In the event the Wrap-Up provider declines to obtain coverage in certain areas—for example, for specialized props, such as expensive jewelry—it must indemnify the production company for all claims that would have been covered by the insurance it declined to purchase at the request of the producer. Remember, it is best for all parties to simply include the coverage, so the producer should first try to negotiate adding it to the policy. However, indemnification is the next-best scenario if the policyholder will not make that concession. (See "Insurance and Indemnification" on page 15 for more information.) If risky stunts or pyrotechnics are involved, the production company should refuse to move forward with such activities until an adequate policy is in place.

## Dealing with Wrap-Up: How to Protect Your Organization When Agencies or Clients Supply Insurance

---

**Coverage subject to cancellation upon improper issuance, alteration, or amendment of a COI.**

---

### The Problem

Production companies frequently assume the duty of issuing COIs to locations, equipment rental companies, and municipalities. If a mishap occurs in the process (e.g., wrong COI issued, misclassification, etc.), canceling an entire policy over a COI snafu is far too heavy-handed an approach. There are better ways to resolve the matter.

### What to Negotiate

**Have the policyholder or its broker issue all COIs.** If a contract calls for the cancellation of the entire policy based on one mistake in issuing COIs, then the production company can supply the primary insured with a list of its stakeholders that need one.

---

**Production company expected to absorb the deductible when Wrap-Up is provided by the agency or client.**

---

### The Problem

Outside of claims pertaining to Workers' Comp and Employers' Liability, as the primary insured the Wrap-Up policyholder should cover all costs of deductibles for losses incurred, including those sustained as a result of acts where the production company was at fault.

### What to Negotiate

**Establish Wrap-Up coverages as primary and apply them accordingly.** Review the agency contract and addenda thoroughly for any wording that would apply the production company's insurance to claims that should fall under the Wrap-Up policy. In other words, the production company's insurance should never be used in lieu of the primary agency- or client-provided policy.

## Dealing with Wrap-Up: How to Protect Your Organization When Agencies or Clients Supply Insurance

---

**Agency or client does not assume responsibility for its own negligence and willful misconduct.**

---

### The Problem

Agency representatives and client companies frequently have a presence on sets and sometimes provide input to direction. These organizations should take full responsibility for accidents resulting from their employees' orders. However, there have been cases of Wrap-Up contracts trying to circumvent the spirit and intent of mutual indemnification.

### What to Negotiate

All parties, including the agency or client, indemnify the production company for claims related to their acts of gross negligence and willful misconduct, reps and warranties, etc. Again, mutual indemnification is the goal. The producer should never be on the hook for any other entity's gross negligence. (See "Insurance and Indemnification" on page 15 for more information.)

---

**Production company's Workers' Comp expected to cover independent contractors.**

---

### The Problem

Although there are Wrap-Up policy addenda being circulated asking for this provision, this is not possible under a Workers' Comp policy.

### What to Negotiate

Independent contractors' companies, or the individuals themselves, are responsible for supplying their own Workers' Comp. The production company may only supply Workers' Comp for those it employs.

## **Insurance and Indemnification**

Indemnification clauses in contracts are designed to protect one party to the agreement against personal injury, property damage, breach of representations or warranties, and/or failure to perform by the other party. The purpose of this type of an agreement is to attempt to make the wronged party whole and not stick them with the bill for losses resulting from others' negligence. Ideally, in any contract you negotiate, the goal should be to obtain "mutual indemnification" with the other party—that is, all parties take responsibility for losses stemming from their own operations or negligence, but not for those that result from others' actions or factors out of their control. To the extent that is possible, production companies should never agree to be accountable for the operations of others they have nothing to do with. With each contract, you are taking on another entity's business and potentially assuming their risks. You only want to indemnify others for the parts of a job over which you have influence—and nothing more. Again, in cases where the producer is being covered by a Wrap-Up policy, the policyholder's deductible should still be applied to all claims, even those related to actions that the production company indemnified the agency. And the latter should also indemnify the producer for claims that would have been covered had the agency obtained and maintained appropriate coverage for the production.

