

commercial lines
personal lines

9th edition

Property & Casualty Insurance Essentials



THE NATIONAL ALLIANCE
RESEARCH ACADEMY
RISK AND INSURANCE STUDIES

Property & Casualty Insurance Essentials



THE NATIONAL ALLIANCE
RESEARCH ACADEMY
RISK AND INSURANCE STUDIES

Austin, Texas 2016

Property & Casualty Insurance Essentials

Ninth Edition

© 2016 The National Alliance Research Academy

All rights reserved. Printed in the United States.

Includes copyrighted materials of Insurance Services Office, Inc., with permission.

Note:

While the information in this publication is accurate, the summaries of coverages and interpretations it offers may not be complete or absolute. It is sold with the understanding that the publisher is not engaged in rendering legal or other professional services. The explanations and examples may not be applicable in all situations and jurisdictions. There are many ways to explain and interpret different risk exposures and insurance coverages, and some agencies and companies may have different opinions or interpretations that deviate from the perspectives contained in this work. Insurance agency personnel should consult with insurance company personnel regarding specific coverage questions and company-specific forms.

Court decisions and new policy versions may alter the intent of the policy form or coverage language. Although every reasonable effort has been made to verify the accuracy of the information in this book, readers are urged to check independently on matters of specific interest or concern. The National Alliance Research Academy makes no warranties or guarantees regarding the accuracy of the information contained in this publication.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the copyright owner.

ISBN# 978-1-878204-82-0

The National Alliance Research Academy

P.O. Box 27027

Austin, TX 78755-2027

alliance@scic.com

www.TheNationalAlliance.com

The National Alliance Research Academy

The National Alliance Research Academy is a non-profit corporation, funded entirely through publication sales and affiliation dues. The Academy promotes and conducts practical research on all aspects of the risk management and insurance industries. As an extension of its robust research program, The Academy publishes monographs and studies that serve the needs of those who desire to share in the growth of the risk management and insurance industry.

The Academy serves as the research and development department of The National Alliance for Insurance Education & Research – the organization recognized across the nation as the best source for practical knowledge, continuing education credits, and designation opportunities for insurance and risk management professionals of every experience level. In addition, The Academy provides support to higher education through the University Associate Certified Risk Managers (UACRM) Program and the University Associate Certified Insurance Counselors (UACIC) Program, as well as assisting educational institutions in attracting new individuals into the professions.

Academy Membership

Research Associate: \$1,000

For corporate entities or associations

With the support of Research Associates, The Academy is able to enhance the profession that we all serve. Contributions from Academy Research Associates help to support the research and publication activities of The Academy. In addition, these funds assist The Academy efforts to attract students to the insurance industry by offering career-oriented programs in cooperation with various educational institutions. We invite you to participate in this mission by becoming an Academy Research Associate. Benefits include:

- 10% discount on all Academy publications
- Tax-deductible contributions
- Two (2) complimentary copies of three (3) publications of your choice, and one (1) copy of each new publication as released
- Company name and logo included in the forefront of all new publications
- Company name and logo included on The Academy website
- Company recognition in The National Alliance's *Resources* magazine
- *Preliminary Findings*, a periodic research bulletin that highlights new discoveries and statistics based on Academy works in progress
- Complimentary subscription to *Resources* magazine, a source of valuable technical information that also contains schedules and information regarding National Alliance programs

Academy Fellowship: \$20

Designated, dues-paying CICs, CRMs, CISRs, CSRMs, and CPRMs. Annual Academy dues are \$20. Benefits include:

- A 10% discount on all Academy publications
- Complimentary subscription to *Resources* magazine, a source of valuable technical information that also contains schedules and information regarding National Alliance programs
- *Preliminary Findings*, a periodic research bulletin that highlights new discoveries and statistics based on Academy works in progress
- Opportunities to participate in upcoming studies and receive Executive Summaries of the results

Visit www.TheNationalAlliance.com and click on “The Academy” to learn more about membership.

Acknowledgements

The National Alliance Research Academy would like to thank the following individuals who contributed to the production of *Property & Casualty Insurance Essentials*:

Technical Editors

JoAnn Clarke, CIC, CRM, CISR, CSRM, CPCU,
ARM, Are, AAI, CPIW
The National Alliance for Insurance Education &
Research
Austin, Texas

Laura Machado, CIC, CPCU
New Mexico Mutual
Albuquerque, New Mexico

Elsa Sanchez, CIC, CRM
The National Alliance for Insurance
Education & Research
Austin, Texas

Darelle White, CIC, CPCU
The National Alliance for Insurance
Education & Research
Austin, Texas

Production Editors

Jim Cuprisin, CIC, CRM, ARP
The National Alliance for Insurance
Education & Research
Austin, Texas

Pat Potucek, CISR
Austin, Texas

Research Associates

The National Alliance Research Academy extends its gratitude to the Research Associates whose support made publication of *Property & Casualty Insurance Essentials* possible:



All Risks



American Agents Alliance



Assurex Global



Bancorp South Insurance Services, Inc.



BB&T Insurance Services



Bowen, Miclette & Britt



Brown & Brown, Inc.



CRC Insurance Services, Inc.



Calhoun, Thomson & Matza, LLP



Disabled Veterans Insurance Careers



Intergovernmental Pool Administration, Safety & Loss Control



HUB International



Hylant



ISU Insurance Agency Network



Insurance Technologies Corporation



Jerry Montgomery Memorial Research Fund



Keystone Insurers Group



Marble Box



MarketScout, Inc.



McGriff, Seibels & Williams

Research Associates



PATRA Corporation



Popular Insurance, Inc.



Selective Insurance Group, Inc.



State Auto Insurance Companies



Synergy Comp Insurance Company



United Valley Insurance Services



USI



Velocify



Westwood Trust



Zurich North America



Alabama IIA



IIAB of Arizona



PIIAC



PIA of Connecticut



IIAB of Delaware



Florida Association of Insurance Agents



PIA of Georgia



IIA of Illinois



IIA of Indiana



PIA of Indiana

Research Associates



Kansas Association of
Insurance Agents



Independent Insurance
Agents of Kentucky

IIA of Kentucky



PIA of Kentucky



IIAB of Maryland



Massachusetts Association of
Insurance Agents



Michigan Association of
Insurance Agents



MN Independent Insurance
Agents & Brokers Association

MIIB



Missouri Association
of Insurance Agents



PIA of Nebraska and Iowa



PIA of New Jersey



PIA of New York State



IIA of North Carolina



PIAA of Ohio



IIA of Oklahoma



IIAB of Pennsylvania



Independent Insurance Agents
& Brokers of South Carolina

IIAB of South Carolina



Insurors of Tennessee



PIA of Virginia & D.C.



PIA of Washington/Oregon



PIA of Wisconsin

Foreword

Property & Casualty Insurance Essentials is designed for people who are new to the insurance industry, and this book is also useful for experienced professionals who want a detailed reference source. This study describes general insurance coverages and specifically refers to policy sources such as ISO (Insurance Services Office), NCCI (National Council on Compensation Insurance), AAIS (American Association of Insurance Services), and FEMA (Federal Emergency Management Agency). *Insurance Essentials* can be studied independently or used as a supplement to National Alliance programs. This book is often used as a valuable study guide for CISR courses and CIC programs.

This book explains the basic coverage forms and policies for personal lines insurance, as well as commercial lines insurance. It provides essential information with examples and actual policy language. *Property & Casualty Insurance Essentials* is one of three books in the Essentials Series; others include *Life & Benefits Essentials* and *Risk Management Essentials*.

The National Alliance would like to thank the writers and editors who contributed to this 9th edition of this study. All the chapters were updated reflecting recent coverage changes. This study always includes information from the latest versions of the ISO policies and is updated on a regular basis.

The National Alliance wants to be your partner in advanced insurance and risk management education and research. For information on other Academy publications, go to our website at: www.TheNationalAlliance.com

We encourage your comments about this book and recommendations for future research. Good luck with your studies and continuing education.

Sincerely,

A handwritten signature in black ink, appearing to read 'W.T. Hold', followed by a horizontal line.

William T. Hold, Ph.D., CIC, CPCU, CLU
President, The National Alliance Research Academy

Brief Table of Contents

SECTION ONE: INSURANCE BASICS	1
CHAPTER 1: GENERAL INSURANCE.....	3
CHAPTER 2: PROPERTY AND CASUALTY INSURANCE BASICS	25
CHAPTER 3: LIABILITY ESSENTIALS	53
SECTION TWO: COMMERCIAL LINES INSURANCE	65
CHAPTER 4: COMMERCIAL PROPERTY COVERAGE FORMS	67
CHAPTER 5: COMMERCIAL PROPERTY CAUSES OF LOSS FORMS	87
CHAPTER 6: COMMERCIAL PROPERTY ENDORSEMENTS.....	99
CHAPTER 7: COMMERCIAL INLAND MARINE	105
CHAPTER 8: EQUIPMENT BREAKDOWN PROTECTION INSURANCE	121
CHAPTER 9: COMMERCIAL CRIME COVERAGE	129
CHAPTER 10: COMMERCIAL GENERAL LIABILITY (CGL).....	139
CHAPTER 11: COMMERCIAL AUTO INSURANCE.....	177
CHAPTER 12: WORKERS COMPENSATION AND EMPLOYERS LIABILITY.....	203
CHAPTER 13: COMMERCIAL UMBRELLA/EXCESS LIABILITY	231
CHAPTER 14: MISCELLANEOUS LIABILITY	249
CYBER LIABILITY	249
LIQUOR LIABILITY INSURANCE.....	259
DIRECTORS AND OFFICERS LIABILITY INSURANCE.....	267
PROFESSIONAL LIABILITY	277
CHAPTER 15: BUSINESSOWNERS POLICY (BOP)	287
SECTION THREE: PERSONAL LINES INSURANCE.....	313
CHAPTER 16: HOMEOWNERS POLICY	315
CHAPTER 17: DWELLING POLICY AND MOBILE HOMES.....	367
CHAPTER 18: PERSONAL AUTOMOBILE	393
CHAPTER 19: WATERCRAFT	419
CHAPTER 20: PERSONAL UMBRELLA/EXCESS LIABILITY	431
CHAPTER 21: MISCELLANEOUS PERSONAL LINES.....	447
PERSONAL LIABILITY INSURANCE	447
EQUIPMENT BREAKDOWN – RESIDENTIAL	465
FLOATER POLICIES	473
IN-HOME BUSINESS	483
SECTION FOUR: FLOOD INSURANCE	491
CHAPTER 22: FLOOD INSURANCE	493
APPENDIX.....	513
GLOSSARY.....	515

Table of Contents

SECTION ONE: INSURANCE BASICS	1
CHAPTER 1: GENERAL INSURANCE	3
INTRODUCTION	3
BASIC TERMS	3
Insurance	3
Risk	3
Risk Management	4
Loss	4
Exposure	4
Hazard	4
Peril	4
COMMON METHODS OF HANDLING RISK	5
Avoidance	5
Retention	5
Segregation, Separation, or Duplication	6
Reduction	6
Transfer	6
LAW OF LARGE NUMBERS	7
ELEMENTS OF AN INSURABLE EXPOSURE TO LOSS	7
Definite Loss	7
Accidental Loss	7
Large Enough Loss to Cause Economic Distress	8
Large Group of Similar Exposure Units	8
Chance of Loss Must be Calculable	8
Not Likely to Produce Loss to a Great Many Units at the Same Time	8
Feasible Cost to Insure	8
INSURERS	8
Stock Company	9
Mutual Company	9
Fraternal Benefit Societies	9
Reciprocals	9
Lloyd's of London	10
Government Insurers	10
State Regulation of Insurance	10
Admitted Insurers versus Non-admitted Insurers	11
Domestic, Foreign, and Alien Insurers	11
Financial Status of Insurance Companies	12

Independent Rating Services for Insurance Companies	12
Government Analysis of Insurance Companies	12
REINSURERS.	12
TYPES OF REINSURANCE	13
Facultative (or Specific) Reinsurance	13
Treaty Reinsurance.	13
Pro-rata Reinsurance	13
Excess Reinsurance.	14
INSURANCE MARKETING DISTRIBUTION SYSTEMS	14
Independent Agency System	14
Exclusive/Captive Agency System	15
Direct Writing System	15
Direct Mail System/ Internet System	15
Mass Marketing	15
INSURANCE PRODUCERS.	15
Agent	16
Solicitor	16
Managing General Agent or MGA.	16
Surplus Lines Agent	16
Broker	16
An Employee of an Insurance Company	17
AUTHORITY OF AGENTS	17
Express (Actual) Authority	17
Implied Authority	17
Apparent Authority	18
No Authority	18
INSURANCE CONTRACTS.	18
ELEMENTS OF A LEGAL CONTRACT	18
Offer and Acceptance	19
Competent Parties	19
Legal Purpose	19
Legal Consideration	19
DISTINCT CHARACTERISTICS OF AN INSURANCE CONTRACT.	19
Contract of Adhesion	19
Aleatory Contract	20
Personal Contract	20
Unilateral Contracts	20
Conditional Contracts.	20
Binders	20

LEGAL INTERPRETATIONS AFFECTING INSURANCE CONTRACTS	21
Contracts of Adhesion	21
Reasonable Expectations	21
Indemnity	21
Utmost Good Faith	22
Representations and Misrepresentations	22
Concealment	22
Warranty	23
Fraud	23
Waiver	23
Estoppel	24
CONCLUSION	24
CHAPTER 2: PROPERTY AND CASUALTY INSURANCE BASICS	25
INTRODUCTION	25
PRINCIPLES AND CONCEPTS - GENERAL	25
Insurable Interest	25
Principle of Indemnity	26
Cause of Loss	26
Named Perils versus Open Perils	26
Direct Loss	27
Consequential or Indirect Loss	27
Blanket versus Specific Insurance	27
Loss Valuation	28
PRINCIPLES AND CONCEPTS - UNDERWRITING	31
Underwriting	31
Loss Ratio	31
Combined Ratio - Loss Ratio and Expense Ratio	32
Rate and Premium	32
Judgment Rates	32
Manual Rates	32
Merit Rates	33
Rating Bureau or Advisory Organization	34
Loss Costs	34
Hazards	34
Basic Types of Construction	35
PRINCIPLES AND CONCEPTS – INSURANCE POLICY	35
Declarations	35
Definitions	36
Insuring Agreement	36

Duty to Defend	36
Occurrence Versus Claims-made.	37
Additional/Supplementary Coverages	38
Exclusions	38
Conditions.	39
Endorsements.	39
Insureds – Named, First Named, Automatic, and Additional	39
Policy Period	40
Policy Territory	40
Cancellation and Non-renewal	40
Deductibles	40
Other Insurance	41
Non-concurrency	43
Policy Limits	43
Restoration/Non-reduction of Limits	46
Coinurance	46
Insurance to Value	47
Vacancy and/or Unoccupancy.	48
Assignment	48
Abandonment.	48
Subrogation.	49
Salvage	49
Liberalization.	50
Mortgageholder Clause	50
Loss Payable Clause	50
Bailee Provision	50
CONCLUSION	51
CHAPTER 3: LIABILITY ESSENTIALS.	53
INTRODUCTION.	53
UNINTENTIONAL TORT - THE CONCEPT OF NEGLIGENCE.	53
Definition	53
Measures of Negligence	53
Prudent Person Concept	54
Elements of Negligence	54
Defenses	55
THE CONCEPT OF INTENTIONAL TORT	58
Intentional Tort Liability.	58
THE CONCEPT OF STRICT TORT LIABILITY	59
Strict Tort Liability.	59

THE CONCEPT OF ABSOLUTE LIABILITY	59
Absolute Liability	59
THE CONCEPT OF WHO CAN BE HELD RESPONSIBLE.....	60
Vicarious Liability	60
Joint and Several Liability.....	60
THE CONCEPT OF RESPONSIBILITY ASSUMED BY CONTRACT	60
Hold Harmless/Indemnification Agreements.....	60
THE CONCEPT OF DAMAGES	61
Categories	61
Compensatory Damages	61
Punitive Damages.....	62
CONCLUSION.....	63
SECTION TWO: COMMERCIAL LINES INSURANCE	65
CHAPTER 4: COMMERCIAL PROPERTY COVERAGE FORMS	67
INTRODUCTION	67
COMMERCIAL PROPERTY COVERAGE FORMS	67
Common Policy Conditions	67
Commercial Property Conditions	68
BUILDING AND PERSONAL PROPERTY COVERAGE FORM.....	69
Building	69
Your Business Personal Property	69
Personal Property of Others	70
Property Not Covered	70
Covered Causes of Loss	71
Additional Coverages	71
Coverage Extensions	73
Exclusions and Limitations.....	74
Limits of Insurance	74
Loss Conditions	74
Additional Conditions	76
Optional Coverages	76
TIME ELEMENT COVERAGE FORMS	77
Time Element Insurance	77
Basic Concepts of Time Element Insurance	77
Business Income (and Extra Expense) Coverage Form	77
Methods of Writing Time Element Insurance	80
Business Income (Without Extra Expense) Coverage Form	81
Extra Expense Coverage Form	81

Extra Expense Coverage Form Provisions	82
Legal Liability Coverage Form	84
Leasehold Interest Coverage Form	86
CONCLUSION	86
CHAPTER 5: COMMERCIAL PROPERTY CAUSES OF LOSS FORMS	87
INTRODUCTION.....	87
CAUSES OF LOSS FORM – BASIC FORM	87
CAUSES OF LOSS FORM – BROAD FORM	87
CAUSES OF LOSS - SPECIAL FORM	88
EXCLUSIONS	89
Additional Exclusion	92
LIMITATIONS	92
ADDITIONAL COVERAGE - COLLAPSE	94
ADDITIONAL COVERAGE – LIMITED COVERAGE FOR “FUNGUS”, WET ROT, DRY ROT AND BACTERIA	95
ADDITIONAL COVERAGE EXTENSIONS	95
DEFINITIONS	96
CONCLUSION	97
CHAPTER 6: COMMERCIAL PROPERTY ENDORSEMENTS	99
INTRODUCTION.....	99
SELECTED ENDORSEMENTS	99
Increased Cost of Loss and Related Expenses For Green Upgrades CP 04 02 10 12	99
Ordinance or Law Coverage CP 04 05 10 12.....	99
Pollutant Clean Up and Removal Additional Aggregate Limit of Insurance CP 04 07 10 91	99
Increase in Rebuilding Expenses Following Disaster (Additional Expense Coverage on Annual Aggregate Basis) CP 04 09 10 12	100
Protective Safeguards CP 04 11 10 12	100
Debris Removal Additional Insurance CP 04 15 10 12.....	100
Functional Building Valuation CP 04 38 10 12	100
Spoilage Coverage CP 04 40 06 07	100
Vacancy Permit CP 04 50 07 88.....	100
Vacancy Changes CP 04 60 10 12	100
Earthquake and Volcanic Eruption Endorsement CP 10 40 10 12	101
Theft of Building Materials and Supplies (Other Than Builders Risk) CP 10 44 10 12	101
Flood Coverage Endorsement CP 10 65 10 12.....	101

Loss Payable Provisions CP 12 18 10 12	101
Additional Insured – Building Owner CP 12 19 06 07	101
Peak Season Limit of Insurance CP 12 30 06 95.....	101
Limitation On Settlement-Blanket Insurance (Margin Clause) CP 12 32 06 07	101
Joint Or Disputed Loss Agreement CP 12 70 09 96	101
Value Reporting Form CP 13 10 04 02	102
Additional Covered Property CP 14 10 06 95.....	102
Additional Building Property CP 14 15 07 88.....	102
Additional Property Not Covered CP 14 20 07 88	102
Outdoor Trees, Shrubs and Plants CP 14 30 10 12.....	102
Outdoor Signs CP 14 40 06 07.....	102
Radio or Television Antennas CP 14 50 10 00	103
Leased Property CP 14 60 07 88	103
Building Glass – Tenant’s Policy CP 14 70 10 12.....	103
Food Contamination (Business Interruption and Extra Expense) CP 15 05 10 12..	103
Business Income From Dependent Properties-Broad Form CP 15 08 10 12	103
Ordinance Or Law – Increased Period of Restoration CP 15 31 10 12	104
Extra Expense From Dependent Properties CP 15 34 10 12.....	104
Utility Services – Time Element CP 15 45 10 12.....	104
Radio Or Television Antennas – Business Income Or Extra Expense CP 15 50 10 12	104
Business Income Changes – Beginning Of the Period of Restoration CP 15 56 06 07	104
Your Business Personal Property – Separation of Coverage CP 19 10 06 95	104
CONCLUSION.....	104
CHAPTER 7: COMMERCIAL INLAND MARINE	105
INTRODUCTION	105
COMMERCIAL INLAND MARINE.....	105
Types of Property	105
Commercial Inland Marine Classes	105
COMMERCIAL INLAND MARINE CONDITIONS	106
Loss Conditions	106
General Conditions	108
INLAND MARINE COVERAGE FORMS	108
Non-Filed.....	109
Builders Risk	109
Contractors Equipment Floater	110
Electronic Data Processing Policies	113
Installation Floater	115

TRANSPORTATION COVERAGES	117
Introduction	117
Common Carrier	117
Motor Truck Cargo Forms	118
Transportation Insurance Policy	120
CONCLUSION	120
CHAPTER 8: EQUIPMENT BREAKDOWN PROTECTION INSURANCE	121
INTRODUCTION.....	121
EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM – EB 00 20	121
Structure	121
Coverage	121
Covered Property	121
Covered Cause of Loss	122
Definition of Breakdown	122
Definition of Covered Equipment	122
Causes of Loss.....	123
Coverages Provided	123
Selected Exclusions	125
Limits of Insurance	126
Equipment Breakdown Protection Conditions	126
CONCLUSION.....	127
CHAPTER 9: COMMERCIAL CRIME COVERAGE	129
INTRODUCTION.....	129
GENERAL DEFINITIONS	129
Theft	129
Burglary	129
Robbery	129
Employee	129
Financial Institution	130
Custodian	130
CONDITIONS	130
Consolidation-Merger or Acquisition	130
Duties In The Event Of Loss	130
Extended Period To Discover Loss	131
Joint Insured	131
Other Insurance	131
Loss Sustained During Prior Insurance	131
Territory	131
Valuation-Settlement	131

CRIME COVERAGE FORMS	131
Difference between Discovery and Loss Sustained Forms	131
Conditions Comparison Between Forms	132
DECLARATIONS	132
INSURING AGREEMENTS.....	133
Employee Theft	133
Forgery or Alteration	133
Inside the Premises – Theft of Money and Securities	134
Inside the Premises – Robbery or Safe Burglary of Other Property	134
Outside the Premises.....	134
Computer And Funds Transfer Fraud	134
Money Orders and Counterfeit Money	135
GENERAL EXCLUSIONS.....	135
Exclusions Applicable To All Insuring Agreements.....	135
Exclusions Applicable Only To Employee Theft Insuring Agreement	136
Exclusions Applicable Only To These Three Insuring Agreements: Inside the Premises – Theft of Money and Securities; Inside the Premises – Robbery or Safe Burglary of Other Property; Outside the Premises	136
Exclusions Applicable only to Computer and Funds Transfer Fraud Insuring Agreement	136
INSURING AGREEMENT ENDORSEMENTS – OPTIONAL COVERAGES	136
Clients’ Property CR 04 01.....	136
Extortion – Commercial Entities CR 04 03	137
Inside The Premises – Theft of Other Property CR 04 05	137
Inside The Premises – Robbery of a Watchperson or Burglary of Other Property CR 04 06	137
Inside The Premises – Robbery of a Custodian or Safe Burglary of Money and Securities CR 04 07.....	137
Employee Theft – Name or Position Schedule CR 04 08.....	137
Lessees of Safe Deposit Boxes CR 04 09.....	137
Securities Deposited With Others CR 04 10.....	137
Guests’ Property CR 04 11.....	138
Safe Depository CR 04 12.....	138
CONCLUSION.....	138
CHAPTER 10: COMMERCIAL GENERAL LIABILITY (CGL)	139
INTRODUCTION.....	139
COMPONENTS OF A COMMERCIAL GENERAL LIABILITY POLICY.....	139
COMMERCIAL GENERAL LIABILITY COVERAGE FORMS.....	140
Types	140
Selected Definitions	141

COVERAGES	151
COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY	152
Insuring Agreement	152
Exclusions	153
COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY	163
Coverage	163
Exclusions	164
COVERAGE C – MEDICAL PAYMENTS.....	166
Coverage	166
Exclusions	166
Supplementary Payments – Coverages A and B.....	166
WHO IS AN INSURED	167
Those Who Become Insureds As A Result Of Their Relationship With Named Insureds.....	168
Other Automatic Insureds	168
LIMITS OF LIABILITY.....	170
Per Occurrence	170
Damage To Premises Rented to You	170
Medical Expense (Per Person).....	170
Personal and Advertising Injury (Per Person or Organization)	170
General Aggregate	171
Products - Completed Operations Aggregate.....	171
SELECTED CONDITIONS.....	171
Duties in the Event of Occurrence, Offense, Claim, or Suit.....	171
Other Insurance	171
Primary and Excess.....	172
Separation of Insureds.....	172
Claims-made Features	173
Extended Reporting Periods	174
Claim Information.....	175
CONCLUSION.....	175
CHAPTER 11: COMMERCIAL AUTO INSURANCE	177
INTRODUCTION.....	177
COMMERCIAL AUTO COVERAGE FORMS	177
Business Auto Coverage Form – CA 00 01	177
Auto Dealers Coverage Form – CA 00 25	177
Motor Carrier Coverage Form – CA 00 20	178
BUSINESS AUTO COVERAGE FORM – CA 00 01	178
Introduction	178

Section I – Covered Autos	178
Section II – Covered Autos Liability Coverage	181
Section III – Physical Damage Coverage	187
Section IV – Business Auto Conditions	190
GARAGE COVERAGE FORM – CA 00 05	191
AUTO DEALERS COVERAGE FORM – CA 00 25	191
Introduction	191
Section I – Covered Autos Coverages	191
Section II – General Liability Coverages	196
Section III – Acts, Errors Or Omissions Liability Coverage	197
TRUCKERS COVERAGE FORM – CA 00 12	198
MOTOR CARRIER COVERAGE FORM – CA 00 20	198
Introduction	198
Covered Autos	198
Coverage	199
SECTION VI – DEFINITIONS	199
SELECTED COMMERCIAL AUTO ENDORSEMENTS	199
Lessor – Additional Insured And Loss Payee – CA 20 01	199
Individual Named Insured - CA 99 17	199
Drive Other Car Coverage – Broadened Coverage for Named Insureds CA 99 10	200
Employee Hired Autos - CA 20 54	200
Designated Insured For Covered Auto Liability Coverage - CA 20 48	200
Hired Auto Specified As Covered Auto You Own - CA 99 16	200
Employee as Lessor - CA 99 47	200
Employees as Insureds - CA 99 33	200
MOTOR CARRIER ACT OF 1980	201
Pollution – MCS – 90 Endorsement	201
CONCLUSION	201
CHAPTER 12: WORKERS COMPENSATION AND EMPLOYERS LIABILITY	203
INTRODUCTION	203
Nature and Development of Workers Compensation System	203
Common Law Relationship of Employee and Employer	203
Employers’ Common Law Obligations	203
Common Law Defenses of Employer	204
No-fault Concept	204
WORKERS COMPENSATION LAWS	204
Workers Compensation Act	204
Types of Workers Compensation Law	205

Covered Employments	205
Covered Injuries	206
Occupational Disease	207
Benefits Provided	208
Security for Benefit Payments	210
Self-Insurance	211
SUBSEQUENT (SECOND) INJURY FUND	211
Purpose	212
How the Second Injury Fund Pays	212
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY	212
Information Page (Declarations)	213
General Section	213
State and Locations	213
Part One – Workers Compensation Insurance	214
Part Two – Employers Liability Insurance	216
Part Three – Other States Insurance	221
Part Four – Your Duties If Injury Occurs	223
Part Five – Premium	223
Part Six – Conditions	223
PREMIUM COMPUTATION	223
Job Classification	224
Experience Modification Factor	224
Premium Discounts	225
ENDORSEMENTS	225
Voluntary Compensation and Employers Liability Coverage	
Endorsement – WC 00 03 11 A	225
Sole Proprietors, Partners, Officers and Others Coverage Endorsement –	
WC 00 03 10	226
Partners, Officers and Others Exclusion Endorsement – WC 00 03 08	226
Employers Liability Coverage Endorsement – WC 00 03 03 C.	226
FEDERAL WORKERS COMPENSATION LAWS AND RELATED ENDORSEMENTS	226
Federal Employers Liability Act (FELA)	226
Longshore and Harbor Workers Compensation Act (LHWCA)	227
The Jones Act – The Merchant Marine Act of 1920.	227
CONCLUSION	228
CHAPTER 13: COMMERCIAL UMBRELLA/EXCESS LIABILITY	231
INTRODUCTION	231
THE PURPOSE OF UMBRELLA/EXCESS LIABILITY POLICIES	232
Increase Liability Limits	232

May Provide Broader Coverage	232
Provide Primary Coverage when Aggregates Are Exhausted	232
TYPES OF UMBRELLA AND EXCESS POLICIES	232
True Umbrella Policy	232
Follow Form Excess Policy	233
Stand Alone Excess Policy	233
SELF-INSURED RETENTION (SIR)	235
CONCURRENCY	236
Concurrent Dates	236
Underlying Limits Shown on the Declarations Must Be Unimpaired	236
ADDITIONAL TERMS AND CONDITIONS	237
Coverages	237
Insuring Agreements	238
Format of Insuring Agreements	238
Defense	240
Coverage Territory	241
Limits	242
Underlying Insurance Requirements	242
Who Is An Insured	244
Damages	245
Exclusions	245
Selected Umbrella and Excess Policy Exclusions	245
Structuring Excess Layers	247
CONCLUSION	248
CHAPTER 14: MISCELLANEOUS LIABILITY	249
CYBER LIABILITY	249
INTRODUCTION	249
SOURCES OF LIABILITY	249
EXPOSURES	249
Security Breach	250
Privacy Violation	251
Website Liability	251
COMMERCIAL GENERAL LIABILITY LIMITATIONS	251
NONSTANDARD CYBER LIABILITY FORMS	252
COMMON CHARACTERISTICS OF CYBER LIABILITY POLICIES	252
Multiple Insuring Agreements	253
Definitions Found in Insuring Agreements	253
Limits of Liability	257

Defense Costs within the Limits of Liability	257
Cyber Liability Exclusions	258
CONCLUSION	258
LIQUOR LIABILITY INSURANCE	259
INTRODUCTION	259
NEED FOR THIS COVERAGE	259
UNDERWRITING CONSIDERATIONS	263
POLICY CHARACTERISTICS	263
Insuring Agreement	263
Exclusions	264
Supplementary Payments	266
Who Is An Insured	266
Limits	266
Designated Premises	266
Representations versus Warranties	266
CONCLUSION	266
DIRECTORS AND OFFICERS LIABILITY INSURANCE	267
INTRODUCTION	267
SOURCES OF D&O LIABILITY	267
Common Law Exposures	267
Statutory Law Exposures	268
THE NEED FOR D&O LIABILITY INSURANCE	268
Commercial General Liability Policy Limitations	269
D&O LIABILITY INSURANCE COVERAGE	269
Nonstandard Forms	269
D&O Policy Provisions	270
Common Characteristics of D&O Policies	270
Definitions	271
Limits of Liability	273
Retention	273
Exclusions	274
Severability Provision	274
CONCLUSION	275
PROFESSIONAL LIABILITY	277
INTRODUCTION	277
Definitions	277
Distinction between CGL Insurance and Professional Liability Insurance	278

CGL AND THE PROFESSIONAL SERVICES EXPOSURES	278
CGL Exclusionary Language	279
CGL Exclusionary Endorsements	279
THE BUSINESSOWNERS POLICY AND THE PROFESSIONAL SERVICES EXPOSURE	279
Professional Liability Coverage	280
Claims-made Coverage Form	280
Definition of Claim	280
Claim Notice and Reporting	280
COMMON CHARACTERISTICS OF PROFESSIONAL LIABILITY POLICIES	281
The Insuring Agreement	281
Insuring Agreement – Pay on Behalf versus Indemnify	282
Who Is An Insured	282
Wrongful Act	283
Insured Services	283
Excluded Exposures	283
Limits of Liability	284
Defense and Settlement	284
Consent to Settle	285
Defense Costs	285
Deductible Options	285
CONCLUSION	286
CHAPTER 15: BUSINESSOWNERS POLICY (BOP)	287
INTRODUCTION	287
Eligibility	287
STRUCTURE OF THE BUSINESSOWNERS POLICY	288
BUSINESSOWNERS POLICY DECLARATIONS	289
BUSINESSOWNERS COVERAGE FORM – PROPERTY – SECTION I	289
Definitions	289
Coverage	290
Covered Property	290
Property Not Covered	291
Causes of Loss	292
Additional Coverages	294
Coverage Extensions	297
Exclusions	298
Limits	300
Deductibles	302
Property Loss Conditions	302

Property General Conditions	303
Optional Coverages	303
Endorsements	304
BUSINESSOWNERS COVERAGE FORM SECTION II – LIABILITY	305
Definitions	306
Businessowners Liability Section	306
Business Liability	306
Coverage Extension – Supplementary Payments	307
Exclusions	307
Medical Expenses	307
Selected Medical Expenses Exclusions	308
Who Is An Insured	308
Limits	308
Selected Endorsements	309
BUSINESSOWNERS COVERAGE FORM SECTION III –	
COMMON POLICY CONDITIONS	310
CONCLUSION	311
SECTION THREE: PERSONAL LINES INSURANCE	313
CHAPTER 16: HOMEOWNERS POLICY	315
INTRODUCTION	315
HOMEOWNERS POLICY COVERAGE FORMS	315
Homeowners 2 – Broad Form HO 00 02	316
Homeowners 3 – Special Form HO 00 03	316
Homeowners 4 – Contents Broad Form HO 00 04	316
Homeowners 5 – Comprehensive Form HO 00 05	316
Homeowners 6 – Unit-Owners Form HO 00 06	316
Homeowners 8 – Modified Coverage Form HO 00 08	318
POLICY STRUCTURE	318
Declarations	318
Insuring Agreement	319
Definitions	319
SECTION I – PROPERTY COVERAGES	325
Coverage A – Dwelling	326
Coverage B – Other Structures	326
Coverage C – Personal Property	327
Coverage D – Loss of Use	329
Additional Coverages	330

SECTION I – PERILS INSURED AGAINST.....	335
Coverage A – Dwelling and Coverage B – Other Structures	336
Coverage C – Personal Property	336
EXCLUSIONS – SECTION I PROPERTY.....	339
Ordinance or Law	339
Earth Movement	339
Water.....	340
Power Failure	340
Neglect	340
War	340
Nuclear Hazard	340
Intentional Loss	340
Governmental Action.....	340
OTHER HOMEOWNERS FORMS	340
HO-2	341
HO-4	341
HO-5	342
HO-6	342
HO-8	343
SUMMARY OF HOMEOWNERS POLICY VARIATIONS - SECTION I.....	344
Coverage C – Personal Property	347
CONDITIONS	347
Insurable Interest and Limit of Liability	347
Deductible.....	348
Duties After Loss.....	348
Loss Settlement	348
SECTION II – LIABILITY	350
Coverage Forms	350
Definitions.....	350
Coverage E – Personal Liability	351
Coverage F – Medical Payments to Others.....	351
SECTION II – EXCLUSIONS	352
Applicable to Coverage E and Coverage F	353
Applicable to Coverage E – Personal Liability Only	360
Applicable to Coverage F – Medical Payments to Others Only.....	361
ADDITIONAL COVERAGES	362
Claims Expense.....	362
First Aid Expense	362
Damage to Property of Others	363

Loss Assessment	363
CONDITIONS	364
Conditions Applicable to Section II	364
Section I and Section II	365
CONCLUSION	366
CHAPTER 17: DWELLING POLICY AND MOBILE HOMES	367
INTRODUCTION	367
THE DWELLING POLICY	367
Characteristics and Purpose	367
Eligibility	368
Definitions	368
Policy Structure	368
Coverage A - Dwelling	369
Coverage B – Other Structures	369
Coverage C – Personal Property	369
Coverage D – Fair Rental Value	370
Coverage E – Additional Living Expense	371
Other Coverages	371
DWELLING PROPERTY COVERAGE FORMS	376
DP-1 – Basic Form	376
DP-2 – Broad Form	377
DP-3 – Special Form	378
EXCLUSIONS	381
Ordinance or Law	382
Earth Movement	382
Water	383
Power Failure	383
Neglect	383
War	383
Nuclear Hazard	384
Intentional Loss	384
Governmental Action	384
Plants and Trees (DP-1 only)	384
Concurrent Causation Exclusions (DP-3 Coverage A and B Only)	384
CONDITIONS	385
Policy Period	385
Insurable Interest and Limit of Liability	385
Concealment or Fraud	385
Your Duties After Loss	385

Loss Settlement	386
Loss to a Pair or Set	387
Appraisal	388
Other Insurance and Service Agreement	388
Subrogation.	388
Our Option	388
Loss Payment	388
Mortgage Clause.	388
Cancellation and Nonrenewal	389
Death.	389
Recovered Property	389
Selected Endorsements	389
Dwelling Under Construction	389
Theft Coverage Endorsements	389
Personal Liability Endorsement.	390
MOBILE HOMES	391
Characteristics	391
Coverage Options	391
Underwriting Considerations	391
CONCLUSION	392
CHAPTER 18: PERSONAL AUTOMOBILE	393
INTRODUCTION.	393
PERSONAL AUTO INSURANCE	393
Eligibility	393
Ownership.	393
Types of Autos	394
PERSONAL AUTO POLICY (PAP)	394
Policy Structure.	394
Agreement	395
Definitions.	395
PART A – LIABILITY COVERAGE.	400
Insuring Agreement	400
Insured	401
Supplementary Payments	402
Exclusions	403
Limit of Liability	405
Out of State Coverage	405
COVERAGE PART B – MEDICAL PAYMENTS COVERAGE (MED PAY)	406
Insuring Agreement	406

Insured	406
Exclusions	407
Limit of Liability	408
Other Insurance	408
COVERAGE PART C – UNINSURED MOTORIST COVERAGE (UM)	408
Insuring Agreement	408
Insured	409
Uninsured Motor Vehicle	409
Exclusions	410
Limit of Liability	410
Other Insurance	411
Arbitration	411
PART D – COVERAGE FOR DAMAGE TO YOUR AUTO	411
Insuring Agreement	411
Collision	412
Other than Collision	412
Non-owned Auto	412
Transportation Expense	412
Towing and Labor Costs Coverage	413
Exclusions	413
Limit of Liability	415
Other Insurance	415
No Benefit to Bailee	416
Other Sources of Recovery	416
Appraisal	416
PART E – DUTIES AFTER AN ACCIDENT OR LOSS	416
PART F – GENERAL PROVISIONS (SELECTED)	416
Changes	416
Policy Period and Territory	417
Two or More Auto Policies	417
CONCLUSION	417
CHAPTER 19: WATERCRAFT	419
INTRODUCTION	419
CHARACTERISTICS	419
Warranties	420
Navigation Limitation	420
Eligibility	421
WATERCRAFT POLICY STRUCTURE	421

WATERCRAFT POLICY	422
Agreement	422
Definitions	422
Liability Coverage	424
Medical Payments Coverage	426
Coverage For Damage To Your Watercraft	428
Uninsured Watercraft Coverage	430
CONCLUSION	430
CHAPTER 20: PERSONAL UMBRELLA/EXCESS LIABILITY	431
INTRODUCTION	431
PERSONAL UMBRELLA/ EXCESS LIABILITY	431
Underlying Policies	431
Characteristics of Most Personal Umbrella Policies	431
Reasons to Purchase	432
Types of Umbrella Policies	432
UMBRELLA POLICY STRUCTURE	435
Declarations	435
Definitions	438
Insuring Agreement	442
Defense Coverage	442
Exclusions	442
Conditions	445
CONCLUSION	446
CHAPTER 21: MISCELLANEOUS PERSONAL LINES	447
PERSONAL LIABILITY INSURANCE	447
INTRODUCTION	447
PERSONAL LIABILITY POLICY	447
Agreement	447
Definitions	447
Insured	450
Coverage L – Personal Liability	453
Coverage M - Medical Payments To Others	453
Exclusions	455
Exclusions Applicable to Entire Policy	456
Exclusions Applicable to Coverage L – Personal Liability and Coverage M – Medical Payments to Others	458
Exclusions Applicable To Coverage L – Personal Liability	460
Exclusions Applicable to Coverage M – Medical Payments To Others	461
Additional Coverages	462

Conditions.....	463
CONCLUSION.....	463
EQUIPMENT BREAKDOWN – RESIDENTIAL.....	465
INTRODUCTION.....	465
PROPERTY COVERAGES.....	466
Definitions.....	469
Exclusions.....	469
Deductible.....	470
Loss Settlement Terms.....	470
Policy Conditions.....	470
Warranties.....	471
CONCLUSION.....	471
FLOATER POLICIES.....	473
INTRODUCTION.....	473
HOMEOWNERS POLICY PROVISIONS.....	473
Coverage C Special Limits of Liability – Homeowners Policies.....	474
CHARACTERISTICS.....	475
Other Characteristics.....	475
OPTIONS.....	475
Specific Property Forms.....	475
Jewelry And Furs Form PM 00 11 12 02.....	475
Stamp & Coin Collections Form PM 00 12 12 02.....	475
Cameras Form PM 00 13 12 02.....	476
Musical Instruments Form PM 00 14 12 02.....	476
Silverware Form PM 00 15 12 02.....	476
Golfer’s Equipment Form PM 00 16 12 02.....	476
Fine Arts Form PM 00 17 12 02.....	476
Bicycles Form PM 00 18 12 02.....	476
Personal Property Form PM 00 19 12 02.....	477
Personal Effects Form PM 00 20 12 02.....	477
Motorized Vehicle Forms.....	477
Motorized Vehicles for Handicapped Person Form PM 00 31 12 02.....	477
Motorized Ground Maintenance Vehicles Form PM 00 32 12 02.....	478
Motorized Golf Carts Form PM 00 33 12 02.....	478
Motorized Snowmobiles Form PM 00 34 12 02.....	478
Outboard Motor And Boat Form PM 00 35 01 04.....	479
COMMON POLICY PROVISIONS.....	479
Causes of Loss.....	479
Valuation.....	479

CONCLUSION	482
IN-HOME BUSINESS	483
INTRODUCTION.....	483
CHARACTERISTICS	483
Eligibility	483
Definitions.....	484
Exposures	484
ISO HOME BUSINESS INSURANCE COVERAGE ENDORSEMENT	485
Definitions.....	486
Additional Definitions	486
Other Structures.....	486
Coverage C – Personal Property	487
Liability Limits	487
Who Is An Insured	487
CONDITIONS – SECTION I	488
Loss Payment	488
LIABILITY EXCLUSIONS	488
Medical Payments to Others.....	489
CONDITIONS – SECTION II.....	489
OTHER OPTIONS	489
CONCLUSION.....	490
SECTION FOUR: FLOOD INSURANCE	491
CHAPTER 22: FLOOD INSURANCE	493
INTRODUCTION.....	493
FLOOD CONCEPTS.....	493
Definition of Flood	493
Causes of Flooding	493
Development of Flood Insurance	494
Eligible versus Ineligible Communities	495
STANDARD FLOOD INSURANCE POLICIES (SFIP)	496
Policy Effective Dates and Waiting Periods.....	496
Binders	496
Limits of Insurance	496
Flood Zones.....	497
Pre-Firm versus Post-Firm	497
SFIP FORMS	498
Dwelling Form	498

General Property Form	498
Residential Condominium Building Association Policy (RCBAP)	499
DWELLING FORM AND GENERAL PROPERTY FORM	499
Insuring Agreement	499
Selected Definitions	500
Policy Provisions	500
PREFERRED RISK POLICY	507
RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY	508
Selected Definitions	508
Property Covered	509
Property Not Covered	509
Deductibles	510
Coinsurance	510
General Conditions – Loss Settlement	511
CONCLUSION	512
APPENDIX	513
GLOSSARY	515

Coverage Forms List

The following list contains the policy forms that are referenced and analyzed in this book. The list includes form numbers, edition dates, and form names. The policy sources include ISO (Insurance Services Office), NCCI (National Council on Compensation Insurance), AAIS (American Association of Insurance Services), and FEMA (Federal Emergency Management Agency).

Chapter	Form #	Edition Date	Form Name	Source
CHAPTER 4: COMMERCIAL PROPERTY COVERAGE FORMS				
4	CP 00 10	10 12	Building And Personal Property Coverage Form	ISO
4	CP 00 30	10 12	Business Income (And Extra Expense) Coverage Form	ISO
4	CP 00 32	10 12	Business Income (Without Extra Expense) Coverage Form	ISO
4	CP 00 90	07 88	Commercial Property Conditions	ISO
4	IL 00 17	11 98	Common Policy Conditions	ISO
4	CP 00 50	10 12	Extra Expense Coverage Form	ISO
4	CP 00 60	06 95	Leasehold Interest Coverage Form	ISO
4	CP 00 40	10 12	Legal Liability Coverage Form	ISO
4	CP 15 31	10 12	Ordinance Or Law - Increased Period Of Restoration	ISO
CHAPTER 5: COMMERCIAL PROPERTY CAUSES OF LOSS				
5	CP 10 10	10 12	Causes Of Loss - Basic Form	ISO
5	CP 10 20	10 12	Causes Of Loss - Broad Form	ISO
5	CP 10 30	10 12	Causes Of Loss - Special Form	ISO
5	CP 10 65	10 12	Flood Coverage Endorsement	ISO
CHAPTER 6: COMMERCIAL PROPERTY ENDORSEMENTS				
6	CP 14 15	07 88	Additional Building Property	ISO
6	CP 14 10	06 95	Additional Covered Property	ISO
6	CP 12 19	06 07	Additional Insured – Building Owner	ISO
6	CP 14 20	07 88	Additional Property Not Covered	ISO
6	CP 14 70	10 12	Building Glass – Tenant’s Policy	ISO
6	CP 15 56	06 07	Business Income Changes – Beginning Of The Period Of Restoration	ISO
6	CP 15 08	10 12	Business Income From Dependent Properties - Broad Form	ISO
6	CP 04 15	10 12	Debris Removal Additional Insurance	ISO
6	CP 10 40	10 12	Earthquake And Volcanic Eruption Endorsement	ISO

Chapter	Form #	Edition Date	Form Name	Source
6	CP 15 34	10 12	Extra Expense From Dependent Properties	ISO
6	CP 10 65	10 12	Flood Coverage Endorsement	ISO
6	CP 04 38	10 12	Functional Building Valuation	ISO
6	CP 04 02	10 12	Increased Cost Of Loss And Related Expenses For Green Upgrades	ISO
6	CP 12 70	09 96	Joint Or Disputed Loss Agreement	ISO
6	CP 14 60	07 88	Leased Property	ISO
6	CP 12 32	06 07	Limitation On Loss Settlement - Blanket Insurance (Margin Clause)	ISO
6	CP 12 18	10 12	Loss Payable Provisions	ISO
6	CP 15 31	10 12	Ordinance Or Law – Increased Period Of Restoration	ISO
6	CP 04 05	10 12	Ordinance Or Law Coverage	ISO
6	CP 14 40	06 07	Outdoor Signs	ISO
6	CP 14 30	10 12	Outdoor Trees, Shrubs And Plants	ISO
6	CP 12 30	06 95	Peak Season Limit Of Insurance	ISO
6	CP 04 07	10 91	Pollutant Clean Up And Removal Additional Aggregate Limit Of Insurance	ISO
6	CP 04 11	10 12	Protective Safeguards	ISO
6	CP 14 50	10 00	Radio Or Television Antennas	ISO
6	CP 15 50	10 12	Radio Or Television Antennas – Business Income Or Extra Expense	ISO
6	CP 04 40	06 07	Spoilage Coverage	ISO
6	CP 15 45	10 12	Utility Services – Time Element	ISO
6	CP 04 60	10 12	Vacancy Changes	ISO
6	CP 04 50	07 88	Vacancy Permit	ISO
6	CP 13 10	04 02	Value Reporting Form	ISO
6	CP 19 10	06 95	Your Business Personal Property – Separation Of Coverage	ISO

CHAPTER 7: OCEAN AND COMMERCIAL INLAND MARINE

7	IH 00 70	12 13	Builders Risk Coverage Form	ISO
7	CM 00 01	09 04	Commercial Inland Marine Conditions	ISO
7	IH 00 68	12 13	Contractors Equipment Coverage Form	ISO
7	IH 00 73	12 13	Installation Coverage Form	ISO
7	IH 00 72	12 13	Motor Truck Cargo Carriers Coverage Form	ISO
7	IH 00 76	12 13	Motor Truck Cargo Owners Coverage Form	ISO

CHAPTER 8: EQUIPMENT BREAKDOWN PROTECTION INSURANCE

8	EB 00 20	01 13	Equipment Breakdown Protection Coverage Form	ISO
---	----------	-------	---	-----

Chapter	Form #	Edition Date	Form Name	Source
CHAPTER 9: COMMERCIAL CRIME COVERAGE				
9	CR 04 01	08 13	Clients' Property	ISO
9	CR 00 20	11 15	Commercial Crime Coverage Form (Discovery Form)	ISO
9	CR 00 21	11 15	Commercial Crime Coverage Form (Loss Sustained Form)	ISO
9	CR 00 22	11 15	Commercial Crime Policy (Discovery Form)	ISO
9	CR 00 23	11 15	Commercial Crime Policy (Loss Sustained Form)	ISO
9	CR 04 08	08 13	Employee Theft – Name Or Position Schedule	ISO
9	CR 25 01	10 10	Exclude Designated Persons Or Classes Of Persons as Employees	ISO
9	CR 04 03	08 13	Extortion – Commercial Entities	ISO
9	CR 04 11	08 13	Guests' Property	ISO
9	CR 04 06	08 07	Inside The Premises – Robbery Of a Watchperson Or Burglary Of Other Property	ISO
9	CR 04 05	08 13	Inside The Premises – Theft Of Other Property	ISO
9	CR 04 07	08 13	Inside The Premises – Robbery Of a Custodian Or Safe Burglary Of Money And Securities	ISO
9	CR 04 09	08 13	Lessees Of Safe Deposit Boxes	ISO
9	CR 04 12	08 13	Safe Depository	ISO
9	CR 04 10	08 13	Securities Deposited With Others	ISO
CHAPTER 10: COMMERCIAL GENERAL LIABILITY (CGL)				
10	CG 00 02	04 13	Commercial General Liability Coverage Form (Claims-Made Version)	ISO
10	CG 00 01	04 13	Commercial General Liability Coverage Form (Occurrence Version)	ISO
10	CG 21 47	12 07	Employment-Related Practices Exclusion	ISO
10	CG 21 06	05 14	Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability - With Limited Bodily Injury Exception	ISO
10	CA 99 37	10 13	Garagekeepers Coverage	ISO
10	CG 27 10	04 13	Supplemental Extended Reporting Period Endorsement	ISO
10	CG 21 49	09 99	Total Pollution Exclusion Endorsement	ISO
CHAPTER 11: COMMERCIAL AUTO INSURANCE				
11	CA 00 25	10 13	Auto Dealers Coverage Form	ISO
11	CA 00 01	10 13	Business Auto Coverage Form	ISO

Chapter	Form #	Edition Date	Form Name	Source
11	CA 99 54	10 13	Covered Auto Designation Symbol	ISO
11	CA 20 48	10 13	Designated Insured For Covered Autos Liability Coverage	ISO
11	CA 99 10	10 13	Drive Other Car Coverage – Broadened Coverage For Named Individuals	ISO
11	CA 99 47	10 13	Employee as Lessor	ISO
11	CA 20 54	10 13	Employee Hired Autos	ISO
11	CA 99 33	10 13	Employees as Insureds	ISO
11	CA 99 16	10 13	Hired Autos Specified As Covered Autos You Own	ISO
11	CA 99 17	10 13	Individual Named Insured	ISO
11	CA 20 01	10 13	Lessor – Additional Insured And Loss Payee	ISO
11	CA 00 20	10 13	Motor Carrier Coverage Form	ISO
CHAPTER 12: WORKERS COMPENSATION				
12	WC 00 03 03 C		Employers Liability Coverage Endorsement	NCCI
12	WC 00 01 04 A		Federal Employers’ Liability Act Coverage Endorsement	NCCI
12	WC 00 02 01 B		Maritime Coverage Endorsement	NCCI
12	WC 00 03 08		Partners, Officers And Others Exclusion Endorsement	NCCI
12	WC 00 03 10		Sole Proprietors, Partners, Officers And Others Coverage Endorsement	NCCI
12	WC 00 01 06 A		Longshore And Harbor Workers Compensation Act Coverage	NCCI
12	WC 00 03 11 A		Voluntary Compensation And Employers Liability Coverage Endorsement	NCCI
12	WC 00 03 13		Waiver Of Our Right To Recover From Others Endorsement	NCCI
12	WC 00 00 00 C		Workers Compensation And Employers Liability Insurance Policy	NCCI
CHAPTER 13: COMMERCIAL UMBRELLA/EXCESS LIABILITY POLICIES				
13	CU 00 01	04 13	Commercial Liability Umbrella Coverage Form	ISO
CHAPTER 14: MISCELLANEOUS LIABILITY				
14	CG 21 16	04 13	Exclusion - Designated Professional Services	ISO
CHAPTER 15: BUSINESSOWNERS POLICY (BOP)				
15	BP 14 07	01 10	Business Income And Extra Expense – Revised Period Of Indemnity	ISO
15	BP 14 06	01 10	Business Income, Extra Expense And Related Coverages Limit Of Insurance	ISO

Chapter	Form #	Edition Date	Form Name	Source
15	BP 00 03	07 13	Businessowners Coverage Form	ISO
15	BP DS 01	07 13	Businessowners Policy Declarations	ISO
15	BP 04 04	01 10	Hired Auto And Non-Owned Auto Liability	ISO
15	BP 10 09	07 13	Named Perils	ISO
15	BP 04 30	07 13	Protective Safeguards	ISO
15	BP 04 56	07 13	Utility Services – Direct Damage	ISO
15	BP 04 57	07 13	Utility Services – Time Element	ISO
CHAPTER 16: HOMEOWNERS POLICY				
16	HO 00 02	05 11	Homeowners 2 – Broad Form	ISO
16	HO 00 03	05 11	Homeowners 3 – Special Form	ISO
16	HO 00 04	05 11	Homeowners 4 – Contents Broad Form	ISO
16	HO 00 05	05 11	Homeowners 5 – Comprehensive Form	ISO
16	HO 00 06	05 11	Homeowners 6 – Unit-Owners Form	ISO
16	HO 00 08	05 11	Homeowners 8 – Modified Coverage Form	ISO
CHAPTER 17: DWELLING POLICY AND MOBILE HOMES				
17	DP 04 72	07 14	Broad Theft Coverage	ISO
17	DP 00 01	07 14	Dwelling Property 1 - Basic Form	ISO
17	DP 00 02	07 14	Dwelling Property 2 - Broad Form	ISO
17	DP 00 03	07 14	Dwelling Property 3 - Special Form	ISO
17	DP 11 43	12 02	Dwelling Under Construction	ISO
17	DL 24 01	07 14	Personal Liability	ISO
CHAPTER 18: PERSONAL AUTOMOBILE				
18	PP 03 06	01 05	Extended Non-Owned Coverage - Vehicles Furnished Or Available For Regular Use	ISO
18	PP 03 34	01 05	Joint Ownership Coverage	ISO
18	PP 00 01	01 05	Personal Auto Policy	ISO
18	PP 03 03	04 86	Towing And Labor Costs Coverage	ISO
CHAPTER 19: WATERCRAFT				
19	WT 04 01	01 10	Uninsured Watercraft Coverage	ISO
19	WT 00 01	01 10	Watercraft Policy	ISO
CHAPTER 20: PERSONAL UMBRELLA/EXCESS LIABILITY				
20	DL 98 01	02 15	Personal Umbrella Liability Policy	ISO
CHAPTER 21: MISCELLANEOUS PERSONAL LINES				
21-1	DL 24 01	07 14	Personal Liability	ISO
21-2	HO 2702	12 06	Equipment Breakdown Coverage	AAIS
21-2	HO 2703	12 06	Equipment Breakdown Coverage Includes Permanently Installed Appliances	AAIS
21-3	PM 00 18	12 02	Bicycles Form	ISO

Chapter	Form #	Edition Date	Form Name	Source
21-3	PM 00 13	12 02	Cameras Form	ISO
21-3	PM 00 17	12 02	Fine Arts Form	ISO
21-3	PM 00 16	12 02	Golfer's Equipment Form	ISO
21-3	HO 00 03	05 11	Homeowners 3 – Special Form	ISO
21-3	PM 00 11	12 02	Jewelry And Furs Form	ISO
21-3	PM 00 33	12 02	Motorized Golf Carts Form	ISO
21-3	PM 00 32	12 02	Motorized Ground Maintenance Vehicles Form	ISO
21-3	PM 00 34	12 02	Motorized Snowmobiles Form	ISO
21-3	PM 00 31	12 02	Motorized Vehicles For Handicapped Person Form	ISO
21-3	PM 00 14	12 02	Musical Instruments Form	ISO
21-3	PM 00 35	01 04	Outboard Motor And Boat Form	ISO
21-3	PM 00 20	12 02	Personal Effects Form	ISO
21-3	PM 00 19	12 02	Personal Property Form	ISO
21-3	PM 00 15	12 02	Silverware Form	ISO
21-3	PM 00 12	12 02	Stamp & Coin Collections Form	ISO
21-4	HO 24 70	10 00	Additional Residence Rented To Others 1, 2, 3 Or 4 Families	ISO
21-4	HO 24 71	10 00	Business Pursuits	ISO
21-4	HO 07 01	05 11	Home Business Insurance Coverage	ISO
21-4	HO 04 42	10 00	Permitted Incidental Occupancies - Residence Premises	ISO
21-4	HO 04 60	05 11	Scheduled Personal Property (With Agreed Value Loss Settlement)	ISO
21-4	HO 04 40	10 00	Structures Rented To Others - Residence Premises	ISO
CHAPTER 22: FLOOD INSURANCE				
22	F-122	06 14	Dwelling Form	FEMA
22	F-123	06 14	General Property Form	FEMA
22	F-144	06 14	Residential Condominium Building Association Policy	FEMA

SECTION ONE

INSURANCE BASICS

CHAPTER 1: GENERAL INSURANCE

INTRODUCTION

Insurance affects many lives in day-to-day activities throughout the world. No one knows when the first insurance contracts or policies came into existence. However, the mechanism of transferring risk is referred to in ancient books containing Hammurabi's Code in Babylon around 2,500 BC.

