

Film and television production claims in Canada

A Crawford & Company (Canada) Insurance Industry Update

Spring, 2007

Despite a recent downturn in Canadian film and television production, the industry remains a significant contributor to Canada's economy, export market and labour force.

The value of all film and television production in Canada in 2005/2006 was \$4.8 billion, with an export value of \$1.95 billion. (*Profile 2007, An Economic Report on the Film and Television Production Industry*, produced by the Canadian Film and Television Production Association/l'Association canadienne de production de films et de télévision—CFTPA/ACPFT).

During the same time period, the industry generated 124,300 full-time jobs. Of these, 47,800 were directly involved in production and the other 76,500 were indirect positions (*Profile 2007*, CFTPA/ACPFT). Direct employees include performers, writers, directors, producers, crews, equipment suppliers, transportation workers and caterers. Indirect jobs include those in construction, food service, hotels, vehicle rental businesses, and financial services such as accounting and insurance.

Aggregate statistics on the insurance aspect of film and television production are not collected, so it is impossible to assess the premium



or claims volume of this segment of the insurance industry.

“Because there are so few film insurers, they're very competitive and don't tend to share their information,” says Neil Gibson, a senior general adjuster with Crawford & Company (Canada)'s downtown Toronto Global Technical Services office who specializes in film and television production claims.

The Canadian film and television production industry

From a high of almost \$5.1 billion in 2002/2003, the total volume of film and television production

dropped to just under \$4.5 billion in 2004/2005, but rebounded to \$4.7 billion in 2005/2006. Much of this decline was due to a reduction in foreign investment in the industry, which represents about a third of total production volume. Between 2003/2004 and 2004/2005, there was a 23-per-cent drop in foreign television and film production, followed by a 14-per-cent recovery in 2005/2006 (*Profile 2007*, CFTPA/ACPFT).

Several reasons are cited for this overall decrease. The robust Canadian dollar has risen almost 35 per cent against the American dollar since 2002, making it less economical for U.S. productions to shoot in Canada. Many American states and

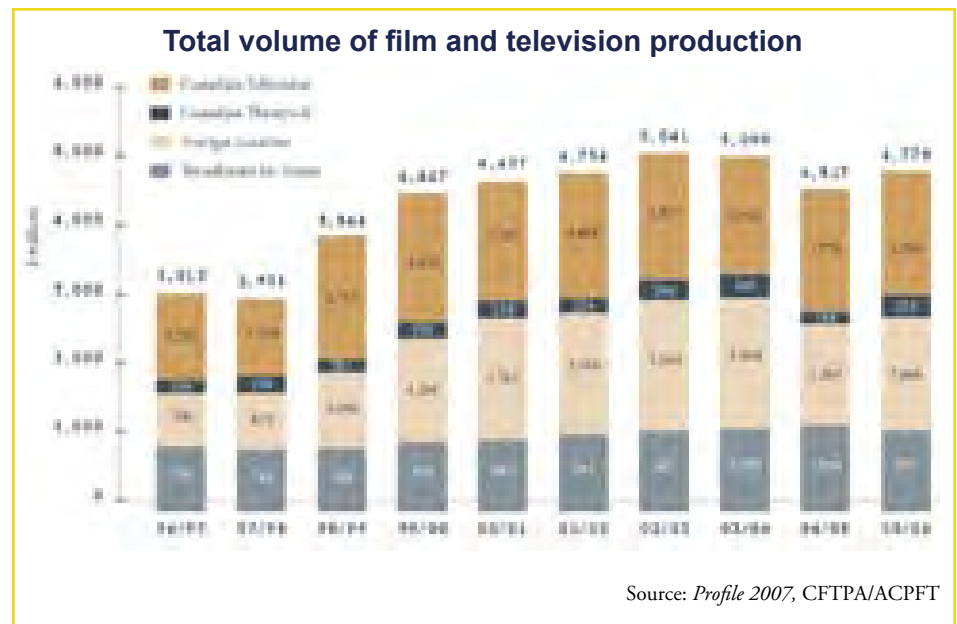
several other countries—such as Australia, South Africa and New Zealand—have initiated the kind of lucrative tax credits that once lured producers to Canada. (*Canadian Business*, Aug. 14-Sept. 10, 2006). New rules in Europe and the United Kingdom favouring co-productions among E.U. nations have drastically cut Canada-U.K. and Canada-France co-productions. (*Profile 2006*, CFTPA/ACPFT).