When indemnification clauses are triggered, they can be very costly as insurance is not always available to cover the losses. For most people, there is tremendous confusion around what their insurance covers vis-à-vis these indemnification provisions that are common in many contracts. Oftentimes, the parties request that insurance cover all the indemnification obligations. However, no insurance policy or policies can achieve this lofty goal. Liability insurance is the financial instrument that is usually relied upon to pay for losses in the event an indemnification clause is triggered. All is well and good if the insurance proceeds are sufficient to cover the guilty party's damages. However, problems can arise for both parties when Liability insurance does not protect against the type of claim or damage provided for in the indemnification clause. In these instances there is usually a lack of funds to honor the obligation's and/or the funds are not readily liquid. For the party making the promise, an uninsured claim could mean financial ruin and the end of their business. Likewise, for the individual or organization relying on it, the other party's lack of liquid funds will most certainly result in the obligation's being unfulfilled.

---

**BOTH PARTIES SHOULD CAREFULLY CONSIDER THE BROAD SCOPE AND ALL-ENCOMPASSING NATURE OF ANY PROMISES OF THIS TYPE THAT GET PUT IN WRITING. WHEN ENTERING INTO A CONTRACT CONTAINING AN INDEMNIFICATION PROVISION, IT IS RECOMMENDED THAT YOU DO SO ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

---

Unlike indemnification provisions, which seek protection against "any and all claims," Liability insurance offers limited protection. A Liability policy contains an insuring agreement in which the insurance carrier will describe the type of claims for which they are providing coverage. For example, coverage is usually afforded should an accident occur and result in either "bodily injury" or "property damage." The insuring agreement is then restricted by means of the policy limit, exclusions, and terms and conditions of the policy. In short, not all indemnified claims will be insured claims! For example, if you intentionally drive a rented car into a wall as part of a stunt, it will likely not be covered by any of your policies.

## Insurance and Indemnification

It is important to note that an indemnification clause in a contract cannot alter the scope of an insurance policy. Any attempt to expand insurance coverage within the indemnification clause beyond what is already contained within the actual insurance policy will not be binding on the insurance carrier. In other words, the provisions of an indemnification agreement will not change or expand the insuring agreement of an insurance policy, regardless of what is agreed to in an indemnification clause.

Simply put, insurance cannot always cover all costs related to the irresponsible actions of other parties.

### *Negotiating Indemnification*

- ✓ Negotiate terms of an agreement with all parties and jointly draft a contract
- ✓ Make sure insurance requirements of each party are spelled out in detail
- ✓ Obtain copies of underlying insurance policies, and have your legal team address and renegotiate exclusions that are of concern

---

**IN SHORT, NOT ALL  
INDEMNIFIED CLAIMS WILL  
BE INSURED CLAIMS!**

---

It is important to remember that proper indemnification language should be fair and balanced with the goal of placing all parties in the best position to access the policy that is in effect. It is not the place for a “gotcha” negotiation on any party’s behalf.

## The Benefits of Working with a Specialist Carrier and Agent

Production companies will likely need help in spotting potential exposures and adverse clauses in contract addenda. It is critical to work with insurance brokers and agents who are experts in the highly specialized field of commercial production. These people will be familiar with the equipment and machinery that are used in your field and how they are applied. They will also know the risks inherent in every element of production work (e.g., filming, editing, stunts, etc.) and the appropriate coverages and limits for each unique initiative. More important, they are knowledgeable about what goes into creating a safe working environment—and the types of claims that are likely to occur in an unsafe setting—and thus they are in a much better position than a generalist insurer to help you mitigate your potential exposure.

### *Signs You Have Found the Right Agent*

- ✓ Agent asks detailed questions about your business.
- ✓ Agent speaks your language and demonstrates an understanding of your industry's protocols and how business is transacted.
- ✓ Industry peers (e.g., executive producers, fellow AICP members, etc.) have heard of the agent and have had positive experiences with him or her. The company also has lots of positive testimonials from customers in your industry.
- ✓ Policies sold by the agent are designed to address your industry's unique insurance needs.
- ✓ Broker acknowledges the parts of your existing policies that are comprehensive and fairly priced.
- ✓ Agent or organization's Web site speaks specifically to your industry, demonstrating a high level of specialization.