Today, a large and varied insurance industry exists that is concerned with helping people and firms to better manage risks. This chapter reviews many of the important concepts that provide the foundation for insurance and risk management.

This chapter begins with important, basic terms used throughout the insurance industry. An understanding of these terms is essential for an understanding of the insurance industry.

BASIC TERMS

Insurance

Insurance is defined as the equitable transfer of the risk of loss from one entity to another in exchange for payment. The transaction involves the insured assuming a guaranteed and known relatively small loss, in the form of payment to the insurer, in exchange for the insurer's promise to compensate the insured in the case of a financial loss. The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insured is financially compensated.

Risk

There are different definitions of risk for each of several applications. The widely inconsistent and ambiguous use of the word is one of several current criticisms of the methods to manage risk.

- a. Risk is the chance of loss.
- b. Risk is the uncertainty of loss. There is a probability or a chance from zero to 100% that loss due to fire will occur to a building. The uncertainty is the risk.
- c. Risk is the difference between expected losses and actual losses over a period of time.

Despite these differences, the simple fact is that risk, as defined above, is always a probability issue.

Risk has other definitions used within the insurance industry. Risk is also the person or property which is the subject of insurance. An insurance company may state it is willing to insure a risk and is referring to the person or property, which is to be covered by an insurance policy. Similarly, a risk manager may refer to a risk as the person or property exposed to a potential loss.

Risk Management

Risk management is the identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of the uncertainty.

Loss

The word loss is frequently used in insurance and risk management. Generally, it refers to a reduction in value. However, definitions vary depending on the type of insurance.

In property insurance (where a physical item is being insured), loss is defined as a decrease or reduction in the monetary value of some property. For example, a large portion of the roof of Freeman Manufacturing is blown off by a windstorm. The plant now has a value of \$150,000 instead of \$200,000.

In liability insurance (where harm caused by a certain action or behavior is being insured), loss refers to the amount of the claim or payment made on behalf of the insured.

EXAMPLE

Troy Smith's truck is struck by Glenda Shapiro's car, causing injury to Troy and damage to his property. He claims a loss of \$20,000 for medical bills and loss of income, and \$5,000 for damage to the truck. From the point of view of Glenda's liability insurance, the loss is not Troy's loss. The loss is what Glenda's liability insurance has to pay to Troy on Glenda's behalf.

Exposure

Exposure is a something or someone subject to a loss, e.g., a building, a person, a product.

Hazard

Hazard is a condition within an exposure that increases the likelihood (probability) of loss or increases the potential amount of loss that occurs. For example, a person who is employed in a dangerous job has a greater exposure to disability or death than the average person. The elements that make the job dangerous are the hazards that lead to a greater probability of loss.

Peril

Peril is a cause of a loss. The peril of fire may cause loss to a building. Disability is a peril that results in loss of income to a person. Peril is a traditional term in insurance; more recently, peril is replaced with the phrase "cause of loss".

EXAMPLE

A person stores a can of paint, paint thinner, and other chemicals a few feet from a gas water heater in his garage. One day the flame from the hot water heater ignites the chemicals, producing a fire that burns the garage and its contents. In this situation, the improper storage of paint and chemicals near the water heater is the hazard (increasing the probability of loss) while fire is the peril (cause of loss).

COMMON METHODS OF HANDLING RISK

Once a risk is identified, the next step is to analyze the impact on the organization and then determine which control technique or combination of techniques should be used. Here are the most common methods of handling risk.

Avoidance

Avoidance is one method of assuring no exposure to loss. A way to avoid an exposure is to choose not to participate in a particular activity or not to own a particular property. Avoidance also includes not engaging in specific activities or getting rid of property.

EXAMPLE

Handy Hardware sponsors a local little league baseball team. Handy faces the potential liability exposure of a game-related injury to one or more of the team members, one or more members of the opposing team, and even to umpires or spectators. To avoid the risk, Handy can make the decision not to sponsor the team. This way, Handy avoids the possible losses associated with team sponsorship.

In another example, Ms. Cook operates a business in her home. She plans to move her business out of her home by either leasing or buying a commercial building. If she does, she faces possible loss exposures to the commercial building from fire, windstorm, vandalism, or other perils. She may avoid the additional risk by not moving her business.

However, avoidance is often not a feasible risk management technique because a certain amount of exposure is necessary in order to conduct a business or maintain a residence.

Retention

Retention is acceptance or assumption of the risk of loss, which means the loss is paid from funds the individual or organization has earmarked, or is paid out-of-pocket. There are two forms of retention: active and passive.

Active retention is the conscious and intentional process of identifying the potential loss and determining how it is to be paid for, should it occur. The decision might be to do nothing in advance and simply absorb the loss. An alternative might be to set up a reserve fund to handle losses. The key idea is that the person or firm makes a conscious choice to pay its own losses. The term self-insurance is sometimes applied to active retention. Retention is a technique that is often combined with insurance, such as when an insurance policy contains a deductible.

The second form of retention is passive retention, which really is not a conscious form of risk handling. It is more of a decision not to use another method of handling risk, resulting in a person or organization paying losses out-of-pocket; or, it is simply ignorance of the exposure's existence.

Segregation, Separation, or Duplication

This technique focuses on reducing the severity of the loss. Segregation involves designating a certain area of a building for high-risk exposures. Segregating the computer room with security controlled access, or creating separate fire divisions within a building or structure, are examples.

Separation involves spreading property values and production activities over several geographic locations. For example, a large department store chain has many locations in many states. It is unlikely that the entire business shuts down if one location suffers a loss. However, a large, single-location store has no separation; and, if it suffers a catastrophic loss, the business is not able to operate for a period of time.

Duplication is redundancy. An example of redundancy is having backup tapes offsite for the computer network.

Reduction

Reduction is the use of any one method or a combination of methods to reduce loss frequency or loss severity. There are generally two approaches: loss prevention and loss reduction. Loss prevention refers to measures aimed at preventing the event. Examples are warning labels on products, safety guards on equipment, and theft alarms on cars. Loss reduction is intended to minimize damage, but does not necessarily prevent an accident from occurring. Examples of loss reduction measures include fire suppression sprinklers in a building to reduce the spread of fire and air bags in cars to reduce or prevent injury. Reduction is usually used in combination with other risk management techniques.

Transfer

Transfer is a technique involving one party transferring the uncertainty of loss (risk) to another party or parties. This is a very popular risk management technique and may be accomplished through the use of insurance or non-insurance transfer.

To demonstrate the use of insurance as a transfer, assume the owner of a building is concerned with how to pay for the building's repair or replacement in the event of fire loss. If the owner has to replace the building, it costs over \$300,000, an amount the owner cannot pay out-of-pocket. The owner might be able to borrow the money, but this is doubtful. Therefore, retention for this owner is not a practical method of handling this risk. The only practical method is to transfer this risk to another through insurance. After the transfer, the uncertainty of financial loss rests with the insurance company rather than with the insured. The chance or probability of loss has not changed. What has changed is the party faced with the risk.

Non-insurance transfer is the transfer of risk through a contract other than an insurance policy. This technique has become increasingly common in recent years. Contractual transfers can range from a car rental agreement for a vacationer to a complicated construction agreement. A common example is in a lease of a building. A provision in the lease agreement transfers responsibility for liability for injuries or damages to others from the owner (landlord) to the tenant. Liability is for injuries to others arising out of the ownership, maintenance or use of the building. Actually, the landlord, as a matter of law, remains legally liable for injuries or damages to others. However, the lease provision states that the tenant holds harmless or indemnifies the landlord should the

landlord become legally liable to another. Therefore, the tenant has accepted the responsibility of the landlord for this legal liability.

LAW OF LARGE NUMBERS

What is the Law of Large Numbers? How can insurance companies, in return for a relatively small sum (the premium), agree to potentially pay out very large sums in return? And how is it possible to determine how much premium to charge when it is impossible to know in advance if an individual insured will have a large covered loss? Effective prediction on a group or aggregate basis, not on an individual basis, is the answer. This is where the Law of Large Numbers comes into play.

The Law of Large Numbers is a mathematical principle which states, the larger the number of homogeneous (similar in attributes) loss exposures, the closer the actual results equal the expected outcome. The Law of Large Numbers can be demonstrated by flipping a coin. Each flip is an exposure. There are two possible outcomes when a coin is flipped – heads or tails. The probable outcome of any flip is 50% heads or 50% tails. However, in reality, if a coin is flipped just ten times, the results may be seven heads and three tails. In applying the Law of Large Numbers, if a coin is flipped 10,000 times, the number of heads and the number of tails is very close to 5,000 each.

Insurance deals with events for which probabilities must be estimated. With the coin, the true probability of a head or a tail is known – one out of two. With automobile accidents or fires, the probability must be estimated. How much confidence can be placed in the estimate? The Law of Large Numbers says that confidence in the estimate increases as the number of homogeneous loss exposures underlying the estimate increases. If it is desired to estimate the frequency of automobile collision losses next year and calculate premiums based on this estimate, undoubtedly there is more confidence in being correct if the estimate is based on what happened to 1,000,000 cars this year, as opposed to only 1,000.

ELEMENTS OF AN INSURABLE EXPOSURE TO LOSS

Many exposures to loss that a person or organization faces are insurable – but not all. In order for a potential exposure to loss to be insurable, it must meet certain criteria or elements. These elements are reviewed below.

Definite Loss

One element is definite loss. As previously stated, a loss causes a decline or loss of value. To be able to insure such a loss, it must be definite in time, place, and amount, so that a loss as defined under an insurance contract can be verified and measured. How can insurers agree to pay for losses if they cannot determine: (1) if a covered loss took place, or (2) how much the loss was worth?

Accidental Loss

Another element is accidental loss. A loss must be accidental from the viewpoint of the insured. If an insured can deliberately cause a loss, it distorts loss predictability and may create a financial gain for the insured. The purpose of insurance is to transfer risk, which is the uncertainty of loss.

Large Enough Loss to Cause Economic Distress

This element means if a loss is not large or severe enough to cause economic or financial distress, then a person or organization is less inclined to purchase insurance. On the other hand, an insurance company must receive enough premium to make it economically feasible to provide insurance. For example, it is doubtful that a person wants to insure the loss of paper clips or the breakage of a shoestring. The premium, while perhaps small in absolute dollar amount, is too large relative to the potential loss payment under the policy.

Large Group of Similar Exposure Units

For this element, there must be a large group of exposure units, with exposure to the same perils or causes of loss, in order for the Law of Large Numbers to operate effectively. For example, an insurance company writing auto coverage on trucks cannot base their operations on 75 to 100 trucks. As demonstrated earlier, there must be a large number of homogeneous exposures to loss to accurately calculate the probability of loss.

Chance of Loss Must be Calculable

The probability of loss must be calculable by gathering the loss history of similar acts, properties, and/or causes of loss. Otherwise, it is impossible to predict aggregate losses and determine what premiums to charge. An example of a loss that is not calculable is the potential loss of income arising from unemployment because it is so irregular in its pattern. The same is true of nuclear incidents.

Not Likely to Produce Loss to a Great Many Units at the Same Time

This element means the type of insured exposure to loss cannot be of a nature that a large number of exposure units could suffer a loss at the same time. Property located near rivers is prone to flood damage. In an extreme case, literally hundreds of thousands of properties could be damaged in one event or in a series of closely related events. Therefore, private insurance companies do not usually insure flood-prone property for flood losses because these companies are very concerned about significant losses that can result in financial disaster.

Feasible Cost to Insure

This is the last element of an insurable exposure to loss. If the covered exposure to loss is very likely to happen, the amount of the premium approaches the amount of the prospective maximum loss. The cost of insuring the life of a person 100 years old is prohibitively expensive, as is writing property insurance on a home that is located a few feet from the rim of an active volcano.

INSURERS

An explanation of the companies that provide the insurance policies is in order. These companies are also called insurers or carriers. Just like people, insurers are a diverse group. Characteristics on which insurers may differ include: ownership, method of distribution of its policies, legal status, and organization. Following are the major types of insurers:

Stock Company

A stock company is an incorporated insurance company owned by its stockholders. The stockholders elect the corporation's board of directors. The stockholders may or may not be policyholders. This type of company has an objective to make a profit for its stockholders. Profits in the form of stock dividends may be shared with stockholders at the end of specifically defined periods.

Mutual Company

A mutual company is an incorporated insurance company owned by its policyholders. There are no stockholders. This type of company has an objective to provide insurance at or near the actual cost of doing business. At the end of the year, if there is money left over in the form of profits or surplus, the money may be returned to the policyholders as a dividend or used to reduce future premiums. Small mutual companies may issue assessable policies. The right to assess gives these mutual companies the right to require policyholders to pay an additional premium if loss experience is poorer than expected. Other small mutual companies, primarily local in scope, operate on a pure assessment basis, with all premium income generated through assessments.

Fraternal Benefit Societies

Fraternal benefit societies are an interesting type of insurance company. They are insurers, sometimes referred to as lodge or fraternal societies, which were especially popular between 1874 and 1920. These insurers provide health or life (death) benefits. They initially made common use of the assessment method or plan. As an example, upon the death of one of the members, the other members were assessed to pay funeral expenses. This approach was first used by stone masons in Egypt around 2,500 BC. Of the few remaining fraternal benefit societies, most have adopted an advanced premium method of operation other than assessment. Insurance is sold only to members of the society or lodge.

Reciprocals

A reciprocal (also referred to as an interinsurance exchange) is a group of individuals or organizations, called subscribers, who join together into an association for the purpose of insuring one another. An attorney-in-fact acts as the manager. The attorney-in-fact, acting on the authority of the subscribers, runs the everyday operations. Subscribers insure one another in an insurance application of "one for all, and all for one".

Many reciprocals specialize in one line of insurance, but some large reciprocals write many kinds of insurance. An example helps to illustrate the concept of this type of company:

EXAMPLE

Ten people enter into an agreement to set up a reciprocal for insuring their homes for fire, up to \$10,000 per home. One of the homes suffers \$10,000 in damage from fire. Each of the other nine people share equally in the loss with the damaged homeowner, and each member pays a \$1,000 share. (They would also pay an additional sum for the management of the company.)

The attorney-in-fact oversees the assessment and payment.

This example shows a reciprocal in its purest form. In a modified form, it more closely resembles a mutual insurance company.

Lloyd's of London

Lloyd's of London is different from an insurance company in the United States. In fact, until 1994, it was an association (syndicate) of private underwriters, each of whom underwrote insurance contracts on a basis of personal liability. In 1994, Lloyd's admitted corporate members.

Lloyd's underwriting members, called names, are individual risk bearers who are grouped together into syndicates. Each name's degree of participation (percentage of participation in the syndicate's premium income, expenses, and losses) is predetermined. Each syndicate has a manager who is responsible for considering applications for insurance submitted to the syndicate by brokers.

The broker is the person who places the application for insurance on behalf of buyers of insurance. A broker may place portions of the same insurance with more than one syndicate, especially for large or unusual risks. There are no insurance organizations in the United States that work exactly like Lloyd's of London, although there are a limited number of Lloyd's Associations, which function more like a reciprocal.

Government Insurers

The insurers described previously are private insurers. Although private insurers write almost all forms of insurance, there are particular exposures to loss these insurers avoid. In the previous discussion of the elements of an insurable exposure to loss, one of the elements is: "not likely to produce loss to a great many units at the same time". Therefore, private insurance companies are reluctant to write flood insurance covering damage to fixed-location property such as buildings and contents. Only people near water or drainage areas want to buy the insurance, and thousands upon thousands of them could suffer flood damage almost simultaneously.

Losses of this magnitude seriously threaten the financial condition of insurance companies, particularly if the same kind of massive losses occur several times during a short period. The federal government does sponsor a flood insurance program, which is reviewed in another chapter.

There are many other government insurers that provide insurance for similar types of exposures. Some of these exposures, such as unemployment and workers compensation, are provided at the state level.

Many states have experienced problems with employers finding private carriers to provide workers compensation insurance. Therefore, many states have established workers compensation organizations that compete with private carriers to provide this insurance.

At a federal level, there are other forms of insurance in addition to the flood insurance. One example is the Federal Crop Insurance Corporation, which offers insurance to protect farmers from crop failures or damages arising from the perils of nature (such as hail).

State Regulation of Insurance

The McCarran-Ferguson Act of 1945 gives states the authority to regulate the "business of insurance" without interference from federal regulation, unless federal law specifically provides otherwise. The act provides that the "business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business".

Congress passed the McCarran-Ferguson Act primarily in response to the Supreme Court case of *United States v. South-Eastern Underwriters Association* in 1944. Before this case, the issuing of an insurance policy was not thought to be a transaction in commerce, which would subject the insurance industry to federal regulation under the COMMERCE CLAUSE. In *South-Eastern Underwriters*, the Court held that an insurance company that conducted substantial business across state lines was engaged in interstate commerce and was, therefore, subject to federal antitrust regulations. Within a year of *South-Eastern Underwriters*, Congress enacted the McCarran-Ferguson Act in response to states' concerns that they no longer had broad authority to regulate the insurance industry within their boundaries.

The McCarran-Ferguson Act provides that state law shall govern the regulation of insurance and that no act of Congress shall invalidate any state law unless the federal law specifically relates to insurance. The act thus mandates that a federal law that does not specifically regulate the business of insurance does not preempt a state law enacted for that purpose. A state law has the purpose of regulating the insurance industry if it has the intention or aim of adjusting, managing, or controlling the business of insurance.

Admitted Insurers versus Non-admitted Insurers

An admitted insurer is one that follows regulatory guidelines set forth by the state and is therefore licensed in the state in which the insured exposure is located. Of course, these guidelines vary from state to state; and some are more stringent than others. The obligation to follow state regulations and submit coverage forms and rates to a state's department of insurance limits the flexibility of the insurer. If an admitted carrier becomes insolvent, the state guarantee fund steps in to pay claims and provide premium remuneration where applicable.

It is a common misconception that non-admitted is synonymous with non-licensed. In reality, non-admitted carriers do not have coverage forms and rates filed with the state and, therefore, are not as highly regulated by the state. Because of this, non-admitted insurers are sometimes able to offer better coverages and rates. These carriers can base price on specific exposures; further, certain complex risks require the use of non-admitted carriers because the conventional insurance marketplace fails to provide the needed coverage. However, in the case of insolvency, in almost all instances the state does not pay the carrier's outstanding claims and/or premium remuneration.

Domestic, Foreign, and Alien Insurers

The term domestic in everyday usage is typically thought of as referring to things or people related to a home country. Domestic also applies to insurers. Typically, an insurance company that is incorporated in, domiciled in, and organized under the laws of a state, and has its home office in this same state, is a domestic insurer.

The term foreign insurer simply refers to an insurance company that is organized and domiciled in one state but is operating in another. For example, a company is domiciled in Texas; in Oklahoma, this same insurer is considered a foreign insurer in its transactions in Oklahoma.

An alien insurer is an insurance company formed and domiciled in a country outside the United States. For example, an insurer incorporated in Mexico is considered an alien insurer in its operations in Texas.

Financial Status of Insurance Companies

Unlike commodities that may be purchased at a store or restaurant, insurance is not a product that is available to be picked up, tasted, or felt. Insurance is a contract for future performance if certain conditions exist and covered loss events occur. Because insurance cannot be inspected, the financial status of the insurance company making promises contained in the insurance policy is very important. If the insurance company is not financially strong, it may not be able to pay claims in the future.

Independent Rating Services for Insurance Companies

One common method of learning the financial status of insurance companies is the use of materials provided by private companies, called Independent Rating Services. These companies analyze insurance companies' financial statements and other data, and assign ratings to the companies. The oldest and perhaps most famous rating service is A.M. Best Company. There are other rating services such as Demotech, Inc., Fitch Ratings, Moody's Investors Services, Standard & Poor's, and Weiss Ratings. These services are helpful to the insurance buyer, risk manager, broker, and agent.

Government Analysis of Insurance Companies

In addition to authorizing insurance companies, the insurance departments of most states provide state insurance department examinations, which are regular financial check-ups of insurance companies within a state. The insurance commissioners of most states (elected or appointed official of a state, who oversees the department of insurance) may investigate insurance companies, as the commissioners deem necessary.

REINSURERS

Reinsurance is a process involving the transfer of risk from one insurer, called the ceding (or primary) company, to another called the reinsurer. The ceding company remains fully obligated to the policyholder.

EXAMPLE

PENCO Chemical Company needs \$10,000,000 in commercial property coverage on its plant and administrative offices. Western Insurance Company is willing to write the commercial property coverage but has some concern about fire and windstorm exposures that may cause a multi-million dollar loss. As part of finalizing the transaction, Western arranges to transfer \$4,000,000 of the insurance to Reinsurance American Company, which also shares in a portion of the premium and potential losses. The transaction is displayed on the following page:

Transaction

PENCO Chemical Company (Insured)

\$10 Million

Western Insurance Company (Ceding Company)

Cedes: \$4 Million

Retains: \$6 Million

Reinsurance American Company (Reinsurer)

Reinsured: \$4 Million

[Sometimes expressed as: Reinsurance America

Reinsures \$4 million x of (in excess of) \$6 million.]

Reinsurance American Company might pass on to still another reinsurer a part of the \$4,000,000 it assumed from Western.

TYPES OF REINSURANCE

There are several types of reinsurance. A brief overview is provided in the paragraphs that follow:

Facultative (or Specific) Reinsurance

Facultative (or specific) reinsurance is a form of reinsurance using offer and acceptance of individual risks, in which, under a contract of reinsurance, the reinsurer retains the faculty (thus the name) to accept or reject each risk offered by the ceding company. The example above illustrates this type of reinsurance. Each risk is individually analyzed, and reinsurance is agreed upon or rejected based on individual merits.

Treaty Reinsurance

Treaty reinsurance is another form of reinsurance in which a contract of reinsurance between the ceding company and reinsurer automatically establishes the terms for reinsuring a class or classes of business. Throughout the United States, treaty reinsurance produces a far greater amount of premium than facultative reinsurance.

Pro-rata Reinsurance

Pro-rata reinsurance is a form of treaty reinsurance set up with the understanding that a certain part of every exposure is shared on an agreed amount. The agreed amount is typically a percentage or specific dollar amount. The reinsurer receives the same percentage of the premium (minus the ceding commission).

EXAMPLE

Glenden Reinsurance Company may agree to accept 60% of every Homeowners Policy that West Insurance Company writes. Policy A insures Home A for \$100,000 at a \$600 premium. Policy B insures Home B for \$200,000 for a \$1,000 premium. Assume that Home A has a \$50,000 loss and that Home B has a \$20,000 loss. The chart below illustrates how the primary insurer and the reinsurer share the coverage amounts, the premiums and the losses.

	Glenden Reinsurance Company	West Insurance Company	Total
POLICY A			
Insurance	\$60,000	\$40,000	\$100,000
Premium	\$360	\$240	\$600
Loss	\$30,000	\$20,000	\$50,000
POLICY B			
Insurance	\$120,000	\$80,000	\$200,000
Premium	\$600	\$400	\$1,000
Loss	\$12,000	\$8,000	\$20,000

Excess Reinsurance

Excess reinsurance is another form of treaty reinsurance where no insurance is ceded; only the losses are ceded. Excess reinsurance commonly takes one of three forms: per risk excess, per occurrence excess, and aggregate excess. One major difference between excess and pro-rata reinsurance treaties is that the excess reinsurer does not participate in every loss, only those losses greater than the ceding company's retention.

It is obvious that reinsurance is a complicated activity, but it is important to understand the concept and its role in the insurance process.

INSURANCE MARKETING DISTRIBUTION SYSTEMS

Insurers have to reach prospective buyers in order to sell their products. There are different marketing or distribution systems that make insurance products and related services available to consumers and potential consumers. Below is a brief review of each of the more common methods of distribution. Some insurance companies use more than one of these systems.

Independent Agency System

The independent agency system involves self-employed parties who enter into contracts with usually more than one insurer to represent the insurer in dealings with the public. Under almost all agency-company agreements, the agency has ownership of the accounts (individual and business) written with the company. If the agency-company agreement is terminated by either party, the insurance company usually does not have the right to assign the policies belonging to the terminated agency to other agencies.

Exclusive/Captive Agency System

The exclusive agency system is made up of agents that represent only one insurance company or a group of companies under common ownership or control. Despite the fact that these agents write for only one company, they are independent contractors and are compensated by commissions for the business that they place with the company. Most commonly, exclusive agents do not have ownership of their accounts, or, if they do, ownership is typically limited.

Direct Writing System

The direct writing system is very similar to the exclusive agency system explained above. The key difference is in the relationship between the insurance agent and the insurer. The direct writer agent is an employee of the insurer and not an independent contractor, as under the independent agent and exclusive agency systems. As might be expected, the insurer owns the accounts produced by the agent. The insurance agent (frequently referred to as a sales representative) can be compensated in a number of ways. Some direct writers compensate their agents with salary only; others pay salary plus bonuses; and some compensate solely on a commission basis.

Direct Mail System/ Internet System

Direct response systems are characterized by writing/selling insurance by mail, telephone or via the Internet. What separates this distribution method from the others is the absence of actual or potential face-to-face contact between the insurance agent and the buyer. This distribution system is commonly used in the sale of life and health insurance, but there are several large property and casualty companies that use this method, especially in personal lines insurance.

Mass Marketing

Mass marketing is an attempt by insurance companies to provide some forms of insurance in a more economical fashion. These insurance companies have discovered that they can reduce expenses related to marketing and underwriting, if they use a form of mass marketing.

Mass marketing is typically accomplished by offering a specific type of insurance to a large group of individuals or entities, such as special interest groups (retail florists), associations (American Association of Retired Persons), or employees of one employer. Frequently, the mass marketing approach resembles the direct response system but is conditioned on the prospective insured being a member of a particular group.

INSURANCE PRODUCERS

Persons involved in the sale or distribution of insurance products are typically referred to as producers and have different relationships with agencies, insurers, and the insurance consumer. Producers' responsibilities and, of course, liabilities are based on the producers' relationships with these parties. The primary types of insurance producers and the responsibilities of each are as follows:

Agent

An agent is defined as a person empowered to act on behalf of another. In the context of the insurance industry, the focus is specifically on an insurance agent. An insurance agent is a person authorized by an insurer to solicit applications, collect premiums, and bind coverage on behalf of the insurer.

The insurance agent is acting on behalf of the insurer. In a legal sense, the relationship is that of principal and agent, with the insurer being the principal. Serving as an insurance agent requires not only the authorization of an insurer but also an insurance license granted by the state in which the agent sells.

Some specific types of agents are:

Solicitor

A solicitor is a person who is hired and authorized by the insurance agent to solicit applications of insurance. This person does not have the authority to bind coverage or represent the insurance carriers. The solicitor is an agent of the insurance agent, and not the insurer.

Managing General Agent or MGA

Managing General Agent or MGA is an independent business which performs, for one or more insurers, some or all of the functions typically attributable to a regional or branch office of the insurer. The MGA does not usually sell directly to an insured but appoints and manages producers throughout a specific geographical territory.

Surplus Lines Agent

Earlier, the concept of a non-admitted insurer was explained. Most agents represent admitted insurers but occasionally use a non-admitted insurer to provide coverage that an admitted insurer does not provide. In order to represent a non-admitted insurer, an agent typically must obtain a surplus lines license.

A surplus lines agent is a person or organization licensed to write property and casualty insurance through a non-admitted (surplus lines) insurer. In most states, this agent must be appointed by a non-admitted insurer to solicit, write insurance, collect premiums, and collect surplus lines premium taxes assessed on each policy written.

Broker

A broker is an individual who acts or aids in the negotiation of insurance contracts, in placing risks, or in soliciting or effecting contracts, as the agent of the buyer and not as the agent of an insurance company. Serving as a broker also requires a license from the state. However, a broker's license is not available in all states.

When not acting on behalf of a buyer, the broker represents himself or herself. In attempting to secure insurance for a buyer, the broker represents (is an agent for) the applicant. The broker's compensation is usually in the form of a commission from the insurer with whom the applicant's insurance is placed, or it may be in the form of a fee charged to the buyer.

When serving as a broker, a person does not have the authority to bind the insurer or to countersign policies on behalf of the insurer. However, in certain activities, such as receiving premiums or delivering a policy, the broker is regarded as the agent of the insurer (by law) rather than the agent of the insured.

An Employee of an Insurance Company

An employee of an insurance company is considered to be an agent of the company in a limited agency capacity. He or she is under the direct control of the insurance company employer and is given direction in terms of the methods and times for serving as an agent.

AUTHORITY OF AGENTS

An agent's actions can bind or commit the principal (in this case, an insurer) only if the agent acts within the scope of the authority possessed by the agent. There are three types of authority:

Express (Actual) Authority

Express (actual) authority is expressly given by the insurer either orally or in writing. The principal is responsible for the actions of the agent under express authority.

EXAMPLE

Agent Erin has express authority from Ajax Insurance Company to bind coverage up to \$200,000 on homes. This authority is specifically cited in underwriting guidelines, as well as in the agency-company agreement provided by Ajax Insurance Company. If Erin binds coverage on a home for \$180,000, she is acting within her express authority.

Implied Authority

Implied authority is authority of the agent that is not specifically expressed or communicated, but is consistent with the agent fully exercising the express authority granted by the insurer. The principal is responsible for the actions of the agent under implied authority.

EXAMPLE

Agent Bob represents Wildfire Insurance Company. Even though Bob's contract with Wildfire is silent on the matter (no express authority), Bob has the authority to advertise his Wildfire affiliation. Such advertising is a logical part of Bob's efforts to solicit and sell insurance for Wildfire.

Apparent Authority

Apparent authority is authority that the agent appears to have to a reasonable person. Apparent authority is not given by the principal but is based on circumstances that create a reasonable belief by a third party that the agent has authority. Apparent authority protects innocent people where the circumstances create a reasonable appearance of authority in an agent. If the doctrine of apparent authority is applied by a court in a particular situation, the insurer is obligated to the innocent third party as fully as if the agent acts according to express or implied authority. However, the principal may be entitled to indemnification from the agent.

EXAMPLE

Agent Paula recently received a packet of sample materials, including a partial rate manual, underwriting guide, applications, and binder forms from Northeast Casualty Company. The Company wants Paula to sign an agency-company agreement.

Client Brenda comes into Paula's office stating she immediately needs coverage for her new boat. Paula does not represent any insurance companies that write watercraft with engines as large as the one in Brenda's boat. Paula remembers that Northeast writes watercraft with that engine size; so she completes an application and binder.

From Brenda's perspective, Paula has apparent authority to represent Northeast Casualty Company and bind coverage. Paula is using materials provided by Northeast, so it is quite reasonable for Brenda to believe she has coverage with Northeast.

No Authority

There is no authority granted, implied or apparent (e.g., the agent commits fraud, and the court does not extend apparent authority to the act). The principal is not responsible for the actions of the agent if there is no authority.

INSURANCE CONTRACTS

As previously stated, insurance policies are unique products in that the insurance consumer spends hundreds, thousands, and sometimes even millions of dollars for protection using these products that cannot be touched, picked up, or seen. All an insured is buying are promises that if certain events occur the insurance company will pay. The insurance company's promises are presented in a legal contract, called an insurance policy.

ELEMENTS OF A LEGAL CONTRACT

Now that the insurance policy has been identified as a legal contract, it is important to examine the essential elements of a legal contract. All legal contracts share these same essential elements. Legal contract means the contract can be enforced in a court of law. If any of these elements are missing, the contract is unenforceable. The four elements are:

1. Offer and Acceptance

It is necessary that there be an offer by one party and acceptance by the other party. An agreement between parties is necessary to have a contract. In the formation of an insurance contract, the offer may initially be made by the potential buyer (potential insured) to the insurance company. In this case, the potential buyer or applicant is the offeror, and the insurance company is the offeree. The company may accept the offer, reject it, or offer different terms or conditions than those applied for by the offeror. In the last case, the insurer is making a counteroffer which may be accepted or rejected by the applicant. A solicitation by an insurance agent to the potential buyer is simply an invitation to make an offer to the insurance company.

2. Competent Parties

Both parties to a contract must meet a level of legal competence. Typically, the requirement of legal competence is not difficult for the insurer to meet. If the insurer is permitted to write the line of insurance in that jurisdiction, in the eyes of the law, it is legally competent to do so. The purpose of this requirement is to protect persons, like minors and the mentally ill, from being taken advantage of when entering into contracts not fully understood or contracts in which their involvement is coerced. However, it is a one-edged sword. The incompetent person can enforce the contract against the other party, but the latter may not enforce the contract against the incompetent person.

3. Legal Purpose

Legal purpose means a contract must not create or encourage an unlawful action or be against public policy. Any agreement entered into for an illegal purpose is not legally binding.

4. Legal Consideration

Consideration means there must be an exchange of something of value by each party to the contract. It is not required that there be an equal exchange – just an exchange. In an insurance contract, the insured pays or promises to pay a premium in exchange for a promise by the insurance company to pay for covered losses.

DISTINCT CHARACTERISTICS OF AN INSURANCE CONTRACT

In addition to the essential elements of a legal contract, insurance contracts have several distinguishing characteristics which set them apart from many other types of contracts. It is important to understand these characteristics in order to comprehend how insurance operates.

Contract of Adhesion

Being a contract of adhesion is a characteristic of an insurance contract that relates to the offer and acceptance stage in the formation of the insurance contract. Although the insurance buyer makes the offer to buy the contract, he or she has little say in the contract's contents, provisions, and conditions. Most insurance contracts are bought in an "as is" condition. Indeed, in most cases, the policy's terms and conditions are on standardized documents. The buyer's choice is between (1) not buying from that insurer, or (2) buying and adhering to the insurer's terms and provisions. The insurer drafts the provisions and issues the policy.

Aleatory Contract

Another distinguishing characteristic is that an insurance contract is an aleatory contract. The term, aleatory contract, means a contract in which there is an unequal exchange between the parties because the element of chance is involved in performance under the contract. It is highly unlikely the insurance premium equals the actual losses paid by the insurance company.

EXAMPLE

An insured pays \$1,000 in annual premium for auto insurance. During the year, the insured is involved in an automobile accident, and the insurance company pays out \$25,000. In the next year, the insured pays \$1,200 in annual premium for auto insurance and has no accidents; the insurance company pays out nothing.

Personal Contract

Another feature of an insurance contract is that it is a personal contract between the insurance company and the insured. The insurance contract (insurance policy) is not a piece of property that can be simply given away or transferred to someone else.

This distinguishing feature can be illustrated in property insurance (for example, insurance written on a house). When a policy is written on a particular house, it is not the house being insured but rather the person who owns and lives in the house. Who that person is can be the deciding factor in the insurer's issuing or continuing the policy. Because the insurance contract is a personal contract, most insurance policies have restrictions on the transfer of the contract to other parties, also known as assignment.

Unilateral Contracts

Insurance contracts are considered unilateral contracts. Unilateral means one-sided and is used to describe contracts that, once entered into, require future performance by only one of the contracting parties (the insurer promises to pay covered losses).

Conditional Contracts

Insurance contracts are also conditional contracts. The insurer's promise is conditioned upon (dependent upon) certain things occurring or being done. An insured event must occur, activating policy coverages. Subsequently the insured has certain duties spelled out in the contract. For example, if an insured claims her auto is stolen, her policy requires her to report the theft to the police. Failure to comply with this policy condition means the insurer has grounds to refuse to perform as promised and not pay the loss.

Binders

An insurance binder is a temporary contract of insurance providing coverage prior to the issuing of a complete insurance policy. A binder is typically in writing, but it also can be oral. If oral, it is usually followed by a written version, typically specifying the type of insurance bound, for what, and for whom, the time it goes into effect, and for how long.

The insurance agent usually is granted a certain amount of binding authority as outlined in the agency-company agreement. Binding authority can also be detailed in company underwriting

guidelines or other written communication from the company's underwriting department. The length of time that coverage can be provided by a binder is governed by company rules and, in some states, by specific state laws and/or regulations.

LEGAL INTERPRETATIONS AFFECTING INSURANCE CONTRACTS

Contracts of Adhesion

As stated earlier, insurance contracts are characterized as being contracts of adhesion. The insurance company has control of the contract contents and language, while the insured has no input. Since insurance contracts are thus one-sided in their composition, it is common, when legal questions arise related to policy ambiguity, for courts to rule in favor of the insured. An ambiguity exists when, in the view of the court, reasonable people can differ on the interpretation of policy language or when the policy language is simply not clear. Courts take the position that only the insurance company had the opportunity to make the contract provisions clear and unequivocal when it wrote the insurance contract.

Reasonable Expectations

The language and provisions of insurance contracts are frequently complicated and are not readily understandable by an untrained person. In disputes involving what a policy says or does not say, some courts, in certain situations, have applied the doctrine of reasonable expectations. Under the doctrine of reasonable expectations, the courts ask what a reasonable person would expect in this particular situation. The court then uses this measure as a basis of interpretation, sometimes despite apparently clear policy language to the contrary. Note: this is not a universal approach taken by the courts.

Indemnity

Property and casualty insurance contracts are, with few exceptions, viewed as contracts of indemnity. To indemnify means to make whole. The principle of indemnity holds that property and casualty insurance contracts should do no more than indemnify an insured. These policies are not vehicles by which insureds should profit or gain. When a loss occurs, it is the goal of insurance to, at most, put the insured back in the approximate financial position the person or entity was in prior to the loss.

An example will help with the concept of indemnity:

EXAMPLE

An insured has a Homeowners Policy that includes personal property theft coverage. The insured's television set is stolen. The television set costs \$2,000 to replace, but because the stolen television is five years old, it does not have a value of \$2,000. Instead, its value at the time it is stolen is \$1,000. The principle of indemnity, applied to the insurance payment, results in the payment of \$1,000 to the insured.

The principle of indemnity does not imply that an insurance loss payment must or should restore the insured to exactly the same financial position that existed before the loss. The point of the principle is that the insured is not better off after a loss than before a loss. Many factors, such as inadequate insurance or a required deductible payment by the insured result in the insured not being fully indemnified, but this does not violate the principle.

Utmost Good Faith

Insurance contracts are said to be contracts of utmost good faith. This means that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal. Thus, the insured must reveal the exact nature and potential of the risks that are being transferred to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs of, and benefits, the insured.

This contrasts with the legal doctrine *caveat emptor* (let the buyer beware). *Uberrimae fidei* (of the utmost good faith) is the motto of Lloyd's of London.

Related to the concept of utmost good faith, some important concepts are explained below.

Representations and Misrepresentations

Representations are oral or written statements of facts, made by an applicant for insurance, to the best of the belief of the applicant. Many of these representations are responses to questions to determine whether the applicant is insurable and how much premium should be charged. For example, for auto insurance, insurers ask how far the applicant travels to work, if the applicant has had any accidents or citations, and so on. A representation is not a part of the contract.

If the representation is material to the issuance of the policy (relied upon by the insurer), the insurance company may ask a court to rescind the contract. Thus, insurance coverage is said to be voidable.

Misrepresentations are oral or written statements of facts, made by an applicant for insurance or an insured in the process of filing a claim, which the applicant/insured knows to be false. As with a representation, if the misrepresentation is material to the issuance of the policy, the insurance company may ask a court to rescind the contract. Again, insurance coverage is voidable. In addition, many insurance policies indicate that misrepresentations in the filing of a claim may void the policy.

Concealment

Concealment is closely related to misrepresentation. Concealment is the intentional failure to disclose material information. Before an insurance company is legally permitted to deny payment for concealment, it must prove (1) the insured knew that the fact was important to the insurance being applied for, the claim being made, etc.(the information is material), and (2) the insured had an intention to defraud the insurer.

EXAMPLE

Ray calls his agent, requesting insurance on his previously uninsured barn. While talking to the agent, Ray is watching a grass fire spread toward the barn. Ray does not mention the fire. Was the fact of the imminent fire material? Obviously. Did Ray intentionally remain silent about the fire? It looks that way. If the barn burns in the fire, might the insurer allege concealment?

As with misrepresentation, many insurance policies indicate that concealment in the filing of a claim may void the policy.

Warranty

A warranty is a statement that promises or guarantees that something is absolutely true or will be true in the future. For a statement to be considered a warranty, it must be made part of the policy.

If a warranty is breached (a warranty is not true or not complied with), the insurer can avoid payment under the policy. Warranties are sometimes found in commercial insurance policies. For example, a crime insurance policy may contain a promise by the insured that a specified alarm system or other anti-crime device is operative during the policy period.

Fraud

Fraud is an intentional manipulation of the truth, used to persuade someone to rely on that manipulation to the detriment of that individual. For example, because of fraud, a person gives up something of value or surrenders a legal right.

Fraud, in terms of insurance, may take place at the time of application or the making of a claim. An insured who (knowingly) falsely reports that his insured auto has been stolen has committed fraud.

Predictably, insurers and insurance policies take a dim view of fraud, misrepresentation, and concealment. As with misrepresentation and concealment, many policies contain a provision dealing with the subject of fraud.

Two additional terms important to a basic understanding of insurance are waiver and estoppel. Although these terms are different, they have a close relationship.

Waiver

A waiver is the voluntary giving up of a known right.

Under property insurance policies, the insurance company has a right to require the insured to submit a proof of loss (typically documents supporting the cost of repairs or replacement) before paying a loss. If the insurance company pays the loss before asking or receiving a proof of loss, the insurance company has waived its right to demand a proof of a loss.

Estoppel

Estoppel is the removal of a right or claimed position by acting in a manner that is inconsistent with that right or position.

An insurance company has a right to investigate and develop facts on whether a claim should or should not be paid. Obviously, an insurance company can immediately deny a claim or investigate the claim under what is called a reservation of rights letter. A reservation of rights letter simply states that the insurance company is investigating the facts now, but reserves the right to deny the claim at a later time. If the insurance company neither immediately denies the claim nor issues a reservation of rights letter, but continues to gather information and investigate the claim over several weeks, it may be estopped (prevented) by a court from denying the claim in the future. The company's action leads a reasonable person to believe that the claim will be paid.

CONCLUSION

The basic concepts of this chapter apply to property and casualty insurance as well as life and health insurance. The next chapter explores concepts of property and casualty insurance.

CHAPTER 2: PROPERTY AND CASUALTY INSURANCE BASICS

INTRODUCTION

Many concepts regarding the insurance industry are explained in chapter 1. These concepts are very important to gaining a clearer understanding of the nature of insurance generally, as well as the various types of insurance. Almost all of the concepts are applicable to either property and casualty insurance or life and health insurance. This chapter focuses principally on basic concepts of property and casualty insurance. The approach is broad-based, rather than concentrating on a specific policy or policies. The knowledge gained in this chapter can be used for an in-depth analysis of property and casualty policies in later chapters.

PRINCIPLES AND CONCEPTS - GENERAL

The primary purpose of this chapter is to build the necessary foundation of words, phrases and policy provisions for property and casualty insurance. A solid foundation is necessary to a better understanding of the property and casualty insurance business. This foundation is then utilized in the chapters that do analyze specific policies.

Insurable Interest

Insurable interest is the financial interest a person or organization has in the object that is being insured. If loss of or damage to the object occurs, it causes the person or organization to suffer a financial loss.

EXAMPLE

Nancy borrows \$200,000 from Central State Bank to purchase a home (the subject of insurance). Unfortunately, her home burns a few months after the purchase. In this example, not only does Nancy, the owner/borrower, have an insurable financial interest but so does Central State Bank, the lender. Both parties suffer a significant financial loss from this fire.

It is very important to note that the insurable interest in property insurance must exist at the time of the loss. Insurable interest can exist at the time the policy is issued but does not exist at time of loss.

EXAMPLE

When Nancy purchases the property in the prior example, she has an insurable interest. If Nancy sells the house outright but fails to cancel the insurance, and a loss occurs, she is not entitled to collect under the policy. The reason is that since she no longer owns the house, she no longer has an insurable interest in the house.

Principle of Indemnity

If Nancy is permitted to collect without an insurable interest, two principles of insurance are violated. First, the principle of indemnity, reviewed in the previous chapter, is violated because Nancy is put into a better economic position than the position that existed prior to the loss. Secondly, the potential for financial gain for Nancy creates a moral hazard. (Moral hazard is examined in greater detail later in this chapter.) Moral hazard, in this situation, means that Nancy has an incentive to cause a loss.

Cause of Loss

In a property insurance policy, one of the most important concepts related to coverage is cause of loss. Before a claim for property damage is paid, the damage must result from a covered cause of loss. A covered cause of loss is one indicated to be covered by the policy. The term peril has been used when referring to a cause of loss. Most current property policies use the term cause of loss, but some policies retain the use of the term peril.

It is common for people entering the insurance industry to confuse perils with hazards. The following example clarifies the difference:

EXAMPLE

If there is frayed insulation on electrical wiring and a fire starts and damages the property, what is the hazard and what is the peril? The frayed insulation on the electrical wiring is the hazard. The peril or cause of loss is fire.

Named Perils versus Open Perils

Insurance policies have different ways of stating what perils are included within the policy's coverage. Some insurance policies list each and every peril covered. These are called named perils policies or specified perils policies. A good example of named perils is a policy that covers direct damage to covered property caused by or resulting from the perils of: (1) fire, (2) lightning, and (3) internal explosion.

Another approach to identifying covered perils is to not identify them at all but to state that the policy covers all causes of direct physical loss or damage except those which are specifically limited or stated not to be covered. This type of policy is an open perils policy. An example of wording found in an open perils policy is, "We insure against risk of direct physical loss of or damage to covered property as described unless the loss is excluded or limited." Until about 30 years ago, the insurance industry used the phrase "all risk" to describe the open perils approach. Unfortunately, many insureds believed the policies literally insured against all risks of loss. As a result, the insureds sued insurance companies when coverage was denied for excluded perils.

In a named peril policy, the burden of proof rests with the insured because the insured must show that a loss is caused by a covered peril. In the case of an open perils policy, the burden of proof is borne by the insurance company because the company must prove that the loss is caused by an excluded peril.

Direct Loss

A direct loss is loss or damage as a direct result of a covered cause of loss. For example, a house that burns because of fire (a covered peril) illustrates a direct loss. The house was directly affected by the fire.

Consequential or Indirect Loss

Consequential or indirect loss is a loss or damage that flows from or results from an insured's inability to use his/her property because of direct loss to the property.

EXAMPLE

Wild Bill's Barbecue sustains damage to its building and business personal property when a grease fire occurs. This is a direct loss to the property from the peril of fire.

Wild Bill's loses income and incurs continuing expenses while the business is closed for repairs to the kitchen. This is an indirect loss resulting from fire damage to the property.

Blanket versus Specific Insurance

In the writing of property insurance, there are different methods of providing coverage when there are different types of property to be insured. One type of property is real property, such as buildings and other structures. Another type of property is personal property or property other than real property. Examples of this type of property are inventory, furniture, fixtures, household contents, and the like.

For those insureds covering one type of property (either building or personal property), a property policy with a specific limit of insurance is written on that property. This is called specific insurance. If two or more types of property or two or more locations are to be insured, these may also be listed or scheduled in the policy with specific limits of insurance applying to each type of property at each location. This method of writing specific insurance is called scheduled coverage. Both of these methods are commonly used by insurance agents and companies when writing property insurance policies.

When the insured has multiple locations and multiple types of property, the process of writing coverage can be complex. As opposed to specific insurance or scheduled coverage, blanket insurance is a method of writing property insurance with a single limit of insurance applying to more than one type of property (real or personal) or property at more than one location.

The following illustration contrasts the schedule and blanket methods of writing property insurance and assumes that both locations are owned by the same insured.

EXAMPLE		
	Location A	Location B
Building	\$100,000	\$80,000
Personal Property	\$50,000	\$40,000
If on a Scheduled Basis - each location and each type of property is listed separately		
If on a Blanket Basis- has one single limit listed, for example \$270,000		

An illustration of the flexibility of blanket insurance can be seen by using locations A and B in the above example. Assume the specific limits shown are the proper amounts to cover the personal property at each location at the time the policy is written. Assume the insured transfers \$10,000 of personal property from Location A to Location B; and after the transfer is made, a fire occurs at Location B. If all the personal property burns in the fire, coverage written on a scheduled basis is inadequate – a \$50,000 loss with only \$40,000 coverage. If the locations are written on a blanket building and personal property basis with a \$270,000 limit, there is not a problem with covering personal property at either location, because there is \$270,000 coverage for a \$50,000 loss to personal property.

The advantages of using blanket property insurance are:

- It gives the insured the ability to apply insurance where it is needed when more than one type of property is covered.
- When the policy covers personal property at several locations, the insured does not have to worry about fluctuating values between or among locations.

Despite the obvious advantages of this approach, blanket insurance is not always used. In addition, when used, the insurer may place restrictions on the coverage amounts available at time of loss through endorsement to the policy.

Loss Valuation

It is the task of the agent, broker, and insurance company to talk with the insured at the time property insurance is written to better enable the insured to develop a realistic estimate of values. If a covered property loss occurs, the claims representative must determine the value of the property at the time of loss in order to properly settle the claim.

Actual Cash Value

Although insurance policies typically have many words and phrases that are specifically defined, this is not the case for the term actual cash value, which is often abbreviated ACV. The most widely used definition for ACV, which comes from court decisions, is replacement cost minus depreciation. Replacement cost is the amount of money it takes to replace a piece

of property, and depreciation is the reduction in value associated with wear and tear (and perhaps other factors) to the property.

Therefore: **ACV = Replacement Cost minus Depreciation**

EXAMPLE

Helen Homeowner owns a television set. One day, a thief breaks into her house and steals the television set. Helen discovers it will cost \$2,000 to replace her television set with one just like it (the insurance phrase, which refers to this is like kind and quality). However, at the time it is stolen, Helen's television set is five years old. Because it is five years old, depreciation enters into the calculation of actual cash value. Simple depreciation is calculated by dividing the actual age of the set by the useful life of the set. The useful life of most television sets is 10 years, therefore:

Depreciation = TV has 10 year life span and is 5 years old, so the TV has 50% useful life left and is half depreciated. The depreciation is $50\% \times \$2,000 = \$1,000$; therefore, $ACV = \$2,000 - \$1,000 = \$1,000$.

Some other important points on ACV are:

- On new property, with no depreciation to deduct, ACV and replacement cost (defined below) are the same.
- It is fairly simple to ascertain the replacement cost of an item like a TV set. With autos, however, replacement cost is impossible to determine, because there is no cost today of a new 2010 Chevrolet Camaro. As a result, the above formula cannot be applied to automobiles. Therefore, with automobiles and potentially some other types of property, ACV may equate to fair market value.
- Some insurers use factors in addition to depreciation (e.g., obsolescence) to determine actual cash value.

Replacement Cost

Replacement cost is the cost to replace damaged property with like kind and quality at today's prices without a deduction for depreciation. Many insureds do not like to purchase insurance policies that pay actual cash value for loss or damage for property claims, particularly when there is a great deal of depreciation involved. As an alternative, some property policies agree to value certain losses using replacement cost, and other property policies provide an option to purchase replacement cost coverage.

Functional Replacement Cost

As reviewed above, replacement cost means the cost of new property of like kind and quality at today's prices without deduction for depreciation. Functional replacement cost is just an alternate form of valuation of property that is (or may be) used in some insurance policies. It is often used when it is impossible or unnecessary to actually replace the original insured property, but the damaged or destroyed property can be replaced with functionally equivalent property (but not physically identical) at a lower cost.

EXAMPLE

A building used as an automotive garage was built of masonry construction in 1940. To replace the building with the same type of construction costs \$300,000 today. If the building is destroyed, the insured does not need to replace the building with masonry construction and is happy with an equally useful metal building. The metal building is a functional replacement and only costs \$150,000.

The advantage of the functional replacement cost method is that the insured may replace property lost or destroyed with property that serves the insured's needs, without having to carry an amount of insurance greater than the functional value. In the above example, since the insured has no need to replace the garage with a masonry building at a cost of \$300,000, there is no need to carry \$300,000 of insurance on the property. An amount of \$150,000 meets the insured's needs and saves the insured a considerable amount of premium.

For partial losses, the policy usually agrees to pay the costs of repairs in the same architectural style using less costly materials, if available. For example, drywall is used instead of plaster.

Market Value

Market value is the value of property (either real or personal) determined by the amount of money people will pay for the property knowing all the relevant facts. For most property insurance coverages, market value is not considered a relevant value. Insurance valuation is usually concerned with physical value based on the costs to repair or replace.

However, there are exceptions. As previously stated, in auto insurance, payment for total losses uses market value as the basis for determining actual cash value. Beyond that, the only area where market value may be relevant to insurance is in the valuation of some types of personal property where there is: (1) a readily available market which provides market values, and (2) the personal property that is insured is intended for sale in that market. For example, finished goods held for sale by a manufacturer might be covered by a policy that agrees to pay for losses at selling price - in essence, market value.

Book Value

Book value is the historical cost (the price paid to acquire the property) less accumulated depreciation. This is generally an accounting valuation which does not provide much guidance for insurance valuations.

Agreed Value

Agreed value applies to a particular provision found in some property insurance policies. When this provision is activated, the insured and insurance company agree on a value of the property. The amount of insurance carried must be equal to a stated percentage of the agreed value to avoid a claims payment penalty. A property policy usually contains a coinsurance requirement (reviewed later in this chapter) which states that the insured must carry insurance to a specified percentage of property value. An agreed value provision suspends any coinsurance requirement.

Stated Value

Stated amount is a method of fixing the maximum amount payable in an insurance policy. Stated amount is most commonly used in automobile physical damage insurance, and it is usually put into effect by an endorsement. Stated amount caps the maximum ACV payment available.

Valued Policy

A valued policy declares the amount that is paid in the case of a total loss of the property. For example, a valuable painting is insured for \$20,000 in a valued policy. The policy states that the insurer agrees that the value of the painting is \$20,000. This means that if the painting is destroyed or stolen the insurer pays \$20,000 regardless of what the painting is actually worth at the time of the loss.

PRINCIPLES AND CONCEPTS - UNDERWRITING

Underwriting

Underwriting is the process of selecting a risk and assigning a proper rating classification (to calculate the correct premium) in a manner that ensures that the insured obtains insurance coverage and the insurance company obtains a profit. In some instances, the underwriting process includes the rejection of a particular risk or the modification of the terms and acceptable conditions. The people involved in the underwriting process are referred to as underwriters, and their role is very important in the financial success of an insurance company.

An underwriter is not simply a person who sits behind a desk and says yes or no on behalf of an insurance company. An underwriter attempts to gather data related to risk factors and work with agents and brokers to write insurance policies. There are many sources of underwriting information. In addition to the application, one of the most important sources is the agent. In many instances, the agent serves as a field underwriter and has the advantage of inspecting the property and/or talking with the insured.

Another common source of underwriting information is government records. These may be as simple as a driver's license record to something as sophisticated as bankruptcy filings. Investigative consumer reports are a third source of underwriting information that are commonly used for certain types of insurance. Finally, in the evaluation of commercial risks, an underwriter may request a report from a major financial rating service (Standard & Poor's or Dun & Bradstreet) on prospective insureds.

Sometimes after evaluating the risk factors, underwriters work with an agent to reclassify a risk in a way to change the premium or coverage to be more competitive with other insurance companies. In some instances, an underwriter may modify the insurance coverage to make the risk acceptable. Underwriting is a decision-making process, whether it involves selection of the risk or pricing of the insurance product.

Loss Ratio

One particularly important factor of analysis for the underwriter is loss ratio. A loss ratio is simply a comparison of the amount of losses to the premium. The loss ratio tells the underwriter how

an individual insured's loss ratio compares to other insureds. For example, a particular insured has a 50% loss ratio, which is good compared to average insureds who have a 55% loss ratio. Underwriters also use loss ratio as a tool to compare the profitability of certain lines of business or types of insureds. Insurance companies have a loss ratio for each line of business written, as well as all lines of business combined. Other persons or organizations may use the company's loss ratios to compare the relative efficiency and effectiveness of the insurance company in running its operations.

Combined Ratio - Loss Ratio and Expense Ratio

Another ratio used in analyzing a company's operating results is the combined ratio. This ratio combines the company's overall loss ratio and the company's expense ratio. The expense ratio indicates the percentage of premiums used to pay the insurer's operating expenses. Most insurers want their combined ratio to be less than 100%.

Rate and Premium

Rate and premium are frequently used interchangeably; but the meanings of the words are different. A rate is a price per unit. The amount to be charged for a certain amount of insurance coverage is the premium.

EXAMPLE

A fire insurance rate for a certain type of building construction may be 20 cents per \$100 of coverage. The premium is made up of the rate per unit multiplied by the number of units.

A building insured for \$100,000:

$$\$100,000/\$100 = 1,000 \text{ units}$$

Therefore the premium is:

$$1000 \text{ units} \times \$0.20/\text{unit} = \$200.$$

The primary objective of ratemaking is to establish a pricing structure to cover claims, to pay insurer operating expenses, and to provide a profit for the insurer. There are various types of rates.

Judgment Rates

Judgment rates are rates applied solely to individual insureds by the insurance company. Judgment rates are typically used when there are not a large number of insureds with similar characteristics. Therefore, these rates are most frequently applied to specialty or large insureds. Each potential insured is evaluated on its own merits, including the chances of a loss occurring. An example of where judgment rates are used is the insuring of a new drug for products liability insurance.

Manual Rates

For rating purposes, insureds with similar characteristics are sometimes placed into classes. Insureds in the same class are charged the same rate. The term manual rates refers to the traditional practice of rates being published on pages in a notebook or binder which is referred to as a rate manual. Though the term still applies, in recent years, rate manuals have been transferred to

electronic media. Manual rates are the only type of rates used in many lines of insurance. In other lines of insurance, manual rates may be used as the starting point for developing a merit rate.

Merit Rates

Merit rates consider the individual loss characteristics of a particular risk. Merit rates gauge the individual loss history and, sometimes, loss control measures a particular insured may have taken in order to reduce either the insured's frequency or severity of loss. There are a number of different methods to derive merit rates, but the material here focuses on only two of the methods.

Experience Rating

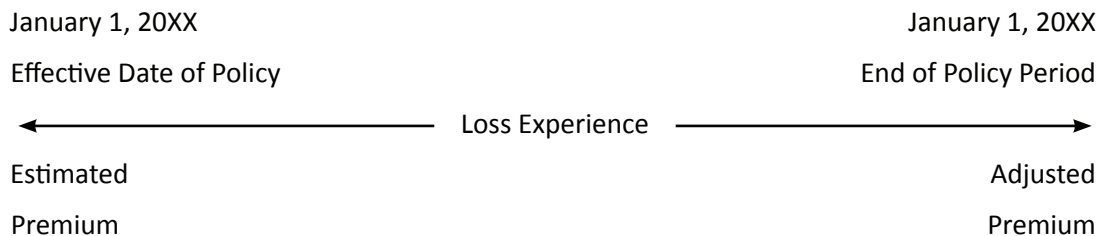
The first method of merit rating explained here is experience rating. One complaint, expressed by some insureds, is that insurance premiums are not fair because they do not take into consideration that a particular insured is a better risk than the average in the same class. Experience rating considers the individual loss experience (loss ratio) of a particular insured. Experience rating applies past loss experience (usually one to three years) to the current policy year. If the individual insured's loss experience is better than average for all insureds collectively in that same rating class, the insurer reduces the manual rate to be charged to that insured during the coming policy period. If the opposite is true, the insurer surcharges (adds to) the manual rate.