However, the industry does have some bright spots. Canadian theatrical production increased almost 76 per cent, from \$184 million in 2004/2005 to \$323 million in 2005/2006. Several Canadian films such as *Bon Cop Bad Cop*, *C.R.A.Z.Y.*, *Trailer Park Boys: The Movie*, *White Noise*, *The Corporation* and *Resident Evil* had successful box office runs.

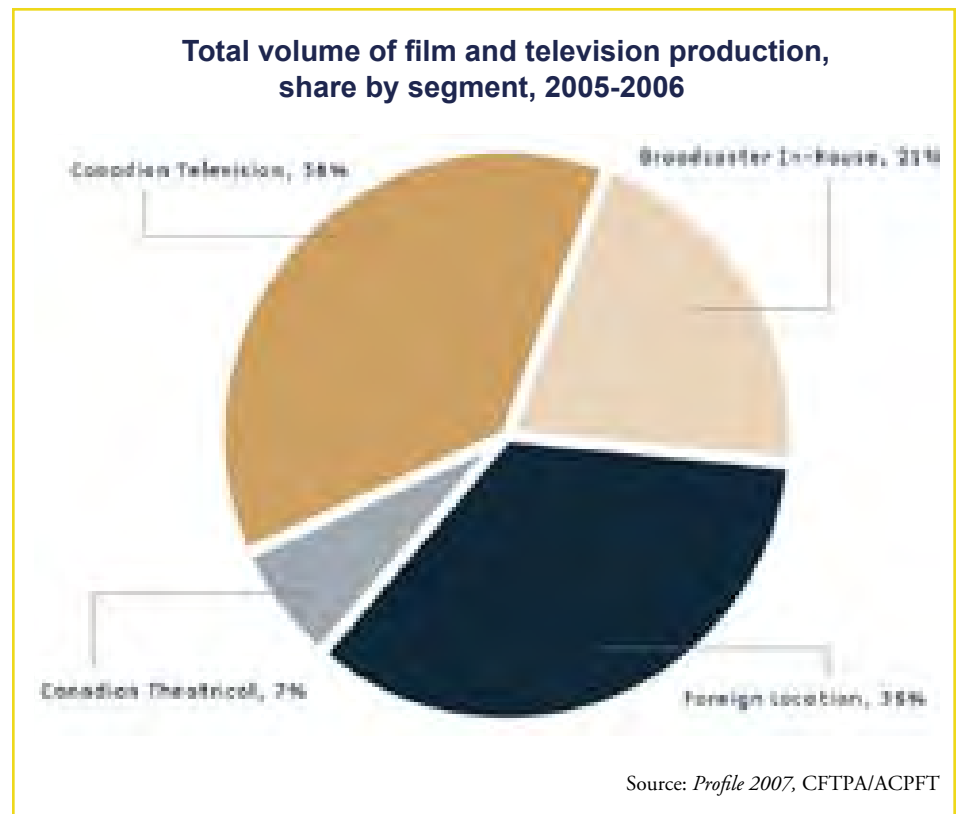
Television production remains the largest segment of the industry, accounting for 38 per cent of total production. In 2005/2006, it increased by one per cent over the previous year, to \$1.8 billion. Movies of the week continue to increase, thanks to growing international interest in Canadian content. However, broadcaster in-house production, accounting for 21 per cent of total production, dropped by nine per cent to \$995 million.

Provincial breakdown

Ontario enjoyed the highest volume of film and television production, with just over \$1.8 billion in total activity in 2005/2006. British Columbia returned to its position as the second-largest centre in the country, with \$1.1 billion.



Source: *Profile 2007*, CFTPA/ACPFT



Source: *Profile 2007*, CFTPA/ACPFT

British Columbia, Nova Scotia, Alberta, and Newfoundland and Labrador all experienced increases in 2005/2006 over 2004/2005. However, Ontario, Quebec, Manitoba, Saskatchewan, New Brunswick and Prince Edward Island all saw decreases.