### *Questions to Ask Your Prospective Agent*

- ✓ How many years' experience do you have insuring commercial productions?
- ✓ What other commercial production companies do you insure?
- ✓ Do you have references?
- ✓ Do you work with specialist insurance carriers?



## **Production Issues That Have Resulted in Large Financial Losses and/or Insurance Claims**

**1**

**Nonappearance  
of Talent and/  
or Director**

**2**

**Cranes**

**3**

**Pyrotechnics,  
Welding,  
and  
Special Effects**

**4**

**Leaving Camera  
Equipment in  
Unattended Vehicle(s)**

**5**

**Properly Securing  
the Location**

**6**

**Aircraft and  
Helicopters**

**7**

**Intellectual Property  
Right Violations**

**8**

**Vehicles Driven by  
Nonqualified Drivers**

**9**

**Mechanical  
Breakdown of  
Vehicle(s), Essential  
Props, and/or  
Nonperformance  
of Animals**

---

## **Production Issues That Have Resulted in Large Financial Losses and/or Insurance Claims**

### **1/ Nonappearance of Talent and/or Director**

---

#### **2/ Cranes**

- Moving the crane while it is erect
  - Not securing the flooring where the crane has been erected
  - Using the crane in close proximity to electrical wires
  - Overweighting the crane
- 

#### **3/ Pyrotechnics, Welding, and Special Effects**

- Smoldering embers have been the cause of large stage and location fires
  - Live ammunition should never be brought to a film set
  - Riggers, pyrotechnic, and special effects personnel should not be paid as employees and the company hired should maintain its own liability insurance
- 

#### **4/ Leaving Camera Equipment in Unattended Vehicle(s)**

---

#### **5/ Properly Securing the Location**

- Electrical wiring – tying electricity into a location, properly grounding, covering cables to prevent tripping
  - Keeping the public at safe distances
  - Limiting visitors to the set
- 

#### **6/ Aircraft and Helicopters**

- The captain of the aircraft should be in total charge
  - Only people essential to the shot should be allowed in aircraft
  - Talent should only be transported by commercial aircraft
- 

#### **7/ Intellectual Property Right Violations**

- Use of photographs and paintings whether from cleared sections of prop houses or not
- Music has resulted in some of the largest copyright violation claims in the entertainment business
- Talent releases from minors
- Unsolicited materials
- Beware of locations that have their own location release

## Production Issues That Have Resulted in Large Financial Losses and/or Insurance Claims

### 8/ Vehicles Driven by Nonqualified Drivers

- Unweighted trailer attached to a truck
- Tractor trailer used on a mountain road without downshifting
- Tying down loads so the weight does not shift