Retrospective Rating

The second method of merit rating explained here is retrospective rating. Unlike experience rating, retrospective rating does not apply past loss experience to the present. Rather, retrospective rating applies the loss history of the current year to a final premium for the same policy year.

EXAMPLE

An estimated (deposit) premium is paid at the beginning of the policy period (typically one year), and then the insured's loss experience is recorded throughout the year. At some time after the policy year has ended, the loss experience is analyzed, and the insured either pays additional premium based on that year's loss experience or receives a premium refund. (This loss experience may be examined at several different points after the end of the policy period before a premium becomes final.)



Most retrospective ratings are designed in a manner in which the insured does not receive too large a benefit for good experience during the policy period nor is penalized too greatly if the insured's loss experience is worse than expected. As indicated in the example above, care must be exercised if retrospective rating is utilized, as it may be several years before the actual premium is determined.

Rating Bureau or Advisory Organization

The rate information has historically been compiled by a rating bureau or advisory organization. A rating bureau is a company that gathers statistical data about various risk factors on individual insureds from a number of insurance companies. Another source of rates is a state agency that is usually a part of the state insurance department. In some cases, rates are generated by the insurance company; and, where required, the insurance company files the rates with the insurance department of the state(s) where insurance is written.

Examples include the American Association of Insurance Services (AAIS), a national insurance advisory organization that develops policy forms and rating information used by more than 600 property and casualty insurers throughout the United States, and Insurance Services Office (ISO), a leading source of information about property and casualty insurance risk, providing statistical, actuarial, underwriting, and claims information as well as policy language.

As a result of a number of lawsuits brought against Insurance Services Office (ISO), the common practice of sharing and pooling loss information to set rates was abandoned by most rating organizations. In its place, a new system of rate information has been formulated.

Loss Costs

The new system is called loss costs. In this system, prospective loss costs are provided to insurance companies only on an advisory basis. The rating organization provides the portion of the rate which indicates the loss experience (loss costs) of each risk classification. Then each specific insurance company adds its own company components for the following: (1) expenses, (2) unexpected contingencies or losses, and (3) profits. The insurance companies combine these to develop the full rate the company uses. Loss costs apply to most lines of insurance.

Hazards

Hazard is a condition within an exposure that makes it more susceptible to a loss. There are three common types of hazards in property and casualty insurance, as described below:

Physical hazards arise from structural, operational, or material characteristics of a risk. A home with older wiring has a greater probability or chance of loss by fire; a home located near a river has a greater probability or chance of loss from flooding.

Moral hazards arise from character flaws in a person that leads him/her to create a loss or exaggerate a loss. Dishonesty, such as the reporting of theft of insured property when no theft actually occurred, is an example of a moral hazard.

Morale hazards arise from irresponsibility, carelessness, or indifference to a loss. An insured failing to lock the door of his/her car in a busy shopping center parking lot because the insured has reasoned, "if the car is stolen, I have insurance coverage", is an example of morale hazard.

The greater the existence of any of these hazards, there is a greater chance of loss. Insurance company underwriters attempt to discover the existence of hazards when gathering and evaluating information on a risk, assigning the proper classifications, and determining premium.

Basic Types of Construction

The review of property and casualty insurance basics continues here with an explanation of the types of construction of homes and commercial buildings. For property insurance underwriting and rating purposes, insurance companies usually use the following six types of construction. Each type of construction is assigned a code number from one to six, with one being the least fire resistant and six having the highest resistance to fire.

Frame construction describes a type of building in which the exterior walls are constructed of wood or similar combustible materials. The frame type of construction can also contain mixed construction (including brick or stone veneer, or stucco on wood) and still be considered frame construction if the majority of the exterior is wood. Although frame construction is the least desirable in terms of fire resistance, it is better than masonry construction in terms of earthquake resistance.

Joisted masonry construction is a building with exterior walls constructed of masonry materials such as brick, hollow concrete block, adobe, concrete, gypsum block, stone, or tile. With this type of construction, typically only the roof, interior framing, and floors are combustible.

A noncombustible building is one with exterior walls, floor, and roof constructed of and supported by metal, gypsum, and any other noncombustible material.

A masonry noncombustible building is constructed with exterior walls having a fire-resistive rating of not less than one hour, or the building must be of masonry construction. To be classified masonry noncombustible, the floors and roof must be either noncombustible or made of a slow-burning material.

A modified fire resistive building is built with exterior walls, floor, and roof made up of masonry construction with a fire-resistive rating of at least one hour, but not more than two hours.

Fire resistive is the last type of construction described here. A fire resistive building meets a construction requirement for a specified thickness of masonry exterior walls and a specified fire-resistive rating for structural framing of not less than two hours.

PRINCIPLES AND CONCEPTS – INSURANCE POLICY

Although insurance policies come in many different print styles or presentation formats, they usually contain a common policy structure. The following structure is typical.

Declarations

The first item common to insurance policies is the Declarations or Declarations Page(s). This page (sometimes pages) contains information that personalizes the policy.

The Declarations typically includes:

- the named person or persons to be insured
- the mailing address of the named insured
- the location of the property
- the coverages provided by the policy
- a specific description of the amounts of insurance
- the effective and expiration dates of coverage
- list of any forms and endorsements applicable

Definitions

As was stated in chapter 1, an insurance policy is really a contract. In this contract, there are frequently words and combinations of words which are used in daily conversation but have special meanings within the context of the insurance policy. Typically, these words and phrases are noted in the policy by the use of bolding or quotation marks. Commonly, the definitions are found in the beginning of the policies in personal lines policies (insurance policies for homes and personal use automobiles) and at the end of commercial lines policies (insurance policies for businesses). Definitions are included to create clarity on what words and combinations of words specifically mean within the policy.

For example, “bodily Injury” means bodily harm, sickness or disease, including required care, loss of services, and death that results.

Insuring Agreement

The insuring agreement section of the policy outlines the promises the insurance company makes to the insured. Frequently, these promises are made in broad terms and later clarified in other sections of the policy.

EXAMPLE

“We (the insurance company) will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages....”

Duty to Defend

The payment of claims for damages for which the insured is legally obligated is one of the primary purposes for buying liability insurance policies. However, the insuring agreement of insurance policies where the insured may be legally liable to another usually contains a duty to defend that is also customarily found in the insuring agreement.

One very important additional benefit of liability insurance is when the insurer has a contractual obligation to provide a defense, and often provides the defense costs in addition to the stated limit of liability. Typically, the insurance company investigates claims, hires attorneys to represent the insured,

and occasionally hires expert witnesses. The insured rarely has to do anything other than cooperate in the investigation and provide assistance if a lawsuit goes to mediation, arbitration or trial.

The insurance company's duty to defend is broader than its potential duty to pay damages. In cases where the claim or suit is found to be groundless (without merit), the insurance company must still defend the insured until it can be determined that the claim or suit is without merit.

If a claim or suit clearly is not within the coverage, then the insurance company is not obligated to provide a defense. And almost all liability policies state that the insurance company's duty to defend ends when the insurance company has used up the applicable limits of insurance in the payment of settlements or judgments.

Two policies, the Business Auto Policy and Commercial General Liability Policy, have been modified within recent years to reinforce the concept that the insurance company is under no obligation to provide a defense for a suit not covered by the policy. For example, the following language is often used:

However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply.

There are some insurance policies that give the insurance company the right to be involved in the defense but do not obligate the insurer to do so. These types of provisions may be classified as "modified defense" provisions.

Occurrence Versus Claims-made

Another method of differentiation of insuring agreements in liability insurance policies is the "trigger" of coverage. The policy "trigger" is the mechanism that sets in motion the obligation of the policy to respond. There are two potential "triggers" in liability policies - occurrence and claims-made.

Occurrence

An occurrence policy states that the bodily injury, property damage, etc., covered by the policy, must occur during the policy period in order for the policy to respond. The claim, from the policy's perspective, can be brought at any time thereafter.

Claims-made

A claims-made policy states that the claim must be made during the policy period in order for the policy to respond. The policy states what it considers to be the making of the claim. Without any further restrictions, this means that the policy responds to a claim made during the policy period even if the bodily injury, property damage, etc., covered by the policy, occurs prior to the policy period or during the policy period. Since most insurers do not want to provide unlimited insurance protection for these prior acts (investigation and defense is most difficult), a date is established that states the bodily injury, property damage, etc., covered by the policy, must take place on or after a date certain and prior to the expiration date of the policy. This date is identified as the retroactive date.

Retroactive Date

The retroactive date can be the inception date of the policy or some date prior to the policy period. Obviously, the farther back the retroactive date, the more potential for the insurance policy to have to respond.

Extended Reporting Periods

Extended reporting periods extend the time the insured has to report claims to the insurer or for claims to be made in accordance with policy provisions. Extended reporting periods do not extend the policy period or change the scope of the coverage provided. The coverage provided does not apply to claims that are covered under any subsequent insurance the named insured purchases, or that would be covered but for exhaustion of the amount of insurance applicable to such claims. Most extended reporting provisions make the insurance excess. Extended reporting periods may or may not reinstate aggregates or increase the limits of insurance.

Additional/Supplementary Coverages

Some insurance policies contain a separate section titled Additional Coverages, Supplementary Coverages, Supplementary Payments, or Extensions of Coverage.

No matter the name, these policy sections are used to specifically list additional obligations of the insurance company to the insured under given circumstances. For example, the Building and Personal Property Coverage Form lists several coverages under a section titled Additional Coverages, which includes coverage for debris removal, preservation of property, etc. A second example is the term Supplementary Payments, commonly found in policies containing liability coverage, such as the Business Auto Policy and Personal Auto Policy.

EXAMPLE**Business Auto Policy – Supplementary Payments**

All reasonable expenses incurred by the “insured” at our request, including actual loss of earnings up to \$XXX per day because of time off from work.

Exclusions

The policy provisions that limit or restrict coverage are commonly called exclusions. Typically, insurance policies that initially provide broad coverage promises use exclusions to shape what the policy really intends to cover.

Exclusions are commonly included within a policy to eliminate coverage for the following possible reasons:

- the exposure is not insurable for a private insurer - e.g., the flood exposure;
- the risk or exposure is not something that the average insured encounters - e.g., ownership of an aircraft;
- the exposure is something covered by other insurance policies – e.g., workers compensation exclusion under a Commercial General Liability Policy; or
- the exposure is so severe that rates charged do not anticipate covering the exposure, e.g., causing intentional injury to others.

Conditions

Conditions are obligations required of the insured and insurance company to carry out other policy provisions. The insurer promises to pay, defend, or give some other service that is only enforceable if: (1) an insured event occurs, and (2) the insured has complied with the contractual obligations as indicated by the insurance policy conditions.

For example, when a loss occurs, the insured has certain duties to perform after the loss and before the insurance company is obligated to pay. The insurance company has certain obligations to pay claims on a timely basis after receipt of the claim and proof of loss. Each insurance policy generally contains numerous conditions.

Endorsements

Endorsements are added to an otherwise complete policy to add coverage, modify coverage, clarify coverage, exclude coverage, and/or comply with state specific requirements. Some endorsements are added on request from the insured, while others are added by the insurance company. Endorsements may or may not cause a change of premium. Endorsements may be part of a policy on its effective date or may be added any time during the policy if the insured desires and the insurer agrees or if circumstances change.

Policy structure is straightforward, which makes it easier to become familiar with insurance policies. Among insurance policies, there are several common provisions. These are examined next.

Insureds – Named, First Named, Automatic, and Additional

Named insureds are persons or organizations specifically named on the Declarations. If there is more than one person or organization, the first person or organization listed is identified as the first named insured. The concept of First Named Insured is very important in many insurance policies, particularly commercial insurance policies, because the first named insured represents all named insureds in important matters with the insurance company and has certain rights and responsibilities. For example, the first named insured may cancel the policy. On the other hand, if the policy is cancelled by the insurance company, the first named insured is the one who receives notice of the cancellation. The first named insured is the only named insured responsible for payment of premium. Not all policies mention first named insureds.

Automatic insureds are persons who are granted insured status because they fit into a category or class of persons described in the policy provisions.

EXAMPLE

Bob has a Personal Auto Policy naming him and his wife, Pat, as the named insureds. The policy, in the insuring agreement, describes an “insured” to include “you” or any “family member.” Under the Definitions section, the policy defines “family member” as:

“Family member” means a person related to you by blood, marriage, or adoption who is a resident of your household. This includes a ward or foster child.

Phil, who is their son and resides in their household, is considered a “family member” and therefore is an automatic insured. He falls within the class of persons who are described as an insured under the policy provisions.

An additional insured is a person or entity not named on the Declarations nor included as an automatic insured, but added to the policy as an insured by endorsement. When properly added, an additional insured is entitled to insurance coverage under the policy, based on the terms and conditions of the endorsement.

Policy Period

The period of time for which the insurance policy provides coverage is called the policy period. The beginning of the policy period is referred to as the effective date; and the end of the policy period is called the expiration date. The dates of the policy period appear on the Declarations. Policy periods usually range from six months (common for personal auto policies) to three years. One year is probably the most common length of time for most types of property and casualty insurance policies. If a policy is written for a three year period, each annual date that is the same as the inception date is considered the anniversary date.

Policy Territory

The policy territory is the geographical area in which accidents, occurrences, or events must occur for coverage to be applicable under the insurance policy. For example, automobile policies commonly list the policy territory as the United States, its territories and possessions, Puerto Rico, and Canada.

Cancellation and Non-renewal

Cancellation is the termination of the insurance policy by either party. The cancellation provision contained within the insurance policy outlines the rights and responsibilities of each party in terms of advance notice, the refund of premium, and to whom the cancellation notice is sent.

Usually, when the insurance company cancels a policy, the insured is paid a refund of any premium paid on a pro rata basis. Sometimes, when the insured requests cancellation during the policy period, the policy states that the insured is only entitled to short rate cancellation. Short rate is an amount less than pro rata.

EXAMPLE

If the annual premium is \$360, and, after four months, the insurance company cancels the policy, the insured receives a refund of \$240 ($8/12 \times \360).

Instead of the insurer canceling, the insured requests cancellation under a policy with a short rate cancellation provision; the insured only receives a refund of \$216 which is 90% of the pro rata cancellation amount.

Non-renewal is the action by the insurance company to terminate insurance coverage at the expiration date or anniversary date of the policy.

Deductibles

A deductible is the amount of loss under an insurance policy that an insured must pay or absorb before the insurance company pays its portion of the loss. When the insurance policy is written, the deductible amount is shown (generally) in the policy's Declarations. The deductible amount

may be a matter of the insured's choice or of the insurer's underwriting requirements. In either case, it is a form of retention that was referred to in chapter 1 as one of the methods of handling risk. The deductible eliminates the payment of small claims by the insurance company, lowers premium, and makes insurance more affordable. Deductibles are generally stated as a dollar amount, but a few policies express deductibles as a percentage of a covered loss or percentage of coverage amount. Deductibles may also be stated as a period of time. These types of deductibles are referred to as "waiting period deductibles".

The deductible is subtracted from the amount of loss and not from the limit of insurance. For example, assume the insured selects a \$500 deductible under a Homeowners Policy. The insured has \$3,000 in guns stolen. The Homeowners Policy has an internal limit of \$2,500 for theft of guns. The insured is paid \$2,500, not \$2,000. [$\$3,000$ (amount of loss) - $\$500$ deductible = $\$2,500$ (loss payment is within the internal limit)]

Other Insurance

In most instances when an insured has a covered loss, the insured has one policy that pays the loss; however, in a few instances the insured has more than one policy that may pay. Almost every policy has an "other insurance" provision that explains how the policy responds if other insurance exists.

Primary

Some insurance policies contain an "other insurance" provision stating the insurance coverage pays first even if there is other valid and collectable insurance. If an insurance policy has this type of "other insurance" provision, it is referred to as primary insurance.

For example, the Business Auto Policy states that for any auto the named insured owns, the Business Auto Policy coverage provides primary insurance. Very simply, the primary policy pays first. However, there can be situations where two policies are both primary; if this is the situation, the policies share. This is explained below under Methods of Sharing.

Excess

Frequently, an "other insurance" provision states that its coverage is excess to any other valid and collectible insurance. Insurance subject to an excess "other insurance" provision pays only after the other policy has paid its limits. The full limit of insurance under the excess policy is available if needed. Some insurance policies contain provisions in which specific types of losses are paid on an excess basis.

EXAMPLE

An insured has a Business Auto Policy with limits of \$1,000,000; and an Excess Liability Policy of \$2,000,000. If the insured causes a serious auto accident where a judgment of \$1.5 million is awarded, the Business Auto Policy pays its limits of \$1,000,000, and the additional \$500,000 is paid by the Excess Liability Policy.

Methods of Sharing

Frequently, when insurance policies apply to the same loss, the other insurance provision states there is a sharing of the loss.

Contribution by Limits

If an insurance policy states it shares in the payment of a loss by contribution by limits, the payment is made on a pro rata basis. This means the amount an insurance policy pays is determined by the proportion of its limits as compared with the total limits of other insurance policies available to pay the loss. It may state this applies whether or not the other insurance actually pays.

EXAMPLE

A building has a value of \$100,000. Company Y insures the building for \$60,000 and Company Z insures the building for \$40,000. If a fire causes a \$20,000 loss, each company pays its pro rata share. This is calculated by taking the company's limit over the combined limits of all policies.

Here's how it works:

Company Y Limit	
Company Y Limit + Company Z Limit	x Loss = Company Y's payment
(Same formula for Company Z)	

Company Y's Payment	$\frac{\$60,000}{\$100,000}$	x \$20,000 = \$12,000
---------------------	------------------------------	-----------------------

Company Z's Payment	$\frac{\$40,000}{\$100,000}$	x \$20,000 = \$8,000
---------------------	------------------------------	----------------------

Equal Shares

Another method of sharing is contribution by equal shares. The contribution by equal shares provision applies only if all the applicable insurance policies involved contain this provision. This method of sharing is used in most liability policies (not the Business Auto Policy), other than those written specifically as excess.

EXAMPLE

Company N has a limit of \$300,000 per occurrence and

Company R has a limit of \$100,000 per occurrence.

There is a loss of \$225,000.

Company N pays: \$100,000

Company R pays: \$100,000

The \$25,000 remaining is paid by Company N.

In this example, each company pays an equal amount or share until its limit is exhausted. Company N still has limits available after the equal shares are paid, so it is obligated to pay the additional amount.

Non-concurrency

Non-concurrency is a term used to describe a situation where there are two or more insurance policies not written with the same terms and conditions. For example: the insured purchases coverage on personal property from Companies A and B. The policy from Company A covers theft, and the policy from Company B does not. The danger here is that non-concurrency results in a gap in coverage. For example, the “other insurance” provision of Company A states that if there is other insurance on the property, it pays its pro rata share whether or not the other insurance is collectible. Company A pays its pro rata share of the theft loss. Company B does not pay at all because it does not cover the peril of theft.

Non-concurrency in liability insurance policies can also exist when there are not common inception and expiration dates on primary insurance policies with aggregate limits (reviewed below) and the commercial umbrella/excess liability insurance policy. For example, the effective and expiration dates of the Commercial General Liability Policy, Workers Compensation and Employers Liability Insurance Policy, and Commercial Umbrella Liability Insurance Policy should be the same. The Commercial Umbrella Policy may have a provision that it drops down and acts as primary insurance if the aggregates in the primary policy are exhausted by claims that occur during the policy period of the Umbrella. There is a possibility that claims under these underlying policies may have aggregates used for claims outside the policy period of the Umbrella if the effective and expiration dates are not the same, which creates a potential gap in coverage.

Policy Limits

Policy limits are the maximum dollar amounts an insurance policy pays for a covered loss. Most policies are written with policy limits, but there are a few which contain no specific dollar limit. Insurance policy limits are important from both the insured’s and insurance company’s perspective. It is important for the insured to evaluate his or her exposure to financial loss and to select an acceptable policy limit for adequate protection. Limits are important from the insurance company’s standpoint, to measure its potential financial exposure to loss under the insurance policies it writes and to permit it to charge appropriate premiums and cap its losses.

Each property insurance policy an insurance company issues states or declares the policy limits for each type of property and type of coverage. Most often, the policy limits are on the Declarations.

EXAMPLE**COMMERCIAL PROPERTY COVERAGE DECLARATIONS**

Coverage	Limit of Insurance	Covered Causes of Loss
Building	\$500,000	Special
Personal	\$200,000	Special

HOMEOWNERS POLICY DECLARATIONS

Section I Coverages	Limit of Liability
A. Dwelling	\$100,000
B. Other Structures	\$ 10,000
C. Personal Property	\$ 50,000
D. Loss of Use	\$ 30,000

It is common for property insurance policies to also have internal limits of insurance. These may be called special limits or sub-limits. Internal limits of insurance may be specified on the Declarations, but more often are found elsewhere in the policy. Internal limits of insurance may restrict the amount of the policy limit that can be used for a particular loss:

- to certain designated property;
- to certain designated property when the loss is caused by a certain peril; or
- at certain locations.

For example, in a Homeowners Policy, there are internal limits of \$1,500 on watercraft and \$2,500 for the theft of firearms.

Liability insurance policies (policies that cover the legal liability of insureds to third parties) are reviewed in greater depth later, but it is important to understand that liability limits vary with the type of liability insurance. Typically, at least two of the following limits are included:

Per Occurrence (Accident)

This limit is the most an insurance company pays arising out of a single occurrence of a covered loss, no matter how many people are injured or claims (bodily injury and/or property damage) are made. Most liability insurance policies state the limits on an occurrence basis. Some policies state their limits on a per accident basis. This is largely traditional.

Per Person

This limit is commonly found in the liability section of the Personal Auto Policy. It is the most which is paid for any one person. Therefore, the policy pays each and every person involved in an occurrence up to the Per Person Limit, no matter how many persons make claims. However, these policies with Per Person Limits may be subject to a Per Occurrence or Per Accident Limit as well.

EXAMPLE

Peter has a Personal Auto Policy with Bodily Injury Limits of \$25,000 Per Person and \$50,000 Per Accident. Peter has an accident causing:

Injuries to Paul in the amount of \$27,000
 Injuries to Mary in the amount of \$13,000
 Injuries to Judy in the amount of \$12,000

How much does the policy pay?

The most that Paul receives is \$25,000, since the Per Person Policy Limit is \$25,000 per person. Peter pays the additional \$2,000 out of his pocket. Because of the \$50,000 Per Accident Limit, there is \$25,000 left to pay \$13,000 to Mary + \$12,000 to Judy.

If there had been another person who was making a claim, there would be no money left, even if the claim was under the \$25,000 limit per person. (How money is apportioned to the various parties if the limits are exceeded is not a part of this review.)

Aggregate Limit

An Aggregate Limit is the most a policy pays, regardless of the number of claims during the policy period. Policies that contain an Aggregate Limit also contain a Per Occurrence Limit. An Aggregate Limit is found in the Commercial General Liability (CGL), Garage Insurance, and Professional Liability Policies (e.g., Directors & Officers Liability, Lawyer's Professional Liability, etc.).

EXAMPLE

A CGL Policy is written with a Per Occurrence Limit of \$100,000 and a \$300,000 Aggregate Limit for the Products and Completed Operations hazard. The insured incurs the following products liability losses during the policy period of January through December:

A products claim is made and settled in February for \$100,000.

Another products claim is made and settled in March for \$100,000.

Still another products claim is made and settled in April for \$50,000.

On May 1, another products claim is made and valued at \$100,000.

All the products liability claims up to the May 1 claim are fully paid. Even though the May 1 claim is within the \$100,000 Per Occurrence Limit, there is only \$50,000 available in the Aggregate Limit. The insured is responsible for the remaining \$50,000.

Split Limits

The term split limits refers to limits of insurance where the portions of payment limits are already designated between two types of insurance coverages. The most common divisions are bodily injury liability and property damage liability. It is very common to find the liability limits for personal auto to be written with split limits.

EXAMPLE

Personal Auto Policy is written with the following limits:

Bodily Injury: \$25,000 per person; \$50,000 per accident

Property Damage: \$50,000 per accident

Some states may require split limits. Some insurance carriers only write split limits, even if the state permits a combined single limit, reviewed next.

Combined Single Limit

Liability policies may be written with a combined single limit for bodily injury and property damage. The advantage of the combined single limit is flexibility.

Continuing with the previous Personal Auto Policy example, if the insured has a combined single limit of \$100,000, the insured has much greater flexibility in certain claims situations. Assume there is a claim for \$30,000 bodily injury to one person, the example above only pays \$25,000. With a combined single limit of \$100,000, the entire \$30,000 is paid.

In another example of the flexibility of combined single limit, again using the Personal Auto Policy example above, assume the insured causes \$60,000 property damage to a building. The split limit leaves the insured \$10,000 short, but the full \$60,000 is paid under a combined single limit.

Restoration/Non-reduction of Limits

Most limits in property insurance policies apply on a per loss basis, so the full policy limit is automatically restored to its original amount following the payment of a loss. Some types of property policies restore a limit after a loss once the insured shows proof of repair or actual replacement of the damaged property. Property policies may contain a provision called Restoration of Limits, which explains how the limits apply after an insured loss has occurred. The Restoration of Limits states that if a property loss occurs, the amount of insurance available is reduced by the amount of the loss. The limit to the amount of insurance available is restored as the repairs are made or at the replacement of the insured property.

As stated, in liability policies, the limit is expressed as per accident or per occurrence. This limit is immediately restored to its original amount after each accident or each occurrence.

Liability policies and a few property policies that contain an aggregate limit treat limits differently following a loss. In a policy with aggregates, the aggregate amount of coverage is reduced by the loss payment for the remainder of the policy period, and restoration of aggregate limits does not occur until policy renewal.

Coinsurance

The concept of coinsurance is very important in commercial property insurance. Coinsurance is a rating and underwriting concept that is designed to encourage an insured to purchase an amount of insurance nearly equal or equal to the full value of the property being insured.

Why is there such a provision? The majority of insured property losses (in fact, over 95%) do not involve total losses of the property. Therefore, many insureds may feel it unnecessary to carry an amount of insurance equal to the value of the property being insured. To encourage an insured to carry an amount of insurance closer to the actual value of the property, the insurance company agrees to provide a lower insurance rate if the insured promises to carry a limit of insurance at least equal to a stated percentage (usually 80% to 100%) of the value of the insured property. If the insured does not keep his/her promise, the insured is penalized at the time of loss and pays for a portion of the loss.

The formula used for applying coinsurance is:

Amount of insurance carried

Amount of insurance required \times Loss = Amount of recovery (minus applicable deductible)

Note: Amount of insurance required = Coinsurance % \times Value of the property

"Did"
"Should"

Did = Insurance Carried

Should = Insurance Required \times Loss = Recovery - Deductible = Payment

Example:

Building	\$500,000
Deductible	\$1,000
Insurance Carried	\$300,000
Coinsurance Required	80%
Fire Loss	\$100,000

Settlement:

<u>Did = \$300,000</u>		
Should = \$400,000	\times (Loss) \$100,000	= (Recovery) \$75,000
		<u>– (Deductible) \$1,000</u>
		(Payment) \$74,000

Insurance to Value

Rather than a coinsurance provision, some policies contain an insurance to value provision. This provision somewhat softens the effects of a coinsurance clause. Just as with coinsurance, the insured is expected to carry a limit of insurance at least equal to a stated percentage (usually 80% to 100%) of the value of the insured property. And just like coinsurance, if the insured does not keep his/her promise, the insured may be penalized at the time of loss. But, unlike coinsurance, the insured never receives less than the actual cash value of the property.

The formula used for applying insurance to value is:

Amount of insurance carried

Amount of insurance required \times Loss = Amount of payment - never less than ACV

Amount of insurance required = Insurance to value % \times Value of the property

Vacancy and/or Unoccupancy

A vacancy provision is common in most property policies, and it suspends or restricts coverage after a specified number of consecutive days of vacancy. Vacancy is defined in the Building and Personal Property Coverage Form as “not enough business personal property to conduct customary business operations”. For example, a clothing store needs clothes. Even though it may have other types of business personal property, the clothing store is considered vacant if it has no clothes to sell.

Unoccupancy usually means the building does not have people occupying it. Today, a building that is unoccupied is usually not subject to suspension or restriction of insurance coverages. An unoccupied building is undesirable to the insurance company from an underwriting standpoint because no one is there to protect the property or to take steps to reduce the loss after a covered cause of loss occurs.

Over the last several pages, several provisions found in property and casualty insurance policies have been reviewed. A few are only found in property insurance policies, but most are found in some form in both property and casualty policies. The remaining provisions examined in this chapter fit into three categories: insured’s provisions, insurance company’s provisions, and third party provisions.

Assignment

Assignment is the named insured giving away the ownership of the policy or an insured relinquishing rights provided in the policy to another person or organization.

Commonly, insurance policies will permit the assignment of the entire policy only if the insurance company first grants written agreement. But what if an insured suffers a loss and is entitled to be paid by the insurer? Can the insured assign the loss payment (not the policy) to another? The answer is yes. A policy’s proceeds (the loss payment the insurer makes) can be assigned after the loss.

An insurance policy is a personal contract. The point to keep in mind is that the insurance company is insuring the owner of the property and not the property. The company wants the right to decide who owns its policies.

Abandonment

Abandonment is the giving up of property by the insured to the insurance company. For example, an insured may want to abandon the property to the insurance company in order to collect the value of the property, rather than restoring or repairing the property. In another case, the insured may want to abandon the property to the insurer because the costs of removing the debris are exorbitant.

EXAMPLE

The insured may wish to abandon a couch that has smoke damage and replace the couch with another even though the couch can be restored.

Most property insurance policies have provisions that prohibit abandonment.

Subrogation

Subrogation is the right of the insurance company to recover an amount of money paid to an insured for a loss when the loss is someone else's fault. The subrogation policy provision, which is commonly called either Our Right to Recovery or Transfer of Rights of Recovery From Others to Us, specifically transfers the insured's right of recovery against a third party to the insurance company.

EXAMPLE

A negligent driver, Jack (third party), strikes Lois (the insured), damaging her automobile. Lois makes a claim to her insurance company and is paid \$2,500. Lois has the right to bring a claim against Jack since the damage was Jack's fault. After paying the claim to Lois, her insurance company may now make claim against Jack because the company has subrogation rights as provided in the subrogation provision.

This provision commonly emphasizes that the insured is prohibited from doing anything after a loss that would interfere with the company's right of subrogation. There is an exception to this prohibition found in the Commercial Property Policy.

Salvage

Salvage is damaged or recovered stolen property taken over by the insurance company, and represents a reduction of the net amount an insurance company has paid on a claim. For example, if an insured's truck is stolen and the company pays the insured, upon recovery of the vehicle, the company retains the salvage and may sell the truck to reduce the net cost of the loss. Some provisions permit the insured to keep the salvage in exchange for a reduced loss payment. Other provisions permit the insured to return funds paid and have the property returned to him/her upon recovery.

Many insurance policies give insurance companies several claims settlement options. In a majority of property losses, there are three choices available to the insurance company as respects placing the insured in his/her previous financial condition:

1. the damaged property is repaired;
2. the damaged property is replaced with like kind or quality; (This is something that in actuality is rarely done because of the insured's potential dissatisfaction and the possibility that the insurance company is warranting the replacement property.)
3. the insurance company pays the insured an amount of money to repair or replace the damaged property.

The policy provisions almost always give the company the right to choose the settlement option.

Liberalization

Liberalization is an insurance policy provision that states that if a policy's coverage is changed during the policy period, then insureds under the insurance company's existing insurance policies receive the benefit of the changed coverage. However, the change must broaden coverage, and there must be no increase in premium due the insurance company.

Mortgageholder Clause

One of the most common third party provisions in an insurance policy is the standard mortgage clause. As previously stated, one party having an insurable interest in real estate is the person or organization that loans the named insured money to purchase the property. The person or organization making the loan is called the mortgagee. Many property insurance policies that can or do cover buildings have a standard mortgage clause, which explains the rights and duties of a mortgagee when the lender is named in the policy as the mortgagee.

The standard mortgage clause extends rights to a mortgagee similar to those given the named insured. The mortgagee listed on the Declarations has a right to be named on the claim payment check. No act of the named insured can void the collecting of a claims payment by the mortgagee. The mortgagee also has the right to receive notice of cancellation and notice of non-renewal.

While the mortgagee is granted rights, the mortgagee also has duties. If the named insured has been denied payment of a claim due to acts or failure to comply with policy conditions, the mortgagee must stand in the place of the named insured and fulfill any necessary duties in order to receive payment.

Loss Payable Clause

Another third party provision is the loss payable clause. The loss payable clause is most often found in property insurance policies that provide coverage for personal property such as automobiles or business personal property. In these policies, the lender's interest is protected by a loss payable clause. This clause states that any loss payment must include the financial interest of the lender named on the Declarations or an attached endorsement.

One important difference commonly found between a loss payable clause and a standard mortgage clause is that the loss payee has no greater rights than the named insured. If the named insured commits an act that voids coverage under the insurance policy, the loss (claim) is also not collectible by the loss payee. (There are some policy provisions, such as the loss payable clause for personal auto insurance or the lender's loss payable clause in commercial property insurance, which protect the rights of a loss payee even if the insured commits an act that voids coverage.)

Bailee Provision

A provision that seldom, if ever, becomes involved in a loss situation is titled no benefit to bailee. A bailee is someone who has rightful possession of the property of another. An example of a bailee is a computer repair person who has an insured's computer in his/her shop, or a dry cleaner that has an insured's clothing for cleaning.

Usually, bailees are legally responsible to return property entrusted to them in a condition as good or better than when the property was given to them. The purpose of the no benefit to bailee provision is to avoid a situation where the bailee tries to escape his/her legal liability for a loss to an insured's property because the property is covered under the insured's property insurance policy. The goal of this provision is the preservation of the insurer's subrogation right.

CONCLUSION

The many concepts and policy provisions examined in this chapter are applied in future chapters analyzing specific coverage forms. In some instances, the general examination of the concepts and provisions in this chapter are expanded with more detail in these specific policy forms. The following chapter presents an examination of essentials of legal liability.

CHAPTER 3: LIABILITY ESSENTIALS

INTRODUCTION

In our society, there are times when a person, or someone for whom a person is responsible, owns something or does something that injures someone or damages another's property. It is said that when a person is responsible, he/she is liable. The focus here is legal liability, the responsibility or obligation of one party to another party. This responsibility or obligation is enforceable in a court of law. Some of the basic concepts of legal liability are now examined.

Legal liability is usually established on one of three bases:

1. One party has committed a tort. A tort is a civil wrong (as opposed to criminal), other than breach of contract, committed by one party against another party. The tort can be classified as intentional or unintentional. A simple example of the unintentional tort of negligence is a driver who follows too closely and runs into the car in front of him, causing property damage and injuring the occupants of the car. Negligence is the most common unintentional tort causing injury and/or damage.
2. A person violates a statute or law. The mere violation of a statute may make the person responsible. A simple example of the violation of a statute is, an establishment licensed to sell alcohol furnishes alcoholic beverages to a consumer in violation of a statute. The consumer then injures himself/herself or another party. The violation of the statute may create strict liability for the establishment, causing the establishment to be legally liable to the injured party.
3. A person or organization assumes the responsibility of another through a contract. This is commonly referred to as contractual liability. A simple example of contractual liability is, one party assumes the responsibility for the legal liability of another party for injury or damage to a third party.

Legal obligation is the requirement in order for liability policies to pay.

UNINTENTIONAL TORT - THE CONCEPT OF NEGLIGENCE

Definition

Negligence is often defined as failure to exercise that amount of care an ordinary, reasonable, prudent person is required to use to protect others from unreasonable risk of harm or injury.

Measures of Negligence

Two measures may be used to determine negligence. These measures are the prudent person concept, mentioned above, and the elements of negligence.

The prudent person concept is a less formal and more intuitive measure of negligence that examines the care used by a person who allegedly commits negligence and compares that care with what is reasonably expected.

The second measure is a more formal step-by-step approach which a claims representative, jury, or judge might use to determine negligence. This approach identifies the elements of negligence and determines their presence.

Prudent Person Concept

Historically, when a person brought a lawsuit against another person, claiming damages due to negligence, the judge or jury measured or determined negligence based on the prudent person doctrine. Essentially, the judge or jury reviewed the facts of the situation and determined whether the person had acted in a manner in which a prudent person would have acted in the same or similar situation. If the person accused of negligence had not acted prudently, then negligence had been committed and damages were awarded. This somewhat subjective measure is still used by claims adjusters and, ultimately, judges or juries.

Elements of Negligence

There are four elements that must be present before negligence exists. If any of the four is absent, then there is no negligence.

1. Legal Duty/Standard of Care

The first element is that there must be a legal duty between the party who allegedly commits the harm and the party who claims to be harmed. Legal duty is established by the relationship that exists between the two parties at the time harm occurs.

EXAMPLE

A customer walks into the restaurant; a duty relationship is automatically established. The customer is a guest and has an implied invitation to be on the premises. The restaurant owner must maintain the premises in a manner that the customer is not harmed. If conditions arise on the premises that could harm the customer, the restaurant owner must take steps to either warn the customer or remedy the situation.

2. Breach of Duty

In order for an act of negligence to be committed, there must be a breach of duty described in the first element above.

EXAMPLE

In the preceding example, if one of the waiters in the restaurant drops a glass of water onto the floor, the restaurant owner or employee has a duty to clean up the water, or set up a barricade (like a chair or caution sign), or use some other reasonable way to direct customers around the spill, until it can be cleaned up and removed. If the spill is not removed and causes a customer to fall and be injured, a breach of duty has occurred.

3. Proximate Cause

The most legal-sounding of the elements of negligence is proximate cause. The word “proximate” should not be confused with “approximate”. Proximate cause is an unbroken chain of events leading to the damages.

EXAMPLE

In the restaurant example, if the water spill is not cleaned up and there are no barricades or other warnings to customers present, when a customer falls and is injured as a result of the water spill, then the proximate cause of damages is the breach of duty to clean up the water spill (maintain the restaurant in a manner that does not harm customers).

4. Actual Loss or Damages

The final element of negligence is that the damages were caused by the breach of duty. Damages are defined as a sum of money that, as far as possible, compensates for a loss.

Payment of damages attempts to put the person back in the same financial position as he/she was prior to the loss. Obviously, it is difficult to objectively compensate a person who has received a severe injury. The money does not remove the pain nor does it take away a permanent limp that results. The goal is to compensate the injured or damaged party as nearly as possible.

If there are no damages, even though the previous three elements exist, then there is no negligence.

EXAMPLE

In the restaurant example of a customer slipping and falling, if the fall results in a broken leg, medical bills incurred, time lost from work resulting in loss of income, and replacement of damaged clothing, damages have occurred. If the customer simply falls, is not injured, and property of the customer is not damaged, there should be no claim pursued, as there are no damages.

Defenses

In some instances, when a person or organization is accused of committing an act of negligence, there are certain defenses that may be used to defend the accused. Most of these defenses have originated from prior court rulings, and some have arisen from statutes passed by legislative bodies.

Assumption of Risk

The assumption of risk defense is used successfully by people or organizations who have allegedly committed negligence. The following is a simple definition of assumption of risk: Assumption of risk is when one knowingly and voluntarily exposes himself/herself to a known danger.

The conditions of this defense are that the person or organization must have knowledge of the potential danger, and with this knowledge, has voluntary exposure to the danger.

EXAMPLE

Steve, whose hobby is woodworking, purchases a new table saw manufactured by the Cutting Edge Company. While using the saw in the manner for which it was designed, Steve cuts off the tips of two fingers. He brings suit against Cutting Edge, which uses a defense of assumption of risk. Steve was aware of the danger of using a saw and voluntarily exposed himself to this danger; therefore, he should not be awarded any damages.

Contributory Negligence

Frequently in an accident involving multiple parties, no one is the sole cause of the accident or the only one who is negligent. As a result, a defense used successfully for many years is the contributory negligence defense. Contributory negligence is defined as follows:

Contributory negligence is when a person or organization adds in any way to his/her own injury and is barred from recovery.

Our courts have adopted the attitude that a person or organization must take steps to avoid injury, and, if he/she contributed in any way to his/her own injury by not taking these steps, he/she is not entitled to collect damages from the other party.

EXAMPLE

Lauren runs a red light and strikes Kelly's car, causing severe damage to Kelly's car and bodily injury to Kelly. Kelly is going 10 miles over the speed limit at the time the accident occurs. Because Kelly is speeding, the court determines that Lauren is 85% at fault and Kelly is 15% at fault. Kelly is unable to collect for her damages due to Lauren's defense of contributory negligence.

Very few states today actually allow the application of contributory negligence. Due to the potential harshness of contributory negligence, most states have passed legislation to modify this defense.

Comparative Negligence

Comparative negligence is a defense based on a statutory modification of contributory negligence, in which multiple parties are negligent and damages are apportioned according to their comparative degrees of negligence. Dependent on the particular law, a person who is more than a stated percentage at fault is barred from recovery.

Under comparative negligence, the victim's contribution of negligence is considered in reduction of the amount of payment, rather than completely barring recovery damages. Using our previous example, under a defense of comparative negligence, Lauren does not have a complete defense but is likely only responsible for 85% of Kelly's damages.

If Lauren is responsible for 85% of Kelly's damages, does that mean that Kelly is responsible for 15% of Lauren's damages? This is not usually the case, as most of the comparative negligence statutes bar persons from recovery if they are 50% or more at fault. However, there are jurisdictions where the negligence is compared and recovery permitted, regardless. Even though Lauren is 85% at

fault in our example, under a pure comparative negligence statute, she is permitted to collect 15% of her damages from Kelly.

Act of God or Act of Nature

A loss may be caused by an Act of Nature, or what is often referred to as an Act of God. A simple definition is: An Act of God or an Act of Nature is an event produced by a physical cause of nature and not within human control or intervention.

If legal action is brought against a person or organization based on negligence, and the circumstances indicate an act of nature (as defined above) is the proximate cause, the Act of God or Act of Nature defense is used.

EXAMPLE

Tony's Tavern has a large sign mounted on a steel post in its front parking lot. One day the sign falls and damages two customers' cars. The customers claim that Tony's Tavern has improperly maintained the sign and Tony's Tavern is therefore negligent. However, further investigation indicates that tornado-like winds, up to 80 miles per hour, were blowing through the area when the sign fell. Because of the tornado-like winds, Tony's Tavern uses the defense that an Act of Nature is the proximate cause of the sign falling as the sign was designed to withstand winds of only 60 miles per hour.

Intervening Cause

In some situations, the person or organization that is initially considered to be negligent is not truly at fault because some other intervening cause is the ultimate reason damages occur.

EXAMPLE

Mike buys a trailer hitch from Penn Trailers and Accessories. The trailer hitch is custom built by Penn Trailers and Accessories for Mike's truck and trailer. Mike is driving one day, towing his trailer, when the trailer suddenly breaks loose, crashing into the embankment. The trailer suffers \$2,700 of damages.

Mike brings a claim for the damages against Penn Trailers and Accessories for improper design of the hitch. In the investigation of the loss, it is discovered that Mike has modified the hitch to make it easier to attach to and detach from his truck. Because of the modification, the design of the hitch is not the reason (proximate cause) for the trailer breaking loose. Rather, the trailer broke loose due to Mike's modification. Mike's action was the intervening cause in this example.

Statutes of Limitations

Historically, if a person or organization allegedly incurs damages as a result of the negligence of another, a claim or suit may be brought at any time in the future. Courts ruled that this gives the person or organization bringing a claim or suit an unfair advantage in some instances. As a result, the majority of states passed legislation limiting the time in which legal action can be brought. This type of legislation is commonly referred to as a statute of limitations.

A statute of limitations is defined as any statute that prescribes the time limit in which a legal action must be brought in order to be legally enforceable. If the legal action is not brought within this prescribed time, then the person or organization bringing the suit is, in essence, barred from recovery.

Frequently, the time limit for negligence actions is two years, but this varies by statute and, in addition, sometimes by type of damages (bodily injury or property damage). Here is an example of a statute of limitations defense for a negligence action:

EXAMPLE

Theresa comes to visit her friend David. While walking on the deck in the back of David's house, Theresa falls through the deck. The reason she falls through is that some of the decking boards have rotted out and David has forgotten to replace them. The accident happens on August 17, 2010, but Theresa does not bring a suit until October 12, 2012. David's attorney files a motion to have the case dismissed based on the fact that the lawsuit is filed after the two-year statute of limitations.

One of the questions that arises in determining whether or not the statute of limitations applies is: When does the applicable period begin? For example, in most cases, if a minor child is injured, the two years does not begin until the minor child reaches the age of majority.

Statutes of Repose

A statute of repose bars an action after a specified period of time has run from the occurrence of some event other than the injury or damage which gives rise to the claim. It is a stricter deadline than a statute of limitations because it may not be tolled by fraud, discovery of injury, age, etc. A statute of repose is neither an avoidance nor a defense to a cause of action because the cause of action does not exist once the period of duration is passed. While a statute of limitations allows a party to avoid suit, a statute of limitations does not affect the validity of the claim. However, once the period of duration under a statute of repose is expired, there is no suit to avoid, because the statute of repose extinguishes the cause of action, and failure to plead the statute of repose as an affirmative defense cannot resurrect a cause of action that no longer exists.

For example, a jurisdiction may have a statute of repose that states a contractor is not responsible for injury or damage after 10 years from the date of substantial completion. If the injury or damage occurs within that 10-year period, the statute of limitations prescribes the time limit in which a legal action must be brought in order to be legally enforceable.

THE CONCEPT OF INTENTIONAL TORT

Intentional Tort Liability

To have a tort claim for an intentional tort, the plaintiff (the injured party) must be able to prove three elements: intent, a volitional act, and causation. Intentional tort liability arises when a person or entity intends to bring about mental or physical harm to another person, and that other person experiences mental or physical harm as a result of the accused's actions.

Examples of intentional torts are assault, battery, libel, slander, invasion of privacy, wrongful detention, and trespass.

THE CONCEPT OF STRICT TORT LIABILITY

Strict Tort Liability

Strict tort liability is a legal concept most commonly applied by the courts in product liability cases. In these cases, a manufacturer or seller is typically legally liable for any and all defective products which cause damages. The defect may be in the design, the manufacture, the labeling, etc. The doctrine reduces the defenses available to the manufacturer, distributor, or seller, but some defenses do exist. Examples of the defenses include proof that the product was improperly used or improperly modified.

THE CONCEPT OF ABSOLUTE LIABILITY

Absolute Liability

The word absolute (or total) in our everyday usage means complete or without regard to anything else. In the context of liability, it has a similar meaning. The definition of absolute liability is: Absolute liability is responsibility without regard to fault or negligence.

There are very few instances in which a court of law holds a person in the position of absolute liability. Normally, absolute liability is applied in the following three instances:

- 1. Explosive or highly flammable material**

Anyone who possesses, stores, maintains, or transports an explosive or inherently dangerous material is absolutely liable for injury or damage caused by the material, regardless of the presence of due care. Therefore, a contractor who uses explosives for the purpose of demolition is held responsible for any harm to anyone or anyone's property, no matter what precautions are taken to prevent harm.

- 2. Firearms**

Absolute liability is frequently applied to the use of or storage of firearms or weapons.

- 3. Animals**

Animals are generally not considered to be dangerous; and the keeping of animals imposes a responsibility of ordinary care. The keeping of dangerous animals imposes absolute liability. Dangerous animals are either wild or a type of animal inherently dangerous by their nature or training. Examples are: lions, bears, and certain breeds of dogs, such as pit bulldogs and Rottweilers.

THE CONCEPT OF WHO CAN BE HELD RESPONSIBLE

Vicarious Liability

There are occasions when a person or organization is held responsible for the acts of others. This is called vicarious liability. Responsibility can include negligence and intentional torts. (The actual transfer of negligence from one party to another is referred to as imputed negligence.) The reason one person or organization is held responsible for the acts of another is because of the relationship between the party(ies) held responsible and the party(ies) who actually commit(s) the act.

A common example of vicarious liability is an agency relationship. In an agency relationship, one person (the agent) acts in behalf of another (the principal). The most common example of an agency relationship exists between an employee and an employer. If an employee commits an act during his/her activities as an employee, then the employer is responsible to the injured party. Another type of relationship where there may be vicarious liability is a general partnership where one partner is responsible for the acts of another partner.

Joint and Several Liability

Joint and several liability is a form of liability that is used in civil cases where two or more parties are found liable for damages. The winning plaintiff in such a case may collect the entire judgment from any one of the parties, or from any and all of the parties in various amounts, until the judgment is paid in full. In other words, if any of the defendants does not have enough money or assets to pay an equal share of the award, the other defendants must make up the difference. Joint and several liability is not recognized in all jurisdictions.

THE CONCEPT OF RESPONSIBILITY ASSUMED BY CONTRACT

Hold Harmless/Indemnification Agreements

Contractual liability is defined as liability that does not arise by way of negligence but by assumption under contract or agreement or as a result of a statute or ordinance. Although it is frequently misunderstood, this type of liability is critical in insurance and risk management. It is common in business agreements (written or oral or implied), for one party to assume responsibility for the liability of another. This is sometimes referred to as a hold harmless agreement and/or an indemnification agreement. The full extent to which one party holds another harmless/agrees to indemnify varies from premises to premises, construction project to construction project, ordinance to ordinance and so on. To assume responsibility for the liability of another is risky and increases exposure to loss.

Indemnification under this type of arrangement is where a sum of money is paid by one party to another party by way of compensation for a particular loss suffered by the latter. The two parties to this type of arrangement are the indemnitor and the indemnitee. The indemnitor is the one who indemnifies. The indemnitee is the one who is indemnified. Sometimes the words hold harmless are used interchangeably with indemnification. However, the purpose of hold harmless is that the party to the contract, who has assumed responsibility for the liability of another, does not wait for the party whose liability has been assumed to incur expenses and then seek reimbursement, but to actually pay all expenses as incurred.

Some states hold contractual assumptions of sole and/or partial fault to be void, except when some form of insurance applies. Other states do not void hold harmless provisions, so long as the contractual provisions of the indemnitee, in attempting to transfer the financial consequences of its liability to the indemnitor, are clear and unequivocal in their intent. Still other states declare both sole and/or partial fault assumptions to be void and unenforceable without exception in specific types of contracts.

THE CONCEPT OF DAMAGES

Categories

As previously stated, damages can be defined as a sum of money which compensates an injured party (an individual or organization). This can mean injury to a person's body, but it also can include damage to another person's or organization's property as well as the loss of use of that property. There are two major categories of damages:

1. Compensatory
2. Punitive or Exemplary

Compensatory Damages

The principle objective of compensatory damages, as the name implies, is to compensate the injured party(ies) for damages incurred. This is accomplished by assessing the damages in terms of money and attempting to restore the party(ies) to the same financial condition existing prior to the loss, as well as compensating the party(ies) for non-economic damages.

There are two categories of compensatory damages:

1. *Special Damages*

Special damages are the measurable dollar amounts of an actual loss. These are "out-of-pocket" costs. Damages included in the special damages category are: medical expenses, loss of earnings, rehabilitation expenses, direct damage to tangible property, and loss of use of damaged property.

EXAMPLE

Lonnie negligently operates her car and runs into Lisa. Lisa is taken to the hospital. She incurs \$2,300 in hospital and doctor bills. She misses two weeks of work at \$1,000 per week. Lisa's car repair bill is \$2,000, plus she spends \$450 to rent a car while her auto is being repaired. Therefore, Lisa has bodily injury special damages of \$4,300. Her property special damages total \$2,450.

2. *General Damages*

General Damages are an award based on a measure of intangible damages incurred from the special damages, as well as other facts and circumstances. Intangible damages include property that cannot be seen or felt with the senses. Goodwill is considered intangible property. General damages also include pain and suffering, disfigurement, and loss of consortium. The above example is continued below, to include general damages.

EXAMPLE

Lisa's injuries from the accident cause pain and discomfort now and into the future. She asks for \$10,000 for pain and suffering. Lisa has a scar to her knee, which makes her uncomfortable wearing shorts and skirts. She asks for an additional \$20,000. The total general damages demanded by Lisa are \$30,000.

Punitive Damages

Punitive damages (sometimes called exemplary damages) are not commonly awarded in lawsuits. Typically, to be awarded punitive damages, an act that caused the damage needs to be willful and/or with complete disregard for another person's safety. Punitive damages are defined as follows:

Punitive damages are the sum of money, in excess of the amount required to compensate for loss, imposed in order to punish such conduct now and deter similar conduct in the future.

There are two purposes for awarding punitive damages.

1. To punish the individual or organization that harmed the injured party(ies).
2. To make an example out of the person or organization who/which caused the damage, to prevent the person or organization from participating in a corresponding activity, or to deter others.

Awardability

With few exceptions, states permit a court to award punitive damages. There are some states, such as Massachusetts and Nebraska, that do not permit a court to award punitive damages.

Insurability

There are many states that do not permit punitive damages to be paid under an insurance policy. The general reasoning is that the payment of punitive damages by a policy relieves the person or organization from the punishment.

A few states permit payment of punitive damages by an insurer if the insured is held responsible for someone else's negligence. However, many of these same states do not typically allow payment of punitive damages if awarded as a result of the insured's direct negligence.

Coverage

Just because punitive damages are awardable and insurable does not mean insurance protection is provided. Some policies contain specific exclusions that pertain to punitive damages. Other policies limit the coverage provided in the insuring agreement to compensatory damages (thereby not including punitive damages). However, it is generally accepted that if the policy is silent as respects punitive damages, the policy provides insurance coverage if punitive damages are insurable.

CONCLUSION

This chapter examines the basic concepts of legal liability. Some of the chapters that follow review how specific liability insurance policies or portions of policies respond to the exposures associated with legal liability, as well as allegations of legal liability.

SECTION TWO

COMMERCIAL LINES INSURANCE

CHAPTER 4: COMMERCIAL PROPERTY COVERAGE FORMS

INTRODUCTION

Providing insurance for real and business personal property is critical for any commercial operation. Any size business may have a majority of its assets and resources committed to tangible property. A common approach to providing the insurance protection is through the use of the Insurance Services Office (ISO) Commercial Property Program. An ISO Commercial Property Policy consists of one or more Commercial Property Coverage Forms, one or more Causes of Loss Forms, the Commercial Property Conditions, the Common Policy Conditions, and endorsements.

This chapter examines the Commercial Property Coverage Forms. The key purpose of the Commercial Property Coverage Forms is to identify the subject of insurance (covered property), property not covered, additional coverages, coverage extensions, and additional conditions relating to specific coverages.

COMMERCIAL PROPERTY COVERAGE FORMS

Under the Commercial Property Program, there are several Commercial Property Coverage Forms available. The following is a list of the Coverage Forms that are reviewed in this chapter. Having a number of coverage forms provides flexibility to customize coverage to the needs of the individual insured.

- Building and Personal Property Coverage Form
- Business Income (And Extra Expense) Coverage Form
- Business Income (Without Extra Expense) Coverage Form
- Extra Expense Coverage Form
- Leasehold Interest Coverage Form
- Legal Liability Coverage Form

Before examining the individual Coverage Forms, the Common Policy Conditions and Commercial Property Conditions are reviewed.

Common Policy Conditions

A. *Cancellation*

Only the First Named Insured may cancel the Policy at any time by mailing or delivering advanced written notice to the Insurance Company. The Insurance Company may cancel the Policy by mailing or delivering to the First Named Insured written notice of cancellation at least 10 days before the date to be effective if for nonpayment of premium or not less than 30 days before the effective date if for any other reason. The Policy Period ends on that date and return premium, if any, is sent to the First Named Insured.

B. *Changes*

This condition states that only the First Named Insured is authorized to make changes to the policy with the consent of the Insurance Company. The Policy must be endorsed by the Insurance Company regarding any changes.

C. *Examination of Your Books and Records*

The Insurance Company has the right to examine and audit the Named Insured's books and records as they relate to the Policy. This can be done at any time during the Policy Period and for up to three years after the Policy is no longer effective.

D. *Inspections and Surveys*

The Insurance Company has the right to make inspections and surveys at any time and to provide the insured with a report on the conditions, including recommendations. The inspection is limited to the insurability and premium determination; it does not warrant that the premises are safe or healthful or in compliance with laws, regulations, codes, or standards.

E. *Premiums*

The First Named Insured is responsible for the payment of all premiums due under the Policy and is the payee for any return premiums paid by the Insurance Company.

F. *Transfer of Your Rights and Duties*

The Named Insured may not transfer rights or duties contained in the Policy except in the event of death, and then only to the named legal representative. Note that until the legal representative is appointed, anyone having proper temporary custody of the insured's property has the insured's rights and duties.

Commercial Property Conditions**A. *Concealment, Misrepresentation or Fraud***

The Insurance Company has the right to void the Policy if any insured intentionally conceals or misrepresents a material fact regarding the coverage part, the covered property, their interest in the covered property, or facts concerning a claim.

B. *Control of Property*

The insurance is not affected by any act or neglect of any person that is not under the control or direction of the Named Insured. In the event of a loss, the breach of any condition at one or more locations does not affect coverage at any location where the breach of condition does not exist.

C. *Insurance Under Two or More Coverages*

In the event that coverage under the Policy is afforded in two or more sections or coverages, the Insurance Company does not pay more than the actual amount of the loss or damage.

D. *Legal Action Against Us*

In order to bring legal action against the Insurance Company, there must be full compliance with all the Policy terms and conditions, and the action must be brought within two years after the date of the direct physical loss or damage occurred.

E. *Liberalization*

If the Insurance Company adopts a revision that broadens coverage and is not subject to an additional premium charge, then the broadened coverage applies immediately to the Policy.

F. No Benefit to Bailee

The insurance is only for the benefit of the insured. If the insured's property is damaged while in the custody of any other person or organization, the Policy only provides coverage for the insured and does not benefit the other person or organization.

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

As the name indicates, this Coverage Form provides property coverage for buildings and/or business personal property. The covered property includes:

Building

Building means the building or structure described in the Declarations, including completed additions, fixtures, permanently installed machinery and equipment, and owned personal property used to service or maintain the building (outdoor furniture, floor coverings, and refrigerators).

Also included in the definition of building is additions and repairs in progress, material, equipment, supplies, and temporary structures within 100 feet of the described premises and used for making additions or repairs – all if not covered by other insurance.