Experts say that one of the reasons the industry remains relatively healthy in Canada despite the jump in the value of the dollar is the diversity of the country's geography and people. Smaller cable-company productions such as movies of the week are on the rise and need

locales that can look like they are anywhere in the world—both on the ground and in the faces of the cast.

Export value

The export value of Canadian film and television production dropped 24 per cent from 2003/2004 to 2004/2005, to \$1.76 billion. However, by 2005/2006, the value had increased by 11 per cent, to \$1.95 billion. Television programming decreased by 24 per cent, while feature film production—following a decline of 72 per cent in 2004/2005—increased by 300 per cent in 2005/2006. Television production accounted for \$200 million, while feature film production accounted for \$88 million.

Job creation

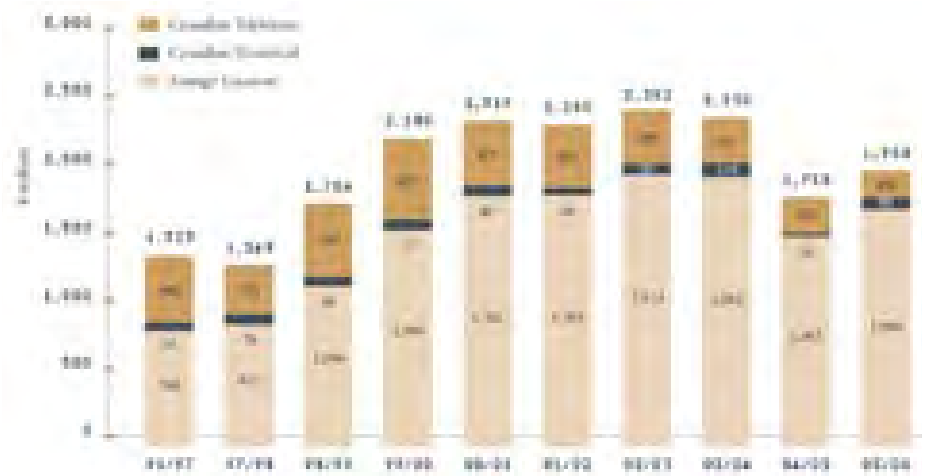
Since 1998, film and television production has kept pace with the overall economy and other service sectors in job creation. From 1998 to 2005, employment in the motion picture and video industries grew at an average annual rate of two per cent, compared to 2.1 per cent in the overall economy. However, each direct job in the production industry generates 1.6 additional indirect jobs. The number of direct and indirect jobs increased by eight per cent from 2004/2005 to 2005/2006.

Volume of film and television production by province

Province	04/01	05/02	06/03	07/04	08/05	09/06	10/07	11/08	12/09	13/10
Ontario	1,156	1,027	1,086	1,224	1,011	1,042	1,082	1,791	1,089	1,118
British Columbia*	59	53	63	107	1,086	1,345	1,134	1,548	914	1,109
Quebec	87	87	109	1,019	1,672	1,219	1,099	1,229	1,279	1,189
Alberta	73	46	124	111	119	111	114	139	111	131
Manitoba	124	107	121	127	100	124	109	110	114	122
Saskatchewan	17	16	44	44	76	74	56	111	96	81
Atlantic	21	19	39	17	41	32	36	42	71	54
Newfoundland and Labrador†	1	4	1	1	11	15	6	1	1	11
New Brunswick	1	11	11	11	12	17	16	17	11	16
Prince Edward Island	1	1	1	1	1	1	1	1	1	1
Total	1,603	1,351	1,544	1,627	1,127	1,754	1,563	2,000	1,417	1,754