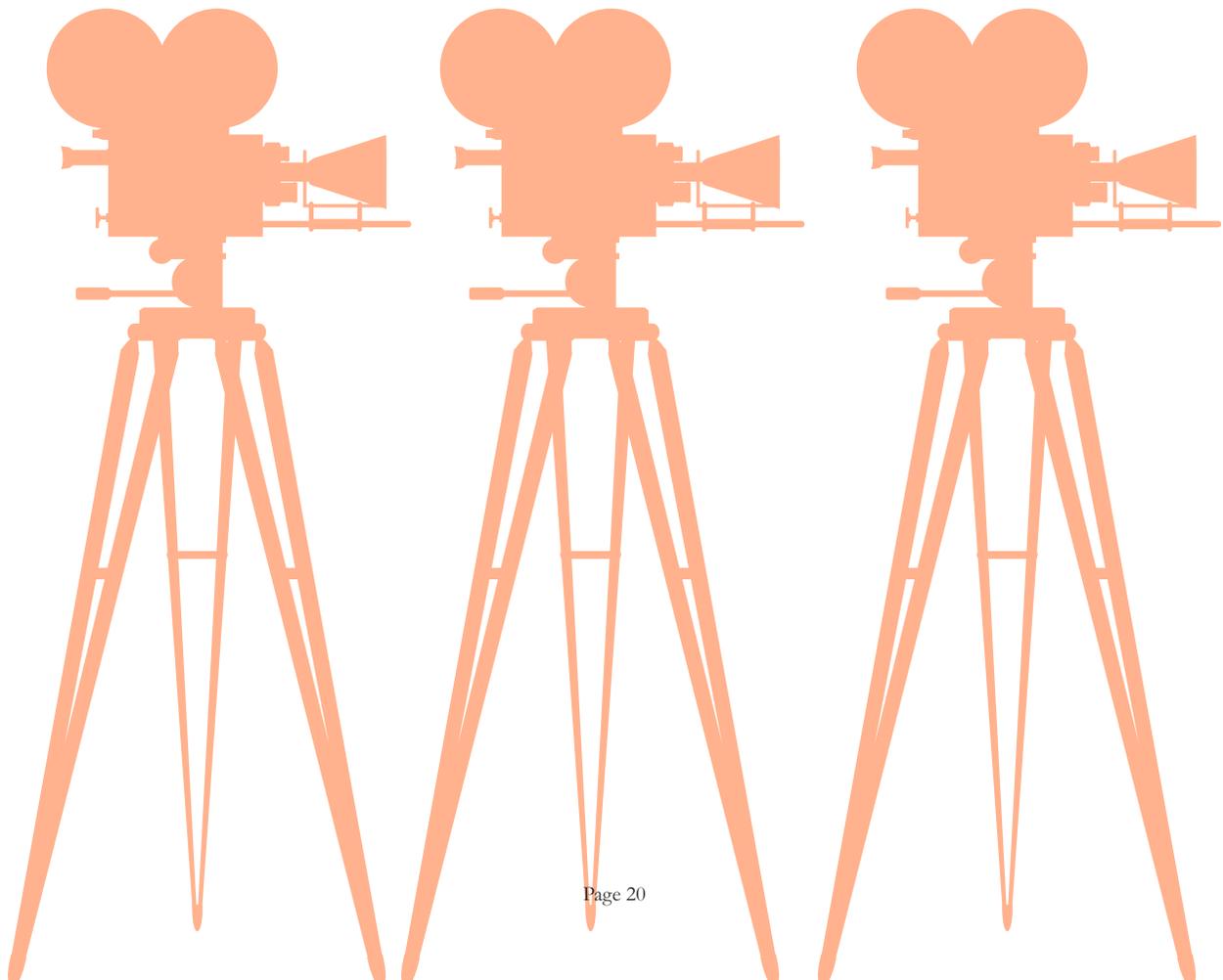
---

### 9/ Mechanical Breakdown of Vehicle(s), Essential Props, and/or Nonperformance of Animals

- Mechanical breakdown of vehicle(s) when in distant locations can cause the loss of an entire shoot day
- Mechanical breakdown of an animation can result in a long production delay
- Failure to get animals to perform

Credit Taylor & Taylor Insurance

Up until this point, we have discussed how to protect your business from liability on paper as best you can. Of course, fair legal agreements and comprehensive insurance will only protect you so much without attention to detail in your day-to-day operations. Although you may not typically employ risk managers, here are some commonsense precautions you can take to reduce the risk of accident and injury to your workers and everyone else involved in a shoot.



## Reduce Your Risk Before Things Happen

### *Equipment*

Make sure that everyone who uses a particular tool or piece of equipment has been formally trained to do so—cameras, in particular, continue to evolve quickly. Allegations of negligence are often raised by injured workers who have not been trained, or allege that they were not trained, to use a certain apparatus. No one should be permitted to use a forklift, scissor lift, boom lift, manlift, or similar mechanical contraption without having received formal, documented certification to do so. If possible, union crews should show their “safety passports” verifying their credentials. Allowing a noncertified individual to operate mechanical machinery has proven many times to be a very significant liability exposure.