Your Business Personal Property

Your Business Personal Property is the Named Insured's business personal property located in or on the building or structure described in the Declarations, or in the open (or in a vehicle) within 100 feet of the building or structure, or within 100 feet of the described premises, whichever is greater. This property may include the following items:

- Furniture and fixtures;
- Machinery and equipment (other than what is classified as Building);
- Stock (materials used for making the Named Insured's products or merchandise held for sale);
- All other personal property owned by the Named Insured and used in the Named Insured's business;
- Labor, materials, or services furnished or arranged by the Named Insured on personal property of others;

Here is an example of the type of Your Business Personal Property cited above.

Example: A customer brings a computer into the Named Insured's store for upgrading. The Named Insured has started the work on the computer when a fire destroys the store. The value of the labor and material used by the Named Insured is covered property to the Named Insured.

- Use interest in tenants' improvements and betterments. This covers the value of improvements and betterments made at the Named Insured's expense or acquired at the Named Insured's expense and which cannot be legally removed by the Named Insured;
- Leased property that the Named Insured has a contractual obligation to insure.

Here is an example of the type of Your Business Personal Property cited above.

Example: The Named Insured is obligated to provide property insurance for a leased copier. This is part of Your Business Personal Property. However, if the Named Insured is only responsible for loss or damage to the copier but is not responsible to provide insurance for it, it is not automatically considered part of Your Business Personal Property.

Personal Property of Others

This is property that belongs to others that is in the Named Insured's care, custody or control while situated in or on the building or structure described in the Declarations, or in the open or in vehicles within 100 feet of the building or structure or within 100 feet of the described premises. The covered property can be

Property the Named Insured is working on, stores, has on consignment, or borrows/rents/leases from others.

Property Not Covered

The following property is excluded from coverage under this Coverage Form. In the event coverage is needed for property that is excluded, a separate coverage option or other form of insurance may be available.

1. Accounts, bills, currency, food stamps or other evidences of debt, money, notes, or securities;
2. Animals, unless owned by others and the Named Insured boards, or if they are the "stock" of the Named Insured;
3. Autos held for sale;
4. Bridges, roadways, walks, or other paved surfaces;
5. Contraband, or property in the course of illegal trade or transportation;
6. Cost of excavations, grading, backfilling, etc.;
7. Foundations of buildings, structures, machinery, or boilers if the foundation is below the lowest basement floor or surface of the ground;
8. Land, water, growing crops, or lawns (other than lawns which are part of a vegetated roof);
9. Personal property while airborne or waterborne;
10. Bulkheads, pilings, piers, wharves, or docks;
11. Property covered under another coverage form or any other policy where the property is more specifically described;
12. Retaining walls that are not part of the building described on the Declarations;
13. Underground pipes, flues or drains;

14. Electronic data, except as provided under Additional Coverages – Electronic Data, but it does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
15. Cost to research, replace or restore information on valuable papers and records, except as provided in the Coverage Extensions;
16. Vehicles or self-propelled machines (including aircraft or watercraft) except:
 - a. Vehicles or self-propelled machines or autos the Named Insured makes, processes, or warehouses;
 - b. Vehicles or self-propelled machines held for sale (other than autos);
 - c. Rowboats and canoes not in water at the described premises;
 - d. Trailers, but not to the extent provided for in the Coverage Extensions.
17. Certain described property while outside of buildings (e.g., crops); or other property such as fences, radio or television antennas, trees, shrubs or plants (other than stock or which are part of a vegetated roof), except as provided in the Coverage Extensions.

As stated, several of the excluded property items may be covered by use of specific endorsements.

Covered Causes of Loss

The Building and Personal Property Coverage Form requires that the Named Insured select one or more of the available Causes of Loss Forms to be attached. The Causes of Loss Forms vary from limited to very broad, which allows the Named Insured to select the appropriate coverage for a particular property. The Causes of Loss Forms are examined in the next chapter.

Additional Coverages

There are six additional coverages contained in the Coverage Form:

1. Debris Removal

Debris Removal pays the Named Insured's expense to remove debris of covered property and other debris on the covered property, when caused by or resulting from a covered cause loss.

Debris removal does not apply to costs to remove:

- The debris of the insured's property that is not insured under the Policy
- Property owned by the landlord unless by contractual requirement
- Property that is Property Not Covered
- Property that would not be a Covered Property under the form
- Deposits of mud or earth
- "Pollutants" or polluted land or water

The debris removal limit of insurance is 25% of (the amount paid for damage to covered property plus the deductible applicable) and is not an additional amount of insurance. If no Covered

Property has sustained direct damage, the limit of insurance is \$5,000 if such removal is covered. If the loss to covered property and the debris removal expense is greater than the limit of insurance or if the debris removal expense exceeds the 25% limitation, an additional \$25,000 is available for debris removal expense.

For example, a building is valued at \$100,000 and insured for that value. It costs \$15,000 for the removal of debris after a covered fire that completely destroys the building. An amount of \$115,000 is paid.

2. Preservation of Property

At times, it may become necessary to remove covered property from the premises to avoid it being damaged by a covered cause of loss. When this takes place, the Policy pays for any direct damage it sustains during the move or while located elsewhere. This coverage extends for 30 days from the time of removal, and it has no effect on the limit.

For example, there is a threat of fire damage to the premises. The Named Insured is moving business personal property to an alternate location to protect it from the fire when the item is dropped and it is damaged. The Policy provides coverage for the damage to the item.

3. Fire Department Service Charge

This Additional Coverage pays up to \$1,000 for service at each premises described in the Declarations, for expenses required by a contract or agreement with a fire department to save or protect covered property that is in danger from covered perils. This limit is the most that will be paid regardless of the number of fire department, units or number of services performed. The \$1,000 limit may be increased. This coverage is treated as additional insurance and is not subject to a deductible.

4. Pollutant Clean up and Removal

This Additional Coverage provides additional insurance for up to \$10,000 for the insured's expense to remove "pollutants" from land or water at each described premises, if the discharge or release of "pollutants" is caused by a Covered Cause of Loss and occurs during the Policy Period. The \$10,000 is an annual aggregate limit per location and is not an occurrence limit.

5. Increased Cost of Construction

Increased Cost of Construction allows limited coverage for the increased cost of complying with the minimum standards of building codes following damage to an insured building that is insured on a replacement cost basis. Coverage is limited to 5% of the building value, subject to a maximum of \$10,000. Note that this Additional Coverage only applies to damaged parts of the building.

6. Electronic Data

This Additional Coverage provides for the cost to replace or restore electronic data that has been destroyed or corrupted by a Covered Cause of Loss. Within this additional coverage, the Covered Causes of Loss are limited to named perils, regardless of the Causes of Loss Form attached. Limited coverage for viruses is included. The total limit available for this coverage is \$2,500 aggregate amount in any one policy year. This additional coverage does not include "stock" of prepackaged software or electronic data that integrates into and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning, or security systems.

Coverage Extensions

There are six Coverage Extensions provided under the Coverage Form. They apply only when a Coinsurance percentage of at least 80% is shown on the Declarations. Each of the Extensions provides additional limits of insurance and is not subject to the Coinsurance requirements stated in the Policy.

1. Newly Acquired or Constructed Property

Newly acquired or constructed buildings are covered automatically up to a maximum of \$250,000 per building, and newly acquired business personal property at any newly acquired locations is covered for not more than \$100,000 at each building. The coverage is limited to the earliest of the following: Policy expiration, 30 days after acquisition, or when values are reported to the Insurance Company.

2. Personal Effects and Property of Others

Business personal property coverage can be extended to include personal effects, which is the personal property of the Named Insured, its management and/or its employees. This part of the Coverage Extension does not include coverage for theft. Business personal property may also be extended to cover personal property of others in the Named Insured's care, custody, or control. For either use of this Coverage Extension, there is a maximum payment of \$2,500 per described premises.

3. Valuable Papers and Records (other than Electronic Data) – Cost of Research

This Coverage Extension pays up to \$2,500 at each described premises for the cost to restore and replace information relating to valuable papers and records other than electronic data. The \$2,500 limit may be increased.

For example, the insured suffers a fire that destroys financial records of customer accounts. This coverage pays up to \$2500 for the costs of conducting research to restore the data.

4. Property Off-Premises

Business personal property is covered while temporarily located at locations not owned, leased or operated by the Named Insured (except for storage locations leased after the Policy's inception date), and while at a fair, trade show, or on exhibition. This Coverage Extension does not apply to property in or on a vehicle or in the care, custody, or control of the Named Insured's salespersons unless at a fair, trade show, or exhibition. The maximum payment for loss or damage is \$10,000.

For example, the insured takes her computer to be repaired and, while it is at the repair shop, it is damaged by a covered peril. Therefore, coverage applies.

5. Outdoor Property

This Extension provides coverage for the specified perils (fire, lightning, explosion, riot or civil commotion, or aircraft) to fences, radio and television antennas (including satellite dishes), or trees, shrubs, and plants (other than stock or part of a vegetated roof). The limit is \$1,000 any one occurrence and includes the cost of debris removal, not to exceed more than \$250 for any one tree, shrub or plant.

Note that wind and hail, as well as vehicle damage, are not covered perils.

6. Non-owned Detached Trailers

Non-owned detached trailers can be covered as personal property if used in the Named Insured's business, while at the Named Insured's covered location in the care, custody, or control of the Named Insured, and the Named Insured has a contractual responsibility for loss or damage to the trailer. This Extension provides \$5,000 limit of insurance, which can be increased if higher limits are needed. This Extension specifically excludes coverage on trailers attached to a vehicle or conveyance, or while hitching or unhitching, as well as if the trailer becomes accidentally unhitched from the vehicle or conveyance. The insurance is excess insurance.

7. Business Personal Property Temporarily In Portable Storage Units

Business personal property coverage can be extended to apply to property while it is temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the described premises, whichever is greater. Coverage is provided for up to 90 days. Coverage does not apply if the storage unit has been in use at the described premises for more than 90 consecutive days. The limit of insurance is \$10,000 and can be increased.

Exclusions and Limitations

Refer to the Cause of Loss Form that applies regarding the exclusions and limitations that form part of the insuring agreement.

Limits of Insurance

The amount(s) shown as the Limit of Insurance in the Declarations is (are) the maximum amount that can be paid for loss or damage resulting from any one occurrence. The most paid for loss or damage to outdoor signs, whether attached or not, is \$2,500 per sign in any one occurrence. The amounts of insurance for the following Additional Coverages are separate from the Limits of Insurance:

- Fire Department Service Charge
- Pollutant Clean-up And Removal
- Increased Cost Of Construction
- Electronic Data
- Deductible

The amount indicated in the Declarations is deducted from the adjusted loss (after application of Coinsurance or agreed value provisions), and payment of the claim then applies (not to exceed the stated limit).

Loss Conditions

The following Loss Conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

In the event of a loss, the Named Insured continues to own and is responsible for the property as well as all related costs, unless the Insurance Company consents to assume ownership.

2. Appraisal

If the Named Insured and the Insurance Company disagree on the value of the property or on the amount of loss, then the issue can be resolved through this process: Each party selects an independent appraiser; the two appraisers select an umpire. The points of each party are presented, and any decision supported by any two of the selected individuals becomes binding.

3. Duties in the Event of Loss or Damage

The Named Insured has certain responsibilities in the event of a loss or damage, which include: to notify the police if a crime has been committed, to promptly notify the Insurance Company of details of what transpired, to protect the covered property from further damage, to cooperate with the Insurance Company and assist as requested relating to the adjustment and investigation of the claim, and to submit a signed, sworn proof of loss within 60 days after request from the Insurance Company.

4. Loss Payment

The Insurance Company is required to inform the Named Insured within 30 days after receipt of the signed proof of loss, the option on which the loss will be paid. The options are: pay the value of the damaged or lost property; pay the cost to repair or replace the property; take the property at an agreed or appraised value; or pay to repair or replace the property with the same type and quality property. The Named Insured is not paid more than its financial interest in the Covered Property.

5. Recovered Property

After the loss has been paid, if the property is recovered, then the Named Insured has the option to take the property and return the loss payment to the Insurance Company. The Insurance Company has the right to keep the property if the Named Insured does not wish to take it.

6. Vacancy

The Insurance Company limits coverage if a building is considered vacant at the time of a loss. For a tenant, a building is vacant if it does not contain enough business personal property to conduct customary operations. For a building owner or general lessee, the building is considered vacant unless at least 31 percent of the total area is occupied and is performing normal business operations. Buildings under construction or renovation are not considered vacant. If the building where loss or damage occurs has been vacant for a period exceeding sixty consecutive days before the date of the loss or damage, then the Insurance Company is not required to pay for loss or damage resulting from vandalism, theft or attempted theft, sprinkler leakage (unless the Named Insured has protected the system against freezing), water damage, or breakage of building glass. The amount paid for all other covered causes of loss is reduced by 15 percent.

7. Valuation

This Condition establishes the basis for the value of the covered property at the time of the loss or damage. This varies depending on the type and nature of the covered property.

Additional Conditions

The following Conditions apply in addition to the Commercial Property Conditions and Common Policy Conditions.

Coinsurance

The Insurance Company agrees to provide a lower rate if the Named Insured agrees to insure the property to a certain percentage of value (usually 80% or higher). If the Named Insured fails to purchase the proper amount of insurance, the Named Insured is penalized at the time of loss by a reduction in the amount that would have been paid if the insured had complied. See chapter 2 for a further explanation of Coinsurance.

Mortgageholders

Extends certain rights to each mortgageholder shown in the Declarations regarding the right to receive loss payments, and states the actions that they are required to take if the Named Insured fails to meet the obligations to the Insurance Company.

Optional Coverages

There are four Optional Coverages the Named Insured may elect to activate and for which additional premium may be charged. An entry must be made on the Declarations for the coverages to be included.

1. Agreed Value

The selection of this Optional Coverage suspends the Coinsurance provision. The Insurance Company agrees to pay covered claims at the proportion of the limit purchased as it relates to the agreed value stated in the Declarations.

Through this Optional Coverage, the insurer and Named Insured agree on an amount of insurance carried. It remains in effect for one year and then must be re-evaluated and renewed.

2. Inflation Guard

This Optional Coverage automatically increases the limits of insurance for the property to which it applies during the course of the year to reflect inflationary increases of the insured property. The Named Insured selects a percentage of annual increase, which is shown in the Declarations.

3. Replacement Cost

When this Optional Coverage is selected, the Valuation Loss Condition is modified by replacing Actual Cash Value with Replacement Cost. The result is that the deduction for depreciation to the covered property is not applied in the loss settlement process. Replacement cost does not apply to personal property of others, contents of a residence, or works of art, antiques, and related items. It also does not apply to stock unless the option for including stock is shown in the Declarations. Tenant's improvements and betterments are not considered to be the personal property of others.

4. Extension Of Replacement Cost to Personal Property Of Others

When the Optional Coverage for Replacement Cost is selected, the Named Insured can elect to have replacement cost apply to personal property of others as well by activating this Optional Coverage. If an item of personal property of others is subject to a written contract which states

the Named Insured's obligation for loss or damage, the valuation is based on the amount for which the Named Insured is liable under the contract, but not more than the lesser of replacement cost or the applicable Limit of Insurance.

TIME ELEMENT COVERAGE FORMS

Time Element Insurance

Time element insurance refers to the insurance coverage designed for indirect or consequential losses that are a result of the business not being able to perform normal operations as a result of a direct damage loss. The term time element is used because the dollar amount of the loss is dependent on the length of time the business is closed or impaired during restoration.

The purpose of time element insurance is to reimburse a business its continuing expenses and net income (as defined) due to a direct loss from an insured peril. It may be thought of as disability insurance for a business. The goal is to provide for an uninterrupted flow of income and to provide an appropriate amount for a sufficient length of time. In other words, it is designed to do for the Named Insured what the Named Insured would have done for itself if a direct damage loss had not occurred.

Basic Concepts of Time Element Insurance

With time element coverages, some common concepts apply, regardless of the type of time element coverage form used.

Elements of a loss:

- The property must sustain direct physical loss or damage;
- The damage must be attributable to a covered cause of loss;
- The property must be at the described premises;
- The business must have a necessary "suspension" of "operations" and/or incur Extra Expenses;
- The business suffers actual financial loss during the period of restoration.

The Insurance Company pays only for what the business would have earned had no loss occurred. It is the Named Insured who must prove the amount of the loss by showing the insurer its past records and future projections. The Named Insured must do everything to restore the damaged property as soon as possible.

The Policy continues to pay until the operations should have been restored or until the limit is exhausted, whichever comes first.

Business Income (and Extra Expense) Coverage Form

The Business Income (and Extra Expense) Coverage Form (CP 00 30) is the most widely used Time Element Coverage Form since it combines the business income and Extra Expense coverages under one form.

1. Business Income

Business Income is considered net income (net profit or loss before income taxes) the Named Insured would have earned or incurred, plus normal continuing operating expenses incurred, which includes payroll. The Insurance Company agrees to pay for loss of business income sustained due to the necessary “suspension” of “operations” during a “period of restoration”. (Please note that the property sustaining direct physical loss or damage does not have to be covered property. For example, if an explosion and fire to a truck parked on the premises necessitates a “suspension” of “operations”, the Policy responds.) The meaning of the term “suspension” includes the slowdown or cessation of the insured’s business activities.

2. Extra Expense

Extra Expenses are expenditures over and above normal operating costs that are a result of direct physical loss or damage to property from a Covered Cause of Loss. The Policy pays for Extra Expenses that are a result of the following:

- To avoid or minimize the “suspension” and to continue operations;
- To minimize the “suspension” of “operations” if the business cannot continue operating; or
- To repair or replace property to the extent the expense reduces the business income loss.

For business income coverage, the “period of restoration”, or the length of time loss payments are made, begins 72 hours after damage occurs and ends when the property should reasonably be restored or repaired, or until such time the business resumes at a new, permanent location. For Extra Expense losses, payments begin immediately.

Note that if the Named Insured’s loss is extended because of additional time needed to comply with ordinances or laws, that increased period of restoration is not covered. The insured may purchase an Ordinance or Law-Increased Period of Restoration Endorsement (CP 15 31) to provide coverage for this type of exposure.

3. Covered Causes of Loss, Exclusions and Limitations

The Causes of Loss that are covered, as well as the limitations and exclusions that apply to them are not a part of the Coverage Form. Refer to the Causes of Loss Form shown in the Declarations for this information. Causes of Loss Forms are reviewed in the next chapter.

4. Additional Limitation – Interruption of Computer Operations

Coverage does not apply when a “suspension” of “operations” results from destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption of Computer Operations. However, the limitation does not apply to loss or damage to electronic data which is integrated in and operates or controls a building’s elevator, lighting, heating, ventilation, air conditioning, or security systems.

5. Additional Coverages

The following Additional Coverages are contained in the Coverage Form. These Additional Coverages are part of (not in addition to) the limit of insurance, with the exception of Interruption of Computer Operations as indicated below.

Civil Authority

The Policy includes coverage when the Named Insured's business incurs a Business Income or Extra Expense loss due to damage occurring from a covered loss at other than the Named Insured's premises, within one mile of the premises, which causes civil authorities to restrict access to the Named Insured's location.

The Business Income Coverage begins after the 72-hour waiting period, and the Policy pays for up to four weeks of Business Income loss to the Named Insured. The 72-hour waiting period does not apply to the Extra Expense loss caused by an action of a civil authority; however, the four week limitation does apply to Extra Expense.

Alterations and New Buildings

The Coverage Form provides the Named Insured a limited amount of automatic coverage for new buildings or structures as well as alterations or additions to existing buildings or structures. It covers a Business Income or Extra Expense loss when the opening of a newly constructed or altered building has been delayed due to a direct loss physical loss or damage at the described premises that is a covered cause of loss. However, the "period of restoration" begins on the date operations would have begun if the direct physical loss or damage had not occurred.

Extended Business Income

Extended Business Income is paid after a business has re-opened after a loss. Upon re-opening, business operations may not be at the same level as prior to the loss. Often there is a difference between what the business was earning just before the loss and what it earns during the first few weeks after business is resumed.

Extended Business Income provides coverage to assist the insured while recovering to the level where operations were prior to the loss. This extended coverage is limited to 60 days.

When it may take longer than 60 days to return to pre-loss conditions, a business owner may select the Optional Coverage Extended Period of Indemnity. This option allows an insured to change the 60-day Extended Business Income Coverage to 90, 120, 150, 180, 270, 365, 450, 540, 630, or 730 days. This coverage cannot be used with a No-Coinsurance Option, nor can it be used with the Maximum Period of Indemnity Option. These concepts are reviewed later.

Interruption of Computer Operations

This coverage applies to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data by a covered cause of loss. Numerous restrictions apply to this Additional Coverage, and the most a Named Insured may collect in a policy year is \$2,500. The limits can be increased.

6. Coverage Extension

When 50% or higher Coinsurance is selected, the Business Income and Extra Expense coverages extend to provide coverage for newly acquired locations other than fairs or exhibitions. The limit of insurance for each newly acquired location is \$100,000 and can be increased. Coverage ends when any of the following occurs first: the policy expires, 30 days after the location is acquired, or when the newly acquired location is reported to the Insurance Company. The Additional Condition Coinsurance does not apply to this Extension.

7. Loss Conditions

Some of the Loss Conditions are similar to those found under the Building and Personal Property Coverage Form (CP 00 10), such as “Appraisal” and “Duties in the Event of Loss”. Under “Duties in the Event of Loss”, there is an additional condition requiring that if the Named Insured intends to continue operations, it must be done as quickly as possible. Both Forms under “Loss Payment” require the Insurance Company to pay within 30 days after receipt of a sworn proof of loss, in accordance with the coverage terms and conditions.

The key differences in this Form compared to the Building and Personal Property Form include how the loss is determined. The amount of Business Income loss is determined based on: (1) The net income of the business before the direct physical loss occurred; (2) The likely net income of the business if no physical loss had occurred; (3) The operating expenses, including payroll, necessary to resume operations at the same level before the loss. The amount of Extra Expense is determined based on those expenses that are in excess of the normal operating expenses if no loss had occurred, and necessary expenses that reduce the Business Income loss that otherwise would have incurred. As mentioned above, it is important that the insured resume operations on a timely basis and failing to do so can result in a reduction of the amount recoverable.

Methods of Writing Time Element Insurance

The methods of writing time element insurance include: (1) with Coinsurance, and (2) Without Coinsurance.

With Coinsurance

The unmodified Business Income Coverage Form includes a Coinsurance condition. Coinsurance for this form of insurance operates in a manner similar to the property Coinsurance calculation. The insured is required to have a minimum of 50 percent Coinsurance, and may use 60%, 70%, 80%, 90%, 100%, or 125%.

The internal calculations of Coinsurance and the setting of adequate limits to comply with this special Coinsurance clause are beyond the scope of this text.

Without Coinsurance

The alternatives to the Coinsurance requirement are stated below.

1. Use No Coinsurance

The Commercial Lines Manual shows that a Named Insured can write a limit of business income insurance with no Coinsurance percentage applicable. However, most insurance companies are reluctant to do this, and the normal rate is increased significantly.

2. Maximum Period of Indemnity

Under this Coverage Form Option, coverage begins after a 72-hour waiting period. Business Income and Extra Expense are limited to a maximum of 120 days after the date of loss or until the limit is exhausted, whichever comes first. Coinsurance is eliminated. All other conditions remain unchanged.

3. Monthly Limit of Indemnity

This Coverage Form Option requires the Named Insured to select a percentage of the limit of insurance available to pay losses for each 30 day period. A maximum payment

for each 30 consecutive days is expressed as a fraction of the limit of insurance. These fractions are $\frac{1}{3}$, $\frac{1}{4}$ and $\frac{1}{6}$, and the fraction chosen is shown in the Declarations. The fraction selected does not relate to the period of time but rather to the most the Named Insured can receive, for any 30-day period of the business income limit shown on the Declarations. This Option is also subject to the 72-hour waiting period as respects Business Income. Coinsurance is eliminated.

Example: If a Named Insured has a business income limit of \$200,000 and elects a monthly limit of $\frac{1}{4}$, the Named Insured receives a payment of whatever loss has been incurred that month. However, the loss payment for any 30-day period never exceeds \$50,000 or $\frac{1}{4}$ of the \$200,000 business income limit.

See the table below for a detailed account of the Named Insured's business income loss and potential coverage amounts.

PERIOD	LOSS	PAID	REASON
First 30 days	\$65,000	\$50,000	$\frac{1}{4}$ of \$200,000 Maximum Available
Second 30 days	\$40,000	\$40,000	Less than \$50,000
Third 30 days	\$45,000	\$45,000	Less than \$50,000
Fourth 30 days	\$50,000	\$50,000	Equal to \$50,000
Fifth 30 days	\$40,000	\$15,000	\$15,000 Remaining Limit
Sixth 30 days	\$10,000	\$0	Limit is Exhausted

4. *Business Income Agreed Value*

This approach is an agreement between the Insurance Company and Named Insured with regard to the values and calculations selected. The Coinsurance requirement is suspended, and any loss that occurs is adjusted without penalty as long as the Named Insured carries a limit of insurance equal to or greater than the agreed value.

Certain conditions apply, including:

- A business income worksheet is required;
- Failure to submit a new worksheet causes the Coinsurance clause to be reinstated; and
- The Named Insured is penalized if the business income limit is less than the agreed value.

Business Income (Without Extra Expense) Coverage Form

Business Income (Without Extra Expense) Coverage Form (CP 00 32) is identical to the Business Income (And Extra Expense) Coverage Form (CP 00 30), with the exception that almost all terms related to Extra Expense are removed. The limited amount of Extra Expense that remains in the Form provides coverage for expenses that reduce the business income loss. The amount paid for such expenses must equal the amount by which the claim is reduced.

Extra Expense Coverage Form

The purpose of the Extra Expense Coverage Form (CP 00 50) is to provide coverage for businesses that do not need insurance coverage for Business Income but do incur additional expenses above

normal operating expenditures to remain operational. Examples of businesses that may have this need include newspapers, hospitals, accounting offices, law firms, and insurance agencies.

Extra Expenses are necessary additional expenditures a business would not normally have, which are incurred during the period of restoration following a covered loss. Expenses, above normal expenses incurred during the “period of restoration” are covered.

These Extra Expenses could include the cost of temporary relocation, the lease/rental of temporary equipment that is necessary to keep the business running, and the payment of overtime to repair crews, if these expenses reduce the amount of loss otherwise payable.

Extra Expense Coverage Form Provisions

Period of Restoration

In the Extra Expense Coverage Form, the “period of restoration” begins with the date of direct physical loss or damage to property at the described premises caused by a covered cause of loss, and ends when the property should be repaired or restored with reasonable speed or on the date when business is resumed at a new permanent location. There is no waiting period or dollar deductible.

The Extra Expense Coverage Form includes Additional Coverages for Alterations and New Buildings, Civil Authority, and Interruption of Computer Operations as well as a Coverage Extension for Newly Acquired Locations, similar to the Additional Coverages and Coverage Extension found in the Business Income Coverage Forms already reviewed.

Special Loss Payment Provisions

The Extra Expense Coverage Form does contain certain special limits on loss payment. What the Policy pays is based on the length of the shutdown and the percentages shown in the Declarations for the Extra Expense Coverage. The total Extra Expense limit is multiplied by one of the percentages, depending on how long the period of restoration lasts. There are three steps involved in determining how much of the Extra Expense Limit of Insurance is available to pay for losses. The most common percentage options used are 40 percent, 80 percent, and 100 percent.

To determine the amount available to pay for a loss:

1. Determine the length of the shutdown;
2. Determine the appropriate percentage; and
3. Multiply the insurance limit by the percentage.

Consider the following example: A small insurance agency has a Policy for \$100,000 in Extra Expense Coverage. The agency suffers a covered loss and must open immediately in another location until repairs are completed.

The table that follows, based on an Extra Expense Limit of Insurance of \$100,000, offers a summary of how the loss payment provision works.

PERIOD OF RESTORATION	PERCENTAGE OPTION	AMOUNT AVAILABLE
30 days or less	40 percent	\$40,000 or 40 percent of \$100,000
31-60 days	80 percent	\$80,000 or 80 percent of \$100,000
More than 60 days	100 percent	\$100,000

If the business is under repair for 45 days, there is \$80,000 available to pay for the necessary Extra Expenses the agency incurs during the period of restoration.

Loss payments are available on a percentage basis, depending upon the amount of time a business is shut down. After 60 days, the Extra Expense Coverage has 100 percent of the Limit of Insurance available to pay the actual loss incurred.

Dependent Properties

Many businesses depend heavily on another enterprise to remain operational at normal levels. If this other enterprise shuts down, the business is affected. These enterprises affecting a business are called dependent properties and are classified as one of the following:

Contributors

Contributors deliver materials and services to the business. For example, a contributor to a manufacturer is a company that supplies its raw materials. If the raw materials are specialized, a loss to the supplier causes an interruption of the manufacturer's business as well.

Recipients

Recipients accept the business' products or services. For example, a plastic manufacturer has a contract with a toy company that accounts for 80 percent of its business. If the toy company is destroyed by a tornado, the plastic manufacturer suffers a business income loss because of loss to a dependent property.

Manufacturers

Manufacturers produce products for delivery to a business' customers. A manufacturer's representative suffers a business income loss if the manufacturer is shut down due to a loss at the manufacturing facility.

Leaders

Leader properties attract customers to a business. A small retail establishment in a mall, such as a restaurant, is in part dependent on customers who come to shop at the mall. If a large department store is shut down due to a fire, the restaurant likely suffers a loss of income.

Additional Considerations

When it comes to dependent properties, additional considerations include the following:

- With respect to contributing locations, services do not include water, communication, or power-supply services; or wastewater removal services.
- The Named Insured must use any available source of materials or outlets for products; and
- The ordinance or law exclusion applies.

Insurance protection is available for these dependent property exposures by endorsement to one or more of the Coverage Forms reviewed.

Legal Liability Coverage Form

This Coverage Form provides legal liability coverage for the benefit of the Named Insured regarding their legal liability (other than liability assumed under contract) for property of others including coverage for loss of use and defense expenses. This Form differs from other property coverage forms because it requires the Named Insured to be liable as a result of an accident and arising out of a covered cause of loss.

Covered Property

This Coverage Form covers tangible property of others that is described in the Policy, which is in the Named Insured's care, custody, or control. Electronic data is not covered property as it is not considered tangible property. However, covered property can be real or personal property.

Covered Causes of Loss

This Coverage Form, as with all of the other Coverage Forms reviewed, does not describe covered causes of loss but makes reference to the Causes of Loss Form attached to the Policy and shown in the Declarations. Causes of Loss Forms are reviewed in the next chapter.

Supplementary Payments

This coverage pays for defense with respect to any claim or any suit against the Named Insured that the Insurance Company defends. This includes all the expenses that the Insurance Company incurs, the cost of bonds, reasonable expenses incurred by the Insured at the request of the Insurance Company (including the Insured's actual loss of earnings up to \$250 a day resulting from time off from work), prejudgment interest that has been awarded, and all interest on the full amount of any judgment that accrues after entry of the judgment and before payment by the Insurance Company.

Coverage Extensions

The following Coverage Extensions are included in this Form:

1. *Additional Insureds*

When the Named Insured is a partnership, limited liability company, or corporation, this Extension includes partners, members, executive officers, trustees, directors, and stockholders as insureds, but only with respect to the performance of duties as such.

2. Newly Acquired Organizations

Provides coverage for newly formed or acquired organizations by the Named Insured with the exception of a partnership, joint venture, or limited liability company. This Coverage Extension ends 90 days after the Named Insured acquired or formed the organization, or at the end of the Policy Period, whichever is earlier.

3. Newly Acquired Property

This Extension applies to the Named Insured's liability for tangible property of others under the Named Insured's care, custody or control after the start of the Policy Period. Buildings are subject to a \$250,000 limit of insurance for each building and must be intended for similar use or as a warehouse. Personal property has a \$100,000 limit of insurance for each owned location or a location in the Named Insured's care, custody or control other than at fairs or exhibitions.

Exclusions and Limitations

The Form refers to the Causes of Loss Form stated in the Declarations for these terms and conditions.

Limits of Insurance

The most the Insurance Company is required to pay for a covered loss is the Limit of Insurance shown in the Declarations. Payments under the Additional Coverage and the Newly Acquired Property Coverage Extension are in addition to the Limits of Insurance.

Loss Conditions

Loss Conditions apply in addition to the Commercial Property Conditions and define what action and duties the Named Insured must take in the event of a claim or suit. This includes reporting promptly any accident that may result in a claim. The notice should contain when, how, and where the event took place, and the contact information for any witnesses. In the event a suit or claim is made, all legal papers and demands must be immediately sent to the Insurance Company. The Named Insured is required to assist and cooperate with the Insurance Company.

Additional Conditions

In addition to the Common Policy Conditions, the following apply:

1. Amendment Of Commercial Property Conditions

None of the Commercial Property Conditions apply to this Coverage Form except for Condition A. (Concealment, Misrepresentation or Fraud); Condition C. (Insurance Under Two or More Coverages); and Condition E. (Liberalization).

2. Bankruptcy

If the Named Insured becomes insolvent, it does not release the Insurance Company of responsibility under this Coverage Form.

3. *Policy Period, Coverage Territory*

In order for coverage to apply, an accident must occur during the Policy Period as stated in the Declarations and within the covered territory, being the United States of America, Puerto Rico, and Canada.

4. *Separation of Insureds*

The insurance provided under this Coverage Form applies separately to the Named Insured and each additional insured, except with regard to the limits of insurance.

Leasehold Interest Coverage Form

This Form provides coverage for a tenant in the event the lease is terminated due to property damage at the described premises, resulting from a Covered Cause of Loss. The Form pays the present value of the difference between the total rents to be paid over the remaining portion of the lease and the estimated rental value of the leased premises for the same time period. Coverage includes the tenant's lease interest, bonus payments, unamortized value of improvements and betterments, and prepaid rent. Leasehold Interest Coverage Form protects tenants with favorable leases, which are below current value, and protects this financial benefit for the balance of the unused lease. It is also essential for tenants who may have substantial sums invested in improvements and betterments to consider this coverage if their lease contains a cancellation provision due to a covered cause of loss.

CONCLUSION

Commercial Property Coverage Forms provide a means to protect a business' own commercial property exposures consisting of buildings and business personal property, as well as providing coverage for indirect losses such as business income, Extra Expense, and lease cancellation. Insurance protection can extend to provide legal liability coverage for property of others for which the Named Insured is responsible. Commercial Property Coverage Forms assist an entity in tailoring coverage to exposure as respects the subject of insurance. The next chapter reviews the potential perils (causes of loss) that may impact the subject of insurance.

CHAPTER 5: COMMERCIAL PROPERTY CAUSES OF LOSS FORMS

INTRODUCTION

The Commercial Property Causes of Loss Forms combine with the Commercial Property Coverage Forms and endorsements to complete the coverage portion of the Commercial Property Policy. The separate Causes of Loss Forms provide the Named Insured with the flexibility to select and design coverage that addresses that business' particular needs. The three Causes of Loss Forms are the Basic, Broad, and Special. The first two Causes of Loss Forms provide coverage on a named perils basis, while the Special Form provides coverage on an open perils basis.

CAUSES OF LOSS FORM – BASIC FORM

This Form provides coverage (with limitations) for direct physical loss of or damage to covered property from 11 named perils. A named perils approach requires that the insured demonstrate the loss was caused by one of the perils described in the Causes of Loss Form.

There are exclusions applicable (reviewed in this chapter under the Causes of Loss – Special Form). There is an Additional Coverage – Limited Coverage For “Fungus”, Wet Rot, Dry Rot, and Bacteria that provides limited coverage of \$15,000 aggregate in a 12-month period if the damage is a result of a covered cause of loss other than fire or lightning. “Fungus” is defined as any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents, or by-products produced or released by fungi. Loss of animals is paid only if they are killed or their destruction is made necessary.

Depending on the situation and need, the perils of wind, hail, vandalism, and/or sprinkler leakage may be excluded by the Named Insured or the insurer by endorsement.

CAUSES OF LOSS FORM – BROAD FORM

This Form is similar, but somewhat broader than, the Basic Form. In addition to the 11 named perils contained in the Basic Form, the following three additional perils are included:

1. Damage Caused by Falling Objects;
2. Weight of Snow, Ice, or Sleet; and
3. Water Damage from Leakage of Appliances.

The Broad Form provides the same Additional Coverage – Limited Coverage For “Fungus”, Wet Rot, Dry Rot, and Bacteria which is found in the Basic Form. And, the Broad Form includes Collapse as an Additional Coverage. Otherwise, the terms and conditions mirror the Basic Form.

CAUSES OF LOSS - SPECIAL FORM

This Form provides the broadest coverage. The coverage is not limited to named perils. Coverage is provided for direct physical loss to covered property at the described premises, unless otherwise excluded or limited. Under this Form, the insurance company is required to review the exclusions and limitations to determine if a loss is not covered, as compared to the Basic and Broad Forms where, as previously stated, the insured must prove that it is covered by one of the named perils. The Special Form is the most commonly used Form due to the extremely broad coverage it provides. As with the Basic and Broad Forms, the perils of wind, hail, vandalism, and/or sprinkler leakage may be excluded by endorsement. In addition, the peril of theft may be excluded.

The Causes of Loss Comparison Chart below lists the perils covered under the Basic, Broad, and Special Forms. Note that the Special Form provides coverage beyond what is stated in the Chart since it is not named perils coverage but direct physical loss or damage unless otherwise excluded or limited.

COMPARISON OF CAUSES OF LOSS FORMS			
CAUSES OF LOSS	BASIC CP 10 10	BROAD CP 10 20	SPECIAL CP 10 30
Fire	Yes	Yes	Yes
Lightning	Yes	Yes	Yes
Explosion	Yes	Yes	Yes
Windstorm & Hail	Yes	Yes	Yes
Smoke	Yes	Yes	Yes
Aircraft & Vehicles	Yes	Yes	Yes
Riot & Civil Commotion	Yes	Yes	Yes
Vandalism	Yes	Yes	Yes
Sprinkler Leakage	Yes	Yes	Yes
Sinkhole Collapse	Yes	Yes	Yes
Volcanic Action	Yes	Yes	Yes
Falling Objects	No	Yes	Yes
Weight of Ice, Snow, or Sleet	No	Yes	Yes
Water Damage	No	Yes	Yes
Collapse	No	Yes	Yes
Theft	No	No	Yes
Direct Physical Loss	No	No	Yes

EXCLUSIONS

The following exclusions, which remove or limit coverage, are common to the Basic, Broad and Special Causes of Loss Forms. Some of these exclusions may be addressed by the purchase of endorsements.

- **Ordinance or Law** - excludes any costs as a result of the enforcement or compliance with any ordinance or law regulating the construction, use, or repair of any property, or requiring the tearing down of any property, including the costs of removing its debris. Existing buildings must comply with new codes and ordinances after a significant property loss. This may involve adding or improving existing building items such as elevators, fire and life safety equipment such as alarms and sprinkler systems, and compliance with energy standards as well as ADA requirements. The costs for these improvements are the responsibility of the insured since the Policy is designed to return the insured to the condition that existed prior to the loss and nothing more.
- **Earth Movement** - excludes direct physical damage or loss due to earth movement and includes earthquake, tremors and aftershocks, landslide, mine subsidence, earth sinking (other than sinkhole collapse), rising or shifting, as well as volcanic eruption, explosion, or effusion. A standard endorsement is available to buy back the perils of earthquake and volcanic eruption. Some states have pooling arrangements available for mine subsidence.
- **Government Action** - damage that results from seizure or destruction of property by order of government authority is not covered except if the acts of destruction are to prevent the spread of fire, and fire is a covered peril. For example, if the government condemns the property and tears it down, there is no coverage. In the event that the property is damaged by fire as a result of government action to prevent or contain the spread of fire, such as the creation of a fire break, that fire loss is covered.
- **Nuclear Hazard** - damage caused by any nuclear reaction or radiation, or radioactive contamination, however caused, is not covered. However, ensuing fire damage is covered. There is a standard endorsement available for certain types of risks, such as hospitals, that provides limited coverage.
- **Utility Services** – excludes damage caused by the failure of communication, water, or other utility service supplied to the described premises, however caused, if the failure originates away from the described premises or originates at the described premises, but only if the failure involves equipment used to supply the utility service to the described premises from a source away from the described premises. This means that in the event a business suffers a loss due to a lack of incoming electricity (or other utility) as a result of damage (such as fire or windstorm) to the local utility station providing the service, there is no coverage for the loss. For example, a food processor loses power and the food must be destroyed. Again, an endorsement is available.
- **War and Military Action** - coverage does not apply for war, or warlike actions including civil war and undeclared war, rebellion, and revolution. (The term terrorism does not appear in this exclusion.)
- **Water** – excludes damage from flood, surface water, waves (including tidal wave and tsunami), tides, overflow of any body of water or spray from any of these, all whether or not driven by wind (including storm surge); mudslide or mudflow; back up, overflow, or other discharge from sewers, drains and sumps, sump pumps or related equipment, as well as underground water pressing on or flowing or seeping through foundations, walls, floors,

paved surfaces, basements (whether paved or not), doors, windows, or other openings. In addition, waterborne material carried or otherwise moved by any of the water is excluded, as well as material carried or otherwise moved by mudslide or mudflow. As with some other exclusions, ensuing fire is covered as well as ensuing explosion or ensuing sprinkler leakage (if a covered cause of loss). Examples of losses not covered include such events as damage to property resulting from: (1) a creek overflowing as a result of heavy rains; (2) damage to a building from a sewer that backs up due to rain, creating a high water table that confines the flow; (3) damage to property from an offshore storm that creates a wave or storm surge that inundates the property; (4) surface water from a fire department pouring water on the building next door and causing extensive damage to the basement.

- Fungus, Wet Rot, Dry Rot, and Bacteria - excludes damage caused by the presence, growth, proliferation, spread or any activity of fungus, wet or dry rot, or bacteria unless this type of damage results in a Specified Cause of Loss (as defined). The exclusion does not apply when this damage is caused by fire or lightning. In addition, limited coverage is found in the Additional Coverage section of this Form.

The following exclusions apply to all three Causes of Loss Forms. Coverage is excluded for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event:

- Artificially generated energy (example - power surge to a building's electrical panels results in arcing and destruction to the panels);
- Mechanical breakdown, including rupture or bursting caused by centrifugal force (example – a turbine generator fails when the blades break and damage the gears and motor);
- Explosion of owned or controlled steam boilers (example – a safety valve fails, which creates an outlet obstruction where excess pressure had no means of release and results in the explosion of the boiler);

Note that the three exclusions stated above can be addressed by the use of an Equipment Breakdown Policy. (Refer to the Equipment Breakdown Protection chapter for additional details).

- Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture, or vapor over a period of 14 days or more;
- Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss. In the event of a loss, it is required that the insured exercise good judgment in protecting the property from further or possible damage, acting as if the property is not covered by insurance. It is considered neglect if the insured, upon discovering a fire in the building, fails to contact the fire department, allowing a possible partial loss to become a larger or total loss.

The following exclusions are specific to the Causes of Loss Form – Special Form. Coverage is excluded for loss or damage caused by:

- Delay, loss of use, or loss of market;
- Smoke, vapor or gas, from agricultural smudging or industrial operations;
- Wear and tear, rust or other corrosion, decay, deterioration, hidden or latent defect;

- Smog;
- Settling or cracking;
- Insect, bird, or animal infestation;
- Losses resulting from freezing of plumbing, heating, air conditioning, or other equipment, with the exception of fire protection devices, unless the insured has maintained heat in the building or drains the water supply (example - the insured fails to turn on the furnace in the building resulting in the pipes freezing, causing them to burst and leak);
- Dishonest or criminal acts, including theft, by certain persons including the Named Insured, the Named Insured's management, employees, temporary employees or leased workers, or anyone else entrusted with the property. (Examples: an employee of the insured steals merchandise from the insured's store; the insured's bookkeeper alters bank deposits in order to steal money from the insured);

The Commercial Crime Policy addresses the exposures found in this exclusion, as explained in the Commercial Crime Coverages chapter.

- Voluntary parting with property under false pretense;
- Losses to personal property in the open from rain, snow, ice, or sleet;
- Collapse, except on a limited basis as provided under Section D as Additional Coverage – Collapse;
- Discharge, dispersal, seepage, migration, release, or escape of pollutants, unless a result of a specified cause of loss (example – a restaurant next to a retail fur store emitted a curry odor that permeated the fur coats; the cost to clean the merchandise at the fur store is denied by the insurance company on the basis that the curry odor qualifies as a pollutant and coverage does not apply);
- Concurrent causation relating to weather conditions; acts or decisions, including the failure to act or decide of any person, group, organization or governmental body; faulty, inadequate or defective: (1) planning, zoning, development, surveying (2) design, specifications, workmanship, repair, construction (3) materials used in repairs, construction (4) maintenance of part or all of any property on or off the described premises. For example, flood can be a result of surface water from heavy rains, the opening of flood control gates on a dam or levy, or the failure to properly design or construct a storm sewer or channel system; when insureds take the position that the cause of loss is one of the above causes as opposed to flood, this set of exclusions applies.

The following exclusions or changes apply only to Business Income, Leasehold Interest, and Legal Liability Coverage Forms:

With regards to Business Income:

- Loss or damage to “finished stock” or the time required to reproduce “finished stock” is excluded;
- No coverage for loss caused by direct damage to radio or television antennas including satellite dishes, masts, or towers;

- Any increase of loss caused by or resulting from delay in rebuilding, repairing, or replacing the property or resuming operations due to interference by strikers or other persons, or the suspension, lapse, or cancellation of any license, lease, or contract is not covered;
- Any Extra Expense caused by or resulting from the suspension, lapse, or cancellation of any license, lease, or contract beyond the period of restoration is not covered;
- Any other consequential loss is excluded.

With regards to Leasehold Interest:

- The Ordinance or Law exclusion does not apply; and
- There is no coverage if the Named Insured cancels the lease, for the suspension/lapse/cancellation of any license, or for any consequential loss.

With regards to Legal Liability:

- Exclusions relating to Ordinance or Law, Governmental Action, Nuclear Hazard, Utility Services, and War and Military Action do not apply;
- There is no coverage for liability assumed by the Named Insured under contract, with an exception for liability assumed in a lease agreement for damage to a building as a result of actual or attempted burglary or robbery with specific provisions applicable.

Additional Exclusion

Coverage is excluded for loss or damage to products, including merchandise, goods, or other products caused by any party's (person or entity) error or omission during any stage of development, production, or use of the product. It also applies to any compromising of the product in form, substance or quality (example – a shoe manufacturer fails to properly install the heels on shoes, which makes the shoes unusable and therefore of little or no value). But if the error or omission results in a Covered Cause of Loss, the insurer pays for the loss or damage

LIMITATIONS

The following limitations apply to all policy forms and endorsements, unless otherwise stated. Loss of or damage to the property described, including losses that are a consequence of loss or damage to the property is excluded:

- a. Steam boilers, steam pipes, steam engines, or steam turbines, if a loss is caused by or resulting from any condition or event inside the equipment (example – tubes inside a boiler melt and damage the equipment as a result of being dry-fired due to low water level in the boiler; this coverage can be addressed with an Equipment Breakdown Policy). The exception is for loss or damage to the equipment caused by or resulting from an explosion of fuel or gases within the furnace of any fired vessel.
- b. Hot water boilers or other water heating equipment, if the loss is caused by an internal event other than explosion.

- c. The interior of any building structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand, or dust (whether driven by wind or not) unless the building's roof or wall(s) become damaged by a covered loss which creates an opening that allows the above items to enter the building. The limitation does not apply to damage as a result of melting snow, sleet, or ice on the building or structure. For example, if a windstorm creates an opening in the roof and rain enters, this interior damage is covered. If the damage is a result of a window or door being left open, and there is no damage to the roof or exterior walls, this damage is not covered.
- d. Theft of building materials and supplies that are not attached as part of the building, unless the property is held for sale by the Named Insured, or insured under a Builders Risk Coverage Form, or Business Income or Extra Expense Coverage.
- e. Property that is missing, where the only evidence is shortage disclosed upon taking inventory, or other instances where there is a lack of evidence regarding what happened to the property.
- f. Property that has been transferred to a person or a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from: dampness or dryness of soil or atmosphere; extreme changes in temperature; disease; frost, hail, rain, snow, ice or sleet.

Coverage is excluded for the following types of property unless caused by the "specified causes of loss" (as defined) or building glass breakage:

- a. Animals, and only if killed or their destruction is made necessary.
- b. Fragile articles, if broken, such as statuary, chinaware, and porcelains. This restriction does not apply to glass or containers of property held for sale.
- c. Builders' machinery, equipment and tools owned by or entrusted to the Named Insured. This limitation does not apply to property located within 100 feet of the described premises, unless the premises is insured under a Builders Risk Coverage Form; also does not apply to Business Income or Extra Expense Coverage.

The Special Limit shown for each item below is the total limit for loss or damage to property in that category unless a higher limit is shown in the Declarations. The Special Limit applies to any one occurrence of theft regardless of the number or type of articles lost or damaged:

- a. \$2,500 for furs, fur garments, and garments trimmed in fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum, and other precious metals and alloys. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$2,500 for patterns, dies, molds, and forms.
- d. \$250 for stamps and tickets, including lottery tickets held for sale, and letters of credit.

Coverage is excluded for the cost to repair any defect to a system or appliance where water or other liquid, powder, or molten material escapes. The exception is damage to fire extinguishing equipment if:

- a. Damage results in the discharge of any substance from the fire protection system; or
- b. Damage is caused directly by freezing.

This limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

ADDITIONAL COVERAGE - COLLAPSE

The coverage provided under Additional Coverage – Collapse applies only to an abrupt collapse as described and limited below.

Coverage applies for direct physical loss or damage to covered property if collapse is caused by one or more of the following:

- a. Building decay that is hidden from view and not known to the Named Insured prior to the collapse.
- b. Insect or vermin damage hidden from view and not known to the Named Insured prior to collapse.
- c. Use of defective material or methods in construction, remodeling or renovation, if the abrupt collapse occurs during the course of construction, remodeling, or renovation.
- d. Use of defective materials or methods in construction, remodeling or renovation, if the abrupt collapse occurs after the construction, remodeling or renovation is complete, and only if the collapse is caused by: a. or b. above; one or more of the “specified causes of loss”; breakage of building glass; the weight of people or personal property; or the weight of rain collected on the roof of the building.

With regard to: outdoor radio or television antennas (including satellite dishes) including lead-in wiring, masts or towers; awnings, gutters, downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves, docks; beach or diving platforms; retaining walls; walks, roadways and other paved surfaces: if the collapse was a result caused by a. through d., the policy provides coverage if such loss or damage is a direct result of the abrupt collapse of a building insured under the Coverage Form and the property is Covered Property under the Coverage Form.

Additional Coverage – Collapse does not apply to a building or any part of a building in danger of falling down or caving in, or that has separated from another part of the building, or that it is showing evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion. The same condition applies to personal property.

An example of a covered loss is a suspended walkway inside a building that collapses because of the weight of several people due to the failure of defective materials used during construction. An example of an uncovered loss: The insured has noticed termite damage to the support columns of

the building; after a period of time, the columns fail due to the termite damage, which is the direct result and cause of the collapse of the structure.

ADDITIONAL COVERAGE – LIMITED COVERAGE FOR “FUNGUS”, WET ROT, DRY ROT AND BACTERIA

This coverage applies only if the cause of loss is one of the “specified causes of loss”, except for fire or lightning; or flood, if the Flood Coverage Endorsement applies to the affected premises. It is a condition that the Named Insured must use all reasonable means to save and preserve the covered property from further damage at the time of and after the occurrence.

This coverage pays for direct physical damage to the covered property caused by “fungus”, wet or dry rot or bacteria, including the cost of removal. In addition, it covers the cost to tear out and replace any part of the building or property to gain access to the “fungus”, wet or dry rot or bacteria, as well as the cost of testing after the removal and repairs of the damaged property, if deemed necessary.

This additional coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

The limit of insurance under this coverage is a policy year limit of \$15,000. Regardless of the number or cost of the losses, once the \$15,000 limit is exhausted, no additional amount is to be paid.

In addition, if Business Income and/or Extra Expense Coverage applies to the described premises, and only if the suspension of operations satisfies all terms and conditions contained in the policy, the payment for loss or expense shall not exceed a period of more than 30 days.

ADDITIONAL COVERAGE EXTENSIONS

Under Additional Coverage Extensions coverage is provided for the following:

- a. Property in transit - the personal property of the Named Insured, excluding property in the care, custody or control of the Named Insured’s salespersons, while situated in or on vehicles owned or operated by the Named Insured and while between points in the coverage territory. Loss or damage must be caused by or result from fire, lighting, explosion, windstorm or hail, riot or civil commotion, vandalism; or vehicle collision, upset, or overturn. Coverage is also provided for the theft of an entire shipping package as a result of visible forced entry to a securely locked and enclosed vehicle. The limit of insurance for property in transit is \$5,000.
- b. If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage occurs, the insurance company also pays the cost to tear out and replace any part of the building to repair damage to the system or appliance from which the covered water or other substance escapes. For example, if a pipe contained within a

wall breaks apart and results in a covered loss, the cost to remove and then replace the wall area to access the pipe is covered. The cost to actually repair the pipe is not covered.

- c. With respects to glass, coverage is provided for expenses incurred to install temporary plates or board up openings, if the repairing or replacing of damaged glass is delayed. This includes the cost to remove or replace obstructions to perform the repairs or replacement, with the exception of window displays.

DEFINITIONS

Fungus means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents, or by-products produced or released by fungi.

Specified causes of loss means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. It does not include the cost of filling sinkholes; or sinking or collapse of land into man-made underground cavities.

Falling objects does not include loss or damage to personal property in the open; or the interior of buildings or structures, including property located inside the building or structure, unless the roof or outside wall is first damaged by a falling object.

Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning, or other system or appliance (other than sump system, including its related equipment), that is located on the described premises and contains water or steam. It also includes accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe at the described premises and is part of a municipal potable water supply or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear. But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. For example, if water damage occurs due to the cracking of a pipe caused by weather-induced flooding along with wear and tear, there is no coverage.

CONCLUSION

In order for the insurer to provide insurance coverage, there must be direct physical loss of or damage to Covered Property resulting from a Covered Cause of Loss. Therefore, Causes of Loss Forms determine in a loss situation whether or not a loss is covered. The insurance company's obligation to pay, subject to all other terms and conditions, is established by attaching one or more Causes of Loss Forms to the Policy.

Of the three Forms available, the Causes of Loss - Special Form should be considered the best option for an insured if the insurer is willing to provide this Form. By securing the broadest coverages, a business can remove some of the uncertainty it faces in protecting the firm's assets.

CHAPTER 6: COMMERCIAL PROPERTY ENDORSEMENTS

INTRODUCTION

Commercial Property Coverage Forms as well as Causes of Loss Forms can be expanded, restricted, modified, clarified and tailored for specific needs by the use of endorsements that attach to and become part of the Policy. These endorsements are separated into categories according to purpose and function. The following endorsements have been selected for review since they are frequently used, and a basic understanding is beneficial.

SELECTED ENDORSEMENTS

Increased Cost of Loss and Related Expenses For Green Upgrades CP 04 02 10 12

This endorsement amends replacement cost coverage to include green upgrades in the event of a covered loss to covered property. Green refers to enhanced energy efficient or environmentally friendly materials, construction practices, designs, and products identified as such by green standards-setters. Coverage is excluded for loss or damage due to contamination by pollutants or fungus, or remedial action. This endorsement is not subject to the coinsurance clause contained in the Policy. The coverage applies only to buildings; and the Named Insured has the option to accept settlement of a covered loss without the green upgrade use or application.

Ordinance or Law Coverage CP 04 05 10 12

This endorsement is designed to address the Ordinance or Law Exclusion found in the Causes of Loss Forms. It contains three coverages, each of which is treated separately from the other. The coverages are:

Coverage A – provides coverage for loss to the undamaged portion of the building for its loss of value as a consequence of a requirement to comply with an ordinance or law.

Coverage B – pays the cost to demolish and remove the undamaged portion of the same building as a consequence of a requirement to comply with an ordinance or law.

Coverage C – covers the increased cost to repair or replace the property when the increased cost is a consequence of a requirement to comply with the minimum standards of ordinance or law.

This Ordinance or Law endorsement provides coverage for these costs up to the limits of liability shown in the schedule located on the endorsement.

Pollutant Clean Up and Removal Additional Aggregate Limit of Insurance CP 04 07 10 91

The use of this endorsement allows for higher limits than the \$10,000 limit provided in the Additional Coverages of the Commercial Property Coverage Form.

Increase in Rebuilding Expenses Following Disaster (Additional Expense Coverage on Annual Aggregate Basis) CP 04 09 10 12

In the event of a disaster, the cost of building materials and labor often increases due to the high demand. This endorsement covers the increased cost of materials and labor when an event that causes the covered loss results in a declaration of disaster by state or federal authorities; or when the covered loss occurs within close proximity to the event that results in a declaration of disaster.

Protective Safeguards CP 04 11 10 12

This endorsement identifies the protective safeguards at covered locations and the requirements of the Named Insured to maintain service for each. Protective safeguards include fire alarms, security systems, fire suppression and automatic sprinkler systems, security services, and other safeguards and services. It is a condition of the insurance that the Named Insured is required to maintain the protective devices and services and failure to do so permits the insurance company to deny payment for loss or damage. For example: the Named Insured suffers a loss caused by fire. If the Named Insured is aware of any condition that suspends or impairs the protective safeguards prior to the fire, the insurer can deny coverage.

Debris Removal Additional Insurance CP 04 15 10 12

This endorsement allows the limit of insurance for debris removal to be increased over the \$25,000 additional limit provided in the Additional Coverages of the Commercial Property Coverage Form.

Functional Building Valuation CP 04 38 10 12

The use of this endorsement provides a way for the Named Insured to insure a building based on use instead of construction. The limit of insurance usually reflects the value to rebuild a less costly structure than the existing building. The coinsurance requirement does not apply. The Ordinance or Law exclusion does not apply.

Spoilage Coverage CP 04 40 06 07

This endorsement provides coverage for loss of covered property (perishable stock) owned by the Named Insured or in the Named Insured's care, custody, or control, which spoils as a result of a Breakdown or Contamination or Power Outage at the described premises. Breakdown or Contamination means a change in temperature or humidity resulting from mechanical breakdown, or failure of refrigerating, cooling or humidity control equipment or contamination by the refrigerant. Power Outage means a change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises and that is beyond the insured's control.

Vacancy Permit CP 04 50 07 88

When attached to the Policy, the Vacancy Loss Condition is removed, permitting coverage to remain in force, as written, for a building that has been vacant for more than 60 consecutive days.

Vacancy Changes CP 04 60 10 12

This endorsement can amend the 31 percent minimum occupancy usage to a new percentage. It does not change any other terms or conditions contained in the Vacancy Condition stated in the Policy.