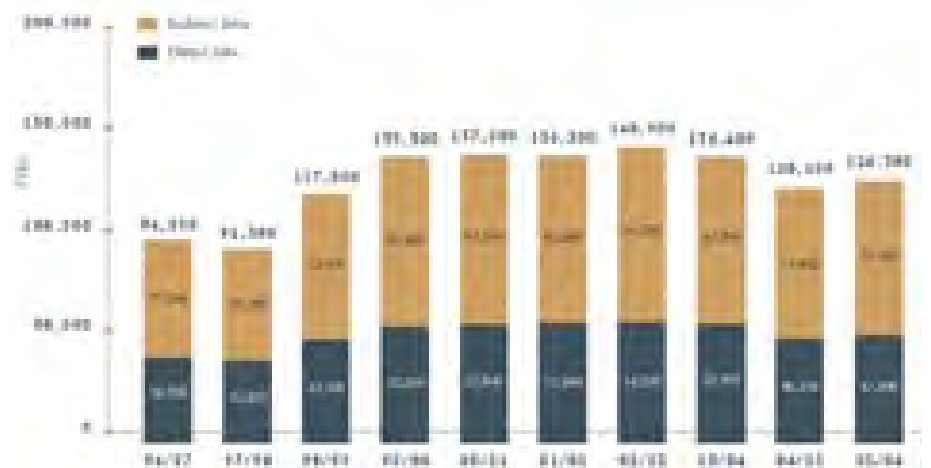
Source: Profile 2007, CFTPA/ACPF

Export value of film and television production in Canada



Source: Profile 2007, CFTPA/ACPF

Number of full-time equivalent jobs in Canadian film and television production



Source: Profile 2007, CFTPA/ACPF

Insuring productions

One of the many sectors that benefit from indirect job creation in film and television production is the insurance industry. In addition to needing to protect their cast, crew, equipment and footage, production companies must satisfy insurance requirements when they apply for permits in filming locations.

Mandated coverage

For example, Toronto requires that these conditions be met:

- General comprehensive public liability in the amount of two million dollars (\$2,000,000)—An insurance policy that covers the insured against liability from a third-party claim for bodily injury and/or property damage which arises from the insured's business, property or operations.
- The City of Toronto named as an additional insured—A person or entity, other than the named

insured, who is protected by the policy, most often in regard to a specific interest and with respect to the operations of the named insured. The comprehensive general liability policy must add the City of Toronto as an additional insured to protect the city where the production company's actions or operations injure a third party for which a claim may be filed against it and/or the city.

- A cross liability/severability of interest clause which is defined as follows—A provision in some insurance policies and applications for insurance that each insured or applicant will be treated as if separately covered under the policy. If a claim is made by one insured against another insured, this provision provides coverage for the insured against whom the claim is made in the same manner as if separate policies had been issued. However, it does not operate to increase the insurance company's overall limit of liability. The comprehensive general liability policy must allow the City of Toronto to

file a claim against the production company if its actions or operations injure the City of Toronto.

Vancouver requires the following coverage:

- Comprehensive general liability insurance covering bodily injury, death and/or damage to or destruction of property including loss of use thereof, arising from the named insured's activities on city property. Such insurance to include broad form property damage, blanket contractual liability, and cross liability or severability of interest clause as defined below.
- Minimum liability coverage of \$5,000,000 per occurrence for bodily injury and/or property damage and in the aggregate with respect to products and completed operations.
- The City of Vancouver and/or Vancouver Board of Parks and Recreation and/or Vancouver Police Board, their officers, agents, employees and volunteers are added as additional insureds but solely with respect to the liability which arises out of the activities of the named insured. The Vancouver Art Gallery Association and/or Vancouver Public Library Board to be included as additional insured if the Vancouver Art Gallery and/or Vancouver Public Library property are used for filming.
- City of Vancouver to receive 15 days prior written notice of cancellation or material change. Thirty days written notice is required on certificates evidencing annual blanket insurance coverage.



- Cross liability or severability of interest clause: The policy shall protect each insured in the same manner and to the same extent as though a separate policy had been issued to each, but nothing shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would be liable if there had been only one insured. Any breach of a condition of this policy by any insured shall not affect the protection given by the policy to any other insured.



Other types of coverage

Film and television production can be very expensive, with production costs ranging from a few thousand to tens of millions of dollars. Many things can go wrong. Stars can get sick, be injured or fall prey to drug or alcohol problems. Cameras and other expensive equipment can fail. Recording media such as film and videotape can be lost or damaged. The wrong kind of weather can delay productions.