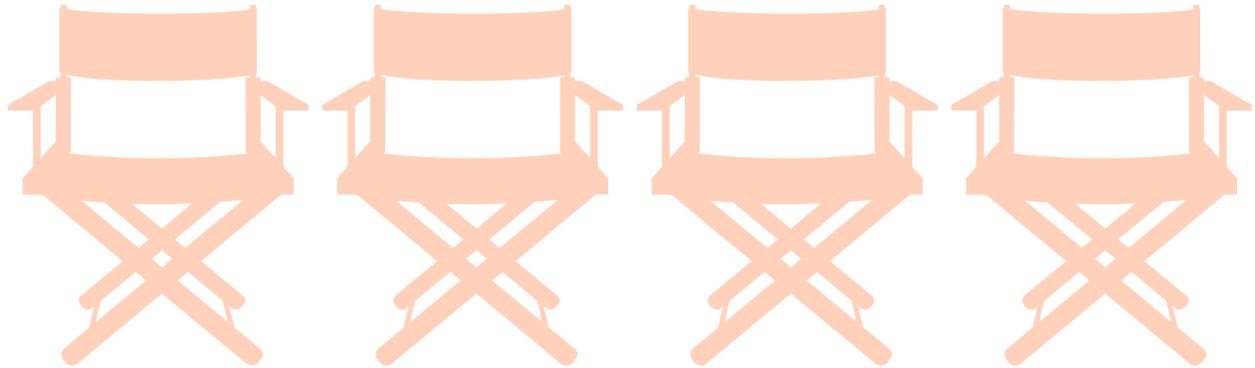
### *In Transit*

Theft continues to be a significant exposure, particularly in our industry where we frequently transport high-value equipment. There are several steps we can take to protect our valuables:

- ✓ Utilizing a GPS tracking system
- ✓ Installing alarm systems
- ✓ Putting in securement devices (e.g., “boots” that fit on trucks when parked off-site overnight)
- ✓ Constant vigilance for suspicious behavior; drivers should have the means to communicate quickly with dispatch or the police
- ✓ Avoiding high-crime areas wherever possible
- ✓ Limiting the number of en route stops
- ✓ Not leaving cargo unattended for extended periods of time
- ✓ Keeping within eyesight of trucks or trailers when they are in unsecured locations such as rest areas, shopping center parking lots, or the driver’s personal residence
- ✓ Parking in well-lit, busy areas whenever possible
- ✓ Locking all equipment while parked with high-performance locks
- ✓ Not letting trucks run while unattended
- ✓ Taking keys out of the ignition while vehicles are parked
- ✓ Parking loaded trailers in such a way as to prevent or reduce access to the rear doors wherever possible
- ✓ Not discussing the nature of your cargo with strangers
- ✓ Placing a company phone number on the truck to aid in the vehicle recovery process
- ✓ Refraining from putting descriptive logos or company names on the truck so as not to alert thieves to its contents

Bad drivers account for millions of dollars’ worth of Workers’ Comp claims and automobile and property damage each year. Make sure you keep records of work-related driving accidents and mishaps committed by your employees, and review these notes from time to time. It is critical to root out unsafe and costly drivers as quickly as possible.

## Reduce Your Risk Before Things Happen



### *On Location*

Whether you're shooting in a rented studio, warehouse, public property, or other site, you can be held responsible for an incident that results in personal injury. Thus, it is critical to think through everything you might be able to control in regard to your location. Abandoned buildings, for example, can be perilous for all employees and potentially risky in terms of liability if third parties are working in them, especially if the property owner or city forced you to take the premises as is. Always try to identify—and ultimately eliminate or control—as many exposures as you can find that could foreseeably cause harm.

It is virtually impossible to list every single safety measure for each conceivable commercial production scenario. Below are a few sample settings common to the industry, and some principles for securing them. These should help you think through how to care for everyone's well-being and look after property on each of your projects.