Earthquake and Volcanic Eruption Endorsement CP 10 40 10 12

This endorsement serves to add earthquake and volcanic eruption to the Basic, Broad and Special Causes of Loss Forms. It does not remove the earth movement exclusion found in the Causes of Loss Forms. This endorsement provides coverage for only earthquake and volcanic eruption as defined in the endorsement.

Theft of Building Materials and Supplies (Other Than Builders Risk) CP 10 44 10 12

When the Causes of Loss – Special Form is used, this endorsement can be added to provide coverage for theft of building materials and supplies located on or within 100 feet of the premises when the materials and supplies are intended to become a permanent part of the covered building or structure.

Flood Coverage Endorsement CP 10 65 10 12

This endorsement provides for flood coverage and may apply for either covered buildings or covered business personal property as stated by schedule. It may be used as primary insurance or as excess insurance over that provided by the National Flood Insurance Program. Coverage is delayed for a period of 72 hours after the effective date of the endorsement.

Loss Payable Provisions CP 12 18 10 12

This endorsement allows others with insurable interest to be named and included in payments issued by the insurance company for loss or damage to covered property by amending the Loss Payment Loss Condition.

Additional Insured – Building Owner CP 12 19 06 07

When a tenant is required to secure the insurance on the building the tenant leases, this endorsement provides a way to add the building owner as a Named Insured for direct physical loss of or damage to the building.

Peak Season Limit of Insurance CP 12 30 06 95

This endorsement is a method for the Named Insured to increase limits on personal property inventories for specified time periods, to address seasonal increases. The endorsement indicates the additional limit(s) for the time period(s) shown as being peak season periods, and an additional premium is charged for each period.

Limitation On Settlement-Blanket Insurance (Margin Clause) CP 12 32 06 07

When coverage is written on a blanket basis, this endorsement may be used to place a limitation on the maximum loss payment amount for an individual property. This is accomplished by applying the margin clause percentage selected (e.g., 105%, 110%, 120%, or 130%) to the value of the covered property shown on the statement of values. The result is the most the insurance company is required to pay in the event of a covered loss.

Joint Or Disputed Loss Agreement CP 12 70 09 96

This endorsement should be included when the Named Insured has purchased Equipment Breakdown Coverage from a different insurance company than the insurance company that is providing property insurance. In situations where coverage may apply under both policies, it is

designed to pay the Named Insured without delay caused by the insurance companies' processes to determine which policy should respond.

Value Reporting Form CP 13 10 04 02

This endorsement is for businesses that have fluctuating personal property values and/or locations that are subject to change. It provides a way to identify changing values during a period of time, maintain adequate coverage and charge accurate premiums that reflect these changes. Eligible property can include stock only, or personal property of the Named Insured or others. The reporting provisions contained in the endorsement require the Named Insured to report on a defined time period basis such as monthly or quarterly, and the reports must be accurate. Failure to comply with any of the terms and conditions results in a penalty in the event of a covered loss. The penalty reduces the amount of payment otherwise due if the values have been under-reported, as well as if the insured fails to report at the time agreed to in the endorsement.

When the Value Reporting Form is used, the premium charged at inception is an advance premium. The final premium is calculated after the policy year or expiration, based on the average of the Named Insured's actual reported values.

Additional Covered Property CP 14 10 06 95

The purpose of this endorsement is to provide coverage for certain property that is excluded under Property Not Covered as described in an unendorsed property form. Property such as fences, foundations, patios, retaining walls, and underground pipes are common examples.

Additional Building Property CP 14 15 07 88

This endorsement is designed to identify scheduled property, which would normally be considered as Your Business Personal Property, as Building, and, therefore, subject to the insuring terms and premium calculations that apply to Building. Rates for Building are typically lower than for Your Business Personal Property.

Additional Property Not Covered CP 14 20 07 88

When the Named Insured does not want or need to insure specific property that is otherwise covered under the Policy, this endorsement is used to identify that property, remove coverage, and thereby reduce the premium.

Outdoor Trees, Shrubs and Plants CP 14 30 10 12

This endorsement permits the limits of insurance for such property to be modified and increased, as well as amending the causes of loss. A limit of insurance can apply to each item. This limit includes any debris removal expense.

Outdoor Signs CP 14 40 06 07

Subject to the Causes of Loss Form, the amount of insurance can be increased from the \$2,500 limit contained in the Policy to a higher limit stated in this endorsement.

Radio or Television Antennas CP 14 50 10 00

This endorsement allows for additional limits and coverages as well as expanding the property definition of radio or television antennas (including satellite dishes) to include lead-ins, masts, and towers.

Leased Property CP 14 60 07 88

This endorsement is designed to provide coverage for personal property leased to the Named Insured as Your Business Personal Property and not as Personal Property of Others. It also allows for specific valuation of such property. Examples include copy machines and telephone systems.

Building Glass – Tenant’s Policy CP 14 70 10 12

Under Commercial Property Forms, if the Named Insured is not required to provide building coverage, then the Policy does not cover building glass. This endorsement is used to provide coverage for building glass when a tenant is contractually responsible to provide insurance for building glass.

Food Contamination (Business Interruption and Extra Expense) CP 15 05 10 12

If a covered business is closed by the Board of Health or any other government authority as a result of the discovery or suspicion of food contamination, this endorsement will pay the increased expenses to clean equipment, replace food, provide necessary medical tests and vaccinations for employees and advertise in order to restore reputation.

Business Income From Dependent Properties-Broad Form CP 15 08 10 12

This endorsement provides coverage for the Named Insured under the Business Income Forms for a covered direct loss to a dependent property. There are four types of dependent property locations:

1. Contributing – businesses that supply the Named Insured with raw materials or products;
2. Recipient – locations that accept the Named Insured’s products or services;
3. Manufacturing – such as manufacturers’ representatives dealing in products manufactured by others;
4. Leader locations - which attract customers to the Named Insured’s business such as an office building or retail anchor store.
5. Coverage can also be provided under this endorsement for direct loss to secondary contributing and recipient dependencies.

The dependent property or properties must be named on the endorsement for coverage to be in place. And the same limits that apply to the business income at the Named Insured’s described premises apply to the dependent properties.

Ordinance Or Law – Increased Period of Restoration CP 15 31 10 12

This endorsement increases the period of restoration with respect to the increased period of the suspension of operations for the Named Insured as a result of a requirement to comply with any ordinance or law pertaining to the covered property.

Extra Expense From Dependent Properties CP 15 34 10 12

The Named Insured can modify the Extra Expense Coverage Form with this endorsement. A specific amount of extra expense insurance can be selected for each dependent property named on the schedule. These limits are separate from the Named Insured's Extra Expense limit of insurance. It provides coverage for extra expense as a result of a direct loss caused by a covered peril at the premises of the dependent property or a secondary dependent property.

Utility Services – Time Element CP 15 45 10 12

This endorsement extends coverage provided under the Business Income or Extra Expense Coverage Forms to apply to a suspension of operations resulting from an interruption in utility services to that premises. The types of eligible utilities are power supply services, communication supply services, water supply services and wastewater removal systems. The direct physical loss or damage to the utility must be to utility property located outside of a covered building scheduled on the Policy and be a result of a covered cause of loss.

Radio Or Television Antennas – Business Income Or Extra Expense CP 15 50 10 12

This endorsement removes the exclusion included in the Causes of Loss Forms regarding loss of income and extra expense due to loss or damage to radio or television antennas.

Business Income Changes – Beginning Of the Period of Restoration CP 15 56 06 07

The purpose of this endorsement is to amend the coverage provided under Business Income Coverage Forms by deleting the 72 hour waiting period condition contained in the Forms, or allowing the waiting period to be reduced to 24 hours.

Your Business Personal Property – Separation of Coverage CP 19 10 06 95

With regards to Your Business Personal Property, this endorsement allows the Named Insured to identify covered property and provide a specific limit for that property, as well as to identify the applicable causes of loss. The property shown in this endorsement will not be covered under Your Business Personal Property in the Declarations.

CONCLUSION

The use of endorsements allows commercial property coverages and causes of loss to be amended to achieve desired results. They may be used to address specific needs of the Named Insured or to limit or enhance coverages that an insurance company is willing to provide. Regardless, there are few policies written that do not contain one or more endorsements.

CHAPTER 7: COMMERCIAL INLAND MARINE

INTRODUCTION

This chapter is an introduction to a unique area of insurance. It looks specifically at a body of insurance, which has developed to meet the needs of a changing America. In the early history of the United States, most large shipments of goods were by water, and, as the country changed, more available methods of shipping goods over land developed. This resulted in additional exposures and produced a change in insurance coverages.

Fire insurance, for the most part, applies to property at a fixed location and is not suited for property with the exposure of being in transit or at unnamed locations. Ocean marine underwriters were experienced with risks of this nature and readily provided coverage. From there, inland marine insurance evolved as a separate classification of insurance.

Commercial Inland Marine Coverage Forms are not usually governed or regulated by the same composition or restrictions regarding coverage, rates and rules as commercial property insurance. Therefore, these Coverage Forms have the ability to provide very flexible coverage to property identified as eligible for inland marine insurance consideration.

COMMERCIAL INLAND MARINE

Types of Property

The following types of property are eligible for Commercial Inland Marine coverage:

- Imports;
- Exports;
- Domestic Shipments;
- Bridges, Tunnels and Other Instrumentalities of Transportation and Communication (excluding buildings, furniture and furnishings, fixed contents and supplies); and
- Commercial Property Floater Risks.

Commercial Property Floater Risks pertain to a business, profession, or occupation. There are 23 categories of Commercial Property Floater Risks. They range from exotic risks, as exemplified by the Radium Floater, to common risks such as the Builders Risk Floater.

Commercial Inland Marine Classes

Commercial inland marine insurance is divided into two categories or classes: filed (or controlled) and non-filed (or non-controlled).

Filed (or controlled)

“Filed” indicates those classes for which rules, rates, and forms must be filed by the insurance companies, with state regulatory authorities, for approval. Risks within a filed class are relatively uniform in nature and have similar exposures. The premiums generated by filed classes are considered minimal compared to non-filed classes. The following is a list of the most common filed Commercial Inland Marine Coverage Forms:

- Accounts Receivable Coverage
- Commercial Articles Floater
- Jewelers Block Coverage
- Sign Coverage
- Valuable Papers and Records Coverage
- Equipment Dealers

Non-filed (or non-controlled)

Non-filed indicates those classes for which rules, rates, and forms are not subject to filing requirements or uniform standards of application. The classes identified as non-filed have greater variance in the exposures, which makes it difficult to provide uniformity related to coverages and pricing. Non-filed lines have the ability and freedom to address unique or specific exposures on an individual risk basis. The majority of commercial inland marine insurance that is written is from non-filed classes. The majority of this chapter focuses on non-filed Inland Marine Coverage Forms, and specifically examines the following:

- Builders Risk
- Contractors Equipment Floater
- Electronic Data Processing
- Installation Floater
- Difference in Conditions
- Transportation

COMMERCIAL INLAND MARINE CONDITIONS

Inland Marine Policies usually consist of not only a Coverage Form, but also a Commercial Inland Marine Conditions Form. The following terms and conditions are generally contained in a Commercial Inland Marine Conditions Form.

Loss Conditions***1. Abandonment***

The Named Insured cannot abandon damaged property to the insurance company and later expect payment for its full value.

2. Appraisal

When the Named Insured and insurance company cannot agree on the amount to be paid on a covered loss, the dispute is resolved through a procedure that allows for an appraiser to be named by each party in order to reach an agreement. If agreement cannot be achieved, an umpire is selected to bring the dispute to its conclusion.

3. Duties in the Event of Loss

The Named Insured has specific duties to perform in the event of a loss, including:

- Notify the police if any laws may have been broken;
- Give prompt notice of loss, including the description of the property and what transpired;
- Take reasonable steps to protect the property from further damage;
- Keep accurate records and prepare an inventory of damaged personal property;
- Make no statement that will assume any obligation;
- Cooperate with and permit the insurance company to inspect the property and records related to the “loss”;
- Send a signed proof of loss within 60 days after the company’s request.

4. Insurance Under Two or More Coverages

If a loss is covered by two or more coverages found in the policy, the insurer does not pay more than the actual amount of the “loss”.

5. Loss Payment

Losses are adjusted with the Named Insured, and payments are made to the Named Insured, unless another party such as a loss payee has been added. The loss is payable within 30 days from the receipt of proof of loss and (a) an agreement with the Named Insured has been reached, or (b) a final judgment has been rendered, or (c) an appraisal award has been filed with the insurance company.

6. Other Insurance

If the Named Insured has other insurance covering the same loss as the insurance under this policy, then this insurance pays only the excess over what should have been received from the other insurance.

7. Pair, Sets or Parts

If a loss involves two items (a pair) or set (three or more items), the insurance company is to either repair or replace the pair or set in order to put the insured back in the same position prior to the loss, or pay the difference between the value of the pair or set before and after the loss. With regard to a loss of property involving a “part”, when the property is comprised of several parts, payment is only for the lost or damaged part.

8. Recovered Property

If the insured or insurer recovers any property after a loss for which a payment has been made by the policy, that party must notify the other party, promptly. The insured then has the option of keeping the property and returning the loss payment, or keeping the loss payment. The insurer will pay recovery expenses subject to the Limit of Insurance.

9. Reinstatement of Limit

The limit of insurance is not reduced by any claim with the exception of a total loss to a scheduled item, in which case the insurance company refunds the unearned premium for that item.

10. Transfer of Rights of Recovery Against Others to Us

If any person or organization receives payment under this insurance and has rights to recover damages from another, those rights are transferred to the insurance company. In addition, after the loss, the person or organization is not permitted to impair such rights and must do everything necessary to maintain and secure them.

General Conditions

The General Conditions of the Inland Marine Conditions Form are explained below:

1. Concealment, Misrepresentation or Fraud

The entire policy is void if the Named Insured, before or after a loss, intentionally concealed or misrepresented any material fact or engaged in fraudulent conduct related to the Policy.

2. Control of Property

Any act or negligence of someone other than the Named Insured does not violate conditions of the Policy. Also, a breach of a condition at one location does not affect coverage at another location where the breach did not occur.

3. Legal Action Against Us

No one can bring legal action against the insurance company unless there is compliance with all the Policy Conditions. There is usually a time limit of 2 years from knowledge of a loss to bring an action against the company.

4. No Benefit to Bailee

This insurance is only for the benefit of the Named Insured. It does not extend to the benefit of others when they have custody of the Covered Property.

5. Policy Period, Coverage Territory

The Policy pays for covered losses which occur during the policy period stated on the Declarations and within the coverage territory.

6. Valuation

The value of the property is the least of the following amounts:

- The Actual Cash Value (ACV) of the property;
- The cost of reasonably restoring the property to its condition before the “loss”; or
- The cost of replacing the property with substantially identical property.

The Commercial Inland Marine Conditions Form is usually attached to an Inland Marine Coverage Form such as a Contractor’s Equipment Floater. In addition, the individual inland marine coverage forms will, in some cases, contain conditions which are applicable to only that coverage form.

INLAND MARINE COVERAGE FORMS

Flexibility is the key term when thinking of inland marine insurance. Because of this flexibility, there is not a standard coverage form for each of the various areas of insured property. For example, a Contractors Equipment Floater (non-filed, inland marine form), used to insure a bulldozer by one insurance company, may be very different in terms of coverage and price for the same bulldozer insured under a policy by another insurance company.

Non-Filed

Non-filed lines of Inland Marine coverage make up the largest number of coverage forms and collectively constitute the greatest share of premium under inland marine insurance. The following non-filed coverages are the most common and comprise a majority of the commercial inland marine business written.

Builders Risk

The Builders Risk Coverage Form provides direct physical damage coverage for the new construction of buildings and structures, additions to existing buildings and structures, as well as renovation and retrofitting of buildings and structures.

Property Covered

The Builders Risk Policy may provide coverage for the structure under construction, including machinery and equipment, building materials, fixtures and similar property, as well as scaffolding and temporary structures used in the construction process. The property is covered at the jobsite, while in transit, and at other locations in temporary storage or awaiting transit.

Property Not Covered – Typical Examples

- Existing buildings or structures to which additions, alterations or improvements are being made;
- Contractor's tools, equipment, and machinery not designated to become a part of the project;
- Motor vehicles, aircraft, or watercraft;
- Accounts, bills, currency, deeds, manuscripts, money, notes and securities;
- Contraband or property in the course of illegal transportation or trade; and
- Trees, shrubs, or plants.

Covered Causes of Loss

Provides coverage for "Direct Physical Loss" to covered property, except those Causes of Loss that are excluded or limited.

Coverage Extensions

There are also several Coverage Extensions for the Builders Risk Coverage Forms. Two of them are highlighted here:

1. Debris Removal

Debris Removal pays up to 25% of the amount of payment for direct physical "loss" to covered property (25% is a typical percentage). This is not typically additional insurance, but is included within the Limit of Insurance applicable to the building or structure. However, an additional \$5,000 or \$10,000 of coverage may be available, if needed.

2. Pollutant Cleanup and Removal

The Coverage Form pays a specified dollar amount for the Named Insured's expense to remove pollutants from land or water at the described premises, if the discharge or release is caused by a Covered Cause of Loss.

Exclusions

There are general types of exclusions, including specific items that are not normally considered to be commercially insurable risks.

Other exclusions commonly found in Builders Risk Coverage Forms include the following:

- Wear and tear, gradual deterioration, hidden or latent defect, mold or inherent vice;
- Delay, loss of use, or loss of market or any consequential loss;
- Mysterious or unexplained disappearance and/or inventory shortage;
- Flood;
- Earthquake;
- Dishonest and criminal acts by certain persons (insured, insured's employees, or owner of the property);
- Design error;
- Mechanical breakdown or failure;
- Testing;
- Rain, sleet, hail or snow damage to property in the open;
- Settling, cracking, shrinking or bulging;
- War; and
- Nuclear.

Other Provisions

- Coinsurance - this provision requires that the Named Insured purchase the proper limits of insurance and failure to comply results in the reduction of the amount of payment for a loss. Most forms require that the Named Insured purchase a limit that equals 100% of the value of the project when completed.
- Soft Costs Coverage – this component, often added by endorsement, provides coverage for specific extra expenses and costs resulting from a delay in project completion due to a covered loss. Examples include interest on loans, architects' and engineers' fees, loss of rental income, etc.

Contractors Equipment Floater

Contractors Equipment Policies provide coverage for a vast range of traditional and specialized equipment used by various industries, including construction, energy, mining, logging, material handling and service companies.

Property Covered

The property covered must be eligible under the Nationwide Marine Definition. It can be owned property or property of others, depending on the Named Insured's operations. The most common approaches for writing Contractors Equipment Policies are on a scheduled or "blanket" basis.

If the equipment is written on a scheduled basis, then all owned equipment is specifically listed with a separate limit for each item. The Policy usually permits newly acquired items to be covered subject to being reported, as stated in the Policy.

If the Contractors Equipment policy is written on a blanket basis, then a single limit applies to all owned and long-term leased equipment as defined in the Policy. Usually, the insurance company requests a schedule of equipment to retain on file for the purposes of underwriting and premium computation. In a blanket Contractors Equipment Coverage Form, the Form usually defines covered property as all equipment owned by the Named Insured that is usual to the Named Insured's business operations, except those types of equipment that are specifically excluded. Property of others that is in the Named Insured's care, custody, or control may be afforded limited coverage.

Property Not Covered

Under the Contractors Equipment Form, there are several items of property that are not covered. The most common ones are mentioned here, but depending on the form, there may be others. In some cases, the property that is excluded can be covered by endorsement, for an additional premium. Keep in mind that the property must fall under the Nationwide Marine Definition.

- Property designed to be part of a structure;
- Autos, trucks, motorcycles, aircraft, or watercraft;
- Waterborne property and property under water;
- Underground property;
- Plans, designs, blueprints, and specifications; and
- Accounts, deeds, money, evidence of debt.

Covered Causes of Loss

Under the Inland Marine Contractors Equipment Forms, there are two methods of providing causes of loss coverage: named perils and open perils.

Named Perils

Although Contractors Equipment Forms vary by insurance company, they typically include the following named perils: fire, lightning, windstorm, hail, explosion, riot and civil commotion, earthquake, landslide, flood, upset or overturning of equipment, collision, derailment, upset or overturn of a transporting vehicle, vandalism, and theft. The insurance company has the flexibility to add or limit the perils to tailor the Policy to address specific needs.

Open Perils

A Contractors Equipment Form using the Open Perils Causes of Loss states it pays for Direct Physical Loss to covered property, except those causes of "loss" that are excluded or limited. The key is exclusions, which are limited or extensive, depending on what is insured and for what purpose.

Coverage Extensions

There are several coverage extensions, which apply to the Contractors Equipment Forms, described below. They are not necessarily offered by all insurance companies.

Additionally Acquired Equipment

Most Contractors Equipment Forms have this provision, and it varies by insurance company. Typically, the insured must report to the insurance company any newly acquired equipment within a defined time period, for example 60 days. Coverage for property acquired (being the same type described on the Declarations Page of the Contractors Equipment Form or a schedule attached thereto) generally is limited to 25-30% of the existing limit. The coverage is automatic but ceases if newly acquired equipment is not reported as required.

Debris Removal

Debris Removal pays up to 25% of the amount paid for direct physical “loss” to covered property. (This is a typical percentage.) On occasion, it is stated as a dollar limit, such as \$10,000.

Pollutant Cleanup and Removal

The Coverage Form pays up to \$10,000 for the Named Insured’s expense to remove pollutants from land or water if the discharge or release is caused by a Covered Cause of Loss.

Rental Reimbursement Coverage

This coverage reimburses the insured for the rental cost of equipment that replaces insured equipment damaged by a Covered Cause of Loss. This extension is usually subject to a waiting period (for example, 72 hours). It is also subject to a specific dollar limit per day and in total. Some Contractors Equipment Forms do not include this extension, but may provide the coverage by endorsement.

Exclusions

Exclusions differ by insurance company. They are contained in their base form and other exclusions are added by endorsement, depending on the situation. Exclusions are also deleted from the Policy to meet certain coverage needs. Commonly found exclusions in the Contractors Equipment Policies include the following:

- Wear and tear, gradual deterioration, hidden or latent defect, mold, or inherent vice;
- Delay, loss of use, or loss of market;
- Overloading, which is a loss arising from the weight of a load exceeding the registered lifting capacity of a piece of equipment;
- Dishonest and criminal acts by certain persons (Named Insured, Named Insured’s employees, or owner of the property);
- Shortage found upon taking inventory, or unexplained disappearance;
- Mechanical or electrical breakdown or failure; and
- Dispersal or release of pollutants.

Other Policy Provisions

The most relevant provisions are listed below:

- Coverage territory is within the U.S., Puerto Rico, and Canada.
- Coinsurance: some policies state that losses are subject to compliance with a coinsurance percentage (80%, 90%, 100%) shown on the Contractors Equipment schedule.
- Valuation, with the options being actual cash value, replacement cost, or agreed value.
- Deductible(s): can vary within a policy in amount (for example \$10,000 for cranes/\$1,000 other equipment) and application (fixed amount compared to percentage).

Electronic Data Processing Policies

Electronic data processing (EDP) equipment and media in most jurisdictions is considered to be eligible for inland marine coverage. EDP equipment and software is susceptible to perils normally excluded under standard open perils coverage, such as changes in temperature and magnetic disturbance. Insurance companies have created their own individual forms to address the special and unique coverage needs for this class of business. EDP is not a controlled line of insurance; therefore, no standard coverage form applies. This being the case, this overview is general in nature and focuses on three more common characteristics of coverages found in EDP policies:

1. *Equipment* – (hardware) defined as a network of electronic machine components or microprocessors that accept instructions and information and process accordingly.
2. *Data and Media* – (software) consisting of devices such as disks containing instructions and information, and data records such as files, documents and other information stored on media, including programs and applications.
3. *Time Element* – Extra Expense and/or Business Income for loss resulting in the interruption of the Named Insured's computer operations, caused by a covered event to the Named Insured's computer, data, media, or building housing the Named Insured's computer operations.

Property Not Covered

Listed below is property that is generally not covered under an EDP Policy by most insurance companies.

- Items that are typically excluded from most property forms such as accounts, money, and evidence of debt;
- Checked luggage;
- Data or media that cannot be replaced;
- Program supportive documents, like flowcharts;
- Records, abstracts, deeds, manuscripts, and other documents, except when converted to data; and
- Loss of internet service provider or web host server or programs.

Covered Causes of Loss

Most policies are written where the Covered Causes of Loss are "Direct Physical Loss" to covered property, except those causes of "loss" that are excluded or limited.

Coverage Extensions

EDP Policies have several unique Coverage Extensions. The most significant are:

- *Duplicate and Backup Coverage*
The Policy extends coverage for duplicate and backup data and media located in separate storage locations or located off premises. The amount varies with the specific policy, and specific limits of insurance are available.
- *Newly Acquired Property and Newly Acquired Locations*
This Extension provides coverage for newly acquired Covered Property up to the limit specified on the Declarations of the particular policy. All Covered Property is protected for covered losses at a newly acquired location for a period of 90 days, up to a maximum amount of \$250,000 (some policies provide a different period of time and offer other limits of insurance).
- *Recharge of Fire Suppression System*
This reimburses the Named Insured for the cost of recharging an automatic fire suppression system due to a discharge to protect computer operations, even if such discharge is accidental.
- *Rewards*
Provides a stated limit, typically \$2,500, for information leading to a conviction for arson, theft, or vandalism, including hacking and computer virus.
- *Transit/Off Premises Coverage*
Provides coverage for the covered property while in transit or off premises at a temporary location subject to the policy terms and conditions. The limit of insurance is reduced and stated as a sub-limit. There may also be additional restrictions limiting coverage for such property during transit or off premises.
- *Utility Interruption*
Coverage for direct physical damage to Covered Property caused by a disturbance, change or interruption in the electrical power supply or other utility source necessary for the operation of the insured property, as defined in the Coverage Form.

Exclusions

Commonly found exclusions in EDP policies include the following:

- Wear and tear, gradual deterioration, hidden or latent defect, mold, or inherent vice;
- Obsolescence
- Delay, loss of use, loss of market, or any consequential loss;
- Programming errors;
- Dishonest and criminal acts by certain persons (Named Insured, Named Insured's employees, or owner of the property);
- Damage during service or repair;
- Design errors or faulty materials, rough handling, or poor or insufficient packaging or packing of the Covered Property; and
- Concurrent causation losses.

Provisions Unique to EDP

The following are examples of provisions that address the unique nature of the property covered.

Virus and Hacking Coverage

Provides coverage for direct physical damage to equipment and software caused by a computer virus or computer hacking as defined in the policy, and subject to the policy's terms and conditions.

Valuation

In most forms, the value of equipment (hardware) is based on the cost to replace damaged or lost items with new equipment that is functionally comparable to the equipment lost or damaged. If not replaced, the valuation becomes actual cash value of the equipment as of the date of the loss.

Software, with regards to applications and programs, is valued at the cost to install from the licensed discs or other licensed methods. Proprietary programs are valued at the cost to reproduce from existing copies, or the cost to research to recreate if duplicate copies are not available.

Installation Floater

The Installation Floater is designed to insure property (goods and materials) intended for installation in connection with the Named Insured's occupation. The Named Insured may be a contractor, subcontractor, retail business, manufacturer, or individual. Examples include installing cabinets, heating and air conditioning equipment, plumbing fixtures, appliances, wiring, lighting, signs, security systems, home theaters, communication and computer equipment, flooring, solar/energy equipment and irrigation equipment.

Property Covered

Property Covered consists of the Named Insured's property, or property of others for which the Named Insured is legally liable, being materials, goods and supplies designated for installation at a specific job or project. The property is covered in the following situations: (1) during installation; (2) at named locations; (3) at unnamed locations; (4) in storage – awaiting installation; (5) in transit.

Property Not Covered

With the Installation Floater Form, there are several areas of property not covered. The common areas are highlighted below, but individual coverage forms should be read to determine if there are others:

- Buildings or structures to which improvements, alterations, or repairs are being made;
- Plans, blueprints, designs, or specifications;
- Property on premises which the Named Insured owns, leases or operates, unless specifically assigned for a particular job; and
- Machinery, tools, equipment, and other property that will not become a permanent part of a building or structure.

Covered Causes of Loss

In general, the Installation Floater covers Direct Physical Loss to Covered Property, except those Causes of Loss that are excluded or limited. In some cases, a named perils approach is taken to limit or restrict coverage.

Coverage Extensions

The Installation Floater may provide Coverage Extensions such as the two that are shown below:

Debris Removal

Pays up to 25% of the amount paid for direct physical “loss” to Covered Property (this is a typical percentage).

Pollutant Cleanup and Removal

This Coverage Extension indicates that the Coverage Form pays up to \$10,000 for the Named Insured’s expense to remove pollutants from land or water if the discharge or release is caused by a Covered Cause of Loss.

Exclusions

The following are common exclusions found in an Installation Floater Policy. Items 7, 8, and 9 may be removed by endorsement for an additional premium, depending on the situation.

1. Wear and tear, gradual deterioration, hidden or latent defect, mold, or inherent vice;
2. Delay, loss of use, or loss of market or any consequential loss;
3. Mysterious or unexplained disappearance (unless property is in the custody of a carrier for hire), and/or inventory shortage;
4. Damage to property of others on which you are performing work or processing;
5. Dispersal or release or escape of pollutants;
6. Dishonest and criminal acts by certain persons (Named Insured, Named Insured’s employees, or owner of the property);
7. Mechanical breakdown or failure;
8. Testing, including performance, stress, pressure, and overload testing;
9. Electrical damage – unless caused by lightning, or a fire results; and
10. Concurrent causation losses.
11. Difference in Conditions

The Difference in Conditions Policy is designed to address specific gaps where coverage is not provided in a standard property policy form. It is a way to cover various exposures under one policy, such as flood, earthquake, landslide, and other perils. It is not excess insurance over existing coverage, but provides selected coverages not found in the underlying policy form.

Difference in Conditions (DIC) is not a regulated line of insurance in most states, but there are some jurisdictions that do not recognize DIC as inland marine insurance. For this coverage, insurance companies have developed their own forms that include unique, individual terms and conditions. In most cases, this is in the form of a separate policy, but some companies may offer DIC as an endorsement to their standard policy forms.

TRANSPORTATION COVERAGES

Introduction

One of the single largest areas of inland marine insurance coverage deals with the exposures of transportation. Insuring transportation exposures is not the insuring of vehicles or conveyances, but rather the insuring of goods (personal property) being transported. Most businesses have an exposure to loss related to the transportation of personal property from one place to another.

The activity of transporting goods is so common for some businesses that they hire their own drivers to drive their own trucks. These types of businesses are called private carriers. Other businesses choose to have others transport their goods and other personal property. Those who hire others to transport their property may use two types of carriers. One type of carrier is called a contract carrier, which only hires out services for a limited number of customers. An example of a contract carrier is a trucking firm hauling inventory for a large retailer to locations nationwide. The second type is a common carrier. A common carrier hauls property of others (no limit on the number of customers) for a fee and, in effect, is a bailee.

There are two general classes of policies reviewed here. The first is Motor Truck Cargo; and the second is Transportation.

Common Carrier

Common carriers are responsible for the cargo (goods being the property of others) as stated in the Bill of Lading for the shipment. Common carriers are held to strict liability (liability without regard to fault) for property of others except for the following:

1. ***Acts of God or Nature***

If the cause of the damage to a shipment arises from an occurrence of nature, the carrier is not responsible unless the carrier could have avoided it. For example, a tornado damages the cargo.

2. ***Exercise of Public Authority***

When a public official, acting on behalf of a government authority, causes a loss to occur, then the carrier may impose this defense. An example is a public official impounding a shipment for quarantine purposes that results in damage to property.

3. ***Acts of Public Enemy***

This includes acts of nations, groups and individuals seeking the violent overthrow of the government.

4. ***Negligence of the Shipper***

The shipper's actions, such as improper packing or preparation of the goods, cause the shipper, instead of the carrier, to be responsible.

5. ***Inherent Vice or Nature of the Property***

The inherent nature of the cargo is such that a shipper should have made special arrangements before shipping. For example, perishable goods that spoil or a condition within a particular type of property which causes it to self-destruct.

Bill of Lading

A bill of lading is a receipt from the carrier to the shipper for goods being transported. It serves as a contract between the shipper and carrier. It identifies the date of the shipment, the property, ownership, destination, and the responsibilities of the carrier.

Contract Carrier

Contract carriers transport goods for a specific client, or a limited number of clients under a negotiated contract. The contract carriers' liability is defined in the contract, as well as the duties and responsibilities of both parties. Coverage is usually provided under a Motor Truck Cargo Liability Form (which includes manuscript changes to comply with the contract) or on a specifically designed Contract Carriers Form.

Private Carrier

A private carrier means the owner of the goods transports their own property on their own vehicles.

Coverage is limited to their own property, and, if they haul goods of others, then they need to have the policy endorsed to provide coverage for those goods as well.

Motor Truck Cargo Forms

The two basic types of cargo forms that are used to insure those which transport goods are:

- The Motor Truck Carrier's Legal Liability Form used for trucking firms that haul the property of others; and
- The Motor Truck Cargo Owner's Form used when the owner transports its own property on its own vehicles.

Since both forms are similar in construction as well as terms and conditions, the following can be used to review both. Keep in mind that since this is a non-filed class it is not subject to regulation regarding form and rate.

Property Covered

The Policy is designed to provide coverage for loss to shipments of legal goods while in due course of transit. The type of property is described in the Declarations and is usually worded as "property generally consisting of.....", - the blank is filled in with the type of property such as lumber, steel pipe, general merchandise. The Form contains a list of commodities that are excluded such as money, securities, jewelry, precious metals, bullion, pharmaceuticals, cigarettes, seafood, electronics and other high valued or easily damaged property. Coverage can be extended for an excluded commodity by endorsement, if approved by the insurance company, subject to the changes that amended the Policy's terms and conditions.

Covered Causes of Loss

A majority of policies provide coverage on an open perils approach in which Risks of Direct Physical Loss are covered, except those Causes of Loss that are excluded or limited. On occasion, the nature of the property and the risk in general call for the coverage to be provided on a named perils basis, or other restrictions in coverage.

Coverage Options

Coverage options vary with the Form; and these must be selected and indicated in the Declarations.

- *Loading and Unloading provides for loss to goods during that process as defined in the Policy.*
- *Refrigeration Mechanical Breakdown covers loss to perishable goods like fruits, vegetables, and ice cream, which results from the breakdown of refrigeration equipment.*

Exclusions

Listed below are some of the exclusions common to most Motor Truck Cargo Forms used by insurance companies.

- War;
- Nuclear;
- Government action excludes damage that results from seizure or destruction by order of government authority;
- Delay, loss of use, or loss of market or any consequential loss;
- Dishonest or criminal acts by certain persons (insured, insured's employees, or owner of the property);
- Voluntary selling or giving property to someone under false pretenses;
- Faulty packing;
- Rain, hail, sleet or snow to property in the open;
- Changes in temperature;
- Illegal transportation or trade; and
- Contamination, corrosion, decay, fungus, mildew, mold, rust, or rot.

Other Provisions

The Motor Truck Cargo Forms have several other provisions. Some are listed below for review.

1. *Territory*
Territory is commonly limited to within the Continental U.S. and Canada. Some insurance companies may restrict or exclude Alaska as a covered territory.
2. *Coinurance*
Motor Truck Cargo Forms generally contain provisions that Policy limits must be 100% of the value of the shipment, or other similar requirement, to avoid a reduction in payment or penalty in the event of a loss.
3. *Deductible*
Deductibles are generally on a stated dollar amount basis and apply to each loss. Keep in mind a shipment can have more than one loss while in route.
4. *Limits*
There may be various limits and sub-limits contained in a Motor Truck Cargo Form. This includes limits per any one vehicle, for terminals (any one location), and catastrophe limits (any one event). It is not uncommon to have sub-limits relating to certain commodities, geographic locations or specific perils.

Transportation Insurance Policy

The role and purpose of the Transportation Insurance Policy is to provide direct coverage for the benefit of the owner of the goods while in transit by motor truck carriers for hire, air carriers, rail carriers, courier and postal services, and can be extended to owned vehicles.

The primary reasons and advantages for the owner of the property to have this coverage include:

- As the Named Insured, claims are paid directly by the insurance company without delay;
- The Policy can be tailored to address the actual exposure or need, including limits, what is covered and valuation in the event of a loss; and
- Not subject to the limitations imposed under the carrier's Bill of Lading.

The two common approaches regarding Transportation Insurance are:

Annual Transportation Policy – All shipments made during the policy term are covered. The values shipped are reported to the insurance company on a scheduled basis (most common being monthly).

Trip Transit Policy – Coverage is limited to specific property for a specific transit event; an individual policy must be issued for each shipment.

The insurance terms and conditions found in the above mentioned Transportation Forms are very similar to the terms and conditions found in the Motor Truck Cargo Liability Form and the Motor Truck Cargo Owner's Form described earlier in this chapter. The major difference is that this form insures the owner of the goods as compared to providing coverage for the carrier who transports the goods.

CONCLUSION

This chapter addresses just a few of the types of coverages defined as Marine and Inland Marine Insurance. Insurance of these types is considered one of the most diverse and complex, as it allows for the coverage to be tailored to meet the individual and specific needs of an insured.

CHAPTER 8: EQUIPMENT BREAKDOWN PROTECTION INSURANCE

INTRODUCTION

Equipment Breakdown Protection Coverage is needed since standard commercial property forms exclude or restrict loss or damage to machinery or equipment caused by mechanical breakdown, electrical arcing, damage due to a surge of electrical power, and explosion due to centrifugal force. They also exclude explosion, cracking, or burning of steam boilers or pipes. This insurance coverage was once called boiler and machinery insurance. Many businesses that did not have boilers did not readily understand the need.

EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM – EB 00 20

The Insurance Services Office's (ISO's) version of the Equipment Breakdown Protection Coverage Form (EB 00 20) can be used with businesses of any size or type. Be aware that those few companies that specialize in writing this type of insurance, in many instances, have their own coverage form. ISO developed the Equipment Breakdown Protection Coverage Form to be representative of many of the most common coverages. The ISO Coverage Form can be tailored to meet the needs of many insureds.

Structure

The ISO Common Policy Declarations and Common Policy Conditions are the same as those examined in the Commercial Property Policy chapter. Because the Common Policy Declarations and Common Policy Conditions are the same, only the specific sections of the ISO Equipment Breakdown Protection Coverage Form are reviewed here. This Form provides insurance on a comprehensive basis by incorporating optional coverages into the Form. These optional coverages are activated by inserting a limit, number of days, or the word "INCLUDED" on the Declarations. If a limit or the word "INCLUDED" is not inserted, then coverage does not apply.

Coverage

The Equipment Breakdown Protection Coverage Form can provide protection related to direct and indirect damage to Covered Property caused by a Covered Cause of Loss, depending on the optional coverages that have been selected.

Covered Property

There are two categories of Covered Property:

- Property the Named Insured owns; or
- Property of others in the Named Insured's care, custody, or control, and for which the Named Insured is legally liable.

Covered Cause of Loss

A Covered Cause of Loss is a “breakdown” to “covered equipment”. It is difficult to understand exactly what this means without a careful review of the definitions of both “breakdown” and “covered equipment”.

Definition of Breakdown

“Breakdown” is the direct physical loss that causes damage to covered equipment, requiring its repair or replacement. Direct physical loss includes failure of pressure or vacuum equipment, mechanical failure, including rupture or bursting caused by centrifugal force, or electrical failure, including arcing, unless loss is excluded elsewhere in the Coverage Form.

It does not include loss or damage resulting from improper care and maintenance. Therefore, breakdown does not include:

- Malfunction such as, adjustment, alignment, calibration, cleaning or modification;
- Conditions in computer equipment and programs such as defects, errors, erasures, and viruses;
- Damage to valves, seals, connections, and fittings;
- Damage to vacuum tubes, gas tubes, or brushes;
- Damage to the equipment’s supporting structure or foundation;
- Failure of safety or protective devices to operate equipment; or
- Cracking of any part of an internal combustion gas turbine exposed to the products of combustion.

Definition of Covered Equipment

“Covered Equipment” includes production machinery, all computers without restriction to their use or function, and all piping subject to certain restrictions. “Covered Equipment” means:

- Equipment designed and intended to operate under pressure or in a vacuum;
- Equipment that is used in the generation, transmission or utilization of energy;
- Communications equipment, and “computer equipment”: and
- Above equipment owned by a utility to supply service to the Named Insured’s premises.

Covered equipment does not include media, any part of pressure or vacuum equipment not under internal pressure, and insulating or refractory material, as well as a list of property including vehicles, aircraft, construction equipment and other similar items.

Causes of Loss

As mentioned earlier, the only covered cause of loss is a breakdown to covered equipment. Again, breakdown and covered equipment are defined terms. Exclusions and limitations do apply.

EXAMPLES

- A condominium building sustained over \$55,000 damage when a large boiler overheated because it did not have enough water in it.
- A church suffered a loss of approximately \$35,000 to its organ, public address system, and choir robes when a cast iron boiler cracked and a fitting to a steam pipe split, which resulted in steam release.
- A transformer and switchgear sustained over \$50,000 damage when a squirrel got into the switchgear and caused a short circuit.
- A retail store's compressor, which was part of the air-conditioning system, failed when a release valve malfunctioned and discharged all the chemical refrigerant and oil from the system. The loss was over \$97,000.

Coverages Provided

The ISO Equipment Breakdown Protection Coverage Form contains ten coverages. Coverage is activated by inserting a notation by the item on the Declarations. If a notation is not made, then coverage does not apply. The coverages contained in the Form are described as follows:

Property Damage

This is the primary coverage applicable to the equipment breakdown exposure. It provides coverage for direct damage to covered property located at the premises described in the Declarations.

Expediting Expenses

This coverage applies to additional costs and expenses the Named Insured incurs as a result of making temporary repairs, and to expedite permanent repairs to the covered property.

EXAMPLE

If it costs \$500 to fly a special gear and bearing in from Germany to more quickly repair a damaged manufacturing machine in Pittsburgh, then it is considered an expediting expense.

If the limit on the Declarations indicates that no more than \$25,000 is paid for Expediting Expenses, then the Policy pays up to \$25,000 or the amount that is left of the Limit of Insurance per Breakdown after covered property losses have been paid.

If the Limit of Insurance is:	\$ 100,000
Loss to Covered Property is:	\$ 98,000
Amount left to pay Expediting Expenses:	\$ 2,000

Business Income and Extra Expense or Extra Expense Only

The Named Insured can elect to purchase combined business income and extra expense or just extra expense. When combined business income and extra expense is selected, the coverage provides for the Named Insured's actual loss of business income during the period of restoration, including necessary extra expense to operate the business during that time. If extra expense only is selected, there is no coverage for business income.

EXAMPLE

A dairy relies heavily on its equipment to purify and process its milk and other dairy products. Its customers might go to competitors and never return.

This type of business must incur additional or extra expenses to keep its business going during the time it takes to repair or replace damaged/destroyed property.

In specialized Equipment Breakdown Insurance, business income and/or extra expense is/are generally provided by endorsement. The ISO Equipment Breakdown Protection Coverage Form includes these as optional coverages.

The Business Income and Extra Expense option in the ISO Equipment Breakdown Protection Coverage Form promises to pay for actual loss of income resulting from business shutdown or the slowdown in business activities and any extra expense incurred to reduce the interruption of business. It also pays those extra expenses incurred to avoid or minimize the stoppage of business and to continue business activities. An example of this expense is the payment of overtime to movers so they complete moving furniture or equipment to another location to reduce operation downtime.

The Extra Expense Only Option pays the Named Insured's "Extra Expense" (those expenses that exceed normal operating expenses and the expenses necessary to keep the Named Insured's operations going during the period of restoration) following a covered breakdown at the described premises. Extra Expense Only is primarily designed for the business that does not need Business Income coverage. The Coverage Form pays extra expenses to continue operations and, if the insured cannot continue operations, it may pay expenses to minimize the suspension of business.

Unless a higher limit is shown on the Declarations, the limit of \$25,000 applies.

Spoilage Damage

This coverage is for loss or damage caused by spoilage to the Named Insured's raw materials, property while being processed, and finished goods. The following conditions must be met for coverage to apply (1) property must be in storage or course of being manufactured (2) property must be owned, or, if the property of others, the Named Insured is legally liable only as stated under the terms of a written contract (3) spoilage must be a result of lack of or excess of power, light, refrigeration, heat or steam, subject to the policy terms and conditions.

Utility Interruption

It is a requirement that the Named Insured purchases Business Income and Extra Expense, Extra Expense Only, or Spoilage Damage to secure this coverage. When purchased, Utility Interruption extends coverage to include loss as a result of utility services being interrupted at the Named Insured's location, subject to the following conditions:

- (1) The interruption is a result of a breakdown to covered equipment owned or operated by a local private or public utility that directly provides utilities to the Named Insured;
- (2) The covered equipment must provide electric, water, gas, communication, heat, or similar utility services to the Named Insured; and
- (3) For coverage to begin, the interruption must last beyond the time as stated in the Declarations.

Newly Acquired Premises

This option extends automatic coverage for newly acquired premises for a predetermined time period shown in the Declarations. The coverage provided is the broadest coverage, highest limit, and highest deductible applicable to the existing premises.

Ordinance Or Law Coverage

This option is similar to the Commercial Property Policy. It provides coverage for the loss in value of the undamaged portion of the building, costs to demolish and clear the site of the undamaged part of the building, and the increased cost of construction because of the enforcement of a law or ordinance.

Errors and Omissions

This coverage is for loss or damage not otherwise payable due to the Named Insured's error or unintentional omission in describing property or its location, failure to include any owned or occupied locations as of the policy's effective date, or error or omission resulting in the cancellation of coverage at the Named Insured's location.

Brands and Labels

This coverage extends to allow the Named Insured to stamp the word salvage on damaged, branded or labeled merchandise that is covered property, or to remove the label from such damaged merchandise and re-label as required by law, at the insurer's expense.

Contingent Business Income and Extra Expense or Extra Expense Only

This coverage is subject to the same terms as described in Business Income and Extra Expense or Extra Expense Only, stated above, with the exception that it applies only to loss or damage resulting from a breakdown to equipment that the Named Insured does not own or operate, and such loss has a negative impact on the Named Insured's business. Coverage is limited to the locations scheduled in the Declarations.

Selected Exclusions

Several of the exclusions contained in this Coverage Form are similar to exclusions found in commercial property coverage forms. They include Ordinance Or Law, Earth Movement, Water, Nuclear, War, and others. The Coverage Form also excludes certain types of explosions that are normally covered by other policies. For example, an explosion resulting from unconsumed fuel or gas within the furnace of a boiler or fire vessel is excluded. This kind of explosion is not covered under the Equipment Breakdown Policy because a Commercial Property Policy usually covers it.

Two other exclusions that may impact coverage are the Pressure or Testing Exclusion and the exclusion for Neglect.

1. *Pressure or Testing Exclusion*

This exclusion bars recovery for any loss caused by or resulting from a breakdown to any covered equipment while being tested. There are certain tests, such as a gas pressure test on a boiler or fire vessel, which increase the pressure beyond the equipment's normal use. Typically, these tests are used in an attempt to detect problems with the equipment. Very few Equipment Breakdown Coverage Forms cover this type of exposure.

2. *Neglect*

There is no coverage for loss or damage that is a result of the Named Insured failing to use reasonable means to prevent the covered property from further damage during and after a loss.

Limits of Insurance

The limits on the Declarations are for loss or damage from a single breakdown event. The additional coverages shown below automatically include a \$25,000 limit unless a higher limit is entered on the Declarations.

Consequential Loss

This coverage applies to the reduction in value of undamaged "stock" parts of a product that become unusable. The reduction in value must be caused by loss or damage to another part of the product.

Hazardous Substances

This coverage is for additional expenses incurred by the insured for any cleanup, repair, replacement, or disposal of covered property, contaminated or polluted by a hazardous substance as defined in the Policy.

Ammonia Contamination

This coverage is for spoilage to the covered property as a result of contamination by ammonia. It also includes expenses related to the salvage of the damaged property.

Water Damage

This coverage is for loss or damage to the covered property from water, including any salvage expenses.

Data And Media

This coverage applies to the cost to research, replace, or restore damaged "data" or "media", including the cost to reprogram instructions used in any computer equipment.

Equipment Breakdown Protection Conditions

The Equipment Breakdown Protection Coverage Form Conditions Section is similar to the Commercial Property Policy, with several exceptions. The two most notable exceptions are found under the General Conditions heading. These are Suspension, and Joint or Disputed Loss Agreement. The following describes each of these conditions.

Suspension

If it is determined that the covered equipment is exposed to, or in, a dangerous condition, any representative of the insurance company may immediately suspend coverage for that

particular equipment. This is done by handing or mailing written notice to the Named Insured. To reinstate coverage for the suspended equipment, an endorsement must be issued by the insurance company.

Joint or Disputed Loss Agreement

In some instances, a loss may occur where there is potentially coverage under both a Commercial Property Policy and an Equipment Breakdown Policy. This clause is to facilitate the payment of the claim between the different insurance companies with the intent to prevent the Named Insured from any inconvenience in case of a dispute between the insurance companies on how the claim should be settled.

EXAMPLE

A steam boiler explodes, and a resulting fire damages the apartment building housing the steam boiler. There is coverage under both the apartment owner's Commercial Property Policy and Equipment Breakdown Policy.

CONCLUSION

Equipment Breakdown Insurance addresses direct physical loss and can be extended to provide time element coverages as a result of a breakdown resulting from a covered event to covered property. Most businesses, regardless of their size, have a need for this insurance and should consider it as part of their overall risk management plan.

CHAPTER 9: COMMERCIAL CRIME COVERAGE

INTRODUCTION

Every business has an exposure related to theft, whether it is from outside intruders or individuals who have been entrusted with the financial assets of the firm. Companies have been forced to close their doors when a substantial amount of money or other valuables have been embezzled by trusted employees. Even in cases where losses have been small, the losses have cost commercial entities a great amount of time and effort.

This chapter examines coverage which can protect an organization from loss due to the unlawful taking of items of value, including money. Most types of insurance policies have limited coverage, if any, for this type of loss, including a restriction or exclusion for loss due to theft committed by those who are entrusted with property. The Commercial Crime Coverage Form is designed to address the exposures associated with the theft or destruction of money and securities, as well as the dishonest acts of employees and others who have custody of this and other types of property.

GENERAL DEFINITIONS

Before examining the various crime coverages, a review of general definitions associated with Commercial Crime Insurance is beneficial. (Please note that these are not literal definitions that necessarily appear in specific Commercial Crime Coverage Forms.)

Theft

Theft is the unlawful taking of any property. The theft must cause deprivation or loss to the owner of the property.

Burglary

Burglary is defined as the unlawful taking of property from within a premises, by a person breaking into or out of the premises, as evidenced by marks of forcible entry or exit. For example, a person breaks the lock on the door of a business, enters the premises, and takes some merchandise.

Robbery

Robbery is the unlawful taking of property from the individual or in the individual's presence where actual bodily harm or threat of harm is involved.

Employee

An employee is a person who works in the service of another (the employer) under a contract of hire, and acts under the direction and control of the employer. An employee does not include agents, brokers, or independent contractors.

Conditions to qualify as an employee:

- Person must be in service of the employer, but need not be full-time
- (30-day extension under insurance coverage for losses caused by an employee after his or her departure);
- Employer must compensate (salary, wages, or commissions) the person;
- Employer must have the right to direct and control the person;
- Person who is furnished to the employer as a substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions may also qualify as an employee for insurance coverage purposes.

Financial Institution

Financial institution includes a bank, savings bank, savings and loan association, trust company, credit union or similar depository institution, or an insurance company or a stock brokerage firm or investment company.

Custodian

Custodian means the Named Insured or any of the Named Insured's partners or members (limited liability company) or any employee while having care and custody of property inside the premises, excluding any person while acting as a watchperson or janitor.

With these general definitions in mind, this examination of commercial crime coverage is limited to Insurance Services Office (ISO) Commercial Crime Coverage Forms. However, be aware: there are other commercial crime policies and coverages. These other policies and coverages may vary substantially in the property covered as well as covered causes of loss.

CONDITIONS

Selected conditions of the ISO Commercial Crime Coverage Forms are listed below. These conditions are shared among the Commercial Crime Coverage Forms that are examined in this chapter.

1. Consolidation-Merger or Acquisition

Coverage is effective for 90 days for newly acquired entities or premises, assets or liabilities of another entity that the insured consolidates or merges with, and the employees of such entities. The coverage is automatic, but it does require that the insurance company be notified in writing. If not added to the policy by the insurance company, the coverage ceases after the 90 days.

2. Duties In The Event Of Loss

The process of notification by, and required actions of, the Named Insured in the event they discover a situation that may result in a loss. These duties include submitting to examination under oath at the request of the insurance company and providing a sworn proof of loss. It also requires the Named Insured's cooperation in the investigation and settlement of a claim, as well as immediately contacting the police and insurance company if illegal activity is suspected.

3. Extended Period To Discover Loss

Extends coverage to loss occurring prior to the cancellation date of the policy but discovered by the insured no later than a stated period of time. This varies with the type of coverage form and will be discussed in more detail later in this chapter.

4. Joint Insured

Identifies that the first Named Insured acts for all insureds unless excluded or not eligible for coverage. In that case, the next Named Insured assumes this role.

5. Other Insurance

This condition describes how the ISO Commercial Crime Coverage Form responds to a covered loss in which there is other applicable insurance, whether written on a primary or excess basis.

6. Loss Sustained During Prior Insurance

Under the ISO Commercial Crime Coverage Form (Loss Sustained Form), the two, Loss Sustained During Prior Insurance Conditions pertain to a situation in which a loss may have been covered by a prior policy, but the loss is not discovered until after the prior policy's discovery period has expired. These provisions state the procedures for settling or allocating losses sustained during prior insurance.

7. Territory

This condition states that the Commercial Crime Policy covers only acts committed or events occurring within the United States, its territories and possessions, Puerto Rico, and Canada. Some coverages are worldwide.

8. Valuation-Settlement

This condition outlines how a loss to each type of insurable property is paid. For example, a money loss is paid based on its face value only, a securities loss is paid at the price at the close of the business day the loss is discovered, and replacement cost is paid for damages to other types of property.

EXAMPLE

If an insured has a rare nickel that is destroyed by a covered cause of loss, the insured would receive 5 cents.

CRIME COVERAGE FORMS**Difference between Discovery and Loss Sustained Forms*****Discovery Form***

Coverage is provided for payments of losses that are discovered during the policy period; this is an approach that has some similarities to claims-made general liability insurance coverage.

Loss Sustained Form

Coverage is triggered for losses that occur during the policy period. This approach has similarities to occurrence general liability insurance coverage.

Conditions Comparison Between Forms

Extended Period to Discover Loss

This is more significant for employee theft coverage.

Discovery Form

The period extends to sixty days after the end of the policy period except for Employee Benefit Plans, which extends for one year. However, the extended period terminates on the effective date when the Named Insured obtains other similar insurance.

Loss Sustained Form

Losses that occur prior to the cancellation date will be paid if discovered no later than one year from the cancellation date. However, the extended period terminates on the effective date when the Named Insured obtains other similar insurance.

Discovery

(This condition is only applicable to the Discovery Form.)

Discovery occurs when the Named Insured first becomes aware of facts a reasonable person would interpret to indicate a covered loss has happened or will happen, even if the person is not aware of the exact details of the loss.

Discovery could also occur when the Named Insured receives notice of an actual or potential claim.

Loss Sustained During Prior Insurance

(This condition is only applicable to the Loss Sustained Form.)

This condition pertains to a loss covered by a prior policy, but discovered after the discovery period has expired. To make sure that there are no gaps in coverage, insureds need to retain old insurance policies in order to provide evidence of prior insurance to the current insurance carrier. With the evidence of prior insurance, the current insurance carrier can be satisfied that no coverage gap exists.

Under the Loss Sustained Form, the recovery for loss covered by a prior policy is the lesser limit of the current policy or the prior policy.

DECLARATIONS

The Declarations that accompanies the Commercial Crime Coverage Form allows the Named Insured to choose among the Form's seven insuring agreements to meet potential exposures to loss. To activate an insuring agreement, the Named Insured has to choose a limit of insurance (per occurrence) and a deductible amount (per occurrence) shown next to the insuring agreement(s). If the Named Insured does not want a specific coverage, "not covered" is inserted next to the specified insuring agreement. Any applicable endorsements that form part of the Policy are

then noted. The Declarations is the same for both CR 00 20 – Commercial Crime Coverage Form (Discovery Form) and CR 00 21 – Commercial Crime Coverage Form (Loss Sustained Form).

INSURING AGREEMENTS

Coverage for each of the following insuring agreements is provided when a limit is shown in the Declarations for such agreement.

Employee Theft

This insuring agreement provides the Named Insured coverage for a loss occurring when an employee takes money, securities, or other property unlawfully from the Named Insured, thereby depriving the Named Insured of that item or items.

It pays for loss of or damage to “money”, “securities”, and “other property” resulting directly from theft committed by an employee, whether identified or not, and whether acting alone or in collusion with other persons. Coverage applies regardless of the number employees involved, but the insurance limit stated is for each act and not for each employee.

Coverage applies for any person meeting the definition of employee. There is no need to name persons or positions. If an insured wants employee theft coverage on a scheduled basis, it can be provided by endorsement: Employee Theft – Name or Position Schedule CR 04 08. This changes the definition of employee to be limited to only a person named in the schedule or any person who performs the duties of a position listed in the schedule.

Also, it is possible to exclude certain persons or classes of persons by using the endorsement: Exclude Designated Persons or Classes of Persons as Employees CR 25 01.

Covered Causes of Loss

Dishonest acts committed with intent to cause loss and obtain benefit.

Condition Applicable to Employee Theft – Termination as to Any Employee

This provision states that coverage is canceled as to a specific employee immediately on discovery by the Named Insured, partner, member, manager, officer, director, or trustee of the Named Insured of any dishonest act committed by that employee, whether the act occurred before or after becoming employed by the Named Insured. This provision is sometimes called the Prior Dishonesty Clause.

Forgery or Alteration

This insuring agreement provides the Named Insured protection from forgeries or alterations of financial instruments, i.e., checks, drafts, promissory notes, and orders to pay money. This coverage applies to the actions of others and not actions by the Named Insured, or any employees, or any representatives of the Named Insured, including directors and trustees. If the Named Insured is sued for refusing to pay a check, draft, or promissory note because it is believed to be forged or altered, coverage is also provided for reasonable legal expenses for providing a defense against the suit.

Conditions Only Applicable to Insuring Agreement for Forgery or Alteration:

Deductible

The deductible does not apply to legal expenses paid under the insuring agreement.