The phrase “time is money” applies in many businesses, but is especially true in film and television production.

A wide range of insurance is available to protect productions from loss, including:

- Cast—sickness, disability or accidental death
- Damage to cameras, sound or lighting equipment
- Damage to or loss of negatives, exposed film and videotape
- Faulty stock, camera or processing

- Extra expense for adverse weather conditions
- Loss of money, currency, securities
- Props, sets, decorations, accessories and wardrobe—damage or destruction
- Damage to miscellaneous equipment
- Third-party property damage
- Extra expense
- Office contents
- Errors and omissions coverage to protect against lawsuits launched by third parties for copyright infringement
- Commercial general liability
- Business automobile liability and physical damage
- Foreign general liability and contingent automobile liability
- Excess liability/umbrella liability
- Aircraft liability and hull
- Watercraft (protection and indemnity) liability and hull
- Animal mortality and extra expense
- Railroad protective liability
- Guild/union travel accident

- Workers' compensation and employers' liability
- Foreign workers' compensation.

While not every production requires coverage for all of these risks, brokers and insurers specializing in this facet of the insurance industry are able to put together appropriate packages after reviewing the script.

General policy conditions

“While the wording may change slightly depending on the underwriter, generally most wordings are fairly similar,” says John Sharoun, CEO of Crawford & Company (Canada) and an expert in film and entertainment losses.

The general policy conditions applicable to most sections of the standard production package include the following relevant clauses:

- **Notice of loss**
“The insured shall immediately report in writing to the company

or its agent every loss, damage or occurrence which may give rise to a claim under this policy, and if the loss is due to a violation of law, also to the police. The insured shall also file with the company or its agent within 90 days from date of discovery of such loss, damage, or occurrence, a detailed sworn proof of loss.”

- **Due Diligence**

“The insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any loss or any circumstances likely to give rise to a claim insured under this policy.”

- **Access to records and examination under oath**

“The company or its authorized representatives shall have access to all accounts, contracts, invoices and records of the insured relating to any declared production at all times during the term of this policy, or while a claim is pending, at such reasonable time and place as may be designated by the company or its representatives. The insured, as often as may be reasonably required, shall submit, and so far as within their power, cause all persons interested in any such declared production, and their employees, submit to examination under oath by the company or its representatives. No such examination under oath or examination of books or documents, nor any other act of the company or its representatives in connection with the investigation of any claim hereunder, shall be deemed a waiver of any defense which the company might otherwise have with respect to any

claim, but all such examination acts shall be deemed to have been made or done without prejudice to the company’s liability.”

- **Subrogation**

“In the event of loss, damage, expense or liability the insured shall acquire any rights of action against any individual firm or corporation for loss, damage, expense or liability cover hereunder, the insured will, if requested by the company, assign and transfer such claim or right of action to the company, or, at the company’s option, execute and deliver to the company the customary form of loan receipt upon receiving an advance of funds in respect of such loss, damage, expense or liability, and will subrogate the company to, or will hold in trust for the company, all such rights of action to the extent of the amount paid or advanced, and will permit suit to be brought in the insured’s name under the direction of, and the expense of the company.”

Dealing with claims

Quick action on the part of production personnel and insurance adjusters can minimize the cost of losses. The sooner the adjuster is involved, the more smoothly the claim process will go, according to John Sharoun.

“The adjuster can gather necessary investigative details, obtain documentation, understand the production’s options, determine the parameters of the claim and—most importantly—inform and involve the insurance company at an early stage,” he says.

Neil Gibson says great variability exists from one claim to the next, even within the same category.

“I have claims with two separate productions where they both involve a half-day interruption, but one is in excess of \$70,000 and the other is about \$5,000. I have one cast claim reserved at \$1.3 million



and another at \$2,500. One production may use a \$3,500 camera while another uses a \$500,000 camera,” he explains.

