

## Do Not Underestimate the OLLE

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The Occurrence Limit of Liability Endorsement (“OLLE” and pronounced “Ollie”) is a hot topic right now in property insurance law as it is being included with increasing frequency in property insurance policies, and many insureds seemingly do not understand how it impacts coverage. Ultimately, as courts across the country are regularly holding, this little OLLE can have big consequences when it comes to the coverage available to an insured under a property insurance policy.

### **What is an OLLE?**

An OLLE is a provision in an insurance policy that “sets the upper limits of [an insurer’s] liability.”<sup>1</sup> Other names for these types of policy provisions include Loss Occurrence Limit of Liability Clause Provisions (“LLOLE”) and Scheduled Limit of Liability Endorsements.

As with any insurance provision, the wording varies significantly with each policy. However, a typical OLLE reads as follows:

It is understood and agreed that the following special terms and conditions apply to this policy:

1. In the event of loss hereunder, liability of the Company shall be limited to the least of the following in any one “occurrence”:
  - a. The actual adjusted amount of the loss, less applicable deductibles;
  - b. 100% of the individually stated value for each scheduled item of property insured at the location which had the loss as shown on the latest Statement of Values on file with this Company, less applicable deductibles. If no value is shown for a scheduled item then there is no coverage for that item;  
or
  - c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.
2. Coverage under this policy is provided only at the locations listed on the latest Statement of Values on file with this Company or attached to this policy.

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<sup>1</sup> *Oregon Potato Co. v. Kinsale Ins. Co.*, No. 2:22-CV-0049-TOR, 2023 WL 3293280, at \*6 (E.D. Wash. May 5, 2023).

3. The premium for this policy is based upon the Statement of Values on file with this Company or attached to this policy.<sup>2</sup>

In this example, the insurer limited its liability in “1b” to “100% of the individually stated value for each scheduled item of property.” This means that for any given loss covered by the policy, the most the insured will be able to recover for a particular item of property is the value of that item as stated in the statement of values (“SOV”)—even if the cost to repair or replace that item is considerably more. This makes sense because the insurer assesses its potential exposure and sets the premium based on the values identified by the insured in the SOV. An OLLE simply provides an incentive for the insured, the party with access to information to determine the value of the property being insured, to provide accurate valuations in the SOV.

Recognizing that sometimes property values can change or may be difficult to accurately identify, some OLLEs contain a Margin Clause. In these provisions, instead of limiting the amount of recovery to “100% of the stated value” of property, the OLLE allows the insured to recover up to a specified additional amount over and above the stated value. This is typically expressed in a percentage of the stated value, often “110%” or “125% of the stated value.”

### **How does an OLLE impact coverage under a property policy?**

Identifying the differences between blanket policies and scheduled policies is key to understanding how an OLLE works. A blanket policy “invariably attaches to, and covers to its full amount, every item of property described in it.”<sup>3</sup> In other words, “[i]f the loss upon one item exhausts the full amount of the policy, the whole insurance must be paid[,] and there can be no apportionment of it.”<sup>4</sup> On the other hand, in a scheduled policy, “each separately treated item of property is in effect covered by a separate contract of insurance[,] and the amount recoverable with respect to a loss affecting such property is determined independently of the other items of property.”<sup>5</sup> These differences are significant, as many courts that have interpreted OLLEs have held that an OLLE, together with an SOV, can transform a blanket policy into a scheduled policy.

Applying the sample OLLE language above, the insured is limited to the least of (a) the actual adjusted amount of loss; (b) the value for each scheduled item of property on the latest SOV; or (c) the Limit of Liability of the policy. Ultimately, an OLLE like this, together with an SOV can turn a “blanket” policy, with an overall limit available across multiple items and multiple locations into a “scheduled” policy, which limits recovery for each location (and/or item) to the stated value in the SOV—the value of the property the insured reported to the insurer.