Electronic and Mechanical Signatures

Signatures that are produced or reproduced electronically, mechanically or by similar means are treated the same as if handwritten.

Proof of Loss

The Named Insured is required to include with the proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

Territory

The Policy states that the coverage territory is worldwide.

Inside the Premises – Theft of Money and Securities

This insuring agreement pays for the loss of money and securities from the Named Insured's premises, or financial institution premises caused by theft by a person physically inside the premises, or by disappearance or destruction of money and securities at the described premises. Premises are considered the interior of the building where the Named Insured occupies and conducts business, and within financial institutions as defined by law. This insuring agreement does not provide coverage for stock or merchandise. The insuring agreement may extend to cover damage to the building (inside and outside) if that damage is a result of an actual or attempted theft of money or securities. It may also provide coverage for loss of or damage to a locked safe, vault, or cash register located inside the Named Insured's building.

Inside the Premises – Robbery or Safe Burglary of Other Property

"Other Property" refers to property, other than money and securities, having intrinsic value and not excluded. Coverage is limited to safe burglary or robbery of a custodian and must occur within the Named Insured's premises. A custodian may be the Named Insured or an employee of the Named Insured, but not a janitor or watchperson.

Outside the Premises

This insuring agreement applies to loss of money and securities and other tangible property that has intrinsic value when the loss occurs outside the Named Insured's premises. The property has to be in the custody of an armored motor vehicle company or a messenger, who can be the Named Insured or a relative, partner, or employee of the Named Insured. Loss of money and securities is covered if due to theft, robbery, or other instances of accidental loss as defined. The loss to other property is covered only for actual or attempted robbery.

Computer And Funds Transfer Fraud

This insuring agreement protects the Named Insured from loss of money and securities, resulting from fraudulent entry of, or change to, electronic data or computer programs; or, from fraudulent

instruction to a financial institution, which results in the transfer of money and securities from the insured's account.

Money Orders and Counterfeit Money

If the Named Insured accepts counterfeit money orders or currency in good faith in exchange for merchandise or services, which tender then is not accepted for payment, the Named Insured has suffered a loss covered by this insuring agreement. The covered territory is limited to the United States and Canada.

GENERAL EXCLUSIONS

The exclusions that apply to ISO Commercial Crime Coverage Forms are divided below into five categories based on their applicability to the various insuring agreements. Selected exclusions are described under each category.

Exclusions Applicable To All Insuring Agreements

1. ***Acts Committed by You, Your Partners or Members*** - any dishonest act of the Named Insured, whether committed alone or with other employees, is excluded. The reference to members relates to an organization that is a limited liability company (LLC). These individuals are the owners.
2. ***Acts of Employees Learned of by You Prior to the Policy Period*** - makes it clear that the Policy does not cover a theft loss by an employee if it is known that he/she committed a dishonest act prior to the Policy effective date.
3. ***Acts of Employees, Directors, Trustees or Representatives*** - there is an exception to this exclusion that applies when the loss is covered under Insuring Agreement –Employee Theft.
4. ***Confidential Or Personal Information*** – disclosure or use of the insured's or another person's or organization's confidential personal information is excluded. Confidential or personal information includes patents, trade secrets, customer lists, financial information and more.
5. ***Indirect Loss*** - excludes coverage for any loss that is an indirect result of an act or occurrence covered by insurance, including but not limited to three specific types of indirect losses.

Specific types of indirect losses excluded:

- Loss of income due to loss or damage to covered property;
 - Payment of damages of any type for which the Named Insured is legally liable, except that insurer pays for compensatory damages arising directly from a covered loss -- this coverage may be provided by endorsement; and
 - Expenses or costs incurred to establish the amount of a covered loss under the Policy.
6. ***Virtual Currency*** – Loss of virtual, digital, or crypto currency of any kind, under any name, is excluded.

Exclusions Applicable Only To Employee Theft Insuring Agreement

1. Employee Canceled Under Prior Insurance;
2. Inventory Shortages;
3. Trading (Trading activities include stock and commodity trading losses, and merchandise trading losses.); and
4. Warehouse Receipts, including documents that are forged, fraudulent, or improperly executed. (Warehouse receipts are highly negotiable and this exclusion excludes loss from fraudulent or dishonest activities.)

Exclusions Applicable Only To These Three Insuring Agreements: Inside the Premises – Theft of Money and Securities; Inside the Premises – Robbery or Safe Burglary of Other Property; Outside the Premises

1. Accounting Errors;
2. Exchanges or Purchases;
3. Fire – Loss to Premises;
4. Money Operated Devices;
5. Motor Vehicles or Equipment and Accessories;
6. Transfer or Surrender of Property;
7. Vandalism; and
8. Voluntary Parting of Title to or Possession of Property.

Exclusions Applicable only to Computer and Funds Transfer Fraud Insuring Agreement

1. Authorized Access
2. Credit Card Transactions;
3. Exchanges Or Purchases
4. Fraudulent Instructions
5. Inventory Shortages.

INSURING AGREEMENT ENDORSEMENTS – OPTIONAL COVERAGES

There are numerous endorsements which provide insuring agreements that are not within the primary crime coverages. The following endorsements have been selected for review:

Clients' Property CR 04 01

This endorsement provides employee theft coverage for property that the Named Insured's client owns or leases or that they hold for others; the client does not need to be legally liable to others. It is restricted to loss caused by an identified employee.

Extortion – Commercial Entities CR 04 03

This endorsement provides coverage for payment of extortion arising from the threat of bodily harm to the Named Insured, as well as employees, directors, and their relatives who have been kidnapped or allegedly kidnapped. It also includes coverage related to threats to the Named Insured's premises or property at the Named Insured's premises. Additional locations outside the defined coverage territory can be scheduled.

Coverage is excluded if Named Insured surrenders property prior to a reasonable attempt to report the extortionist's demands to law enforcement authorities.

Inside The Premises – Theft of Other Property CR 04 05

This endorsement provides more extensive coverage than found in the Inside The Premises – Robbery or Safe Burglary of Other Property insuring agreement because it includes the peril of theft, which is broader than either robbery or safe burglary.

Inside The Premises – Robbery of a Watchperson or Burglary of Other Property CR 04 06

This endorsement provides broader coverage than found in the Inside The Premises – Robbery or Safe Burglary of Other Property insuring agreement, in that it expands the definition of "robbery" to include robbery of a "watchperson" and expands the peril of "burglary" from safe burglary only. There must be visible signs of forced entry or the "watchperson" threatened for coverage to apply.

Inside The Premises – Robbery of a Custodian or Safe Burglary of Money and Securities CR 04 07

This endorsement pays for loss to money and securities arising from robbery of a custodian (Named Insured, partners, members or employees). As indicated in crime coverages previously reviewed, a "custodian" does not include a "watchperson" or janitor. Finally, it provides coverage for damage to the "premises" or damage to a locked safe or vault that arises from a robbery or safe burglary.

Employee Theft – Name or Position Schedule CR 04 08

This endorsement modifies or limits employee theft coverage to either specified individual(s) or position(s) as shown on the schedule of the endorsement. This may also be used to provide for excess coverage over the Employee Theft Insuring Agreement for specific employees or positions. This allows for a blanket limit for all employees with another or additional limit for those named on this endorsement.

Lessees of Safe Deposit Boxes CR 04 09

This endorsement pays for loss resulting from theft, disappearance or destruction of insured's securities, or loss resulting from burglary, robbery or vandalism of other property, that is stored in a safe deposit box or vault inside a depository premises (financial institutions or other safe depositories). It does not provide coverage for money that is stored.

Securities Deposited With Others CR 04 10

This endorsement is designed for businesses that entrust securities to others, providing coverage for theft, disappearance or destruction while in transit by a custodian to or from the custodian's

premises, inside the custodian's premises (locations listed on the Declarations), and on deposit at the custodian's premises. Coverage does not apply to the Named Insured's securities while located on premises owned by the Named Insured.

Guests' Property CR 04 11

This endorsement provides liability coverage to the Named Insured for the property of others for which the Named Insured is responsible. This coverage is designed for the Named Insured's guests staying on the Named Insured's premises, such as a hotel, motel, or nursing home. The insuring agreement provides two coverages: first, it pays for loss or damage the Named Insured becomes legally obligated to pay for property in the Named Insured's possession or inside the premises and, secondly, it covers guest's property in a safe deposit box inside the premises.

Safe Depository CR 04 12

This endorsement is for businesses (other than financial institutions) that offer safe deposit box services to their clients. There are two insuring agreements. First, it provides legal liability coverage for customer's property in a safety deposit box, vault, or other places on the Named Insured's premises, and it provides defense coverage for suits by customers for damage to the customer's property. Second, a direct damage coverage is available that covers the customer's property for causes of loss of "robbery", "burglary", destruction, or damage. The Named Insured does not have to be legally liable under the direct damage coverage.

CONCLUSION

Commercial Crime Coverages provide protection and alternatives for businesses regarding losses due to crime. Whether the situation involves people who are trusted or outside intruders, Commercial Crime Coverage provides a method to protect the assets of a business.

CHAPTER 10: COMMERCIAL GENERAL LIABILITY (CGL)

INTRODUCTION

People or organizations that provide goods and services to the general public face numerous liability exposures. These exposures are a result of the public coming on the premises, the activities arising from the manufacturing and/or the distribution of products, as well as the providing of services. The policy that protects businesses and other organizations for their premises and operations exposures, as well as their products and completed operations exposures, is the Commercial General Liability (CGL) Policy. General liability insurance is used because the other types of commercial liability insurance are very specific. Examples of the specific types of liability insurance are Business Auto Policy, Workers Compensation and Employers Liability Insurance Policy, Employment Practices Liability Insurance Policy, and Employee Benefit Liability Insurance Policy.

COMPONENTS OF A COMMERCIAL GENERAL LIABILITY POLICY

The forms and endorsements for a particular line of insurance make up what is known as a coverage part. A policy that contains a single coverage part (or line of insurance) is called a monoline policy. A policy that contains two or more coverage parts is a multiline policy and is called a Commercial Package Policy (CPP).

Regardless of whether a policy is written as a monoline policy or a package policy, the coverage parts used are identical. That is, there is only one set of forms used to provide a given coverage. A particular coverage form may be used alone or it may be combined with other types of coverage forms in the same policy.

The Commercial General Liability Coverage Form may be used independently as a monoline policy, or it may be used in conjunction with Commercial Property and/or Commercial Crime under a package policy. The distinguishing feature between the two approaches – monoline vs. package – is merely the number of coverage parts attached to the policy.

The Commercial Lines Program provides a simplified framework for assembling coverage parts. Generally, a commercial lines insurance policy consists of:

- Common Policy Declarations;
- Common Policy Conditions;
- One or more Commercial Coverage Parts; and
- Interline Endorsements (as needed).

In most cases, every commercial policy includes the Common Policy Declarations and the Common Policy Conditions. These forms apply to the entire policy regardless of the number of coverage parts included.

Individual coverage parts each have their own coverage forms, declarations, endorsements, and, in some cases, separate conditions form (not CGL), which apply only to that particular coverage. In addition, something called interline endorsements may be attached to a package policy. These may apply to more than one coverage part and were developed to reduce redundancy.

The structure of the CGL Policy is illustrated below:



COMMERCIAL GENERAL LIABILITY COVERAGE FORMS

Types

There are two Commercial General Liability Coverage Forms available. These two coverage forms contain the same coverages; the difference is the “trigger”, or activation, of coverages.

Occurrence – CG 00 01

The occurrence coverage form is the dominant coverage form written.

It is estimated that almost 97% of all the CGL Policies use this form. The Form CG 00 01 has an occurrence trigger, which means that liability coverage is activated when covered bodily injury, property damage, or personal and advertising injury occurs during the policy period, no matter when a claim for damages is made, whether seven days or seven years from the time of the event that caused the covered loss.

Claims-made – CG 00 02

The Commercial General Liability Coverage Form CG 00 02 has a claims-made trigger, meaning that liability coverage is activated when covered bodily injury, property damage, or personal and advertising injury occurs after a date specified in the Commercial General Liability Declarations and before the end of the policy period, if the claim for damages is made during the policy period. The consideration for coverage within the claims-made version is not when the occurrence resulting in bodily injury and/or property damage occurs or when the offense resulting in personal and advertising injury happens, but when a claim for damages is made. The date specified in the Declarations, referred to above, is called the retroactive date. This Coverage Form is most commonly written for businesses which have special exposures and hazards, especially product liability exposures with a long-term potential for loss. Additional claims-made concepts are reviewed later in this chapter.

Selected Definitions

Although the Definitions are located in Section V – Definitions of the Coverage Form, an examination of the Commercial General Liability (CGL) coverages necessitates an understanding of some of the words and phrases with special meaning.

Bodily Injury

“Bodily Injury” means bodily injury, sickness, or disease sustained by a person, including death from any of these at any time.

The following scenario illustrates examples of bodily injury as defined in the CGL Coverage Form:

EXAMPLE

Seaside Hotel and Convention Center not only provides guest rooms but also has a restaurant on site. On a busy summer morning, a guest slips on the recently polished marble floor in the entry, suffering a sprained wrist. Later that day, several other guests attending a 5-day conference become ill and are diagnosed with Legionnaire’s Disease. Later that evening, a guest becomes sick with salmonella from food eaten in the hotel restaurant. A week later, one of the elderly gentlemen who had contracted Legionnaire’s Disease during the conference dies from complications of the disease.

Property Damage

“Property damage” means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

© Insurance Services Office, Inc.

Paragraph a. of the definition clarifies that “property damage” not only means the physical injury to tangible property but also includes all resulting loss of use.

Paragraph b. expands the definition further by adding the loss of use of tangible property that is not physically injured.

The last paragraph of the definition states that electronic data is not considered tangible property. Tangible property basically means a physical item that can be touched. The electronic data itself is not considered tangible property; and, therefore, any damage done to electronic data does not meet the definition of “property damage” in the unendorsed CGL Coverage Form.

EXAMPLE

Early Friday morning, as Panther Construction Company is transporting a large construction crane through the downtown streets, the boom hits and damages a utility pole. The boom collapses in front of Needless Markup Department Store, blocking the entrance to the store on opening day of the Annual Fall Sale. It takes several hours to remove the crane and boom. Although the department store has not been physically injured, they make a claim for loss of use, since customers cannot gain entry to the store.

In the above scenario, the utility pole, a tangible item, suffered physical harm from the boom. This type of property damage meets the definition of paragraph a. of “property damage”. The department store, although not physically injured, suffers a loss of use due to the occurrence of the crane hitting the utility pole and collapsing on the street. This loss is included within the definition of paragraph b. of “property damage”.

The above definitions of “property damage” and “bodily injury” are similar to those found in other policies providing liability insurance protection.

Occurrence

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

© Insurance Services Office, Inc.

“Occurrence” is broader than an accident. An accident is an event that is unexpected, which occurs suddenly and at a definite place. Although an accident is always an occurrence, an occurrence can include repeated accidental (unintended) events, which cause damage. Think of occurrence as an accident with time removed.

An example of an occurrence resulting in bodily injury due to continuous exposures is individuals who reside or work near manufacturing plants. Continuous exposures to certain harmful chemicals or manufacturing conditions result in sickness or disease.

The following example illustrates a property damage occurrence due to continuous or repeated exposures:

EXAMPLE

Eight office buildings are located on the same large downtown block. Four of those office buildings are targeted for demolition to make room for a hotel and parking garage. The demolition process is conducted over several weeks and includes the use of explosives, drilling and excavation. One of the nearby office buildings starts to suffer plumbing “problems”. It is discovered that the vibrations from the demolition conducted at the nearby construction site is the cause of the damage.

Coverage Territory

“Coverage territory” means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) “Personal and advertising injury” offenses that take place through the Internet or similar electronic means of communication;

provided the insured’s responsibility to pay damages is determined in a “suit” on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

© Insurance Services Office, Inc.

According to paragraph b. above, liability arising out of a covered loss while traveling between New York and Puerto Rico is considered within the “coverage territory”. A similar loss occurring on a flight between California and Mexico does not meet the definition of “coverage territory”.

Paragraph c. clarifies that there is coverage worldwide for three types of circumstances but only if damages are determined in a suit in the territory described in paragraph a. or in a settlement the insurer agrees to.

The following examples illustrate how worldwide coverage applies within the scope of this definition:

EXAMPLES

1. Big Cook's Kitchen Appliances manufactures electric coffee makers in the United States and sells them to various South American countries. A customer in Brazil purchased a Big Cook's coffeemaker that has an electrical short in its wiring that causes fire damage to the customer's home. The customer files a suit in the United States.
2. Big Cook's sends an employee for a week to conduct product demonstrations in Mexico to assure the safety and quality of its coffeemakers. During a presentation, the employee spills hot coffee on an attendee, causing second degree burns. The attendee files suit in Puerto Rico.
3. Big Cook's posts some comments on its website, which libels a competitor located in France. The competitor files a suit in Canada.

If the customer, attendee or the competitor files a suit in a territory not described in paragraph a., there is no worldwide coverage provided.

The following two definitions are key to the understanding of Coverage B – Personal and Advertising Injury.

Advertisement

"Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

© Insurance Services Office, Inc.

EXAMPLE

A successful restaurant chain, Tony's Iguana Café, specializing in Mexican food, has a blue iguana named Tony dressed in a mariachi outfit as its company logo. It places ads in the Sunday newspaper and airs a jingle on radio spots. Its television ads feature an animated singing iguana strumming a guitar. The restaurant has a website that advertises its lunch specials and includes electronic coupons that can be printed. Tony's also sponsors a little league team and a soccer team with the restaurant name on the jerseys. These are all examples of advertisements as defined in the CGL Coverage Form because the intent is to attract customers.

Personal and Advertising Injury

“Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
- f. The use of another’s advertising idea in your “advertisement”; or
- g. Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

© Insurance Services Office, Inc.

Paragraph a. is a common exposure for a retail named insured, as respects to shoplifting.

Paragraph c. is a common exposure for those who rent real property to individuals, or for someone who owns or operates a hotel or motel.

In paragraphs d. and e., the phrase “includes oral or written publication in any manner” is intended to include all forms of publications, including electronic publications.

Paragraph g. includes copyright infringement. This basically means using another’s publications, images, or audio recordings without the owner’s permission. There are exceptions to this, such as fair use, but that is beyond the scope of this analysis.

Insured Contract

“Insured contract” means any one of the following contracts that assume responsibility for liability for bodily injury and/or property damage. It can be expressed by the acronym LEASE PLUS, a contract under which a named insured assumes the tort liability of another party.

“LEASE” +
Lease – liability assumed under a lease of premises
Easement – liability assumed under an easement (right to use another’s land) or license agreement
An obligation to indemnify a municipality as required by ordinance
Sidetrack agreement
Elevator maintenance agreement
+ tort liability of another assumed by the named insured

Next, a review of the types of “insured contracts”.

Lease

In most lease agreements, the landlord or owner usually requires a tenant to assume responsibility for any bodily injury or property damage that occurs on the premises described in the lease. This meets the definition of “insured contract”.

However, if the lease agreement requires any indemnification due to fire damage to the premises, then that portion of the lease is not considered an insured contract. The tenant needs a property policy to comply with this responsibility.

Easement

A business may want to use someone else’s land on an ongoing basis.

EXAMPLE

An individual has no access to a piece of property. She wants to build a road in order to access the property. She enters into an easement agreement with an adjoining landowner that allows her to build a road to gain access to her premises. In the easement, she assumes responsibility for bodily injury and/or property damage that may occur and cause the property owner to become involved in the claim or suit.

An Obligation to Indemnify a Municipality as Required by Ordinance

In the case of a city or town, there may be an ordinance that requires indemnification from a person or organization that may build a structure or erect an obstacle that could cause bodily injury or property damage to the general public. The indemnification requirement is not in any

specific contract or agreement between the named insured and the municipality, but rather it is written in the municipality's ordinance.

EXAMPLE

Snowy's Ice Cream Shop opens a store in a downtown location. Snowy erects a sign that hangs over a city sidewalk. If Snowy's sign falls and injures a pedestrian or damages a parked vehicle, then the city is entitled to be indemnified according to the city ordinance.

Sidetrack Agreement

A sidetrack is a railroad track which runs from a main railroad line. It is common for a manufacturer or distributor of goods to use railroads for shipping. To facilitate the shipment of goods, the railroad may agree to put in a sidetrack that goes into a manufacturer's or distributor's property. In exchange for providing the sidetrack, the railroad requires the named insured to sign an agreement assuming liability arising out of the use and maintenance of the sidetrack.

Elevator Maintenance Agreement

Not all businesses have elevators, but those that do are usually not able to perform their own elevator maintenance. When a business hires a company to maintain their elevator, there is typically an agreement that indicates which party is held harmless and which party assumes the responsibility for the liability of the other party in the event of an accident arising out of maintenance of the elevator.

PLUS

An "insured contract" also includes that part of any other contract pertaining to the named insured's business under which the named insured assumes the tort liability of another to pay for bodily injury or property damage to a third party or organization.

EXAMPLE

Corin Construction Company enters into a construction agreement to build an addition for TMS Electronics. In the agreement, Corin agrees to assume the liability arising out of the construction site and all activities in connection with the construction. A customer of TMS is injured due to negligent activity of Corin Construction Company. The customer sues both Corin and TMS. TMS contacts Corin, reminds it of the hold harmless agreement, and asks Corin to pay any amount for which TMS is held responsible.

The next two definitions are related, even though liability arising from an auto is typically not covered under the CGL Policy but is covered by the Business Auto Policy; and liability arising from ownership, maintenance, or use of mobile equipment is covered under the CGL Policy but not the Business Auto Policy. The ways the two policies handle the potential overlaps is examined later.

Auto

"Auto" means a land motor vehicle, trailer, or semi-trailer designed for use on public roads, including any attached machinery or equipment or any other land vehicle that is subject to a

compulsory or financial responsibility law or any other motor vehicle insurance law where licensed or principally garaged.

However, “auto” does not include “mobile equipment”.

Mobile Equipment

“Mobile equipment” means any of the following types of land vehicles, including any attached machinery or equipment (this is not a complete list):

- a. Bulldozers, farm machinery, forklifts, and other vehicles principally designed for use off public roads;
- b. Vehicles maintained for use solely on or next to premises the named insured owns or rents (a yard truck or a multi-use lightweight equipment “mule”);
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or that are not self-propelled (trailer-types), that are maintained primarily to provide mobility to permanently mounted power cranes, shovels, loaders, etc.;
- e. Vehicles that are not self-propelled that are used primarily to provide mobility to permanently attached air compressors, pumps, spraying equipment, welding equipment, cherry pickers, and other equipment used to raise and lower workers;
- f. Vehicles not described in items a - d above maintained primarily for purposes other than transportation of persons or cargo.

The following self-propelled vehicles (not trailers) with permanently attached equipment are considered “autos”, not mobile equipment.

1. Equipment designed primarily for snow removal, street cleaning, and road maintenance other than construction or resurfacing;
2. Cherry-pickers and vehicles with similar lifting devices mounted on automobile or truck chassis;
3. Vehicles with air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, “mobile equipment” does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered “autos”.

Your Product

“Your product”:

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your product”; and
- (2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

© Insurance Services Office, Inc.

As noted in the above definition, containers, other than vehicles, are part of the definition. Products can be contained in different size and different types of containers, such as boxes, bags, cans, bottles, barrels, netting, vats, or tanks. These containers and /or their packaging can be made from different types of materials such as glass, paper, metal, plastic, cloth, or wood.

Also, some products such as toys and electronic equipment are sold with batteries included. Some furniture and equipment that require assembly are commonly sold with an Allen wrench. These are examples of parts or equipment furnished in connection with goods or products that meet the definition of “your product”.

Most products are commonly sold with some type of warranty, warnings, or instructions. A product may be manufactured correctly, but if it has incorrect instructions attached or inadequate warnings, the product can be used in a manner that causes bodily injury or property damage.

Your Work

“Your work”:

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instructions.

© Insurance Services Office, Inc.

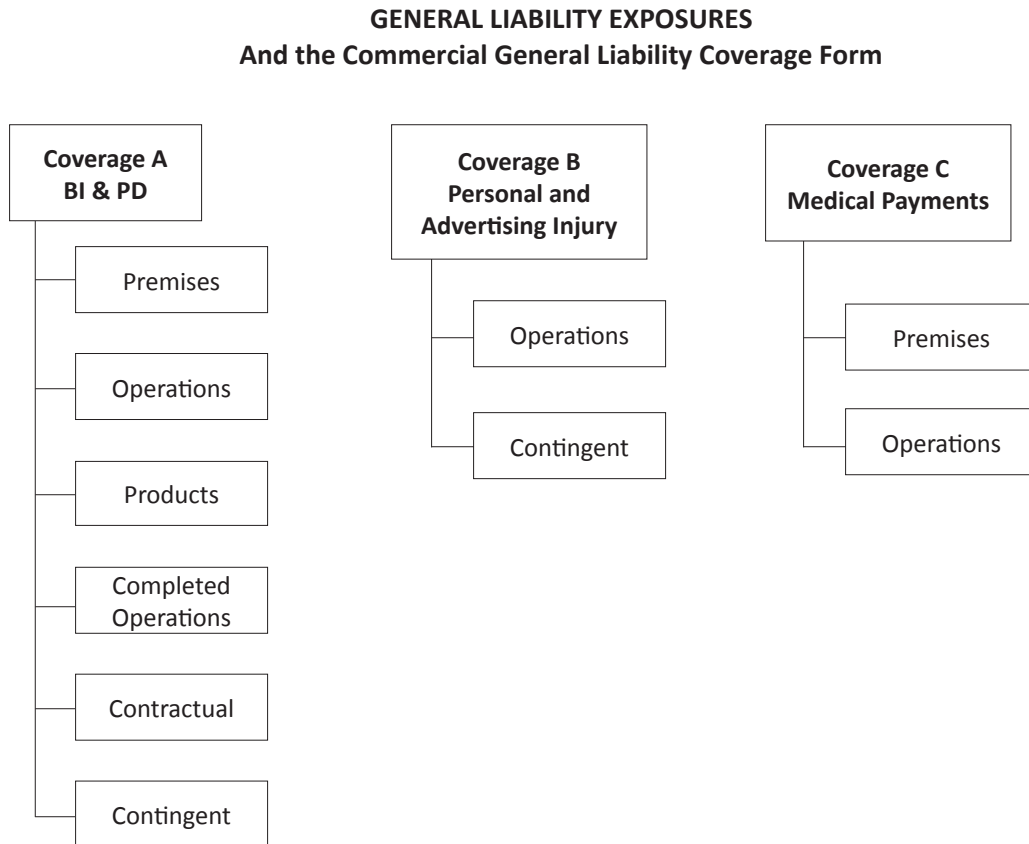
The definition of “your work” includes not only work or operations performed by the named insured, but also the work or operations performed on behalf of the named insured.

As stated in the definition of “your product”, the definition of “your work” includes warranties and providing or failure to provide warnings or instructions.

The definitions found in the CGL Coverage Form clarify the meaning of these terms as they apply to the CGL Coverage Form, as opposed to the meanings found in various dictionaries. These definitions play a crucial role in understanding what coverage is applicable and helping to avoid or to limit any ambiguities or misinterpretations of coverage.

COVERAGES

The three coverages of the Commercial General Liability Coverage Form are shown in the following chart:



COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

In the preceding chart, there are a number of exposure areas specifically listed. All these exposures are included to varying degrees in this coverage. Below are some simple examples:

EXAMPLE

Map Department Store has a liability exposure as a result of all of the customers who come on the premises. Likewise, the store must be concerned with its operations or activities that can cause liability, such as injuring a customer while demonstrating a product at a trade show. Business operations such as installation, repairs, service or maintenance can also cause liability.

For every product sold, there is potential for product liability. If the store's blind and drapery department goes to a customer's house and installs blinds or puts up a valance, the installation could fail later and injure the customer or cause property damage. This is referred to as a completed operation.

The store may rent space in a shopping mall and be exposed to contractual liability because of the lease. Finally, if the store decides to expand, and it hires contractors to do the work, negligence on the part of the contractors may be transferred to Map Department Store. This possible liability for the acts of others is referred to as contingent or protective liability. All these areas of liability exposures are included within Coverage A.

As part of its operations, Map Department Store uses various types of advertisements to attract customers. The possibility of an injury arising out of an offense associated with this type of exposure is included within Coverage B.

Like many other retail stores, Map hires a security guard for safety reasons and to curb shoplifting. The actions of the security guard on behalf of the store are considered a contingent liability exposure. The possibility of an offense arising out of a false arrest or detention because of this exposure is included within Coverage B.

As mentioned earlier, Map Department Store has a premises exposure and an operations exposure. If a customer trips over a store display and injures a limb, there may be a need for them to obtain some medical attention, including x-rays. These types of medical expenses, regardless of fault arising from a premises or operations exposure, are included under Coverage C.

Insuring Agreement

In the insuring agreement for Coverage A – Bodily Injury and Property Damage Liability, the insurer promises to pay those sums the insured becomes legally obligated to pay as damages for “bodily injury” and “property damage” to which the insurance applies. Nowhere in the Policy does it say it pays for all the potential exposures.

In addition to the insurer's promise to pay legal obligations, the insurer promises to defend any suit where there is coverage for the bodily injury and/or property damage. This is a significant promise, since one recent study attributes 38% of total CGL Policy premium dollars to expenses related to claims investigation and defense of suits. As seen when supplementary payments are

examined, expenses related to claims investigation and defense of suits are usually unlimited, but subject to the discretion of the insurer. Next, selected exclusions are reviewed.

Exclusions

This insurance does not apply to the following types of damages:

Expected Or Intended Injury

Obviously, it is logical to exclude damages expected or intended from the insured's standpoint. This exclusion eliminates coverage when a fired contractor takes an end-loader and demolishes a property owner's storage shed.

There is an exception for bodily injury for the use of reasonable force to protect persons or property. For example, if an irate customer threatens another customer, the insurance covers a claim resulting from a store manager's reasonable efforts to restrain the threatening customer, resulting in bodily injury.

Contractual Liability

This exclusion is somewhat confusing because it starts by saying there is no coverage except liability assumed in a contract which qualifies as an insured contract. Refer to the definitions section of this chapter to review the definition of an "insured contract", and review the specific examples. Though liability assumed in contracts is excluded in the broader sense, this exception covers many types of contracts. Thus, the majority of an insured's assumed contractual liability is covered in the CGL Policy.

However, three examples of contracts that are not covered are:

1. A contract that indemnifies a railroad for losses arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad structure, such as a trestle or road-bed; and
2. A contract that indemnifies an architect, engineer, or surveyor for losses arising out of preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, field orders, change orders or specifications; and
3. A contract under which the named insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the named insured's rendering or failure to render professional services.

The CGL Policy includes contractual liability defense expense as an included item of damages. If certain requirements are met, the expense of contractual liability defense expense is paid in addition to the limits of liability. However, if not all the requirements are met, the expenses are paid within the policy limits.

Liquor Liability

The intent of this exclusion is to eliminate coverage related to the added exposure of being in the business of selling, serving, and/or distributing alcoholic beverages. Almost all states place an additional responsibility on a server of alcohol if the alcohol is served in violation of the law

and/or causes the bodily injury or property damage of others. This includes failure to provide transportation to any person who may be intoxicated.

EXAMPLE

Todd's Tavern serves Mike several beers, despite the fact that Mike is only 16. Mike leaves the Tavern in his car and, about three miles down the road, crashes into a tree. A claim is brought against Todd's Tavern for the bodily injury and property damage.

The liquor liability exclusion applies even if the claim alleges the negligence in the supervision, hiring, employment, training or monitoring of others.

EXAMPLE

A restaurant busboy under the age of 21 serves himself some liquor one night at the end of his shift. He later drives intoxicated and causes an at-fault accident. A claim is brought against the restaurant for failure to supervise the underage employee.

The next example shows that this exclusion does not eliminate host liquor liability for the named insured, who is not in the business of selling, serving, and/or distributing alcoholic beverages.

EXAMPLE

The Pope Insurance Agency invites several clients to the agency for a holiday open house. One client is provided with additional liquor, even after it is apparent he is intoxicated. He falls down the stairs and breaks his arm. He makes a claim against Pope. The Liquor Liability Exclusion does not apply to this situation.

Businesses which do not sell, serve, or furnish alcohol but that permit a person to bring alcohol for consumption on the premises are commonly referred to as "bring your own" establishments. The liquor liability exclusion does not apply to these types of establishments since they are not considered in the business of selling, serving, or furnishing alcoholic beverages.

Workers' Compensation And Similar Laws

The CGL does not provide coverage for an obligation under a workers compensation law. The named insured must purchase separate workers compensation insurance coverage and/or other coverages for which he or she may be statutorily responsible.

Employers Liability

This exclusion is added to eliminate coverage for bodily injury to an employee (the "employee" definition includes a "leased worker", as defined in the CGL) which arises from a non-workers compensation situation.

The exclusion also eliminates consequential injury to the spouse, child, parent, brother, or sister of an injured employee, such as loss of consortium.

The exception eliminates insurance protection for the named insured if sued by another party as being partially responsible for an injury to an employee of the named insured. The exclusion eliminates insurance protection for the named insured if sued by an employee in a capacity other than as employer (for example, as a manufacturer of a product).

There is an exception to this exclusion, for liability assumed under an insured contract. The below example illustrates how coverage is given back.

EXAMPLE

Big Tom is a general contractor and Little Joe is one of his subcontractors. Little Joe has entered into an “insured contract” with Big Tom. Sally is one of Little Joe’s employees and is injured during the course of work due to, in some part, Big Tom’s negligence. Sally not only files a workers compensation claim with Little Joe, her employer, but she also files a liability claim against Big Tom. Since Little Joe has assumed Big Tom’s tort liability, then Little Joe is obligated to indemnify Big Tom for damages. This is covered under Little Joe’s CGL as an exception to the Employers Liability exclusion.

An endorsement to the CGL is available if the named insured wants coverage due to a claim made by an injured leased worker. For protection from employers liability claims not covered by a CGL Policy, the business should purchase employers liability coverage. (Workers Compensation and Employers Liability Insurance are discussed in a separate chapter.)

Pollution

The CGL Coverage Form is not designed to provide liability coverage arising out of the discharge, dispersal, seepage, migration, release, or escape of pollutants, whether they are released into land, water, or air. The CGL policy excludes bodily injury and property damage arising out of the pollution exposure, including the actual damage or harm caused by the pollutants, and mandated costs to clean up and/or test for pollutants. However, there is some coverage under certain circumstances.

Exceptions - Premises

1. Bodily injury, if sustained within a building caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building’s occupants or their guests.
2. Bodily injury and property damage for which the named insured may be held liable, and if the owner or lessee of such premises, site or location has been added as an additional insured with respect to the named insured’s ongoing operations performed for that additional insured at those premises. Coverage is provided only if those premises are not and never were owned or occupied by, or rented or loaned to, any insured, other than that additional insured.

EXAMPLE

Wally's Wallpaper Store owns a building with a gas heater. One day, the gas heater malfunctioned, causing fumes to seep through the vents into the customer area. Several customers became ill and filed claims.

Wally's was hired to install some wallpaper at the location of Curt's Chemical Manufacturing. Curt required Wally to add Curt's Chemical Manufacturing as an additional insured to Wally's CGL Policy. Wally accidentally knocked over a barrel of chemicals with his ladder causing the chemicals to leak and cause property damage.

Both of these claims are covered under Wally's CGL Policy.

1. Insured does not bring pollutants to the job site, and is not there to work on the pollutants.
2. Fluids or fuels used to operate the mobile equipment escape.
3. The pollution is caused by release of gases, fumes or vapors from materials brought into a building where operations are being performed.

EXAMPLE

Lovely's Landscaping Service is hired by a business to do some landscaping for Elite Country Club. In digging a large hole for a tree, Lovely hits a sewer pipe, causing pollutants to escape and cause property damage.

Lovely uses a front-end loader at the country club. The oil line of the loader ruptures, causing oil to seep out, damaging the tennis courts.

Carl's Carpets & Tile Service is hired by Elite Country Club to install some new flooring. While installing tile in the main ballroom, several country club members in another banquet room became ill from the fumes from the adhesive.

These three claims illustrate covered pollution claims arising out of the insured's operations.

Exception - Arising out of the Insured's Product or Completed Operations

1. Products can be defined simply as goods that are made or produced. If an insured manufactures dumpsters, each dumpster is a product. If a dumpster leaks toxic material onto land or water as a result of a defect in the product, the CGL Policy responds to the damage because the pollution arises out of the insured's product.

EXAMPLE

Connally Container Co. makes barrels for liquids, including hazardous chemicals. Curt's Chemical Manufacturing buys several barrels to store chemicals Curt's uses in its manufacturing process. One of the barrels leaks, contaminates the land with polluting chemicals, and releases fumes that make three people sick.

The claims against Connally for bodily injury and property damage are paid under Connally's CGL Policy.

Exception - Arising out of a Hostile Fire

The CGL Policy defines a “hostile fire” as one that becomes uncontrollable or breaks out from where it was intended to be.

EXAMPLE

Leonardo’s Paint Store catches on fire, resulting in chemicals being released into the air, causing bodily injury. The chemicals also seep into the land, causing property damage. The claims against Leonardo’s for bodily injury and property damage are paid under Leonardo’s CGL Policy.

Even though coverage is limited to the above exceptions, many insurance companies attach the Total Pollution Exclusion Endorsement – CG 21 49. This is an exclusionary endorsement that eliminates coverage for all pollution-type losses, including the examples of coverage reviewed in the previous paragraphs.

Aircraft, Auto, Or Watercraft

This exclusion indicates that the named insured needs to have a separate auto policy, aircraft policy, or watercraft policy for most liability exposures resulting from the ownership, maintenance, use or entrustment to others of any aircraft, auto or watercraft owned or operated by or rented or loaned to any insured. There is some coverage provided by the CGL Policy for certain activities or situations involving aircraft, autos, or watercraft by exceptions to this exclusion.

With this exclusion, there is almost no coverage for aircraft, and the coverage for watercraft is very limited. The exclusion contains exceptions to the exclusion for liability arising out of watercraft, if the watercraft is:

1. Owned – while ashore on premises, owned or rented; or
2. Non-owned – if less than 26 feet and not carrying persons or property for a charge. Here is an example of a non-owned watercraft loss:

EXAMPLE

A business rents a twenty foot motorized watercraft for a fishing trip to entertain a client. While out on the lake, the client suffers a head trauma.

The bodily injury suffered by the client in this example, if due to the negligence of the insured, is covered.

The CGL Policy excludes liability involving the ownership, maintenance, use or entrustment of an auto. However, there is an exception to this exclusion related to parking an auto on, or on the ways next to, premises the named insured owns or rents, provided the auto is not owned by or rented or loaned to the named insured or the insured. Hotels and restaurants that provide parking services (commonly referred to as valet parking) are examples of businesses with this liability exposure.

EXAMPLE

An employee for a restaurant that provides valet parking drives a customer's Ford Mustang towards the back lot adjacent to the restaurant. While driving the customer's vehicle, the restaurant employee swerves to avoid a squirrel and hits a pedestrian and a parked SUV. The bodily injury sustained by the pedestrian and the property damage to the SUV are covered under the CGL Policy.

However, the physical damage to the Ford Mustang is not covered under the CGL Policy, as there is an exclusion in the CGL Policy that excludes coverage for property damage to property in the care, custody, or control of the insured. Coverage for physical damage to customers' autos being parked is best provided by adding endorsement CA 99 37 Garagekeepers Coverage to a Business Auto Policy.

The CGL Policy provides insurance coverage for liability assumed under any insured contract for the ownership, maintenance or use of aircraft (owned or non-owned) and watercraft (owned or non-owned).

It is important to know the differences between an auto and mobile equipment, due to the CGL Policy's coverage treatment of each. Remember, if the equipment meets the definition of a land vehicle subject to compulsory or financial responsibility laws or another motor vehicle insurance law of the state where licensed or principally garaged, then the land vehicle is considered an auto. However, if being subject to one of these laws is the only reason it is considered an auto, bodily injury or property damage arising out of the operations of the attached equipment is covered under the CGL Policy.

CGL coverage also applies to the operations of a self-propelled cherry-picker and similar devices mounted on an automobile or truck chassis and used to raise or lower workers, and to the operations of air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment that are attached to a self-propelled vehicle.

EXAMPLE

Lovely's Landscaping Company uses a self-propelled cherry-picker to lift workers to reach tall trees that need trimming. One day, the bucket of the cherry-picker snags a telephone line and causes damage. This damage is covered under the CGL Policy.

Mobile Equipment

Bodily injury or property damage arising out of "mobile equipment" as defined in the CGL Coverage Form is covered except for two restrictions found in this exclusion:

1. There is no coverage for the transportation of mobile equipment by an auto owned or operated by or rented or loaned to any insured. (This exposure is covered by the Business Auto Coverage Form.)
2. There is also no coverage for mobile equipment used in racing, demolition, or stunting activity, or while practicing for or being prepared for such activity. (This exposure needs to be covered by a special events policy.)

EXAMPLE

A forklift being transported on a flatbed trailer to a jobsite falls off the trailer and hits a parked car. The damage done to the parked car is not covered under the CGL.

War

The war exclusion is found in most policies. It is not the intent of the CGL Policy to pay for losses, however caused, arising directly or indirectly out of war, warlike action, or insurrection. War presents a catastrophic exposure.

Damage To Property

This exclusion is a rather complicated exclusion that pertains to property damage only. Some of these exposures can be handled by the Commercial Property Policy, Builders Risk Policy, Installation Floater, and Bailee Coverage, etc.

The CGL Policy does not pay for property damage to:

1. Property owned, rented, or occupied by the named insured;
2. Premises sold, given away or abandoned by the named insured if the property damage arises out of any part of those premises;
3. Property loaned to the named insured;
4. Personal property in the care, custody, or control of the insured. For example:

EXAMPLE

Better Electronics not only sells a variety of electronics, appliances, and computers, but also services most of the products it sells. Ed, a repairman for Better, drops a customer's television on the floor while moving it. There is no coverage for the damage to the television under the CGL Policy because it is in the insured's care, custody, or control.

5. That particular part of real property on which the named insured, or any of the named insured's contractors or subcontractors, are performing work.

EXAMPLE

Paul's Plumbing is using a blowtorch to repair a damaged pipe at the Third National Bank. A nearby wall catches fire and a large section of the bank burns. The CGL Policy does not pay the damage to the pipe the workman is working on; however, the resulting property damage to the rest of the bank is covered.

6. Faulty workmanship on any property that requires restoration or repair of the property. For instance, if the insured puts a window in crooked and it has to be replaced, the cost of the replacement is not paid. Exposures such as faulty workmanship are not supposed to be the subject of insurance.

There are several other exceptions to parts of this exclusion resulting in coverage for the insured. Most of these are beyond the scope of this chapter.

However, one exception gives property damage coverage from perils other than fire to premises (including contents) that are rented to the named insured for seven consecutive days or less.

EXAMPLE

An insured rents a hotel meeting room for five days to conduct demonstrations of a new product. During one demonstration, the insured drops the product and damages the hotel's conference table, chairs, and wood floor. There is coverage, because the rental is for fewer than seven consecutive days.

There is a separate limit of insurance that applies to these covered losses, and this is reviewed as part of Damage to Premises Rented To You, later in this chapter.

Damage To Your Product

The CGL Policy does not guarantee the product, but pays for resultant damage caused by a defective product. Only the damage to "your product" as defined by the CGL is excluded.

EXAMPLE

Skipper buys a boat from Gilligan's Sportscraft. The second time he takes the boat out, it blows up. Skipper receives burns and loses personal property as a result of the fire and subsequent sinking of the boat. Skipper sues Gilligan's for loss of the boat and for destruction of property he had on the boat, as well as his injuries. Gilligan's CGL Policy does not pay for the damaged boat ("your product"), but it pays for the resultant damage to personal property and for Skipper's injuries.

Damage To Your Work

This exclusion is similar to the one above for Damage to Your Product, removing coverage for that part of "your work", as defined by the CGL, performed by the named insured. There is an exception to the property damage to "your work". Coverage is provided if the damaged work or the work out of which the damage arises was performed on behalf of the named insured by a subcontractor.

- Property damage to the work of a subcontractor resulting from the named insured's work – covered.
- Property damage to the work of a subcontractor resulting from that subcontractor's work – covered.
- Property damage to the work of a subcontractor resulting from another subcontractor's work – covered.
- Property damage to the work of the named insured resulting from a subcontractor's work – covered.
- Property damage to the work of the named insured resulting from the named insured's work – excluded.

Damage To Impaired Property Or Property Not Physically Injured

Coverage will not apply to damage to “impaired property”, as defined in the CGL Coverage Form, or to property that has not been physically injured. However, there is an exception for loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after the impaired property has been put to its intended use.

It is best to examine this exclusion by first looking at an example of an impaired property loss:

EXAMPLE

CARBO Company sells 500 carburetors to Austin Heavy Equipment Company, which uses them in forklifts it manufactures. Upon the installation of the carburetors, Austin Heavy Equipment discovers the carburetors do not work correctly. Therefore, Austin Heavy Equipment has impaired property. Austin Heavy Equipment brings a property damage claim against CARBO Company for the loss of use until they can get delivery of replacement carburetors from another manufacturer.

In the above example, the forklifts meet the definition of “impaired property” because, even though they may contain the named insured’s defective product, the forklifts have *not* been physically injured. The forklifts can be restored to use by replacing or repairing the carburetors. The primary excluded exposure is for a loss of use claim or a decrease in value claim where the named insured’s product or named insured’s work has not actively caused damage to the property of another.

However, if a forklift was put to its intended use and the carburetor malfunctioned, causing fire to the forklift, the resultant damage to the forklift, including loss of use of *that* forklift, would be covered.

Recall Of Products, Work Or Impaired Property

Excluded are expenses incurred in withdrawing products, damages claimed for loss of use of recalled products, and expenses incurred by a supplier of components in withdrawing products that incorporate supplier’s products already in the hands of the purchaser. This is usually a first party loss, not a liability claim; it is a cost to keep bodily injury or property damage from occurring. For instance, a company such as a tire manufacturer has a much greater chance of a product recall than many other insureds. The named insured needs to purchase product recall coverage based on the individual organization’s exposure.

Personal And Advertising Injury

Coverage A of the CGL Policy excludes bodily injury arising out of personal and advertising injury, as Coverage B includes consequential bodily injury as part of its coverage.

Electronic Data

Damages arising out of the loss of, loss of use of, damages to, corruption of, inability to access, or inability to manipulate electronic data are excluded. Electronic data is information, facts or programs stored on, created or used on, or transmitted from computer software. Think of data

as the stuff stored on the hard disk, floppy disk, CD, DVD, or other media, or transmitted on lines from computer to computer, but not the disk, computer, or lines themselves.

This exclusion eliminates coverage for any damages awarded as a consequence of the loss of electronic data or the inability to use such data. For example, loss of use of the computer hardware that does not function correctly because of damage to or destruction of the data is not covered. This exclusion does not apply to liability for damages because of bodily injury.

Recording And Distribution Of Material Or Information In Violation Of Law

The CGL Policy does not provide any coverage for bodily injury or property damage arising out of any act or omission that violates or is alleged to violate the Telephone Consumer Protection Act, the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-Spam Act), the Fair Credit Reporting Act (FCRA), including any amendments to these laws, or any other statute, ordinance or regulation that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Fire Damage Coverage

Damage due to fire to premises that are rented or temporarily occupied by the named insured is provided as an exception to various exclusions. This type of coverage is commonly referred to as fire legal liability coverage.

EXAMPLE

Sylvan Products rents an exhibition stall at the Las Vegas Convention Center as part of an industry convention. The two Sylvan Products employees who are going to work at the convention bring a multimedia presentation with them to attract convention attendees to their exhibit. Unfortunately, the stall has only a limited number of electrical outlets, so the Sylvan employees “rig” something up. After 30 minutes, the stall catches fire. Sylvan Products is held responsible for \$10,000 fire damage to the area it is renting. This loss is covered as a fire damage loss.

This coverage applies only to damage caused by fire due to the named insured’s negligence and not due to any contractual liability assumed in a lease. For example, it does not apply to fire caused by lightning.

Fire Damage Legal Liability is subject to the limit of Damage to Premises Rented to You listed on the Declarations.

- Important note: Coverage for damage to premises rented to the named insured does not apply to any other peril other than fire when rented for more than 7 days. Example: A tenant in a building who has leased the premises accidentally leaves a faucet running that results in water damage to the flooring. There is no coverage if a claim is filed.

Damage to Premises Rented to the Named Insured

PERIL	PROPERTY	7 DAYS OR LESS	MORE THAN 7 DAYS
Fire, if negligent	Premises only	Covered	Covered
Any other peril other than fire	Premises & contents	Covered	Not covered

Exclusion – Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability – With Limited Bodily Injury Exception

Mandatory endorsement CG 21 06 replaces the Electronic Data exclusion found in Coverage A of the CGL Coverage Form. This endorsement combines the provisions found in the Electronic Data exclusion with an additional exclusion for damages arising out of access or disclosure of confidential or personal information.

Some cyber-related liability exposures and some first party exposures related to cyber incidences are best handled by specific policies, such as an Information Security Protection Policy or a company specific Cyber Liability Policy. Cyber Liability is discussed in a later chapter.

Employment-Related Practices by Endorsement

It never has been the intention of the CGL Coverage Form to provide liability protection for claims arising out of those actions labeled as Employment-Related Practices. Employment-related practices include such activities as discrimination, sexual harassment, and wrongful termination. Most court decisions regarding employment-related practices, in finding in favor of the insurance company, have stated that the acts did not fit under the definition of an “occurrence”, or were excluded as expected or intended injury.

To avoid the possible defense costs, almost all insurance companies have excluded employment-related practices by attaching the endorsement Employment-Related Practices Exclusion – CG 21 47. The endorsement excludes coverage for claims involving wrongful termination, sexual harassment, and discrimination. In actuality, it is simply a clarification that there is no coverage for such activities. Insureds may purchase a separate insurance policy for some of these excluded exposures.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**Coverage**

This coverage section of the CGL Coverage Form provides liability protection for those specific offenses that are defined in “personal and advertising injury”, previously covered in the Definitions Section of this chapter. Payment is made for damages for injury, including consequential bodily injury, caused by those specific offenses.

Coverage applies only if the offense arises out of the named insured’s business and only if the offense is committed in the coverage territory during the policy period.

Exclusions

Even though the definition of personal and advertising injury specifies what injuries are covered, the CGL Coverage Form has several exclusions that eliminate coverage.

Knowing Violation Of Rights Of Another

No coverage applies if the insured is aware that an act violates the rights of another but still goes ahead and commits the act anyway, knowing it inflicts personal and advertising injury.

Material Published With Knowledge Of Falsity

Publication of false material done, in any manner, by or at the direction of the insured is not covered.

Material Published Prior To Policy Period

If the first publication takes place before the beginning of the policy period, then no coverage applies.

Criminal Act

It is not the intent of the CGL to provide coverage for criminal acts.

Contractual Liability

There is no coverage for personal and advertising injury for which the insured assumes liability in a contract or agreement.

Breach Of Contract

No coverage applies for a breach of contract, except for an implied contract to use another's advertising idea in the named insured's advertisement.

Quality Or Performance Of Goods

There is no coverage for failure to conform to any statement made in the named insured's advertisement on a product's quality or performance.

Wrong Description Of Prices

If the price of goods stated in the name insured's advertisement is incorrect, then no coverage applies if any personal and advertising injury arises, or is alleged to arise.

Infringement Of Copyright, Patent, Trademark Or Trade Secret

The intent of this exclusion is to exclude coverage for the unauthorized use of another party's copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, intellectual property rights do not include the use of another's advertising idea in the named insured's advertisement.

An exception to this exclusion gives back coverage for infringement of copyright, trade dress or slogan in a named insured's advertisement.

EXAMPLE

A new restaurant chain, Tina's Iguana Bar & Grill, begins operations. Its TV advertisement uses an iguana dressed in a pink flamenco dress singing a mariachi tune. Tony's Iguana Café files a suit claiming that Tina used his advertising idea in her advertisement.

One of Tina's advertisements features an image of Tony the Iguana with a caption that says if you enjoyed eating at Tony's, then try the food at Tina's Iguana Bar & Grill. Tina did not get permission to use Tony's image. This is an example of infringing upon another's copyright.

Both of the above examples are provided insurance protection due to the exception.

Insureds In Media And Internet Type Business

Coverage does not apply to an insured whose business is advertising, broadcasting, publishing, telecasting, web designing, or determining web content. It also does not include coverage for an insured whose business is an Internet search, access, content or service provider.

There is an exception to this exclusion, in which coverage is given back for the offenses listed in paragraph a. b. c. in the definition of "personal and advertising injury".

Electronic Chat Rooms Or Bulletin Boards

Any personal and advertising injury arising out of an electronic chat room or bulletin board is excluded. This applies whether owned, hosted, or controlled by an insured.

Unauthorized Use of Another's Name or Product:

No coverage applies for the unauthorized use of another's name or product in the named insured's email address, domain name, metatag, or any other similar tactics to mislead someone else's potential customers.

War, Pollution and Pollution-Related

The intent of these three exclusions is to clarify that the CGL Policy has no intent of covering war, pollution or pollution-related losses.

Recording And Distribution Of Material Or Information In Violation Of Law

This exclusion is similar to the exclusion in Coverage A. The intent is to exclude coverage for losses that violate telemarketing, spamming, and other similar statutes.

Access Or Disclosure Of Confidential Or Personal Information

This exclusion is added to Coverage B of the CGL Coverage Form by mandatory endorsement CG 21 06. It is similar to the exclusion in Coverage A except that there is no exception for bodily injury.

COVERAGE C – MEDICAL PAYMENTS

Coverage

The final coverage area examined in the CGL Coverage Form is a coverage similar to that reviewed in Homeowners Section II – Liability. Unlike Coverages A – Bodily Injury and Property Damage Liability and B – Personal and Advertising Injury Liability, Coverage C –Medical Payments pays regardless of fault or negligence. This coverage pays medical expenses for bodily injury caused by an accident on the premises the named insured owns or rents, as well as resulting from the named insured's operations. The expenses must be incurred and reported within one year from the date of the accident. There are two purposes for this coverage:

Goodwill

There is perceived benefit to the named insured when the customer, injured on the insured's premises through no fault of the insured's, is reimbursed for medical expenses. The customer or guest is more inclined to come back to the business premises and do business again.

Reduction of Lawsuits

A person injured on the premises is less likely to sue if he/she is reimbursed for medical expenses. Otherwise, even though the insured may not be ultimately held responsible for an injury, a dispute can be costly in terms of defense and investigation expenses.

Exclusions

Coverage C – Medical Payments does not pay expenses for bodily injury:

1. To any insured, except volunteer workers;
2. To a person hired to do work for or on behalf of any insured or a tenant of any insured (for example, injury to a maintenance worker);
3. To a tenant in that part of the premises the tenant normally occupies;
4. To a person, whether or not an employee of any insured, if payable or provided under a workers' compensation or disability benefits law or a similar law;
5. To persons injured while practicing, instructing or participating in any physical exercise or games, sports or athletic contests;
6. Included in the "products-completed operations hazard", as defined in the CGL; or
7. To those losses excluded under Coverage A – Bodily Injury and Property Damage Liability.

Now that all three coverages have been reviewed, there are some other important areas of the CGL Coverage Form to be examined. Supplementary Payments is first.

Supplementary Payments – Coverages A and B

As in other liability insurance coverages, the CGL Coverage Form contains a section that pays certain types of expenses in addition to the policy limits from the insurer's defense of any claim or suit. The types of Supplementary Payments which are covered under Coverage A – Bodily Injury

and Property Damage Liability and Coverage B – Personal and Advertising Injury Liability include the following:

1. All expenses the insurer incurs;
2. Up to \$250 for the cost of bail bonds because of an accident or traffic law violation(s) arising out of the use of a covered vehicle (mobile equipment);
3. The cost of bonds to release attachments, but only for amounts within the applicable limit of insurance;
4. Other reasonable expenses incurred by the insured at the insurance company's request to assist the insurer in the investigation or defense of the claim or suit. (This can include travel expenses to attend a trial or the insured sending a copy of a police report, etc., as well as actual loss of earnings up to \$250 a day because of time off work.);
5. All court costs charged against the insured in the suit. (This does not include attorney's fees or expenses taxed against the insured.);
6. Pre-judgment interest awarded against the insured on that part of the judgment the insurance company pays. (If the insurance company makes an offer to pay the applicable limit of insurance, it will not pay any prejudgment interest based on that period of time after the offer.);
7. Interest accruing after a judgment has been entered and before the insurance company has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These specific Supplementary Payments do not reduce the policy limits.

If the insurance company defends an insured against a suit and an indemnitee of the insured is also named as a party to the suit, the insurance company defends that indemnitee as long as the indemnitee meets all the conditions described in the policy. If the indemnitee complies with all the conditions, the expenses incurred are paid as Supplementary Payments and do not reduce the limits.

WHO IS AN INSURED

At the beginning, the Commercial General Liability Coverage Form states that the word “insured” means any person or organization qualifying as such under Section II – Who Is An Insured.

There are three categories of insureds found in the CGL Policy:

1. **Named Insureds** – those persons or organizations that are specifically named on the CGL Declarations or a schedule attached thereto.
2. **Automatic Insureds** – those persons or organizations that qualify automatically as insureds, because they qualify as a member of a specific category, like employees.
3. **Additional Insureds** – those persons or organizations that qualify because they are added by endorsement (or in the case of some insurers, by a provision in their coverage form).

Those Who Become Insureds As A Result Of Their Relationship With Named Insureds

If the named insured is an individual (a sole proprietorship), then that person and his/her spouse are insureds with respect to the named insured's business.

If the named insured is a partnership or joint venture, then that entity, the partnership's partners, members of the joint venture, and their spouses are insureds with respect to the named insured's business. (A joint venture is similar to a partnership. In a joint venture, two or more parties enter into an agreement to share labor and or property to accomplish a specific business activity. The legal relationship will terminate when the activity or task is accomplished. It is very common for contractors to enter into a joint venture on a large construction project or one that requires a particular specialty.)

If the named insured is a limited liability company, then that entity, its members and managers are insureds. [A limited liability company (LLC) is a type of business ownership, which combines attributes of a partnership and a corporation. It contains the tax advantages of a partnership and a subchapter S corporation as well as the liability advantages of a corporation. An LLC is owned by its members, and its managers serve as executive officers.]

If the named insured is a corporation or some other organization (non-profit organization or governmental entity), then that entity and its executive officers and directors are insureds, but only with respect to their duties as officers and directors. Also, if the entity is a corporation, then stockholders are considered insureds, but only with respect to their liability as stockholders. "Executive officers" as defined in the CGL means a person holding any of the officer positions created by the named insured's charter, constitution, bylaws or any other similar governing document.