Types of claims

Claims in film and video production fall into four general categories, from simplest to most complex:

- **Damage to vehicles or locations**

The claims that occur most frequently involve vehicles and other property and are similar to such claims in any other sector. Films often require the use of vintage or very expensive automobiles, and these can easily be damaged during shooting. Other types of property damage usually involve locations. Films frequently use lovely old homes or other high-value premises as a backdrop to the action. Often these sites have valuable antiques, art, or other expensive or irreplaceable one-of-a-kind items that can be damaged or destroyed.

- **Equipment malfunctions**

When the highly specialized and valuable equipment used in film production breaks down, it can mean a costly interruption to the schedule. Actors, production staff and other equipment must wait around while the broken item is fixed or replaced. People’s wages and rental fees must be paid whether the production is proceeding or at a standstill, and days added to the schedule mean increased costs. The fact that filming generally occurs during the evening and overnight is a further complication.



- **Faulty and negative losses**

A claim unique to the film industry, a flawed negative is the second-largest type of exposure and can occur in a variety of ways—a malfunctioning camera, damage in transit or faulty processing. However the damage occurs, it may not be apparent until the next day when the dailies are viewed. By then, locations might be unavailable, actors might have left town, or any number of other variables might have intervened. Careful judgment is required to find the best of the available options:

- Is the film really needed? Directors do many takes of most scenes, and perhaps it is possible to edit around the damaged negative.
- Can the film be fixed? Digital enhancement might be able to make the film usable.
- Should the scenes be reshot? Usually films shot in Canada feature one or two big-name stars. The production schedule is arranged so that these actors

spend only a few days here, and by the time the film damage is noticed, the actor might have gone elsewhere to work on another project. If a double can’t be used, the production will have to negotiate the star’s return.

- **Cast claims**

Also unique to the film industry, cast claims are the most complex type of exposure. The illness or injury of a major star poses huge problems for a production. For example, if an actor breaks his leg on the first of several days of shooting, the filmmakers must consider whether to rewrite the script around the injury (for example, shoot him only from the waist up or sitting behind a desk) or recast the role. If they recast, they have to find the right person and hope that he’s available. The cost of his fee is augmented by the expense of a new wardrobe, new publicity shots, and time for him to learn the script and get up to speed on the production. Insurers

require a medical history before agreeing to cover an actor, and will exclude any recurring types of exposure such as back trouble, drug problems, depression or repeated sick days.

Documenting the claim

No matter what the type of loss, claimants will likely be asked to provide the following documentation:

- Complete incident report setting out factual details of loss
- Complete set of call sheets for the production, before and after the loss
- Complete set of production reports for the production, before and after the loss
- Original locked budget
- Original schedule and all revisions to the date of incident, and all revisions thereafter
- Cost report to the date of incident
- Cost report after the loss and/or reshoot

- All relevant contracts, deal memos, leases, rental agreements, location agreements, processing lab agreements, purchase orders, etc.
- A detailed accounting submission validating the claimed loss, including all backup invoice detail. Preferably, the production set up a separate accounting ledger at the time of the incident to isolate and capture all insurance costs
- In the event of a negative loss, copies of the affected negative in VHS format, copies of the lab reports, evidence of causation, several estimates of the cost of repair, or in the event of reshoot, evidence the footage cannot be repaired
- Also, in negative loss evidence, proof that the special warranties of the policy have been complied with:
“If you, the insured, fail to comply with the following warranties, our obligation to provide coverage under Part II does not apply:

a) It is represented by the insured, that artwork and drawings, and software and related material used to generate computer images, are to be kept until completion of the negative protection print. Damage to any of these materials and drawings which have already been photographed, and for which satisfactory negative film exists, shall not result in a loss under this policy, unless the corresponding negative film is also damaged, requiring reproduction of the materials, as well as the film.

b) Unless otherwise endorsed hereon, it is represented by the insured that unprocessed negative films will not be accumulated by the insured for shipment or processing in excess of the period of five shooting days. In any claim, action, suit or other proceeding, to enforce a claim for loss or damage hereunder, the burden of proving that such loss or damage does not fall within this representation, and is not a violation of this representation, shall be solely upon the insured.

c) It is represented by the insured that cameras, lenses, and related equipment, are fully tested in accordance with industry standards by the insured, and proved to be sound at the commencement of filming or taping of any declared production.”