Because the insured (or the insured’s agent) provides the SOV and the stated values therein, SOVs can vary significantly in form and substance. An SOV can simply identify a Total Insurable Value (“TIV”) for each location, which would mean that for any covered loss at a covered location, the

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<sup>2</sup> *RSUI Indem. Co. v. Benderson Dev. Co.*, No. 2:09-CV-88-FTM-29DNF, 2011 WL 32318, at \*4 (M.D. Fla. Jan. 5, 2011).

<sup>3</sup> *Landmark Am. Ins. Co. v. Pin-Pon Corp.*, 155 So. 3d 432, 437 (Fla. Dist. Ct. App. 2015) (quoting Steven Plitt, et al., 12 *Couch on Insurance* § 177:74 (3d ed. 1997)).

<sup>4</sup> *Id.*

<sup>5</sup> *Benderson Dev. Co.*, 2011 WL 32318, at \*5 (quoting 12 *Couch on Insurance* § 175:90).

limit available for that loss is the amount identified as the TIV for that location. In those SOVs, specific insured property at a location is not separately identified.

However, the more common approach (and one that provides more detailed information to an insurer) identifies categories of insured property at each location separately and provides a value for each individual category or “item” identified. For example, an SOV could identify separate categories for real property, business personal property (“BPP”), and business interruption (“BI”) at each location as shown below:

Statement of Values

	<b>Building</b>	<b>BPP</b>	<b>BI</b>	<b>TIV</b>
<b>Location 1</b>	\$10,000,000	\$1,000,000		\$11,000,000

Using the example SOV above, assume the policy insures 10 different locations, with a total Limit of Liability of \$150,000,000. Location 1 experiences a fire that significantly damages the property. The adjustment team conducts its investigation and identifies the “actual adjusted amount of loss” (the amount it will cost to repair the damage and any BI loss suffered during the period of interruption under the terms of the policy at issue) as follows:

	<b>Location 1</b>
<b>Real Property</b>	\$20,000,000
<b>Business Personal Property</b>	\$1,500,000
<b>Business Interruption</b>	\$1,000,000
<b>Total Loss:</b>	\$22,500,000

The OLLE provision above, specifically the “1b” limitation, limits the recovery available for each individually scheduled item to the value stated in the SOV or the adjusted amount of loss, whichever is less. Accordingly, to determine the amount owed under the policy, the stated value for each item involved in the loss must be compared to the actual adjusted amount of loss.

In this example, although the adjustment team identified a BI loss in the amount of \$1,000,000, the SOV does not contain a value in the BI category. The same OLLE explains that “[i]f no value is shown for a scheduled item then there is no coverage for that item.” Accordingly, the insured’s covered BI loss is reduced to \$0, and the remaining scheduled items involved in the loss are Real Property and Business Personal Property. When the stated values are added together, the total is \$11,000,000 (\$10,000,000 + \$1,000,000). Because this is less than the total adjusted amount of loss, the most the insured can recover is \$11,000,000.

**The math is simple; the language is straightforward; why is this an issue?**

In the example above, the insured obtained a property insurance policy with a Limit of Liability of \$150,000,000, and the insured suffered, what the adjustment team agreed was, a loss of \$22,500,000. And yet, application of the OLLE limits the insured’s recovery to \$11,000,000.

This is because the insured is limited to the least of: “a. [t]he actual adjusted amount of loss” (\$22,500,000); “b. 100% of the individual stated value for each Scheduled item (\$10,000,000 + \$1,000,000 = \$11,000,000); or “c. the Limit of Liability” (\$150,000,000). The “least” of these amounts is \$11,000,000.

While the math is simple and the language straightforward, the volume of litigated claims involving policies containing OLLEs suggests that insureds are either (1) not reading the OLLE when they purchase insurance or (2) intentionally purchasing scheduled coverage and undervaluing property in order to obtain lower premiums.