If the named insured is a trust, the trust and the trustees are insureds with respect to their duties as trustees.

Other Automatic Insureds

Employees and volunteers, other than the named insured's executive officers or managers of a limited liability company, are insureds, but only for acts within the scope of their employment by the named insured or while performing duties related to the conduct of the named insured's business.

A "volunteer worker" means a person who is not your employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by the named insured, and is not paid a fee, salary or other compensation by the named insured or anyone else for their work performed for the named insured.

However, these employees or volunteers are not considered insureds for bodily injury or personal and advertising injury:

1. To the named insured, partners of partnerships, members of joint ventures, or members of a limited liability company; or to a co-employee or co-volunteer while performing the named insured's business duties;
2. To consequential injury to the spouse, child, parent, brother or sister of the injured co-employee or co-volunteer;

3. For which there is any obligation to share damages or repay someone because of an injury to others listed in item 1 or 2 above; or
4. Arising out of providing or failing to provide professional health services.

These employees or volunteers are also not insureds for damage to property owned, occupied or used by, rented to, in the care, custody or control of the named insured, any of the named insured's employees, volunteers, any partners of partnerships, any members of joint ventures or members of limited liability companies.

Any person (other than the named insured's employee or volunteer) or organization is an automatic insured while acting as the named insured's real estate manager. A real estate manager would be someone who oversees the regular activities of managing real properties that are owned or rented by the named insured. These activities could include such things as renting or leasing of property, collecting rents, and buying and selling of real property.

If the named insured dies, any person or organization with proper temporary custody of the named insured's property is an insured, but only until a legal representative is appointed.

The named insured's legal representative becomes an insured if the named insured dies, but only with respect to duties as a legal representative.

Newly acquired or newly formed organizations, other than a partnership, joint venture, or LLC, in which the named insured maintains ownership or majority interest, qualifies as a named insured if there is no other similar insurance. These newly acquired or newly formed organizations are only granted coverage until the 90th day after acquisition or formation or to the end of the policy period, whichever is earlier.

No person or organization is an insured with respect to the operation of any current or past partnership, joint venture or limited liability company that is not shown in the Declarations.

LIMITS OF LIABILITY

There are six limits for the CGL Policy, which may apply differently to different coverages.

LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	\$ _____
DAMAGE TO PREMISES	
RENTED TO YOU LIMIT	
Any one premises	\$ _____
MEDICAL EXPENSE LIMIT	
Any one premises	\$ _____
PERSONAL & ADVERTISING INJURY LIMIT	
Any one premises	\$ _____
GENERAL AGGREGATE LIMIT	\$ _____
PRODUCTS/COMPLETED	
OPERATIONS AGGREGATE LIMIT	\$ _____

Per Occurrence

The Each Occurrence Limit is the most that is paid for each occurrence regardless of the number of insureds, claims made, suits, or persons or organizations making claims or bringing suits for any one occurrence. This is the most the insurer pays for damages under Coverage A – Bodily Injury and Property Damage, and Coverage C – Medical Payments. This limit reduces the aggregate limits.

Damage To Premises Rented to You

The Damage to Premises Rented to You Limit is the most that is paid for any one premises, no matter how many persons or claims are made for any one occurrence. This limit may be referred to as a sublimit, since a payment under the coverage reduces the amount payable under the occurrence limit. Payment made under this coverage reduces the General Aggregate Limit.

Medical Expense (Per Person)

The Medical Expense Limit is the most that is paid for expenses described under Coverage C – Medical Payments because of bodily injury sustained by any one person. As is the case in the Damage To Premises Rented To You Limit, this is a sublimit, since a payment under the coverage reduces the amount payable under the occurrence limit. Payment made under this coverage also reduces the General Aggregate Limit.

Personal and Advertising Injury (Per Person or Organization)

Coverage B – Personal and Advertising Injury is subject to a limit separate from the occurrence limit. The Personal and Advertising Injury Limit is the most that is paid to any one person or

organization for the sum of all damages because of all personal and advertising injury. Losses paid under this limit reduce the General Aggregate Limit.

General Aggregate

The General Aggregate Limit is the most that is paid during the policy period regardless of the number of claims or persons making claim. The General Aggregate is applicable to all covered claims other than the products and completed operations claims.

Products - Completed Operations Aggregate

The Products - Completed Operations Aggregate Limit is the most that is paid during the policy period regardless of the number of products and/or completed operations claims or persons making claim. It is applicable only to products – completed operations under Coverage A – Bodily Injury and Property Damage.

The aggregates are reduced by the payment of claims paid, not simply by the establishment of a loss reserve by the insurer.

SELECTED CONDITIONS

Duties in the Event of Occurrence, Offense, Claim, or Suit

These duties are similar to those found in other liability policies.

1. The first duty is that of notification. The first named insured must see to it that the insurer is notified, as soon as is practical, of an occurrence or an offense. Technically, until a notice is presented, there is no coverage under the CGL Coverage Form. A lack of timeliness can have a significantly adverse effect on the insurer's ability to investigate and settle a claim.
2. The lack of reporting or late reporting is especially important related to reporting of any summons, demand, or suit. If the insured fails to provide notice on a timely basis, coverage may no longer be afforded.
3. Another duty is cooperation. The insured must cooperate with the insurer in the investigation and settlement of the claim, or the defense of any suit brought under the Policy.
4. Another duty is to assist in the enforcement of any rights against any person or organization that may be liable to the insured because of bodily injury or property damage.

Other Insurance

Usually, the named insured does not have other valid and collectible insurance, which applies to losses covered under Coverage A – Bodily Injury and Property Damage, or Coverage B – Personal and Advertising Injury. If the named insured does have other valid and collectible insurance, this Policy provision lays out the responsibility of the various insurers related to payment.

Primary and Excess

This condition states that the CGL Coverage Form is primary except where the circumstances described below apply. If the insurance is primary, the insurance company's obligations are not affected unless any of the other insurance is also primary.

The CGL Coverage Form is excess over any other insurance, whether primary, excess, contingent or on any other basis:

1. That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work"; or
2. That is Fire Insurance for premises rented to the named insured or temporarily occupied by the named insured with permission of the owner; or
3. That is liability insurance purchased by the named insured to cover the named insured's liability as a tenant for property damage to premises rented to the named insured or temporarily occupied by the named insured with the permission of the owner; or
4. If the loss arises out of the maintenance or use of aircraft, auto, or watercraft to the extent the loss is not excluded; or
5. Any other primary insurance available to the named insured covering damages arising out of the premises or operations, or the products and completed operations, for which the named insured has been added as an additional insured.

If none of the above apply, then the named insured's CGL Coverage Form is treated as primary.

When both policies applicable to a loss are primary, the Other Insurance provision states how much each insurer must pay. There are two methods used to determine how much. These two methods are described in chapter 2 – Property and Casualty Insurance Basics in the section entitled "Other Insurance". Here is a brief explanation:

Contribution by Equal Shares

If all the companies permit Contribution by Equal Shares, then this is the method used. Under this method, each insurer contributes amounts that are equal until each insurer has paid its applicable limit or none of the loss remains.

Pro Rata

If any of the companies does not permit contribution by equal shares, then the loss is paid on a Contribution by Limits basis, more commonly called Pro Rata basis.

Separation of Insureds

The final CGL Coverage Form provision to be reviewed here is one which deals with how the Policy handles insured versus insured claims. Insurance under the CGL Policy is applied to each covered entity as though each had its own separate policy. If one insured brings a covered claim (no applicable exclusions) against another insured under the same Policy, the Policy pays the claim. The Separation of Insureds provision may also apply when an employee of one insured brings a claim against the employee of another insured under the same Policy. The employees are not considered fellow employees, and there is coverage.

Although not all the conditions found in the CGL Coverage Form have been examined, some of the more important provisions that affect coverage and/or the amount of coverage have been reviewed.

Claims-made Features

Lastly, some of the features of the CGL Claims-made Policies are reviewed. The CGL Claims-made Policies are not widely used. In fact, only about 3% of the CGL Policies are written using the CG 00 02 Claims-made Coverage Form.

Retroactive Date

The CGL Claims-made Coverage Form usually has a Retroactive Date shown in the Declarations. This date defines the extent of coverage for an occurrence or offense that takes place prior to the Policy's inception date.

The retroactive date is determined when the Policy is issued. The decision as to the actual date used is made by the insured and the insurer.

From a practical standpoint, the insurer has the final say as to the date. The retroactive date can be:

1. The same as the Policy's inception date; or
2. Earlier than the Policy's inception date; or
3. No date.

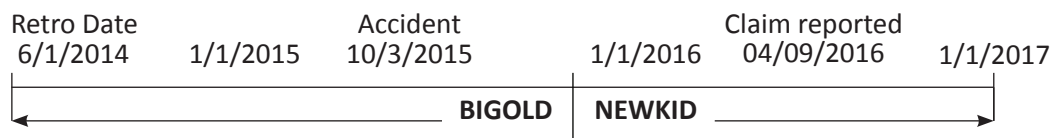
The occurrence version of the CGL Coverage Form has no retroactive date since it does not cover events which occur prior to the beginning of the policy period.

Trigger

As was earlier stated, the event which triggers (or activates) the coverage under the CGL Claims-made Coverage Form is making a claim. Here is an example:

EXAMPLE

Medico, Inc. has a Claims-Made CGL Policy with the BigOld Insurance Company from January 1, 2015 to January 1, 2016. The policy is placed with NewKid Mutual with a policy period of January 1, 2016 to January 1, 2017. The coverage periods are displayed below.



As indicated above, the covered accident occurs on October 3, during the policy period of 1/1/2015-1/1/2016. Even though the accident occurred in October 2015, the coverage is triggered by the date the claim was reported which is April 9, 2016. Therefore, NewKid's policy pays the claim. An additional consideration is the retro date. In the CGL Claims-Made Coverage Form, an accident that occurs prior to this date is not covered.

Extended Reporting Periods

The termination of a claims-made policy can create many years of potential exposure without coverage for the insured. It also may create many years of errors and omissions exposure for the insurance agent who wrote the policy. The occurrence version of the CGL Coverage Form has what is called a “forever tail”, meaning it has the ability to pay if the bodily injury or property damage happened during the policy period regardless of when claims are made.

In the unendorsed CGL Claims-Made Coverage Form, once the Policy ends there is no continued coverage for claims made.

Extended reporting periods extend the time the insured has to report claims to the insurer or for claims to be made in accordance with policy provisions. Extended reporting periods do not extend the policy period or change the scope of the coverage provided. The coverage provided does not apply to claims that are covered under any subsequent insurance the named insured purchases, or that would be covered but for exhaustion of the amount of insurance applicable to such claims. Most extended reporting provisions make the insurance excess. Extended reporting periods may or may not reinstate aggregates or increase the limits of insurance.

Basic Extended Reporting Period (BERP)

To reduce the possibility of future claims that the insured might face, the CGL Claims-made Policy has an automatic tail. It is referred to as a tail because at the end of the policy period, it extends the period of time for claims to be made. This tail, provided at no additional cost, is called the Basic Extended Reporting Period (BERP).

The BERP provides additional time for claims to be reported. This is true only if the report of the occurrence for bodily injury or property damage, or the report of the offense for personal and advertising injury, is received no later than sixty (60) days after the end of the policy period. For these known occurrences or offenses, there is a five-year time period for claims to be made. However, for incurred, but not reported, occurrences or offenses, there is a period of only sixty (60) days for claims to be made. These are often called unknown occurrences or offenses.

The BERP does not reinstate or increase the limits of insurance; it merely extends the period of time for claims to be made.

There are two potential problems with the BERP. First, it does not provide adequate protection for the unknown occurrences or offenses, and second, the five-year protection for known occurrences or offenses may not be sufficient.

Supplemental Extended Reporting Period (SERP)

To remedy the above two problems with the BERP, it is possible to endorse the Policy with the Supplemental Extended Reporting Period (SERP). It is written with a forever “tail”. The SERP takes over where the BERP ends. The SERP must be requested in writing within 60 days after the end of the policy period. The premium, a one-time charge not to exceed 200% of the Policy’s annual premium, must also be paid.

If the Policy is endorsed with a SERP endorsement, a Supplemental General Aggregate Limit and a Supplemental Products-Completed Operations Aggregate Limit of insurance apply, but only for claims first received and recorded during the SERP. The supplemental aggregate limits of insurance are equal to the dollar amount shown in the General Aggregate Limit and the Products Completed Operations Aggregate Limit indicated in the Declarations that are in effect at the end the policy period.

The Personal and Advertising Injury Limit, the Each Occurrence Limit and the Damage to Premises Limit shown in the Declaration continue to apply; however, the provisions that apply to the General Aggregate Limit and the Products Completed Aggregate Limit are amended according to the SERP endorsement.

Claim Information

The insurer who cancels or non-renews a Claims-made CGL Coverage Form must provide claim and occurrence information to the first named insured no later than 30 days before the date of policy termination. In other circumstances, the insurance company provides the information only if the first named insured requests it in writing within 60 days after the end of the policy period.

CONCLUSION

Most business risks need the liability protection offered in the CGL Policy against the exposures that are faced on a daily basis. Not only can the CGL Policy provide bodily injury, property damage, and personal and advertising injury coverage, subject to Policy terms and conditions, but it also provides the defense of covered claims.

The CGL Policy has several exclusions where coverage does not apply. It is not the intent of the CGL to cover all liability losses. Coverage for some of the losses can be provided by adding an endorsement or by purchasing an insurance policy other than a CGL Policy. Some of the exclusions are best covered by other policies, some of which are reviewed in other chapters of this text.

CHAPTER 11: COMMERCIAL AUTO INSURANCE

INTRODUCTION

Commercial auto insurance has the clear objective of providing auto liability and physical damage insurance protection for autos owned or used by a business for furthering that business. Although the number of commercial auto insurance policies purchased may be smaller than personal automobile policies, the number of vehicles and the amount of premium exceeds that of the Personal Automobile Program.

Commercial auto insurance is usually written as a stand-alone policy, but it may be written as a part of the Commercial Package Policy. If the Business Auto Policy (BAP) is written as a part of the Commercial Package Policy, then it also contains a Common Policy Declarations and Common Policy Conditions. The Business Auto Coverage Form – CA 00 01 is added along with the Business Auto Declarations and any appropriate business auto endorsements.

The primary focus of this commercial auto insurance review is the Business Auto Policy (BAP); some references are made to other coverage forms used in writing commercial auto insurance. When referring to the entire Business Auto Policy, BAP will be used as an abbreviation; BAC is used for the specific Business Auto Coverage Form.

COMMERCIAL AUTO COVERAGE FORMS

There are several coverage forms that are designed for writing commercial auto insurance. Following are brief descriptions of each.

Business Auto Coverage Form – CA 00 01

The Business Auto Coverage (BAC) Form is designed to provide liability and/or physical damage coverage for owned, non-owned, or hired/borrowed autos that may be used in the named insured's business operations. This Coverage Form is also used for auto service risks, including repair shops, service stations, storage garages, public parking places and tow truck operators.

Auto Dealers Coverage Form – CA 00 25

Those businesses that are in the auto and trailer dealer business have unique exposures that are better protected by this Coverage Form instead of a Business Auto Coverage Form. This Coverage Form is for dealers only, and not for businesses that only provide auto service. Not only does this Coverage Form allow the insured to insure both liability and physical damage exposures like the Business Auto Coverage Form, but it provides the opportunity to provide insurance for loss or damage to customers' vehicles that are in the insured's care, custody, or control.

Motor Carrier Coverage Form – CA 00 20

The Business Auto Coverage Form is not specifically designed for individuals or organizations engaged in common trucking activities such as leasing vehicles or exchanging trailers. The Motor Carrier Coverage Form is designed to protect a named insured's special exposures that center around the transporting of property or persons. This Coverage Form fits the need for named insureds that are hired to transport the property of others as well as named insureds that transport their own property.

BUSINESS AUTO COVERAGE FORM – CA 00 01

Introduction

The Business Auto Coverage Form is the most commonly used coverage form, providing protection for auto exposures faced by most businesses. Due to the great variety of exposures arising out of the ownership, maintenance or use of autos, this Coverage Form provides an opportunity to purchase narrow to very broad coverage, depending on choices made by the named insured.

The Business Auto Coverage Form consists of five sections:

- Section I – Covered Autos
- Section II – Covered Autos Liability Coverage
- Section III – Physical Damage Coverage
- Section IV – Business Auto Conditions
- Section V – Definitions

Section I – Covered Autos

The Business Auto Coverage (BAC) Form can provide coverage for owned, non-owned, and hired/borrowed autos (all as defined). Section V – Definitions, defines an “auto” as a land motor vehicle designed for travel on public roads. This definition also includes any other land vehicle that is subject to compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. However, the definition clearly states that an “auto” does not include “mobile equipment”. The coverage applicable to autos is determined by the selection and designation of symbols. The numerical symbols, once selected, are entered next to a coverage on the Declarations to show what coverage is applicable to which autos.

Business Auto Coverage Form – Symbols

There are ten symbols listed in the Coverage Form. Each is briefly described below.

Symbol 1 is applicable to Any “Auto” (e.g., owned, non-owned, hired/borrowed or mobile equipment subject to compulsory or financial responsibility law). Symbol 1 can be used for liability only.

Symbols 2, 3, and 4 refer to owned autos, and these symbols can be used to trigger Liability, Physical Damage, Medical Payments, Personal Injury Protection and Uninsured/Underinsured Motorists Coverages. Each of these symbols provides coverage as follows:

- **Symbol 2** = Owned “Autos” Only
- **Symbol 3** = Owned Private Passenger “Autos” Only
- **Symbol 4** = Owned “Autos” Other Than Private Passenger “Autos” Only

Symbols 5 and 6 are related to owned autos, but these symbols are used only for those owned autos subject to compulsory no-fault or compulsory uninsured motorists laws, respectively.

Symbol 7 is used to provide any of the coverages available, but only for autos specifically described in the Policy Declarations for which a premium charge is shown.

Hired/borrowed autos and non-owned autos have coverage extended by the use of Symbols 8 and 9, respectively:

Symbol 8 = Hired “Autos” Only: provides coverage for “autos” the named insured leases, hires, rents, or borrows. It does not include any “autos” the named insured leases, hires, rents or borrows from any of the named insured’s “employees”, partners (if the named insured is a partnership), members (if the named insured is a limited liability company), or members of their households. Symbol 8 is used to trigger liability and physical damage coverages.

Symbol 9 = Non-owned “Autos” Only: provides liability coverage for “autos” the named insured does not own, lease, hire, rent, or borrow that are used in connection with the named insured’s business. This includes “autos” owned by the named insured’s employees, partners (if the named insured is a partnership), members (if the named insured is a limited liability company), or members of their households but only while used in the named insured’s business or the named insured’s personal affairs.

Symbol 19 = Mobile Equipment Subject to Compulsory or Financial Responsibility or Other Motor Vehicle Insurance Law. This symbol is designed to trigger coverage for land vehicles that are ordinarily classified as mobile equipment except for the fact that they are subject to motor vehicle insurance laws where licensed or principally garaged.

The numerical symbols in the Business Auto Coverage Form are used to cover the usual descriptions of covered autos. Endorsement CA 99 54 - Covered Auto Designation Symbol can be added in those circumstances when a named insured desires coverage under certain conditions that are not defined by the symbols in the Business Auto Coverage Form. Symbol 10 is the designated symbol that is used with the Business Auto Coverage Form when a custom description is best needed to designate coverage.

EXAMPLE

Bubba Distributors has a fleet of 80 vehicles. He has Symbol 1 for liability on all vehicles, which is what he wants and needs on his fleet. Bubba's concern is that some of his vehicles are older and some are newer. Bubba wants only physical damage coverage on any vehicle that is less than 5 years old. With the insurance company's approval, his agent adds Endorsement CA 99 54 with Symbol 10 with the following description:

Symbol 10 = Any vehicle where the model year is less than 5 years old.

Newly Acquired Autos

The Business Auto Coverage Form grants automatic coverage for a newly acquired auto, whether or not it is an additional or replacement auto, if one or more of Symbols 1, 2, 3, 4, 5, 6, and 19 are used. Automatic coverage for newly acquired autos remains in force for the entire policy period.

If Symbol 7 is used to designate coverage, then there is limited automatic coverage for newly acquired autos. Symbol 7 is subject to the following conditions:

1. An additional "auto" is provided with the coverage that all owned "autos" have of that coverage; or
2. Same coverage as on the "auto" it is replacing; and
3. There is notification to the insurer within 30 days after acquisition of the auto.

Certain Trailers, Mobile Equipment and Temporary Substitute Autos

The BAC Form provides that covered autos liability coverage may be extended to certain vehicles. These vehicles are listed below:

1. Trailers with 2,000 lbs. or less load capacity designed primarily for travel on public roads;
2. "Mobile equipment" while being carried or towed by a covered "auto"; and
3. Non-owned temporary substitute auto for a covered "auto".

Mobile Equipment Definition

The definition of "mobile equipment" is included in the Business Auto Policies. The definition of mobile equipment in the BAC Form corresponds to the definition of mobile equipment in the CGL Policy. The Business Auto Coverage Form states that mobile equipment does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered autos. Both the BAP and CGL Policy indicate that the operations exposures of these vehicles are covered by the CGL Policy, but the locomotion exposures must be covered by the BAP.

For example, a particular state may require that a golf cart operated on the street be licensed. While a golf cart is normally not considered an auto, it is as a result of this particular state regulation, at least for the locomotion exposure on the street.

Symbol 19 - Mobile Equipment Subject to Compulsory or Financial Responsibility or Other Motor Vehicle Insurance Law Only may be used to trigger automatic coverage for the type of exposure described above. It is suggested that if the named insured chooses Symbol 7 for liability coverage, Symbol 19 also be included for the potential exposure from these types of vehicles.

Section II – Covered Autos Liability Coverage

Insuring Agreement

Similar to the Personal Auto Policy, the Business Auto Coverage Form promises to pay legal obligations of the insured for bodily injury or property damage caused by an accident and resulting from the ownership, maintenance, or use of a covered auto. The Business Auto Coverage Form also promises to pay legal obligations of the insured for covered pollution cost or expense. In the Business Auto Coverage Form Exclusions Section, there are only a few covered pollution losses; therefore, there are few instances that “covered pollution cost or expense” is paid.

EXAMPLE

Assume that a covered auto runs into a fuel storage tank, damages the tank, and spills diesel fuel on someone else’s property. Under the Business Auto Coverage Form, this is a covered pollution loss. The insured has coverage for a request, demand, or order to clean up and remove the pollutants.

Who Is An Insured

To properly understand whether a loss is covered under Section II – Covered Autos Liability, it is important to know who is an insured. The Coverage Form itself explains who is an insured and identifies who is not an insured.

There are three broad categories of insureds: (1) the named insured, (2) permissive users EXCEPT (explained below), and (3) those held to be vicariously liable for the named insured or a permissive user.

1. The named insured has the broadest coverage and is granted liability coverage for any covered auto – owned, non-owned, or hired/borrowed (as defined).
2. Permissive users are different than as stated in the Personal Auto Policy. The Business Auto Coverage Form requires that the person using the auto be given permission by the named insured. However, this permission may be express permission or implied permission. The Business Auto Coverage Form also lists five exceptions related to permissive users.
3. These persons and/or entities are listed as not insureds. Normally, these individuals and/or entities are excluded from liability coverage because there is a greater exposure or the insurer wants to be aware of the exposure. In some cases, these excluded parties may be added by endorsement.
4. A vicarious insured is anyone who is liable for the conduct of an insured (named insured or permissive user).

EXAMPLE

An employee has been requested by his employer, XYZ Company, to drive a YMCA van to attend a YMCA function. The YMCA has given him permission to do so. While driving the YMCA's van, the employee causes an accident. YMCA is covered under the YMCA's Business Auto Coverage Form, because the YMCA is the named insured and the van is a covered auto. The driver is a permissive user of the van. The driver's employer, XYZ Company, is covered for the vicarious liability related to the accident.

Coverage Extensions

The BAC Form extends coverage to Supplementary Payments and Out-of-state Coverage Extension. However, the insurance company does not pay anyone more than once for the same elements of loss because of these extensions.

Supplementary Payments

As in other liability insurance coverages, the Business Auto Coverage Form contains a section that pays certain types of expenses, in addition to the policy limits, from the insurer's defense of any claim or suit. The types of Supplementary Payments included are as follows:

1. All expenses the insurance company incurs.
2. Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of a covered "accident".
3. The cost of bonds to release attachments in any "suit" against the insured defended by the insurer, but only for bond amounts within the applicable limit of insurance.
4. All reasonable expenses incurred by the insured at the insurance company's request. This includes travel expenses to attend a trial or the insured sending a copy of a police report, etc. This includes actual loss of earnings up to \$250 a day because of time off work.
5. All court costs charged against the insured in the "suit". This does not include attorney's fees or expenses taxed against the insured.
6. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the insured the insurer defends. However, the duty to pay interest ends when the insurance company has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These supplementary payments do not reduce the limit of insurance.

Out of State Coverage Extensions

Sometimes it is necessary for the insured to travel away from a state where a covered auto is licensed or principally garaged. The Business Auto Coverage Form has two extensions that apply for out-of-state exposures.

The Coverage Form increases the limit of insurance for covered autos liability coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered auto is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property. It also provides the minimum amounts

and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered auto is being used.

Exclusions

There are several exclusions in the Covered Autos Liability Section of the BAC Form. Some are similar to those found in the Personal Auto Policy. There are some exclusions, which are self-evident; and there are others that are summarized in the next few pages.

1. ***Expected or Intended Injury***

Unlike the CGL Policy, there is no exception for bodily injury resulting from the use of reasonable force to protect persons or property.

2. ***Contractual Liability***

This exclusion actually provides broad contractual liability coverage because of the stated exceptions to this exclusion. Coverage is provided for liability for damages assumed in an “insured contract”. The definition of “insured contract” of the BAC Form includes most contracts a named insured enters into for the use of a business auto.

Item 6 of the “insured contract” definition extends liability coverage to that part of any contract or agreement entered into as part of the named insured’s business pertaining to the rental or lease of any auto by the named insured or its employees. However, such contract or agreement is not considered an insured contract to the extent it obligates the named insured or any of the named insured’s employees to pay for property damage to such auto. Coverage for damage to a rented vehicle must be covered by using Symbol 8 (Hired Auto) in the Physical Damage section of the Declarations to trigger coverage.

Insured contract means:

1. A lease of premises;
 2. A sidetrack agreement;
 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for “bodily injury” or “property damage” to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
 6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your “employees”, of any “auto”. However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your “employees” to pay for “property damage” to any “auto” rented or leased by you or any of your “employee”.
- An “insured contract” does not include that part of any contract or agreement:
- a. That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
 - b. That pertains to the loan, lease or rental of an “auto” to you or any of your “employees”, if the “auto” is loaned, leased or rented with a driver; or
 - c. That holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for your use of a covered “auto” over a route or territory that person or organization is authorized to serve by public authority.

© Insurance Services Office, Inc.

3. *Workers’ Compensation*

Any obligation of the named insured for workers’ compensation benefits, disability benefits or unemployment compensation or any similar law is not covered in the BAC Form.

4. *Employee Indemnification and Employer’s Liability*

Any obligation of the named insured to pay for liability arising out of work-related accidents to an employee, other than workers compensation, is not covered. There is an exception for bodily injury to a domestic employee not entitled to workers compensation benefits as well liability assumed by the insured under an insured contract.

5. *Fellow Employee*

Liability for bodily injury arising out of an auto accident in which one employee negligently causes injury to another employee is not covered. Note: there are available endorsements that modify this exclusion to provide coverage.

6. *Care, Custody, or Control*

This exclusion states that property damage to property owned, being transported by, or in the care, custody, or control of the insured is not covered. Obviously, some businesses are actively involved in transporting their own property as well as the property of others, and this property may be covered under inland marine insurance, reviewed in another chapter. However, this exclusion applies to both real and personal property. Therefore, there is no coverage under the BAC Form for property damage to the building a tenant occupies and damages with a covered auto.

7. *Handling of Property*

The damage caused either before the property begins the loading process or after the property has been finally delivered from a covered auto is a general liability exposure and is not covered under the BAC Form.

EXPOSURE	POLICY
Ozzie's Office Supply store stacks boxes by the front door for pickup. The top two boxes fall, injuring a pedestrian.	This is a CGL premises/operations exposure because the goods have not been accepted for movement onto an auto.
Ozzie's driver begins moving the boxes onto the delivery truck. He drops one of the boxes and injures another pedestrian.	Ozzie's BAP provides coverage because the goods have been accepted for movement onto an auto.
While driving across town, one of the boxes falls off the truck, causing extensive damage to a parked Jaguar.	Ozzie's BAP provides coverage because the goods have been accepted for movement onto an auto, are in transit, and have not been finally delivered.
After final delivery of the shipment, the improperly stacked boxes fall and damage some computer equipment at the purchaser's office.	Ozzie's BAP no longer provides coverage because the goods have been finally delivered by the insured. This represents liability arising out of a completed operation that Ozzie's CGL Policy covers.

8. *Movement of Property by Mechanical Device*

If property is moved in the loading or unloading process by a mechanical device (like a forklift), the damage arising out of this movement is not covered by the BAC Form, but is covered under the Commercial General Liability Coverage Form. However, there are two exceptions: (1) the mechanical device is a handcart, or (2) the mechanical device is attached to a covered auto.

EXPOSURE	POLICY
An employee for Ozzie's Office Supply uses a handcart to move some boxes onto the delivery truck.	Covered under the BAP because of the exception in the exclusion for movement of property by a handcart.
An employee for Ozzie's Office Supply uses a forklift to move a large box for loading onto the delivery truck.	Excluded under the BAP due to movement of property by a mechanical device (forklift). Look for coverage under the CGL Policy.
An employee for Lovely's Landscape has a flatbed truck with an attached crane used to load and unload pallets of grass. While moving the direction of the crane to unload the pallet to the ground, the operator hits a pedestrian.	Covered under the BAP because of the exception for movement of property by a mechanical device attached to a covered auto.

9. Operations

There is no coverage for the operations exposures of certain mobile equipment under the BAC Form; this is covered under the Commercial General Liability Coverage Form.

This includes the operations of equipment permanently attached to vehicles that are considered autos, such as cherry-pickers, air compressors, pumps and generators, and spraying, welding and well-servicing equipment.

EXPOSURE	POLICY
Billy's Billboard uses a truck with a permanently attached cherry-picker to get from job site to job site. Billy accidentally hits a parked car while in route to a job site.	Covered under the BAP because a self-propelled vehicle with a permanently attached cherry-picker is considered an auto while being used as transportation.
Billy gets to the job site and, while extending the cherry picker to reach a billboard, he snags a telephone line with the cherry picker, causing damage.	Excluded under the BAP due to the operation of the attached equipment. Look for coverage under the CGL.

10. Completed Operations

Completed operations liability arises out of a person's or organization's completed or abandoned work. This exposure is usually covered under the Commercial General Liability Coverage Form and is not provided in the BAC Form.

11. Pollution

The BAC Form does not provide much coverage for pollution losses arising out of the discharge, dispersal, seepage, migration, release, or escape of pollutants. This exclusion is designed to eliminate coverage for pollutants that are being transported by an auto. There are some exceptions related to this exclusion. There is coverage:

- a. If the pollutants are needed for, or are a result of, normal electrical, hydraulic, or mechanical functioning of the covered auto, and the pollutants are contained in an intended part or place. For instance, an auto accident caused by an insured causes oil from the auto's crankcase to leak onto the road and cause bodily injury and/or property damage.

- b. If an accident occurs away from premises owned or rented to an insured and if the pollutants (non-cargo) are upset, overturned, or damaged as a result of the use of a covered auto. As an example, following the delivery of chemicals, the covered auto backs into one of the containers causing it to rupture and spill pollutants, thereby causing bodily injury and/or property damage.

With these limited exceptions to the pollution exclusion, it is important for an insured to consider buying pollution coverage. There is also an endorsement that can be added to the BAP to provide broader pollution coverage.

12. War

13. Racing

There is no coverage for a covered auto used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. Insurance also does not apply while that covered auto is being prepared for such contest or activity.

Limits of Insurance

Regardless of the number of covered autos, insureds, premiums paid, claims made or vehicles involved in the accident, the most the insurance company pays for the total of all damages and covered pollution cost or expense combined resulting from any one accident is the Limit of Insurance for Covered Autos Liability Coverage shown in the Declarations.

Unlike the limits of the CGL Policy, there is no aggregate limit applicable to the BAP.

Section III – Physical Damage Coverage

This coverage section provides protection from direct and accidental loss or damage to an insured's owned auto, or its equipment and, with the selection of proper symbols, sometimes a hired or borrowed auto. The coverage very simply states, "We will pay for "loss" to a covered "auto" or its equipment".

Perils Options

There are three primary coverages available:

1. Comprehensive Coverage
2. Specified Causes of Loss Coverage
3. Collision Coverage

The Comprehensive and Collision Coverages are similar to those examined in the Personal Auto Policy chapter. The Specified Causes of Loss Coverage is a named perils coverage, as an alternative to Comprehensive Coverage.

Specified Causes of Loss Coverage only pays if the loss arises from:

1. Fire, lightning, or explosion;
2. Theft;
3. Windstorm, hail, or earthquake;

4. Flood;
5. Mischief or vandalism; or
6. Sinking, burning, collision, or derailment of any conveyance (e.g., ferry or train) transporting the covered auto.

These perils may be further restricted by endorsement.

Towing coverage may be provided if selected by the named insured and a limit is shown on the Declarations. It only applies to the private passenger type of covered auto.

If the named insured carries Comprehensive Coverage, the insurer agrees that glass breakage, loss caused by hitting a bird or animal, and loss caused by falling objects are paid under Comprehensive Coverage. However, the named insured has the option of having glass breakage caused by a covered auto's collision or overturn considered a loss under Collision Coverage.

Coverage Extensions

Transportation Expenses

Although the limits of \$20 per day and a maximum of \$600 are the same as the PAP, this coverage extension is much more limited because it will only pay if there is a total theft of a covered private passenger auto. This coverage begins 48 hours after the theft. The PAP extends coverage for any covered cause of loss. This extension only applies for those covered autos for which the named insured carries either Comprehensive or Specified Causes of Loss Coverage. This coverage may be expanded by use of an endorsement.

Loss of Use Expenses

This extension only applies if Physical Damage Coverage is indicated on the Declarations for Hired Autos. The insurance company agrees to pay for loss of use of a rented or leased vehicle under a written contract. (Loss of use coverage does not apply to a rented or leased auto with a hired driver.) The most that is paid for loss of use is \$20 per day to a maximum of \$600 per day. This coverage may be expanded by use of an endorsement.

Exclusions

There are several exclusions that apply to the Physical Damage Section of the Business Auto Coverage Form. There are some exclusions that are self-evident, and others that are summarized below.

1. *Nuclear Hazard or War or Military Action*
2. *Racing*

As a counterpart to the liability section, the BAC Form does not provide Physical Damage Coverage for a loss to a covered auto used in any professional or organized racing, demolition or stunting activity, or while practicing for such contest or activity, or while that covered auto is being prepared for such a contest or activity.

3. *Wear and Tear*

Wear and tear, freezing, mechanical or electrical breakdown, or road damage to tires is not covered. However, if any of these are caused by another loss that is covered (e.g., theft), the exclusion does not apply.

4. *Electronic Equipment and Media*

This exclusion applies to loss to any of the following:

- a. Tapes, records, discs, or similar audio, visual, or data electronic devices designed for use with audio, visual or data electronic equipment;
 - b. Radar or laser detectors or any jamming apparatus;
 - c. Any electronic equipment that reproduces, receives or transmits audio, visual, or data signals; or
 - d. Any accessories used with the electronic equipment described in c., above.
5. However, there is an *exception* to 4.c. and 4.d. Coverage is provided for electronic equipment solely powered from the auto's electrical system that is:
- Permanently installed in or upon the covered auto; or the equipment is removable from a housing that is permanently installed in or upon the covered auto; or is an integral part of the same housing unit; or
 - Necessary for the normal operation of the covered auto or the monitoring of the covered auto's operating system.

Example: Cell phones, laptops, and other personal device appliances (PDAs) are not covered, as they are not solely powered by an auto's electrical system nor are they permanently installed.

6. Diminution in Value

When an auto is damaged in an accident, its resale value often decreases even after it has been completely repaired. The BAC Form does not pay for the actual or perceived loss in market or resale value that might result from a direct and accidental loss to a covered auto.

Limit of Insurance

The most the insurance company pays for a loss of the damaged or stolen property in any one accident is the lesser of:

1. Actual cash value as of the time of loss; or
2. Cost to repair or replace with like kind and quality.

The most that the insurance company will pay in any one loss is \$1,000 for all electronic equipment that reproduces, receives or transmits audio, visual or data signals and which at the time of loss is:

1. Permanently installed in the housing unit not normally used by the manufacturer for such equipment;
2. Removable from the permanently installed housing unit;
3. An integral part of such equipment.

The insurance company makes an adjustment for depreciation and takes into consideration the physical condition of the vehicle when determining actual cash value in the event of a total loss. If a repair or replacement results in better than like kind and quality, the company does not pay for the betterment.

Deductible

The insurance company pays for a covered loss minus the applicable deductible indicated in the Declarations. If Comprehensive Coverage applies, there is no deductible to a loss caused by fire or lightning.

Caution must be exercised, as the deductible applies per auto. For example, if there are seventeen covered autos damaged by hail, there are seventeen applicable deductibles.

Section IV – Business Auto Conditions

The conditions in Section IV apply in addition to the Common Policy Conditions. There are two categories of conditions: Loss Conditions and General Conditions. The first five conditions are Loss Conditions, which state how the policy will handle covered losses. The next eight conditions are General Conditions. Following is a summary of selected conditions.

Duties in the Event of Accident, Claim, Suit, or Loss

1. Prompt notice;
2. Assume no obligation, make no payment, and send copies of demands, summons, or legal papers;
3. Cooperate with the insurer;
4. Notify police in event of theft; and
5. Protect damaged property, and permit the insurer to inspect it before repair or disposition.

Other Insurance

By the very nature of business operations, it is more common to see more than one policy applying to a loss situation. The Other Insurance Condition indicates which BAP is primary and which is excess.

If the accident involves a covered owned auto, the BAC Form is primary. If the auto involved in an accident is a covered, non-owned auto, the Policy is excess.

Liability assumed under an insured contract is provided primary coverage by the Policy.

In the case of an owned covered trailer, in which the trailer is connected to a non-owned tractor, the Policy is excess. If a non-owned covered trailer is connected to an owned covered auto, the Policy is primary.

When the Business Auto Coverage Form and another Business Auto Coverage Form apply on the same basis (whether primary or excess), insurers of the respective policies pay on a pro-rata basis.

Policy Period, Coverage Territory

The Policy is applicable to losses that occur during the policy period, and in the policy territory. The policy territory is generally the United States, its territories and possessions, Puerto Rico, and Canada. The territory also includes anywhere in the world if a covered auto of the private

passenger type is leased, hired, rented or borrowed without a driver for 30 days or less. Coverage applies only if the suit is filed in the US, its territories or possessions, or Canada, or the company agrees to the settlement elsewhere.

GARAGE COVERAGE FORM – CA 00 05

The Garage Coverage Form was designed primarily for auto and trailer dealers. The three major coverage areas provided by the Garage Coverage Form were: (1) Liability Coverage, (2) Garagekeepers Coverage, and (3) Physical Damage. In 2013, the ISO introduced the Auto Dealers Coverage Form (ADCF) to replace the Garage Coverage Form. The ADCF incorporated provisions of the 2007 edition of the Commercial General Liability Coverage Form and the 2010 edition of the Garage Coverage Form. The ADCF also includes a new coverage section for acts, errors or omissions. The Garage Coverage Form was withdrawn by ISO in 2013.

AUTO DEALERS COVERAGE FORM – CA 00 25

Introduction

Auto and trailer dealers have some special exposures over and above the average business that simply uses or services autos.

The Auto Dealers Coverage Form consists of five sections:

- Section I - Covered Autos Coverages
- Section II - General Liability Coverages
- Section III - Acts, Errors or Omissions (E&O) Coverages
- Section IV - Conditions
- Section V - Definitions

Section I – Covered Autos Coverages

There are three major coverage areas that may be provided in Section I of the Auto Dealers Coverage Form: (1) Covered Autos Liability Coverage, (2) Garagekeepers Coverage, and (3) Physical Damage. A brief review of each of these three areas follows.

Covered Autos

Similar to the previous two coverage forms, the applicable coverage is indicated by designated symbols. The Auto Dealers Coverage Form uses Symbols 21-31. These are comparable to Symbols 1-9 that are in the Business Auto Coverage Form. For example, Symbol 21 = Any “Auto” is the same as Symbol 1 = Any “Auto” in the Business Auto Coverage Form. The difference is simply the number 2 prior to numbers 1-9, so instead of Symbol 1 in the BAP, in the Auto Dealers Coverage Form it is Symbol 21.

Obviously, Symbols 30 and 31 are different.

Symbol 30 - “Autos” Left With You For Service, Storage or Safekeeping covers “autos” left in the named insured’s possession, because of the named insured’s operations. This is the only appropriate symbol to trigger Garagekeepers Coverage.

Symbol 31 – “Auto” Dealers “Autos” (Physical Damage Coverages), as indicated in its title, is designed to provide physical damage for certain auto dealers. It is broader than Symbol 22, as it applies to owned autos as well as other “autos” the dealer has an interest in as described in Item Six of the Auto Dealers Declarations.

In terms of newly acquired autos, the Auto Dealers Coverage Form works comparably to the BAC Form. Those covered autos designated with Symbols 21, 22, 23, 24, 25, and 26 receive automatic coverage for the remainder of the policy period. Symbol 27 is granted limited automatic coverage, just as Symbol 7 in the BAC Form.

Similar to the Business Auto Coverage Form, Endorsement CA 99 54 Covered Auto Designation Symbol can be added in those circumstances when a named insured desires coverage under certain conditions that are not defined by the symbols in the Auto Dealers Coverage Form. Symbol 32 is the designated symbol that is used with the Auto Dealers Coverage Form when a custom-made description is best suited to designate coverage.

Covered Autos Liability Coverage

Insuring Agreement

This coverage is very similar to what is found in the Business Auto Coverage Form. This part of the Auto Dealers Coverage Form promises to pay the sums the insured legally must pay because of an accident resulting from the use of covered autos.

Who Is An Insured

The persons insured for covered autos are the same as those examined in the Business Auto Coverage Form with a couple of exceptions. If the named insured shown in the Declarations is an individual, then the broad coverage afforded to that individual also extends to a spouse, if any. The other exception is in the area of permissive users. There is an additional party granted limited coverage. If the named insured is an auto dealership, the customer’s use of a covered auto is granted with limits up to the state-required financial responsibility limits if there is no other insurance available. If other insurance is available, but it is less than state required minimums, the Auto Dealers Coverage Form pays up to state-required minimums.

Exclusions

Most of the exclusions in this Liability Section are the same as in the Business Auto Coverage (BAC) Form. Some exclusions found in the Auto Dealers Coverage Form that are not in the BAC Form are:

- ***Leased Autos***

There is no coverage for covered “autos” leased or rented to others, unless to a named insured’s customer while the customer’s “auto” is left for service or repair.

- *Defective Products*

This exclusion is similar to the “damage to your product” exclusion found in the CGL Coverage Form.

- *Work You Perform*

This exclusion is similar to the “damage to your work” exclusion found in the CGL Coverage Form.

- *Acts, Errors Or Omissions*

Coverage is excluded, as there is a separate section in the Auto Dealers Coverage Form that addresses acts, errors or omissions.

EXAMPLE

1. The auto dealer sells a new truck to a customer. The truck loses power, and the customer hits a tree. There is no coverage for the damage to the customer’s truck because the car itself is the defective product.
2. The auto dealer installs new brakes on a customer’s truck. The brakes do not operate properly, and the customer hits a tree. There is no coverage for the brakes (defective product) but there is for the rest of the damage to the customer’s vehicle.

One of the significant exclusions found in the BAC Form and also found in the Auto Dealers Coverage Form relates to care, custody, or control. The Policies exclude “property damage” involving property in the “insured’s” care, custody, or control. The exclusion eliminates coverage for property damage to a customer’s vehicle while the insured is working on the vehicle. This necessitates the selection of additional coverage.

Garagekeepers Coverage

An auto dealer, because of its bailee relationship resulting from the possession of customers’ autos and other property, may be liable for losses while autos and property are left in the auto dealer’s care. This coverage is needed because of the named insured’s potential legal obligation, and because this coverage is not provided in either the Business Auto Coverage Form or the Commercial General Liability Coverage Form, nor is it provided in the general liability section of the Auto Dealers Coverage Form.

Insuring Agreement

The Coverage Form provides coverage for customer’s autos or customer’s auto equipment left in the insured’s care, custody, or control. It does not provide coverage for other property in the customers’ autos that might be considered in the insured’s care, custody, or control.

Method of Writing

The liability coverage takes on the characteristics of physical damage since it includes the following coverage options:

1. Comprehensive Coverage;
2. Specified Causes of Loss Coverage

3. This coverage is limited to the following:
 - Fire, lightning, explosion
 - Theft, or
 - Mischief or vandalism;
4. Collision Coverage.

This coverage is similar to what is in Section III – Physical Damage of the Business Auto Coverage Form. The difference is that the insured must be legally liable. Therefore, if a tornado destroys the insured's building, which in turn destroys a customer's car, the Garagekeepers Coverage does not pay, since the insured is not negligent. While Garagekeepers is most commonly written on a legal liability basis, it is possible to buy the coverage on a direct basis. This means that the Policy pays if a loss arises from a Covered Cause of Loss, whether the insured is negligent or not.

The two forms of the direct option are Direct Primary and Direct Excess. The Direct Primary pays no matter what other coverage is available to the owner of the damaged vehicle (the customer). Direct Excess pays regardless of fault, but only after the owner of the property has collected from other available insurance, such as the customer's PAP.

Limit of Insurance and Deductible Application

The most the policy will pay for each location is the limit of insurance shown in the Declarations. There are two deductible options for Comprehensive or Specified Causes of Loss. The first option applies only to theft or vandalism. The second option applies to all perils. Either deductible option applies per each customer's auto with a maximum deductible per loss. The collision deductible applies per auto. If the insurer pays a deductible to settle a Garagekeepers claim or suit, the insured is required to reimburse the insurer for the amount of the deductible.

Exclusions

Some of the Garagekeepers exclusions are similar to those found in the Physical Damage Section of the Business Auto Coverage Form. There are also four additional exclusions that apply.

1. Contractual

Insurance does not apply to liability resulting from a contract or agreement by which the insured accepts responsibility for a loss. There is an exception for liability that the insured would have in the absence of a contract.

Note: There is no exception for an insured contract.

2. Theft

This exclusion means a loss due to theft or conversion caused in any way by the named insured, the named insured's employees or by the named insured's shareholders.

3. Defective Parts

4. Faulty Work.

Defective parts and faulty work are not covered under Garagekeepers, as damage related to the named insured's work and defective products is intended to be addressed under the general liability section of the Auto Dealers Coverage Form.

Physical Damage Coverage

It is common and usually necessary for auto dealers to buy physical damage coverage to protect the dealer's owned autos, leased autos or other autos in which the dealer has an insurable interest. With the proper selection of symbols, physical damage coverage can be purchased to protect these autos from direct and accidental loss or damage. Similar to the Business Auto Policy, physical damage coverage can also be purchased on hired autos.

Perils Options

There are three primary coverages available:

1. Comprehensive Coverage;
2. Specified Causes of Loss Coverage;
3. (These are the same specified causes of loss found in the BAC form.)
4. Collision Coverage.

Exclusions

The exclusions in the Auto Dealers Coverage Form are essentially the same as those examined in the Physical Damage exclusions found in the Business Auto Coverage Form. However, there are two exclusions not seen in the other coverage form.

1. False Pretense

Physical Damage Insurance does not pay for false pretense. False pretense means that someone causes the insured to voluntarily part with a covered auto by trick or scheme. The exclusion also eliminates coverage for the named insured acquiring an auto from a seller who does not have legal title. Coverage may be provided by endorsement.

2. Miscellaneous Exclusions

- There is no coverage for expected profit, or for loss of market or resale value.
- There is no coverage for loss to autos at undisclosed locations after 45 days.
- There is no coverage under Collision for a covered auto while being driven or transported from the point of purchase or distribution to its destination, if such points are over 50 road miles apart.
- There is no coverage under Specified Causes of Loss for physical loss caused by or resulting from the collision or upset of any vehicle transporting it.

Limits of Insurance

The limits of insurance provision for Physical Damage Coverage are similar to those found in the Business Auto Coverage Form. There is also an additional provision that states that the limit of insurance is the most that will be paid for all loss to any one scheduled location and for autos in transit.

Deductible Application

There are two deductible options for Comprehensive or Specified Causes of Loss. The first option applies only to theft or vandalism. The second option applies to all perils. Either option applies per auto, with a maximum per loss. The collision deductible applies per auto.

Section II – General Liability Coverages

Coverage A. Bodily Injury and Property Damage Liability

Insuring Agreement

This portion of the Auto Dealers Coverage Form promises to pay for the legal obligation of the insured because of bodily injury and property damage caused by an accident and resulting from the auto dealer's operations, other than the operation of autos. This liability coverage is comparable to the coverage found in the Commercial General Liability Policy, but there are some differences to reflect the nature of the auto dealer business.

Most of the exclusions in the General Liability are similar to the exclusions in the CGL Policy. There are 15 exclusions in the General Liability section of the Auto Dealers Coverage Form compared to 17 exclusions in the CGL Policy. Following is an example of one of the exclusions which is slightly different.

Pollution Exclusion

This exclusion is similar to the pollution exclusion found in the CGL Coverage Form in that it excludes almost all coverage arising out of the pollution exposure, including the actual damage or harm caused by the pollutants and all costs to clean up and/or test for pollutants. However, it does not contain as many exceptions as the CGL Policy. Following are the exceptions to the pollution exclusion in the Auto Dealers Coverage Form.

- a. Bodily Injury or property damage arising out of heat, smoke or fumes from a hostile fire. Hostile fire means one that becomes uncontrollable or breaks out from where it was intended to be.
- b. Bodily Injury, if sustained within a building, and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests.
- c. Bodily Injury or property damage sustained within a building and caused by the release of gases, fumes or vapors from material brought into that building in connection with operations performed by the named insured or on the named insured's behalf by a contractor or subcontractor.

Limits of Insurance

A unique feature of Auto Dealers Coverage is that the General Liability limit not only has a per accident limit but it is also subject to an aggregate limit similar to what is found in the Commercial General Liability Policy. Additionally, the Auto Dealers Coverage Policy imposes a \$500 deductible for property damage to an auto caused by the insured's work.

Coverage B. Personal and Advertising Injury Liability

This liability coverage is comparable to the Personal and Advertising Injury liability coverage found in the Commercial General Liability Policy. Coverage applies to specified offenses and has similar exclusions. Additional exclusions in the Auto Dealers Coverage Form include:

- *Employment-related practices*
- *Acts, errors or omissions*

Coverage is excluded as there is a separate section in the Auto Dealers Coverage Form that addresses acts, errors or omissions.

Coverage C. Locations and Operations Medical Payments

This coverage under the General Liability section of the Auto Dealers Coverage Form pays for medical expenses caused by an accident and resulting from the named insured's auto dealer operations. Exclusions are similar to those found in the Commercial General Liability Coverage Form; however, there is an additional exclusion for Injury sustained by a person away from auto dealer locations.

Section III – Acts, Errors Or Omissions Liability Coverage

This section of the Auto Dealers Coverage Form is designed to pay damages an insured is legally obligated to pay because of any act, error or omission of the insured arising out of the auto dealers operations.

"Act, error or omission" means any actual or alleged negligent act, error or omission committed by an "insured" in the course of your "auto dealer operations" arising:

1. Out of an "insured's" failure to comply with any local, state or federal law or regulation concerning the disclosure of credit or lease terms to consumers in connection with the sale or lease of an "auto" in your "auto dealer operations", including, but not limited to, the Truth In Lending and Consumer Leasing Acts;
2. Out of an "insured's" failure to comply with any local, state or federal law or regulation concerning the disclosure of accurate odometer mileage to consumers in connection with the sale or lease of an "auto" in your "auto dealer operations";
3. In an "insured's" capacity as an insurance agent or broker in the offering, placement or maintenance of any "auto" physical damage, auto loan/lease gap, credit life or credit disability insurance sold in connection with the sale or lease of an "auto" in your "auto dealer operations", but only if the "insured" holds a valid insurance agent or broker license at the time the "act, error or omission" is committed, in the jurisdiction in which your "auto dealer operations" is located, if required to do so by such jurisdiction; and
4. Out of a defect in title in connection with the sale or lease of an "auto" in your "auto dealer operations".

© Insurance Services Office, Inc. 2011

Exclusions

There are nine exclusions in this section of the Auto Dealers Coverage Form, most which are self-evident. Coverage does not apply to:

1. Criminal, Fraudulent, Malicious, Dishonest Or Intentional Acts
2. Bodily Injury, Property Damage Or Personal And Advertising Injury
3. Profit Gain -

No coverage for damages based upon any profit, remuneration or advantage to which any insured is not entitled.

4. Contractual
5. Noncompensatory Damages
6. Quality Or Performance Of Goods – Failure To Conform To Statements

7. Recording And Distribution Of Material Or Information In Violation Of Law
8. Discrimination
9. Bankruptcy Or Insolvency

TRUCKERS COVERAGE FORM – CA 00 12

The Truckers Coverage Form (TCF) was a policy designed for the special exposures of businesses that transport the goods of others. In other words, truckers are motor carriers for hire.

In 1993, the ISO introduced the Motor Carrier Coverage Form (MCCF). This Form incorporated the provisions of the TCF as well as those of the BAC Form. Only carriers that transported property on a for-hire basis were eligible under the TCF. The eligibility under the MCCF was expanded to include motor carriers that transport their own property as well as property of others. In light of the expanded scope of the MCCF, ISO withdrew the TCF in 2010.

MOTOR CARRIER COVERAGE FORM – CA 00 20

Introduction

The Motor Carrier Coverage Form is designed for the special exposures of businesses that provide transportation of goods, materials, or commodities in the furtherance of commercial enterprise. In other words, a motor carrier for hire, also known as a trucker, is eligible for coverage under the MCCF. In addition, businesses that transport their own property as well as property of others are eligible under the MCCF.

Although ISO has provided the MCCF, motor carriers are commonly written by specialty insurance companies using their own policy forms.

Covered Autos

Similar to the other auto coverage forms, the coverage applicable in the MCCF is designated by symbols. The symbols used in the MCCF are 61 – 71 and 79. Symbols 61, 62, 63, 65, 66, 67, 68 correspond to Symbols 1, 2, 3, 5, 6, 7 and 8 in the BAC Form. Symbol 79 corresponds to Symbol 19.

The remaining symbols are different and are listed below:

Symbol 64 = Owned Commercial “Autos” Only. This applies to only those trucks, tractors and “trailers” the named insured owns (and for Covered Autos Liability Coverage, any “trailers” the named insured doesn’t own, while the trailer(s) are connected to an owned power unit). This can be used to activate liability, physical damage, and uninsured and underinsured motorist coverages.

Symbol 69 = “Trailers” In Your Possession Under A Written Trailer Or Equipment Interchange Agreement. This applies to only those “trailers” the named insured does not own, while in the named insured’s possession under a written “trailer” or equipment interchange agreement. In the agreement, the named insured must assume liability for “loss” to the “trailers” while in the named insured’s possession.

Symbol 70 = Your “Trailers” In The Possession Of Anyone Else Under A Written Trailer Interchange Agreement. This applies to only those trailers the named insured owns or hires while in the possession of anyone else under a written “trailer” interchange agreement.

Symbol 71 = Non-owned “Autos” Only. This symbol is similar to the Symbol 9 in the BAC Form and is used to activate liability.

Coverage

Covered Autos Liability

This coverage is similar to the BAC Form, but does have some changes related to “Who Is An Insured” to reflect the nature of the motor carrier business. These changes are especially related to ownership and use of trailers. The exclusions are likewise similar to those found in the BAC Form.

Trailer Interchange Coverage

This is coverage written to cover a trailer interchange agreement. A trailer interchange agreement is a written agreement between two truckers, in which each trucker agrees to be responsible for direct and accidental loss or damage to trailers that are not owned by them, but that are held in their possession. The coverage pays for the named “insured’s” legal obligations, because of loss to a “trailer” the named insured does not own, or to the “trailer’s” equipment. This care, custody, or control coverage is similar to that found in the Garagekeepers Coverage of the Auto Dealers Policy.

SECTION VI – DEFINITIONS

Trailer” includes a semitrailer or a dolly used to convert a semitrailer into a trailer. But for Trailer Interchange Coverage only, “trailer” also includes a container.

© Insurance Services Office, Inc. 2011

Physical Damage Coverage

This coverage is similar to Physical Damage provided in the BAC Form.

SELECTED COMMERCIAL AUTO ENDORSEMENTS

Lessor – Additional Insured And Loss Payee – CA 20 01

This endorsement provides that a lessor named in the schedule is an insured; however, it does not provide coverage for the lessor’s sole negligence. The endorsement also provides that the leased vehicle be considered as an owned auto.

Individual Named Insured - CA 99 17

If one of the named insureds listed on the Declarations of a Business Auto Policy or a Motor Carrier Policy is an individual and if at least one of the covered autos is an individually owned private passenger type (PPA, pickup or van), the Individual Named Insured Endorsement should be attached. The endorsement extends coverage to family members who are residents of the

individual named insured's household by broadening the Who Is An Insured provision. Personal auto coverage for personal use of covered owned autos and also for non-owned autos is provided and, besides affording liability coverage, it can also grant physical damage coverage to non-owned autos. The endorsement also deletes the fellow employee exclusion for the named insured and family members.

Drive Other Car Coverage – Broadened Coverage for Named Insureds CA 99 10

Liability, Auto Medical Payments, Uninsured/Underinsured Motorists, and Physical Damage can be provided for specifically named individuals (including individuals' resident spouses) while they are using a non-owned auto for their personal use. This endorsement is most commonly used for employees, partners, and officers who are furnished company autos. The endorsement is needed when the individual is provided a company car and does not have his/her own Personal Auto Policy.

Employee Hired Autos - CA 20 54

The Who Is An Insured provision is modified by this endorsement to include an employee as an insured while operating an auto hired or rented under contract in an employee's name, while conducting business for the named insured. Without this endorsement, the named insured has coverage, but the employee might not have coverage and must rely on his/her Personal Auto Policy for protection in the event of a loss.