- In the event of a loss under the cast coverage, copies of pre-production medicals and the application will be obtained. The production will be required to immediately provide the certificate of a duly qualified physician detailing the circumstances under which



the cast member's incapacity to perform arises. It is the obligation of the production to preserve the insurer's right for an independent medical examination of the cast member, by the insurer's appointed physician. Failure to comply may prejudice the insured's right to recover under the policy.

Recoverable costs

Loss means any extra expenditure incurred by the insured in completing principal photography of the production as a result of the occurrence.

"Extra expenditure" does not mean any loss, damage, expense or liability arising from any obligation or requirement of the insured to meet any schedule deadlines, delivery dates, release dates, air dates, or any other completion date—even when occurring in conjunction with a loss otherwise covered under the policy.

The term "production cost" means all costs chargeable directly to a production, including the amount of overhead stipulated by the insured at the time of the declaration of the production. It also includes any loss paid under "cast," "negative faulty," or "extra expense." The costs of the underlying rights and materials, including story, scenario, music rights, sound rights, royalties, permanent sets, owned wardrobe, owned props, owned equipment, premiums paid for the insurance policy, interest paid on loans and personal property taxes, are not included. However, the insured may at the time of dec-



laration specifically request that any of these costs be included, except for the insurance premium.

In determining costs chargeable directly to the production, compensation for services rendered by any partner, officer, or corporate director is not included except as part of overhead, unless these individuals are acting in the capacity of producer, director, writer, actor or similar role.

While there may be multiple issues relating to which costs are recoverable under the policy, in very general terms the policy provides for the recovery of extra expenses incurred by the production, were it not for the happening of the event of loss. The adjuster or the insurer will review the documentation provided to get a snapshot of "what was scheduled to happen versus what did ultimately happen as a

result of the loss" to determine the financial impact or extra expense to the production.

For example, in a situation where the production adds a day to the middle of the schedule, but does not extend the schedule beyond the original production date:

- Crew costs, location costs, some actor costs, film stock, processing and post production may very well be an extra expense under the policy.
- Equipment rentals, vehicle rentals, usually contracted on a weekly or monthly basis, may not be an extra expense. These costs may have been incurred in any event.
- Actors on picture deals may not require additional payment. Some employees on weekly paid deals may not represent extra expense.

- In the case of actor illness where the original day was rescheduled, film stock, processing and post-production costs may not be considered extra expense. In each case, individual circumstances and the backup detail must be reviewed before any final decision or recommendation to the insurer can be made.

Disagreements

In the event of dispute, the insured has redress under the policy through the appraisal condition:

“If the insured and the company do not agree on the amount of the loss, either may make a written demand for an appraisal of the loss. When this occurs, each will select and pay a competent and impartial appraiser. The two appraisers will select an umpire. If the appraisers cannot agree on an umpire, either may request a judge of a court having jurisdiction make the selection. Each appraiser will then appraise the loss, stating separately the value at the time of the loss, and the amount of the loss. If the appraisers do not agree, they will submit their statements to the umpire. Agreement by the umpire and either of the appraisers will be binding. The insured and the company will equally share any other appraisal expenses and the expense of the umpire. Even though the company may submit an appraisal, the company will retain their right to deny the claim.”

In the event of a suit against the insurer, there is a time limitation imposed by Section 5 of the general policy conditions:

“No suit, action or proceeding for the recovery of any claim under this policy, shall be sustainable in any court of law or equity unless the insured has fully complied with all of the requirements of this policy, and unless the same be commenced

“While such provisions exist in the policy for the protection of the insured’s rights, the reality is that it almost never comes to this,” says John Sharoun. “Insurers are committed to paying what is reasonably owed under the policy in accordance with the policy conditions. With the assistance and advocacy of the broker in any dispute, most issues are capable of resolution.”



within 12 months next after discovery by the insured of the occurrence which gives rise to the claim, provided however, if by the laws of the state, province, or country within which this policy is issued, such limitations are invalid, and any such claim shall be void, unless such action, suit, or proceeding be commenced within the shortest limit of time permitted by the laws of such state, province or country.