For example, in *Forest Oaks Shreveport Apartments, LLC v. Western World Insurance Co.*, a federal court in Louisiana analyzed an SOV along with the “limit of liability” provision below after a fire significantly damaged an apartment building in Shreveport, Louisiana:

The premium for this policy is based upon the Statement of Values and/or Application on file with the Company. In the event of a covered loss or damage, the liability for the Company shall be [ ] limited to the least of the following:

- a. The actual adjusted amount of loss or damage, less applicable deductibles.
- b. The stated value(s) for the location(s) involved, as shown on the latest Statement of Values and/or Application on file with the Company, less applicable deductibles.<sup>6</sup>

In that case, the insured’s SOV valued each building at an apartment complex in the amount of \$407,000.<sup>7</sup> Although only one building was damaged by the fire, the insured argued that the only limit in the policy was the “\$5,000,000 limit of liability primary per occurrence” and that the “SOV merely provides a description of the property and does not limit any liability.”<sup>8</sup> In the alternative, the insured argued that if there was a limit of liability pursuant to the SOV, the insured would be limited to the “aggregate value of the four separately listed buildings” on the SOV, which totaled \$1,628,000.<sup>9</sup> It was undisputed that the appraised cost of the damaged building totaled \$939,188.33, after accounting for the depreciated cash value and the \$25,000 deductible.<sup>10</sup> The

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<sup>6</sup> No. CV 20-286, 2021 WL 2534112, at \*5 (W.D. La. June 21, 2021).

<sup>7</sup> *Id.* at \*1.

<sup>8</sup> *Id.* at \*2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*1.

court held that the policy at issue was a scheduled policy and that the insurer appropriately limited its liability to the value listed on the SOV for the damaged building in the amount of \$407,000 because it was less than the actual loss.<sup>11</sup> The court pointed out the following:

Plaintiff hired a sophisticated agent and broker to insure its properties. Plaintiff, through its agent and broker, bargained for a scheduled policy and supplied the SOV with the properties listed individually for \$407,000. As such, Plaintiff paid the premiums consistent with the values Plaintiff submitted to Defendant. It was up to Plaintiff to accurately list the value of the property in the SOV. Plaintiff's interpretation of the policy would lead to the absurd result of allowing a sophisticated insured to undervalue the property in an SOV for cheaper premiums and still receive blanket coverage. When reading the contract as a whole, the intent of the parties was clearly to create a scheduled insurance policy. Therefore, the limit of liability is the value listed for the property in the SOV: \$407,000.<sup>12</sup>

In *Gulfport-Brittany LLC v. RSUI Indemnity Co.*, the insured argued its insurer was wrong in limiting the amount recoverable to the stated value for an apartment complex damaged by Hurricane Katrina because the Scheduled Limit of Liability endorsement conflicted with the Excess Physical Damage Schedule and the Excess Physical Damage Coverage Form.<sup>13</sup> The Scheduled Limit of Liability Endorsement in that case stated:

1. In the event of loss hereunder, liability of the Company shall be limited to the least of the following in any one "occurrence":
  - a. The actual adjusted amount of the loss, less applicable deductibles and primary and underlying excess limits;
  - b. 100% of the individually stated value for each scheduled item of property insured at the location which had the loss as shown on the latest Statement of Values on file with this Company, less applicable deductibles and primary and underlying excess limits. If no value is shown for a scheduled item then there is no coverage for that item; or
  - c. The Limit of Liability as shown on the Declarations page of this policy or as endorsed to this policy.<sup>14</sup>

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<sup>11</sup> *Id.* at \*5.

<sup>12</sup> *Id.*

<sup>13</sup> 339 Fed. App'x. 413, 415 (5th Cir. 2009).

<sup>14</sup> *Id.*

The Fifth Circuit, applying Mississippi law, held that the insurer was correct, explaining that the provisions did not conflict.<sup>15</sup> Instead, the court explained, “the policy creates an overall \$140 million per occurrence limit with scheduled sub-limits for individual properties, including” the apartment complex.<sup>16</sup> As a result, the insured was only entitled to recover \$2,458,014, the amount stated in the SOV, and not the \$140 million per occurrence limit.<sup>17</sup>