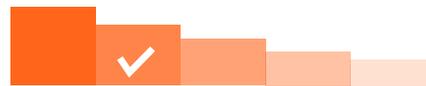
**Activity/hazard and associated risk(s)**

Power tools  
Electrical shocks  
Backfiring equipment  
Injury caused by misuse

**Who might be at risk?**

Set designers and any workers in their vicinity

**Likelihood of incident (on a 1-to-5 scale)**



**Possible controls to put in place**

- ✓ Never carry tools by the cord
- ✓ Never unplug by yanking cord
- ✓ Perform work on insulated platform and/or rubber mat
- ✓ Require workers to wear rubber gloves
- ✓ Perform daily inspection to ensure machine is clean and grounded
- ✓ Repair or retire tool at first sign of wear and tear (e.g., trigger begins to stick, cord starts to fray, etc.)

## Reduce Your Risk Before Things Happen

**Activity/hazard and associated risk(s)**

Utilizing a body of water (e.g., ponds, rivers, lakes, swamps, bogs, oceans, pools, and tanks)  
 Drowning  
 Water damage to gear and property

**Who might be at risk?**

Actors  
 Stunt people in water  
 Adjacent camera people  
 Lighting specialists  
 Sound technicians

**Likelihood of incident (on a 1-to-5 scale)**



**Possible controls to put in place**

- ✓ Gather information about currents
- ✓ Evaluate potential hazards (e.g., subsurface objects, underwater life, and contamination)
- ✓ Make sure water is not contaminated (via direct water sampling, verification by local health authorities, or similar means)
- ✓ Have coast guard or other marine safety vessels downstream in the event of undertow

**Activity/hazard and associated risk(s)**

Hot-air balloon usage

**Who might be at risk?**

Balloon passengers  
 Cast and crew members underneath balloon

**Likelihood of incident (on a 1-to-5 scale)**



**Possible controls to put in place**

- ✓ Consult balloon expert on potential hazards related to the day's climate (e.g., wind, air density, temperature, humidity)
- ✓ Hire FAA-certified pilot
- ✓ Install and thoroughly test radio equipment for communication with the set
- ✓ Select and clear landing spot
- ✓ Require personnel not in balloon during filming to stand 100 feet away at all times

## **What Is the Risk Level Now with Controls in Place?**

Once your safety controls have been implemented, evaluation of their completeness and effectiveness is an ongoing process. Keep records of what works and what does not. Wherever possible, collect and analyze data and make charts to illustrate your progress over time and fine-tune your practices.

**Every accident and near-miss should be investigated and discussed at the next safety meeting to ensure that everyone is aware of the appropriate safe work procedures.** Information gained from safety inspections and accident investigations is another source of valuable insights that can help refine your safety practices.

Putting together these risk assessment and management documents (and supporting them with videos and photos wherever possible) could be perceived as extra red tape. However, by documenting your safe practices—and their execution by employees—you may have proof that you have done everything you can to mitigate risk and protect your workforce and the general public if something were to go wrong. Of course, once you have a safety plan in place, you must stick to your own guidelines vigilantly. If a mishap can be traced back to a failure to follow your own safety procedures, you will likely be held liable.

---

**EVERY ACCIDENT AND  
NEAR-MISS SHOULD  
BE INVESTIGATED  
AND DISCUSSED AT THE NEXT  
SAFETY MEETING TO ENSURE  
THAT EVERYONE IS AWARE OF  
THE APPROPRIATE SAFE WORK  
PROCEDURES.**

---

## PROSIGHT SPECIALTY INSURANCE DISCLAIMER

---

The text set forth and scenarios discussed in this handbook are for general informational purposes only and assume there are no other issues with the terms, conditions, and/or exclusions other than those highlighted for purposes of discussion. The statements herein do not take into account your specific circumstances; all claims are different and each policy contains specific terms applicable to the policyholder. Furthermore the application of law may change the application of policy provisions.

Statements discussed within the handbook are designed to highlight certain provisions of the various types of coverage discussed herein and do not supplement, modify, or amend any policy or warranty coverage on any past, current, or future claim under any specific policy. Any comparison herein was prepared solely by ProSight Specialty Insurance based upon good-faith, objective reading of the language of the basic policies and endorsements.

The information provided should not be relied on as legal advice or a definitive statement of the law in any jurisdiction. For such advice, the readers should consult their own legal counsel.