In *Fair Grounds Corp. v. Travelers Indemnity Co. of Illinois*, a court in Louisiana found that an insured was limited to the values in its SOV for a grandstand damaged in a fire in the amount of \$16,617,273 and limited its business income losses to \$1.5 million even though the insured’s loss totaled over \$34 million.<sup>18</sup> In that case, the policy at issue limited the insurer’s liability to the “Total Stated Value for the property lost or damaged, as shown on the latest statement of values on file with us.”<sup>19</sup> Importantly, the insured admitted that the policy, as written, was a scheduled policy.<sup>20</sup> Yet, the insured asserted that its recovery was not limited to the values for individual items in the SOV because (1) the agent failed to send the cover sheet seeking blanket coverage, and (2) the insurer failed to attach all schedules on file to the policy.<sup>21</sup> The insured argued that the policy provided blanket coverage, “which covered the total value of the loss, no matter which particular portions of the insured property were damaged.”<sup>22</sup>

The court held that the broker was the agent of the insured—not the insurer, and therefore the insurer could not be held accountable for the broker’s alleged negligence.<sup>23</sup> Additionally, the court found that the insurer was not required by statute to attach the SOV to the policy and that “documents could be incorporated by reference.”<sup>24</sup> Accordingly, the court limited the insured to the values in its SOV for the grandstand in the amount of \$16,617,273 and pointed out that implicit in the insured’s arguments is the admission that the value reported to the insurer was a “gross underestimation of its actual replacement cost of over 30 million dollars.”<sup>25</sup>

In *Trident Seafoods Corp. v. Commonwealth Insurance Co.*, a federal court in the Western District of Washington analyzed the following LLOLE after a fire destroyed a building at a fish processing plant in Alaska:

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 742 So. 2d 1069, 1070 (La. App. 5th Cir. 1999).

<sup>19</sup> *Id.* at 1071.

<sup>20</sup> *Id.* at 1073.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1071.

<sup>23</sup> *Id.* at 1075.

<sup>24</sup> *Id.* at 1076.

<sup>25</sup> *Id.* at 1071.

The premium for this Policy is based upon the Statement of Values provided. In the event of loss under the policy, the liability of the Company shall be limited to the least of the following:

- i) The amount of the loss;
- ii) 100% of the total stated value for each category insured, for which a claim has been presented, including, building, contents, machinery and equipment, Stock, business income or Gross Earnings, Extra Expense and any other coverage provided at such Location, as shown on the latest Statement of Values or other documentation on file with the Company;
- iii) The Limit of Liability, any Sublimit of Insurance or Amount of Insurance specifically used in this Policy that applies to any insured loss or coverage or Location.<sup>26</sup>

In that case, the insured argued that subsection (ii) only limited liability to “each category insured, for which a claim was presented, *not* by location.”<sup>27</sup> The court found the insured’s interpretation unreasonable as the proposed amount would exceed the policy’s limit.<sup>28</sup> The court explained that “the phrase ‘at such Location’ modifies and limits the categories that are included in ‘each category.’”<sup>29</sup> Accordingly, the court held that the LLOLE “limits liability by category and location.”<sup>30</sup>

Ultimately, the inclusion of an OLLE (or its sister provisions, the LLOLE and the Scheduled Limit of Liability Endorsement) in property insurance policies is beneficial for both insurers and policyholders. By requiring an insured to accurately report the value of covered property, insurers can appropriately assess risk and determine premiums, resulting in a more stable insurance market for all. As the litigation around these provisions illustrates, however, whether an insured (1) fails to read an OLLE in a policy at the time of purchase or (2) intentionally purchases scheduled coverage for lower premiums planning to argue for blanket coverage in the event of a loss, underreporting values in an SOV can have significant consequences. If the insured does not suffer a loss during the policy period, it is possible that the only effect of the insured’s sloppy (or dishonest) valuation and underreporting is that the insurer collects less premium than it would if the values were properly reported. But, if the insured suffers a loss, the insured’s underreporting can significantly limit the amount it can recover under the policy. Acknowledging the existence and application of an OLLE on the front end leads to transparency for all involved.

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<sup>26</sup> 850 F. Supp. 2d 1189, 1199 (W.D. Wash. 2012).

<sup>27</sup> *Id.* at 1200 (quotations omitted).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 1201.

<sup>30</sup> *Id.*