Designated Insured For Covered Autos Liability Coverage - CA 20 48

Under the Who Is An Insured provision, the commercial auto coverage forms provide coverage for anyone liable for the conduct of an insured. The Designated Insured Endorsement is used to specifically identify by name a person or organization as an insured for vicarious liability.

Hired Auto Specified As Covered Auto You Own - CA 99 16

This endorsement is used in a situation where the named insured leases or rents an auto for an extended period of time, usually six (6) months or longer. It treats the described auto as if it is owned by the named insured. The endorsement also adds the owner or lessor of the described auto as an insured but only for that covered auto.

Employee as Lessor - CA 99 47

This endorsement considers an employee-owned auto that is leased to the named insured as a covered auto. The Who Is An Insured provision is amended to include the employee (lessor), whose auto is described in the schedule, as an insured.

Employees as Insureds - CA 99 33

This endorsement amends the Who Is An Insured provision to include any employee as an insured while using a covered auto the named insured does not own, hire or borrow, while conducting the named insured's business or personal affairs. Without this endorsement, an employee relies solely on his/her own Personal Auto Policy for protection while using his/her auto for the named insured. With this endorsement, while the employee's PAP is primary, the employee is an insured for excess coverage under the employer's non-owned liability coverage.

MOTOR CARRIER ACT OF 1980

The Motor Carrier Act of 1980 requires payment under Title 49, Code of Federal Regulations for Bodily Injury, Property Damage, and Environmental Restoration Claims that arise from use and operation of an auto. Environmental Restoration means the restitution for the damage or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or onto the land, atmosphere, watercourse, or body of water, of any goods transported by a motor carrier. Basically, the law is an incentive to maintain and operate vehicles on a public highway in a safe manner. All entities that are paid to transport property across state lines and those entities transporting hazardous substances must meet the requirement stated under the law.

The minimum financial responsibility varies with the type of hauler and the type of materials being hauled. For example, a for-hire operator who hauls non-hazardous property between states must have a single limit of liability of \$750,000. However, a for-hire or private carrier of property, who carries any quantity of Class A or B explosive, poison gas, or compressed gas on a highway route, must meet a financial responsibility limit of \$5,000,000.

Pollution – MCS – 90 Endorsement

Those motor carriers that come under the Act of 1980 are held in a position of absolute liability. It makes no difference which precautions are taken to prevent a loss; the named insured is held liable. The MCS-90 prevents the named insured from receiving a \$11,000 per day penalty for knowingly not complying. This endorsement is not insurance protection and should be treated as a surety bond. As is the case in a surety bond, the MCS-90 has a provision that clearly states that the named insured is required to pay back any payment for environmental restoration. To have pollution coverage, a motor carrier should purchase pollution coverage by endorsement, or an auto policy that provides pollution protection.

CONCLUSION

Most businesses have a need for commercial auto insurance for providing auto liability and physical damage insurance protection. The intent of this chapter is to provide a review of the different commercial auto coverage forms available that are designed for writing commercial auto insurance. A good understanding of how coverage is triggered (which autos are covered autos), who is an insured, and what exclusions apply are necessary in order to provide the best protection for the named insured.

CHAPTER 12: WORKERS COMPENSATION AND EMPLOYERS LIABILITY

INTRODUCTION

This chapter examines an insurance system devised to compensate workers who become injured on the job or contract a work-related disease. It also examines the different methods used to provide this compensation. The principal focus is on workers compensation insurance, with a brief review and analysis of specific endorsements, including federal workers compensation and employers liability endorsements. An overview of the Workers Compensation System is examined first.

Nature and Development of Workers Compensation System

In the late 1800's, the United States was gradually moving from an agricultural economy to one more involved in manufacturing and providing services. With the movement of people from the farms to the factories, there was an increased number of people working for others and an increase in the number of work-related injuries. These injuries occurred at a time in which most people had no health and accident insurance and certainly no disability coverage. Injuries meant medical expenses and a loss of income.

Common Law Relationship of Employee and Employer

Before workers compensation laws were enacted, the only recourse for an employee who was injured on the job was to file a suit against his/her employer. The injured employee had to prove his/her injuries had been caused by negligence on the part of the employer.

Employers' Common Law Obligations

Even in the late 1800's, employers had certain responsibilities to employees that had been determined by the courts. These common law obligations of the employer were:

1. Provide a reasonably safe place to work.
2. Provide reasonably safe tools.
3. Provide competent fellow workers.
4. Set up safety rules and enforce them.
5. Warn the workers of any known dangers of the job.

The employer could face a suit from the employee based upon these obligations. Although these obligations still exist today, they have less significance.

Common Law Defenses of Employer

Employers who were sued were usually successful against the injured employee because the following common law defenses were established in the courts:

1. *Assumption of Risk*

If the defense alleged that the injured person was aware of the danger and voluntarily exposed himself/herself to the risk, then the person was not entitled to collect for his/her injuries.

2. *Contributory Negligence*

An employee who contributed in any way (even as little as 1%) to his/her own injury was not entitled to any recovery. This was a rather harsh defense since few accidents involved no contribution by the employee.

3. *Fellow Servant Rule or Negligent Act by a Fellow Employee*

An employee who was injured by the negligent act of a fellow employee should not be the responsibility of the employer. The argument was that if the employee was injured by a fellow employee he/she should bring claim against the person who caused the injury. An exception to this would be the case where the employee causing the injury was not competent to work with the injured employee.

The use of these defenses by employers in the late 1800's significantly reduced the chance of an employee receiving payment for his or her injuries.

No-fault Concept

With each passing year, the problem of injured workers grew and it became a large economic burden on society. The solution was the passage of workers compensation laws and the implementation of a no-fault system of compensating injured workers. Employers assumed the cost of occupational injuries without regard to fault. The employer gave up his/her right to the common law defenses in exchange for certainty of a claim where the benefits were prescribed by law. The injured worker received definite benefits in exchange for giving up the right to sue the employer. The Workers Compensation System became what is often called "the sole (exclusive) remedy" for the employee.

WORKERS COMPENSATION LAWS

The passage of workers compensation laws began in 1911 and spread to every jurisdiction. Now all 50 states, as well as the District of Columbia and Puerto Rico, have enacted individual laws. These laws are the foundation of the Workers Compensation System.

Workers Compensation Act

Even though each jurisdiction's law is different, there are some common provisions and approaches to providing workers compensation benefits.

Types of Workers Compensation Law

Compulsory

All states except Texas and New Jersey have some type of workers compensation law that is compulsory for most employments. Oklahoma has a workers compensation statute, Title 85A, that allows employers a choice to be exempt from the Administrative Workers Compensation Act (AWCA) but only if they qualify under the Oklahoma Employee Injury Benefit Act (OEIBA). The benefits paid under the OEIBA, which are the same form of benefits under the AWCA, are also compulsory for most employments.

In the State of New Jersey, an employer is presumed to be subject to the workers compensation act and must specifically elect not to be. The state of Texas is the only state that truly has an elective law for all employments.

Penalty for Failure to Comply

An employer who fails to provide workers compensation benefits to an employee is usually subject to a fine and potentially other penalties, including criminal prosecution. Not only can a fine be imposed for failure to procure workers compensation insurance (or an approved alternative benefit plan in Oklahoma) but also for failure to maintain coverage. Likewise, the employer may be held responsible for benefits provided by the workers compensation statute.

Exclusive Remedy

In many jurisdictions, a workers compensation claim brought under the employer's Workers Compensation and Employers Liability Insurance Policy (or under an approved alternative benefit plan in Oklahoma) is the sole or exclusive remedy for an injured worker. A suit against the employer to recover for injury or occupational disease is usually permitted if there was failure to secure workers compensation insurance. This suit is usually difficult to defend since most statutes hold that the employer's failure to provide insurance causes the loss of common law defenses.

Covered Employments

The goal of workers compensation laws is to protect workers who become injured or are afflicted with an occupational disease. A majority of jurisdictions' workers compensation laws declare that all employments are covered, with certain listed exceptions.

Usually, sole proprietors and partners are not included because they are not legally classified as employees. Officers of a corporation are usually subject to the law, but may be excluded.

Most jurisdictions' workers compensation laws exempt domestic employees, casual laborers, and certain classifications of farm workers (usually based on the number of workers, family relationship, or amount of payroll). Other types of workers who may be exempt are real estate agents, charity workers, volunteer workers, and owner/operators of trucks.

Some jurisdictions have a numerical exclusion, which means that workers compensation requirements for coverage do not have to be provided if the employer has fewer employees than a number specified in the law. For example, Georgia employers do not have to provide workers compensation insurance if they employ fewer than three employees.

Most jurisdictions have provisions for adding excluded individuals, but on a voluntary basis.

One difficult issue is that of an independent contractor versus an employee. A general definition of independent contractor is one who undertakes an independent calling to provide work or service for another person. Examples of potential independent contractors are plumbers, electricians, landscapers, or computer repairpersons.

There are numerous factors that are used to determine independent contractor status. Common law rules place these factors in three main categories. Following is summary of the categories:

1. Behavioral Control

Certain facts (type and degree of instruction, training, evaluation) are used to indicate whether a business has the *right* to direct or control how the worker does the job. The more that a business exercises their control over a worker, the more these facts indicate that the worker may be an employee and not an independent contractor.

2. Financial Control

An independent contractor is typically a worker who is in business for themselves, can seek and do other work for other business, and has the opportunity to make a profit or loss. They may have a significant investment in the equipment used and are more likely to have unreimbursed expenses. Independent contractors are usually paid a fee for the work done and not a wage or salary.

3. Type of Relationship

When the business provides employee benefits to a worker, this typically is seen as an employer-employee relationship. If the worker provides services that are a key aspect to that business or if the worker expects the job to continue indefinitely, the worker may have certain expectations that they are an employee.

To help clarify this cloudy issue, some jurisdictions have provided specific definitions of an independent contractor.

Covered Injuries

The workers compensation laws express that payment is made for those injuries which arise out of, and are in, the course and scope of employment. What constitutes arising out of and in the course and scope of employment has been subject to “thousands” of court cases and many different interpretations. Obviously, a worker who falls and breaks his/her leg while carrying shingles on a roof, or an employee who is involved in an auto accident on the way to deliver an insurance policy to a customer, is in the course and scope of employment. However, the issue is much grayer when an employee is injured in a softball game during the company picnic.

Many jurisdictions indicate that the following activities are outside the course and scope of employment and the person’s injuries are not covered:

1. An Act of God (an exposure to some natural phenomenon, such as a tornado, where the employee is not subjected to a greater hazard than the average member of the public)
2. Intoxication (normally required to be the proximate cause of injury)
3. Horseplay (an act of play, which does not further his/her employer’s business, such as an arm-wrestling match between two construction workers)

4. An injury caused by the employee's willful intention and attempt to injure himself/herself (suicide attempt)
5. Personal fight or other personal battery

EXAMPLE

Joe is working at Lynch Department Store when a man walks up to him and slugs him in the mouth, knocking out teeth and fracturing his jaw. The altercation is the result of Joe taking out the angry man's girlfriend the night before, and is not covered. If Joe is struck by an angry customer who does not like the store's return policy and takes it out on Joe, then the injury is covered.

6. Injuries caused by an employee's willful failure to use a required safety device.

For the vast majority of claims presented, the injuries are covered injuries; however, there are a number of situations that are clearly not covered, and still other situations that may or may not be covered.

Occupational Disease

Occupational disease is the fastest growing area of workers compensation claims. This is largely due to a greater awareness of occupational diseases, advances in medical technology (which uncovers the diseases), and the introduction of new products, materials, and work procedures that produce the diseases.

In the beginning, workers compensation laws did not contain any reference to occupational diseases. Now, all workers compensation laws have some description of what constitutes an occupational disease. An occupational disease is a disease arising out of and in the course of employment which causes damage or physical harm to the body. It also includes disease which may naturally result from the occupational disease. Examples of occupational disease include black lung, silicosis, and asbestosis.

In some states, the occupational disease description may also include repetitive stress injuries, overuse syndrome, and other types of musculoskeletal disorders that are a result of work-related activities performed over a period of time. Examples include carpal tunnel syndrome, tendonitis, and bursitis. Occupational diseases do not include those infectious diseases to which the general public is exposed, such as flu or a cold. There are exceptions to this description for employees working in the health care industry who may contract an infectious disease.

EXAMPLE

A change of work procedures is the use of a scanner by grocery checkers. The repetitive motion of moving grocery items across the scanner has caused carpal tunnel syndrome (a painful condition of the tendons in the wrist) in some employees. This is considered an occupational disease in some jurisdictions.

Many jurisdictional laws have statutory limits in which a person may make an occupational disease claim. Typically, the limit is two years from the date of manifestation or discovery of the disease or condition.

Benefits Provided

Every jurisdiction varies in the amount of benefits it provides, but all workers compensation laws provide three basic benefits; most also provide for a fourth:

1. Medical
2. Disability Income
3. Death and Survivor Benefits
4. Rehabilitation

Medical

The benefit that is most consistent from jurisdiction to jurisdiction is medical. All jurisdictions offer an unlimited amount of benefits, subject to the test of reasonable and necessary treatment. In over half of the states, medical expenses and/or charges are subject to a medical fee schedule. Most states do not include mental injury unless it is related to an accompanying, compensable, physical injury.

Rehabilitation may be included within this medical benefit. Laws vary a great deal in the type and amount of rehabilitation. Almost all jurisdictions include medical or physical rehabilitation which attempts to restore injured workers as closely as possible to their previous physical condition.

Disability Income

The benefit that has the greatest variance is disability income. The goal of this benefit is to discourage malingering by not providing the full replacement of a worker's salary or wages.

Most injuries incurred do not render the worker totally disabled for the rest of his/her life. Ordinarily, an injured worker may not be able to work for a period of time but then has only a partial disability, as opposed to a permanent disability. Partial disability means that the worker can work but may not be able to perform all the physical tasks required of the job he/she held at the time of the injury.

The weekly amount paid for a total disability, no matter whether it is permanent or temporary, usually is paid on a percentage of the injured worker's average weekly wage or spendable income. This percentage ranges from 60% to 80%, with $66\frac{2}{3}\%$ as the most common percentage. In addition to this percentage limitation, weekly income benefits are subject to minimum and maximum dollar amounts, which may change annually.

EXAMPLE

Susan receives an average weekly wage of \$900. She becomes totally disabled. Susan lives in a state which pays on a basis of $66\frac{2}{3}\%$, subject to a maximum of \$542. In this case, Susan does not receive $66\frac{2}{3}\%$ of her \$900 average weekly wage, which is \$600; instead, she receives the maximum of \$542.

The time limit in which benefits may be paid varies anywhere from life to a specific number of weeks stipulated in the workers compensation law. Most temporary disability claims are only paid during the time of disability.

All jurisdictions have a waiting period (also commonly found in disability income policies) that reduces the payment for the disability income benefit. This feature, contained in the workers compensation statutes of all jurisdictions, serves as a deductible and varies from three to seven days. An employee who misses only two days of work does not receive any disability income payment. The waiting period has no effect on the payment of medical benefits. Every jurisdiction has a retroactive period, which means that after so many days the money that was not paid due to the waiting period is paid retroactively. Following is a brief example that contains a seven day waiting period and fourteen day retroactive period.

EXAMPLE			
<u>April 9</u>	<u>April 10</u>	<u>April 17</u>	<u>April 24</u>
Date of	1st Day	1st Day Beyond	End of
Accident	Absent	Waiting Period	Retro Period
The first seven days are not compensated, so the injured employee receives no compensation the first week after the injury. Then, at the end of the retroactive period (4/24 in this example), the injured worker is paid for the first seven days.			

The purpose of the waiting period is to eliminate the cost of handling and paying small claims; however, once an employee has missed a certain number of days, the law has determined that it is not a small claim, and the injured worker receives payment for all the days off work.

Most jurisdictions have a number of injuries that are classified as scheduled injuries. These injuries involve the total loss of a limb (amputation) or total loss of use of a specific body part (hand, foot, eye, ear). The schedule may also determine the amount of payment.

Those injuries that are classified as partial injuries are paid on a basis of a prescribed method described in the workers compensation law of the particular jurisdiction where benefits are being sought. In most cases, the amount of limitation or disability is determined by a physician's evaluation. The degree of disability determines the amount of payment for weekly income.

Death and Survivor Benefit

Amount of Payment/Time Period Payable

Although death claims make up a small percentage of the total claims, they are very significant in terms of large payments and how the death affects peoples' lives. This benefit is included to provide some financial support for those who do not receive the benefit of the deceased employee's future earnings.

The income benefits for beneficiaries are determined by the type of beneficiary. Most state laws require that a beneficiary must be dependent on the deceased worker for some part

of his/her financial needs. Spouse and/or children are considered primary beneficiaries. A spouse may receive benefits for a specified number of weeks, or as much as a lifetime if he/she does not remarry. If the spouse does remarry, he/she may receive a lump sum payment equal to one to two years' income. Children may receive benefits for a specified number of weeks, or up to a certain age, and must be single and in school. Other beneficiaries, such as dependent parents, brothers, sisters, and grandchildren, are usually limited to a specific number of weeks.

The actual weekly benefit is based on a percentage of the average weekly wages or spendable income of the deceased worker at the time of death. Frequently, the total amount available would be equal to a percentage that is paid under disability. Many laws reduce the amount if there is only a spouse or only children.

For instance, in Florida, if a spouse and children make a claim, the percentage is $66\frac{2}{3}\%$, whereas if only a spouse makes a claim, the percentage is 50%. If only a child makes a claim, the percentage is $33\frac{1}{3}\%$.

Burial Allowance

Workers compensation laws provide a maximum allowance for burial expenses. Usually this allowance is not adequate to pay the entire amount for an average-priced funeral. The amount of the allowance ranges between \$3,000 and \$15,000, with the average at about \$5,000.

Rehabilitation

As previously stated, rehabilitation may be included within the medical benefit. Laws vary a great deal in the type and amount of rehabilitation available. Almost all jurisdictions include medical and/or physical rehabilitation which attempts to restore injured workers as close as possible to their previous physical condition.

Some laws specifically address the question of vocational or occupational rehabilitation. In these jurisdictions, the vocational or occupational rehabilitation is either provided under rehabilitation benefits or paid from a special fund.

Many of the laws put either a limit on the amount of money (such as Alaska paying up to a maximum of \$13,300 for retraining costs) and/or time (such as Wisconsin, with a limit of 80 weeks). Limits are most commonly found in the area of vocational rehabilitation.

Security for Benefit Payments

There are three potential ways an employer may provide workers compensation coverage.

1. Private Insurance

A majority of employers provide workers compensation coverage by purchasing a Workers Compensation and Employers Liability Insurance Policy from a private insurance company.

2. State Funds

In most states, private insurance is the most common method for employers to obtain workers compensation coverage. However, in the past few years, insurers in a small number of states have left the state or have become very selective as to which entities

they insure. This has led some employers to seek coverage from public insurers as provided by individual states. Most states have either a State Assigned Risk Plan or a Competitive State Fund.

The state Assigned Risk Plan has typically been thought of as a market of last resort. An employer who has been rejected by one or more private insurer may make application to the Assigned Risk Plan to obtain workers compensation insurance. All workers compensation insurers in the state must take a share of any losses associated with those employers who have purchased a policy through the Assigned Risk Plan. There are a few insurers in the state that are designated as the servicing insurers for the Plan.

More than a dozen states have created Competitive State Funds to provide workers compensation insurance. As the title indicates, these funds were set up in a state to compete with private insurers for Workers Compensation and Employers Liability Insurance Policies in their respective states. In a number of these states, the Competitive State Fund has replaced the Assigned Risk Plan.

3. *Monopolistic State Funds*

In the states of North Dakota, Ohio, Washington, and Wyoming, an employer can only provide workers compensation insurance in that state by purchasing a policy from the Monopolistic State Fund. Any employer doing business in that state must make application to the respective State Fund. There is no compensation paid to agents who assist a client in making application to a Monopolistic State Fund. Workers Compensation Policies written in a monopolistic facility usually do not include anything other than the basic workers compensation coverage, so employers must purchase separate employers liability insurance.

Self-Insurance

Almost every jurisdiction permits some form of self-insurance. There are exceptions: North Dakota, Wyoming, and the Commonwealth of Puerto Rico. Most states permit both individual self-insurance and group self-insurance. Group self-insurance permits similar employers to pool their resources to insure their workers compensation obligations. The requirements to qualify as a self-insurer vary greatly from one jurisdiction to another. Some states permit self-insurance only for group public entities.

SUBSEQUENT (SECOND) INJURY FUND

Some states have what is referred to as a Second or Subsequent Injury Fund, which pays a portion of a claim by an employee who has had a previous injury and who suffers another injury.

EXAMPLE

Jill applies for a job as a welder with Northwest Construction Co. Jill was in a hunting accident several years ago and lost sight in one eye. The loss of sight in no way prevents Jill from being a top-notch welder, so Northwest hires her. Several months after she begins work, she is involved in an accident that renders her sightless, and she is considered under the workers compensation law as totally and permanently disabled.

Purpose

The Second or Subsequent Injury Fund was designed with two purposes in mind:

1. To equitably allocate the costs of providing benefits in cases where an injury combines with a pre-existing condition(s).

In the previous example, the employer is now facing a claim in which the workers compensation coverage is going to be responsible for considerably more than if the employer had hired someone without previous injury. The Second Injury Fund is designed so that the employer's Workers Compensation and Employers Liability Insurance Policy does not have to shoulder all the payment.

2. To encourage hiring and retaining the physically handicapped.

Because the employer is not held responsible for all the payment and not severely penalized for this type of loss, an employer is more inclined to hire a qualified person with a previous injury.

How the Second Injury Fund Pays

Although the Second Injury Fund may vary to some degree from one jurisdiction to another, in principle it works like this: The employer of the worker who receives the subsequent injury turns the claim into his/her workers compensation insurer. The workers compensation insurer pays the claim to an amount equal to what it is responsible for as if it is the only injury. In the example of Jill, the workers compensation insurer of Northwest pays for the loss of one eye, and the Second Injury Fund pays the remaining portion of the claim.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Workers compensation insurance is provided in most situations by the issuance of a Workers Compensation and Employers Liability Insurance Policy that is formulated by the National Council on Compensation Insurance (NCCI).

A few states use a policy that is slightly different from this Policy. The Policy is divided into the following seven sections:

- General Section
- Part One – Workers Compensation Insurance
- Part Two – Employers Liability Insurance
- Part Three – Other States Insurance
- Part Four – Your Duties If Injury Occurs
- Part Five – Premium
- Part Six – Conditions

Each of these sections is reviewed in detail after a brief examination of the Information Page.

Information Page (Declarations)

The part of most policies which individualizes the insurance contract is the Declarations. In the Workers Compensation and Employers Liability Insurance Policy, this part of the Policy is titled Information Page. It contains important information, which is divided into four items:

1. Identification of the Named Insured.
2. The Policy Period.
3. Identification of which states are included for Workers Compensation and Employers Liability, Limits of Employers Liability Coverage, and Other States Coverage, as well as any Endorsements that are added.
4. Premium Information.

General Section

This section has as its primary function a description of who is an insured, the locations covered, and a definition of “state” and “Workers Compensation Law”.

Who Is an Insured

The named insured is the employer listed in Item 1 of the Information Page. It is important to keep in mind that the purpose of this insurance is to protect the employer regarding legal obligations that are imposed either by the workers compensation law or through employer’s liability.

People sometimes forget that the employer is the named insured because the injured employees are being paid benefits. The named insured may be an individual (sole proprietorship), partnership, limited liability company, joint venture, association, corporation, or other type of legal entity.

In the case of a partnership, each individual partner is an insured, but only with respect to his/her position as an employer of the partnership’s employees. In the case of a joint venture, each member is not covered as a separate entity (unless an appropriate endorsement is attached).

Unlike some of the other commercial insurance policies, the coverage does not extend to officers, directors, and employees for their acts as individuals.

Workers Compensation Law

This provision of the General Section states that the term “Workers Compensation Law” means the workers compensation and occupational disease law of each state or territory listed in Item 3.A. of the Information Page. This term appears several times throughout the Policy.

State and Locations

This Policy covers all the workplaces listed in Item 1 – Insured’s Mailing Address, and Item 4 – Premium Information of the Information Page. It also covers all other workplace locations in states listed under Item 3.A., unless the insured employer is self-insured in those states. When the word “state” is used in this Policy, it means any state of the United States of America and the District of Columbia. It does not cover territories such as the U.S. Virgin Islands.

Part One – Workers Compensation Insurance

This insurance applies to bodily injury caused by accident or disease. Bodily injury by accident must occur during the policy period.

Bodily injury by disease must result from conditions of the employee's employment, and the employee's last day of exposure to the conditions causing the disease must occur during the policy period.

We Will Pay

The Workers Compensation and Employers Liability Insurance Policy, instead of using the term insuring agreement, identifies this policy provision as We Will Pay. In the simplest language, it states that the Policy pays promptly when the benefits required under the workers compensation law are due from the employer (named insured). In other words, the insuring agreement simply says the insurer pays whatever the applicable workers compensation law says the employee is entitled to receive as benefits. So if the accident happens in Florida to a Florida resident, the injured employee is most likely entitled to receive benefits as prescribed under the Florida Workers Compensation Law.

We Will Defend

Even though workers compensation is a no-fault coverage, disputes do occur. The insurer promises to defend the insured against any claims seeking benefits payable under the workers compensation part of this Policy. The insurer has no duty to defend a claim, proceeding, or suit that is not covered by this insurance.

We Will Also Pay

As commonly found in a liability insurance policy, the insurer agrees to pay supplementary items, such as reasonable expenses incurred at the insurer's request (but not loss of earnings), premiums on appeal bonds, litigation expenses, interest on judgments, and expenses the insurer incurs.

Other Insurance

Like most insurance policies, the insurer does not pay more than its share of benefits and costs covered by workers compensation insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares are equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance are equal until the loss is paid.

Payments You Must Make

Since the Part One – Workers Compensation provisions promise to pay for those legal obligations that are outlined in the state workers compensation law, those items excluded are Payments You (the named insured) Must Make. This is just another way of saying exclusions. These excluded items are legal obligations for:

1. The employer's serious and willful misconduct. This includes an actual physical assault of an employee or coercing an employee to participate in a dangerous activity that results in injury.
2. The employer knowingly employs an employee in violation of the law. For example, an employer knowingly hires an unauthorized alien. This employee is injured on the job. The U.S. Immigration finds out about the injury and fines the employer for knowingly hiring unauthorized aliens.

Although the Workers Compensation and Employers Liability Insurance Policy pays benefits for these workers' injuries, if fines or penalties are imposed related to the hiring of undocumented workers or minors, then the named insured is responsible for making these payments.

3. The named insured fails to comply with health or safety laws or regulations. For example, an employer in the construction industry disregards OSHA safety regulations regarding the maximum weight load requirement for scaffolding, and an employee is injured as a consequence. OSHA issues a citation to the employer for \$10,000.

If the named insured does not comply with either State or Federal Health or Safety Laws, the named insured is responsible for additional costs related to such losses.

4. The named insured discharges, coerces, or otherwise discriminates against any employee in violation of any Workers Compensation Law.

Most states have specific provisions within their Workers Compensation Law that prohibit the discharge of or discrimination against any employee who makes a workers compensation claim.

All these excluded payments are activities within the named insured's control.

Recovery from Others

This provision is also known as the subrogation provision or clause. This means that the insurer has the employer's rights, and the rights of persons entitled to the benefits of this insurance, to recover payments from anyone liable for the injury. The employer is contractually obligated to do everything necessary to protect these rights and to help the insurer enforce them.

EXAMPLE

An employee in a factory is injured while using a defective machine and receives workers compensation benefits. The insurer can try to recover payment from the manufacturer of the machine (liable party).

There are some circumstances where the employer enters into a contract where the other party requests a waiver of subrogation to prevent the insurer from seeking subrogation. To comply with the insurance requirement of this type of contract, WC 00 03 13 Waiver of Our Right to Recover From Others Endorsement is available to waive the right of subrogation against third parties who may be responsible for an employee's injuries.

Statutory Provisions

The intent of this provision is to comply with the varying workers compensation laws without having to include the different variations by state.

1. As between an injured worker and the insurer, the insurer has notice of the injury when the insured has notice.
2. The insured's default or the bankruptcy or insolvency of the insured or the insured's estate does not relieve the insurer of their duties under this insurance after an injury occurs.
3. The insurer is directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce the insurer's duties; so may an agency authorized by law. Enforcement may be against the insurer or against the insured and the insurer.

4. Jurisdiction over the insured is jurisdiction over the insurer for purposes of the workers compensation law. The insurer is bound by decisions against the insured under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by the insurer under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves the insured of their duties under this Policy.

Part Two – Employers Liability Insurance

Nature

The vast majority of work-related accidents and occupational diseases are compensable under the workers compensation laws of the various states and therefore covered under Part One – Workers Compensation Insurance. There are, however, some claims that can be made against the employer for work-related injuries or occupational diseases that are not payable under Part One. Part Two provides employers liability coverage for those claims in which an employer may be held legally obligated to pay, that are not covered under the workers compensation law.

We Will Pay

This section states what the insurer promises to pay. It is the Insuring Agreement. Overall, the coverage promises to pay for the named insured's legal liability to pay damages because of bodily injury to an employee as a result of an accident and/or disease arising from employment by the named insured. The accident or last exposure to conditions of employment must occur during the policy period, and any suit must be brought in the coverage territory.

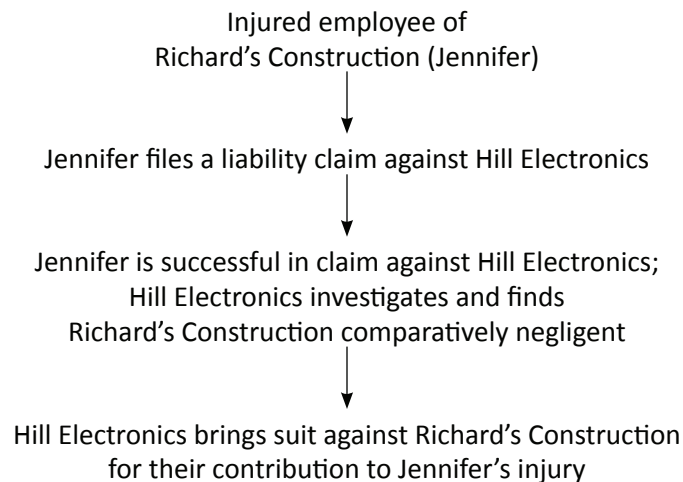
The Policy provides examples of situations where it pays if permitted by law. The following are examples that are included:

1. *Third-party claims*

These are claims made against the employer by others (third parties) who have been held liable for an employee injury. These are sometimes referred to as third party action over claims.

EXAMPLE

Hill Electronics hires Richard's Construction for an addition to their plant. Jennifer, an employee of Richard's Construction, is injured on the job. In addition to collecting workers compensation benefits, she files a liability claim against Hill Electronics, alleging that her injury arose from their failure to maintain their premises. She is successful in her claim. While investigating the claim, Hill Electronics discovers that Richard's Construction is comparatively negligent in this loss. Hill Electronics brings a claim against Richard's Construction for their contribution.



2. *Care and loss of services*

These claims include loss of consortium claims that are brought by the injured employee's spouse. As reviewed in other chapters, loss of consortium includes services (cooking, child-care, yard maintenance), society (companionship), and sexual relations. Depending on the state, children may bring claims for loss of society and services.

3. *Consequential bodily injury to a spouse or immediate relative of the employee*

An example of this kind of situation is a spouse, when learning of his wife's work-related injury, suffers a heart attack and files suit against the employer.

4. *Dual capacity*

This occurs when an employee is injured; the employer is sued in a capacity other than as the employer.

EXAMPLE

While at work, an employee of Sturdy Stepladder Manufacturing Company uses one of the company's stepladders to reach an object on a shelf. The stepladder collapses and the employee falls and injures himself. The injured employee files a workers compensation claim with Sturdy in their capacity as his employer, and, in addition, he files a liability suit against Sturdy in their capacity as the manufacturer of the product.

Most states do not permit dual capacity claims; however, if they are permitted and are successfully brought against the named insured, then the Employers Liability Coverage defends and pays any claim.

The Policy wording specifically includes the four situations above, but bear in mind that there are other situations that may be covered under Employers Liability. For example, a claim could be made by a person who is not eligible under the applicable workers compensation law. There are other employment-related situations that may occur, but some are specifically excluded.

Exclusions

There are twelve exclusions in Part Two – Employers Liability Insurance.

1. Contractual Liability

Liability assumed under a contract is not covered. This exclusion does not apply to a warranty that the insured's work will be done in a workmanlike manner.

EXAMPLE

Richard's Construction is hired by Bill's Manufacturing to make an addition to Bill's plant. In this example, there is a contractual arrangement in which Richard's Construction assumes the tort liability of Bill's Manufacturing to pay for any bodily injury to a third person.

Joe, an employee of Richard's Construction, becomes injured on the job. Joe sues Bill's Manufacturing, alleging that his injury arose from the failure to maintain its premises. Bill's Manufacturing tenders the defense of the claim to Richard's Construction because of the hold harmless agreement.

There is no Employers Liability coverage for this type of exposure. Richard needs to look to his CGL Policy to provide coverage.

2. Punitive or Exemplary Damages

If a legal action covered under Part Two – Employers Liability includes punitive as well as compensatory damages, then the Policy only pays the compensatory damages.

3. Violation of Law

The Employers Liability Insurance does not provide coverage for bodily injury to an employee if the employer knowingly hired that person in violation of law.

EXAMPLE

Coal mining is a prohibited job for minors under the age of 18, according to Kentucky Child Labor Laws. Therefore, an employer in Kentucky has no Employers Liability coverage if a person, known to be under the age of 18 and hired to do coal mining, is injured.

4. Workers Compensation or Similar Laws

Workers Compensation and Occupational Disease coverage is excluded under Part Two – Employers Liability, because it is covered under Part One – Workers Compensation.

There is also no coverage for any obligation imposed by unemployment compensation, disability benefits laws, or any similar laws. It is not the intent of the Employers Liability Insurance to pay or defend claims for unemployment or disability that is covered by federal or state governmental programs.

5. Intentional Injury

Employers Liability Insurance does not provide coverage due to bodily injury intentionally caused or aggravated by an employer.

EXAMPLE

A sole proprietor employer gets angry and punches an employee, which results in a lost tooth. The employee files a lawsuit for damages, in addition to filing a workers compensation claim. There is no coverage for the employer under the employer's liability for this intentional act.

6. Injuries Outside the United States

Coverage does not apply to injuries that occur outside the United States of America, its territories or possessions, and Canada. However, there is coverage provided an employee is a citizen or resident of the USA or Canada who is injured while temporarily outside these countries.

EXAMPLE

An employer sends an employee who is a California resident to Japan for 30 days to learn some computer techniques. That employer has liability coverage if that employee is injured during the course of employment.

7. Employment-Related Practices

Coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of employees are all considered employment-related practices and damages arising out of these are excluded. Losses from these types of claims should be covered by a specific Employment-Related Practices Liability Insurance Policy.

8. Federal Workers Compensation Laws

It is not the intent of the Policy to provide coverage from any workers compensation or occupational disease claims arising out of federal law. Exclusion 8 clarifies that bodily injury

to any person subject to the specifically named federal acts and any other federal workers or workmen's compensation law or other federal occupational disease law is excluded.

The specifically named federal acts to which this exclusion applies are:

- Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901 et seq.),
- Non-Appropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171 et seq.),
- Outer Continental Shelf Lands Act (43 U.S.C. Sections 1331 et seq.),
- Defense Base Act (42 U.S.C. Sections 1651-1654),
- Federal Mine Safety and Health Act (30 U.S.C. Sections 801 et seq. and 901-944).

EXAMPLE

While securing cargo on deck, Steve, an employee for Wally's Waterfront Company, is injured when a container is accidentally dropped on him. Loading and unloading cargo on vessels is considered maritime employment and is subject to the Longshore and Harbor Workers' Compensation Act. There is no coverage for Wally's Waterfront if Steve brings a claim against Wally's.

Endorsements are available to provide coverage for workers that are subject to these federal acts.

9. Federal Employers Liability Act (45 U.S.C. Sections 51 et seq.)

This exclusion applies to liability for bodily injury to any person subject to the Federal Employers Liability Act, also known as the Railroad Employers Liability Act, and any other federal law.

10. Crew Members

There is no employers liability insurance coverage provided due to bodily injury to a master or member of the crew of any vessel. In addition, employers liability does not cover punitive damages related to the employer's duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law.

EXAMPLE

Sam's Shrimping Company owns several shrimping boats. Tom is a captain of one of Sam's boats. Tom slips on the boat's deck and injures his back. Since Tom does not qualify for workers compensation benefits, he files a claim against Sam to be compensated for his injuries. However, on an unendorsed Workers Compensation and Employers Liability Insurance Policy, there is no coverage provided for this type of claim, since Tom is a member of the vessel's crew.

WC 00 02 01 B Maritime Coverage Endorsement is available to provide employers liability insurance coverage for an insured that has employees who are masters or members of a crew.

11. Fines or Penalties

There is no coverage for payment of fines or penalties imposed for violating federal or state laws. A common example is when the Occupational Safety & Health Administration (OSHA) levies a fine against an employer for violating safety regulations. Payment for this type of claim is not covered due to this exclusion.

12. Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) (29 U.S.C. Sections 1801 et seq.)

The Employers Liability Insurance does not provide coverage for any type of damages payable under the MSAWPA. The purpose of this act is to protect migrant and seasonal agriculture workers by establishing employment related standards for employers to meet. Some of these standards include wages, housing transportation, disclosures, and recordkeeping.

We Will Defend

The defense provisions of Part Two – Employers Liability Insurance are almost identical to those under Part One – Workers Compensation. One difference is that in Part Two, the provision states that the insurer has no duty to continue to defend once it has paid the applicable limit of liability under the Employers Liability Coverage.

We Will Also Pay

This provision is similar to the provision in Part One-Workers Compensation Insurance. The only difference is that the insurer pays only up to the limit of liability for premiums for bonds to release attachments and for appeal bonds.

Other Insurance

This provision is similar to the provision in Part One-Workers Compensation Insurance, except that it pays for their share of damages in lieu of benefits.

Limits

In Part One – Workers Compensation Insurance, there are no limits, since the benefits paid are dictated by the workers compensation laws that apply. In Part Two – Employers Liability Insurance, there are three limits:

1. Bodily Injury by Accident – Each Accident

This limit is the most the insurer pays for all claims arising out of any one accident, regardless of how many claims arise out of the accident.

2. Bodily Injury by Disease – Each Employee

This limit is the most the insurer pays due to bodily injury by disease to any one employee.

3. Bodily Injury by Disease – Policy Limit

This limit is the most the insurer pays for bodily injury by disease claims, regardless of the number of claims.

Recovery From Others

This is similar to the provision found in Part One – Workers Compensation Insurance, in that the company has the insured's right to recover payment from a party responsible for injuries to an employee.

Actions Against Us

Unlike Workers Compensation, this Employers Liability provision indicates a claimant has no right against the insurer until the insured has complied with all terms of the Policy and the amount owed has been determined with the insurer's consent or by a trial and judgment.

Part Three – Other States Insurance

A named insured employer who has ongoing operations in a state should list that state in Item 3.A. of the Information Page. For example, if the named insured's home office is in New York, and

the named insured has offices in New Jersey and Connecticut, then New York, New Jersey, and Connecticut should all be listed under Item 3.A.

There may be times, however, when a named insured employer has workers compensation and employers liability exposures in other states where the named insured does not have ongoing operations at inception of the Policy. Coverage can possibly be added for any unknown or unexpected exposures that may occur in those other states by adding those states under Item 3.C. of the Information Page.

The purpose of the Part Three – Other States Insurance is to provide coverage for incidental exposures in those states other than those listed in Item 3.A. These incidental exposures are for travel to or through other states, and temporary or occasional work in those states. Part Three – Other States Insurance is not designed to provide Workers Compensation and Employers Liability Insurance in every state on a blanket basis.

Individual state laws vary in terms of benefit levels. The various laws also vary in how they handle injuries which occur outside the state (sometimes called extraterritorial claims).

How This Insurance Applies

Part Three – Other States Insurance Coverage is triggered by specific wording in Item 3.C. of the Information Page. If the state in which the benefits apply is listed, then there is coverage. If a worker from one state is injured in another, the state benefits which apply may be based on one of the following criteria:

1. state of hire;
2. state of residence;
3. state of primary employment;
4. state of pay; or
5. state of injury.

The injured employee has the right to ask a state to accept jurisdiction for his/her injury and apply that state's benefits. Approximately half of the states allow the employee from outside the state to recover compensation benefits based on their laws.

To avoid a coverage gap, it is better to use certain wording to identify the states. The following is the best wording, but not all companies will use this broad wording.

“All states except monopolistic states and states designated in Item 3.A. of the Information Page”

Monopolistic states are not included in the suggested wording, as they do not permit private insurance.

If there is a state where the named insured works on an ongoing basis and that state is not listed in 3.A., then the insured must notify the insurer within 30 days of the effective date of the Policy. Failure to do so causes a coverage gap, no matter what the wording is in 3.C.

Notice

There is a specific provision in Part Three that the named insured must tell the insurer at once if the named insured begins to work on an ongoing basis in a state listed in 3.C.

Part Four – Your Duties If Injury Occurs

The majority of requirements listed in this section are similar to those found in other liability policies, such as giving prompt notice of claims, and sending any summons, demands, or other legal papers to the insurer. However, one duty is somewhat different. The named insured should provide immediate medical and other services required by the Workers Compensation Law.

Part Five – Premium

This section, as its title indicates, focuses on premium and provides general information on how the premium is determined. The provision begins by stating that the insurer uses its manuals of rules, rates, rating plans, and classifications to determine the premium. The provision then assigns a classification to each worker and, if a classification does not properly apply, the insurer assigns a classification.

The premium for each work classification is determined by multiplying a rate times a premium basis. The most commonly used basis is remuneration. Remuneration includes wages, salaries, bonuses, vacation pay, sick pay, profit sharing, etc. Since few employers know what the remuneration will be for the year, the premium is simply an estimate. The named insured pays a deposit, and the payroll records are subject to audit by the insurer, at which time the final premium is determined and charged or credited appropriately.

Part Six – Conditions

There are several conditions in the Workers Compensation and Employers Liability Insurance Policy, two of which are reviewed below.

Inspection

This condition establishes the insurer's right to inspect the named insured's workplaces, but clearly states the insurer is not under a specific obligation to make an inspection. This condition clarifies that these are not safety inspections, but inspections for insurability. The insurer may provide reports and recommend changes to reduce losses; however, the insurer does not warrant the workplace or the named insured's operations for safety or for compliance with any laws.

Transfer of Your Rights and Duties

This condition is similar to that found in most commercial insurance policies. It states that the named insured's rights and duties cannot be transferred to another entity without the written permission of the insurer. New owners do not receive automatic coverage; the insurance only applies to the named insured shown on the Information Page.

If the named insured dies during the policy period, a legal representative has coverage, if the insurer is given notice within 30 days of the death.

PREMIUM COMPUTATION

In the Part Five – Premium section, the calculation of the workers compensation premium receives much more attention than seen in other insurance policies.

Job Classification

Each job is classified according to its job activity characteristics and the danger directly related to performing the job. The higher the risk, the higher the premium rate is for the job classification. Each job is assigned a numerical classification code. Here are examples of two classifications presented in the manual (rates are fictitious):

- Clerical Office Employee – has a classification code of 8810, which has a rate of \$.37 per \$100 of payroll. A clerical office class excludes work or service areas, and the clerical work area is separated from other work areas by partitions, walls, or floors.
- Salespersons, Collectors, or Messengers – Outside is classified 8742 which receives a rate of \$.79. These are employees engaged in such duties away from the employer's premises. This classification does not apply to employees who deliver merchandise.

The job that requires work outside, which includes travel, is considered a higher risk and has the higher rate.

The payroll information for each classification is recorded, and a premium is assigned for each job classification for the named insured. The rate is computed per \$100 of payroll. If a company has a payroll of \$50,000 for Clerical Office Employee – 8810, the computation would be: $\$50,000/\$100 = 500 \text{ units} \times .37 = \185 .

The various premiums for each job classification are then summed, and an expense constant (expense item added to each policy to cover expenses common to all policies) is added to equal the estimated premium.

Experience Modification Factor

Experience modification is a rating plan in which the individual insured is rated separately based on past premiums and losses.

Each year a rating bureau calculates the experience modification factor to be applied to the named insured's premium. The experience period generally consists of three full years, ending one year prior to the Policy effective date.

The chart below illustrates the experience period:

EXPERIENCE PERIOD					
To determine the experience modification factor for 2015, the rating bureau uses the losses and final audited premium for 2011, 2012, and 2013. An experience modification of less than 1 is favorable and more than 1 is unfavorable. If the named insured has a standard premium of \$10,000 and experience modifier of .65, then the named insured has experience premium of \$6,500 instead of \$10,000. If the named insured in the same example has an experience modifier of 1.15, he/she has to pay \$11,500 instead of the standard premium of \$10,000.					
Jan. 1	Jan. 1	Jan. 1	Jan. 1	Jan. 1	Jan. 1
2011	2012	2013	2014	2015	2016

To be eligible for experience rating, an individual insured needs to develop a high enough premium level, as prescribed by the particular state, for a given period of time. For example, \$5,000 over a two-year period, or an average of \$2,500 per year.

Premium Discounts

Generally speaking, an insurance company's expense for underwriting, issuing, and servicing a policy with a large premium is less than handling several policies with smaller premiums. For example, it costs the insurance company less money to service one \$100,000 policy than five policies with premiums of \$20,000 each. In recognition of this savings, many states mandate a sliding scale premium discount on policies with a standard premium of a stated amount (commonly \$5,000). The credit size may range from .1% to 16.3%, depending on the size of the premium.

ENDORSEMENTS

The terms of the Policy can only be changed by endorsements. This section focuses on just a few selected endorsements.

Voluntary Compensation and Employers Liability Coverage

Endorsement – WC 00 03 11 A

In some states, there are certain employees who are exempt from the workers compensation law. Commonly, these workers are domestic employees, agricultural employees, and casual laborers. These exempt employees, who are not eligible for workers compensation benefits, may bring suit against the employer for an on-the-job injury resulting from the employer's failure to meet common law obligations. To avoid this potential suit, an employer may elect to provide coverage on a voluntary basis for exempt employees. The addition of this endorsement to the Workers Compensation and Employers Liability Insurance Policy provides the coverage.

The endorsement provides coverage for workers compensation benefits afforded under the workers compensation laws of the state designated in the endorsement. With the endorsement, the Workers Compensation and Employers Liability Insurance Policy pays an amount equal to the

benefits that would be required if the named insured and the employees described in the Schedule were subject to the workers compensation law. Before anything is paid, the person receiving the benefits must release the named insured and insurer from all responsibility for injury and/or death. As stated above, by adding this endorsement and offering benefits, an employer (named insured) may avoid tort action brought against him/her by an injured worker.

Sole Proprietors, Partners, Officers and Others Coverage Endorsement – WC 00 03 10

Similar to employees who are exempt from workers compensation, some states also allow certain positions to be exempt. If those individuals elect to be subject to the workers compensation law, then adding this endorsement provides coverage for those individuals as long as they are designated in the endorsement schedule. This endorsement may not be permitted in all states.

Partners, Officers and Others Exclusion Endorsement – WC 00 03 08

In contrast to the previously mentioned endorsement, a partner, officer or other individual subject to workers compensation law may elect to reject coverage if permitted by law. This endorsement excludes the persons described in the endorsement schedule from receiving workers compensation coverage. The endorsement also excludes employers liability coverage for any claim brought forth by that designated individual who may have suffered a work-related injury or occupational disease.

Employers Liability Coverage Endorsement – WC 00 03 03 C

In an earlier section, it is stated that workers compensation coverage for certain states has to be purchased directly from the Monopolistic State Fund. These Monopolistic State Funds do not provide employers liability coverage. If the employer has a Workers Compensation and Employers Liability Insurance Policy for operations in another state, the addition of this endorsement provides Employers Liability coverage in a monopolistic state that is listed in the endorsement schedule. (For Ohio, use WC 34 03 01 C).

FEDERAL WORKERS COMPENSATION LAWS AND RELATED ENDORSEMENTS

There are several groups of employees that are subject to coverage for work-related injuries and occupational disease under federal workers compensation laws and employers liability laws. The next few pages review some of the federal laws and some respective endorsements that provide coverage to the employers of these individuals.

Federal Employers Liability Act (FELA)

The Act

The Federal Employers Liability Act was passed to provide the exclusive remedy for railroad employees who receive work-related injuries caused by the negligence of their employers. FELA is only applicable to common carriers using a railroad involved in interstate commerce. This law is based on negligence, unlike the workers compensation laws which are no-fault. Under FELA, the worker must show that the railroad was negligent, and this negligence was the proximate cause of the injury. The passage of FELA eliminated a number of the common law defenses studied earlier. The common law defenses of the fellow-servant rule and the assumption of risk were eliminated as related to railroad workers. Contributory negligence of

the employee does not bar recovery but simply reduces damages based on the contribution, in essence, comparative negligence.

Federal Employers Liability Act Coverage – WC 00 01 04 A

This endorsement is purchased to protect an employer who is a common carrier engaged in interstate rail commerce.

This endorsement provides only Employers Liability Insurance to work that is subject to FELA. It does not provide workers compensation insurance. When this endorsement is attached to a standard Workers Compensation and Employers Liability Insurance Policy, it modifies the Employer Liability limits in terms of work that is subject to FELA. Instead of the three liability limits as indicated on the Information Page, there are two limits. One limit is a per accident limit for liability and the other limit is an aggregate limit for liability arising out of bodily injury by disease.

Longshore and Harbor Workers Compensation Act (LHWCA)

The Act

This Federal Act was designed to provide compensation and medical benefits to land-based employees (those who are not masters or members of a crew) while working on navigable waters. Navigable waters are bodies of water that are used for navigation and commerce between states or navigation from a state to an ocean or sea. Examples of navigable waters are the Great Lakes, the Gulf of Mexico, and the Ohio River, to name but a few. People who are engaged in maritime employment, including loading and unloading ships, ship construction and repair, and construction and maintenance of docks, piers, and wharves, are not eligible for state workers compensation benefits while engaged in such employment. The individuals who come under this act are entitled to unlimited medical benefits (subject to reasonable medical standards) and prescribed weekly disability benefits.

Longshore and Harbor Workers Compensation Act Coverage – WC 00 01 06 A

Those employers who employ workers subject to the Longshore and Harbor Workers Act may purchase coverage for these benefits by adding this endorsement to a standard Workers Compensation and Employers Liability Insurance Policy. This endorsement provides both workers compensation and employers liability insurance for work subject to the LHWCA.

The Jones Act – The Merchant Marine Act of 1920

The Act

The Merchant Marine Act of 1920, which is commonly referred to as the Jones Act, is a federal employers liability law that provides seamen with a tort remedy when they incur a work-related injury. Historically, seamen were owed certain privileges relating to injury or disease as established by maritime law. Frequently, this was inadequate, so the Jones Act was passed to provide a way for seamen to successfully bring a negligence claim against their employers. The law removes or modifies the common law defenses previously discussed. A seaman is any person employed on the vessel so as to accomplish the ship's mission. This could be any person, from a navigator to a cook.

Maritime Coverage Endorsement – WC 00 02 01 B

This endorsement is designed to pay for the legal obligation of an employer who may be held responsible for negligent action, which results in the work-related injury to a member of the crew of a vessel.

This endorsement, which is attached to a standard Workers Compensation and Employers Liability Insurance Policy, modifies the employer liability exclusion that eliminates coverage for bodily injury to a master or member of a crew.

The endorsement stipulates that liability coverage applies only to bodily injury when the vessel is in the territorial limits or in the operation of a vessel moving directly between ports of the continental United States, Alaska, Hawaii, or Canada. Some insurers will delete or modify this wording.

In place of the three liability limits indicated in Part Two – Employers Liability, there are two limits in this endorsement. One limit is a per accident limit for liability and the other is an aggregate limit for liability arising out of bodily injury by disease.

Other Endorsements

There are other endorsements available that provide coverage for work subject to specific federal laws. A select few are:

- Nonappropriated Fund Instrumentalities Act Coverage Endorsement – WC 00 01 08 A
- Outer Continental Shelf Lands Act Coverage Endorsement – WC 00 01 09 B
- Defense Base Act Coverage Endorsement – WC 00 01 01 A

CONCLUSION

Workers compensation is a system that is used to compensate persons who become injured or contract occupational diseases as a result of their employment. This no-fault system views injuries and diseases as a cost of doing business. Every jurisdiction has its own worker compensation laws which outline how workers are compensated. Although the amounts actually paid may vary widely from jurisdiction to jurisdiction, every jurisdiction provides three benefits; some provide a fourth:

1. medical,
2. disability,
3. death benefits, and possibly
4. rehabilitation.

An employer usually has three ways to provide these benefits:

1. the purchase of private insurance,
2. the purchase of insurance from a state government fund, or
3. self-insurance.

Nationally, the purchase of insurance from a private company is the choice most often used. Much of this review was the examination of the Workers Compensation and Employers Liability Insurance Policy. This Policy consists of three coverages:

- Part One – Workers Compensation Insurance
- Part Two – Employers Liability Insurance
- Part Three – Other States Insurance

This Policy, along with many endorsements, provides protection to employers for their legal obligations for injuries to their workers imposed by both state and federal legislation.

CHAPTER 13: COMMERCIAL UMBRELLA/EXCESS LIABILITY

INTRODUCTION

The concept of Commercial Umbrella Liability Policies (hereafter referred to as Umbrella) began as more of a marketing or sales device by some insurance companies. It was an addition to existing Excess Liability Policies (hereafter referred to as Excess), designed to provide higher liability limits over other policies. These insurance companies never expected to pay large judgments, because, at the time, large judgments were so rare. Now, large judgments are commonplace, especially in lawsuits brought against major businesses.

Before examining an Umbrella Policy or an Excess Policy, it is important to understand the need for such a policy. The principle need is for higher limits. There are three primary reasons:

1. Public Attitude

The general public is more claims conscious. The media is full of reports of high judgments. Suits are also proliferated by the growing numbers of attorneys.

2. Law of Negligence

It has become easier to collect on negligence claims because of changes in the burden of proof for negligence. The judiciary has also relaxed its requirements to collect. Many state legislatures have passed laws that modify or eliminate many of the traditional defenses.

3. Jury Attitude

There has been a greater desire by juries to compensate victims, and there has been an increase in the acceptability by jurors of large judgments.

To provide more evidence of the need for Umbrella/Excess Policies, here are some examples of large judgments brought against insureds.

EXAMPLES

1. An employee, while operating a leased auto on company business, struck two pedestrians and a number of parked autos. This auto accident led to a \$7,000,000 settlement for injuries and property damage.
2. An award of \$71,000,000 was made in an Illinois lawsuit. Milk contaminated by salmonella bacteria caused 23,000 persons to become ill.

THE PURPOSE OF UMBRELLA/EXCESS LIABILITY POLICIES

Increase Liability Limits

As previously stated, the primary purpose of Umbrella and Excess Liability Policies is to provide higher liability limits. Insureds will typically have liability policies such as Commercial General Liability, Business Auto, and Employers Liability (via a Workers Compensation and Employers Liability Insurance Policy) with certain limits. Umbrella and Excess Policies are designed to provide excess liability limits over these underlying policies. The term underlying policies means those policies shown on the Umbrella or Excess Policy's Declarations that pay for a loss before the Umbrella or Excess Policy pays.

May Provide Broader Coverage

Some Umbrella and Excess Policies provide liability coverage that is broader than underlying coverage.

- An example of this might be a broader definition of coverage territory, especially when compared to that found in a Business Auto Policy or a Commercial General Liability Policy.
- Another example is the inclusion of coverage for property damage to property in the insured's care, custody, or control, or at least a less restrictive exclusion.

Therefore, Umbrella and Excess Policies can provide primary coverage when underlying policies do not provide coverage. (If these underlying policies do not cover a particular loss situation, and the Umbrella or Excess Policy provides coverage for such loss situation, the Umbrella or Excess Policy becomes primary.)

Provide Primary Coverage when Aggregates Are Exhausted

Umbrella Policies should also provide primary coverage when underlying aggregates are reduced or exhausted. You may remember that the Commercial General Liability Policy and the Businessowners Coverage Form have aggregate limits. When the aggregate limit has been used up, the Umbrella/Excess Policy may become primary. (This is normally a characteristic of all Umbrella Policies and some Excess Policies.)

TYPES OF UMBRELLA AND EXCESS POLICIES

In reviewing this chapter, it is important to understand that even though there is an ISO standardized Umbrella Policy available, many carriers prefer to use their own forms. The types of forms likely encountered are:

1. True Umbrella Policy

Many people consider any Excess Policy as an Umbrella Policy, but this is not technically correct. A true Umbrella Policy always provides broader coverage than found in the underlying policies and becomes primary when aggregates are exhausted. It is estimated that less than half of policies called "Umbrellas" are true Umbrella Policies. The majority of policies sold today are written as an Excess Policy. Some Excess Policies may provide broader coverage; others do not.

2. Follow Form Excess Policy

A few Excess Policies are simply excess liability policies that follow the same terms as the underlying policy(ies). This means that the Excess Policy provides the same coverage, and there is no broader coverage.

A Follow Form Excess Policy that is written over just one underlying policy is commonly referred to as monoline excess. If written over more than one underlying policy, it is known as multiline excess. The purpose is to provide higher limits excess over the underlying policies.

Multiline Excess			Monoline Excess	
CGL	BAP	EL	BAP	

To help you understand this point, the following sample language illustrates a Following Form Excess Policy:

Coverage hereunder shall attach only after the insurers of the Underlying Insurance shall have paid in legal currency the full amount of the Underlying Limit for such Policy Period. Coverage hereunder shall then apply in conformance with the terms and conditions of the Primary Policy.

Even though carriers may refer to their policies as “Follow Form”, a careful review of the policy coverage is needed to verify that there is no restrictive language. The following is sample language that gives the indication that it is a “Follow Form” except under certain circumstances where the policy wording differs.

Except to the extent the insuring agreements, terms, definitions, conditions, and exclusions of this policy differ, the coverage provided by this policy shall follow the insuring agreements, definitions, conditions, and exclusions of the first underlying insurance policy as shown in the schedule of underlying policies.

The above is not a true “Follow Form” Excess Policy because of the exceptions.

3. Stand Alone Excess Policy

A Stand Alone Excess Policy differs from a Follow Form Excess Policy in that it contains its own insuring agreement, exclusions, conditions, etc. For this reason, it is referred to as a Stand Alone Excess - it stands on its own terms and conditions. Commonly there is less coverage in some areas, which is why it is not a true Umbrella Policy.

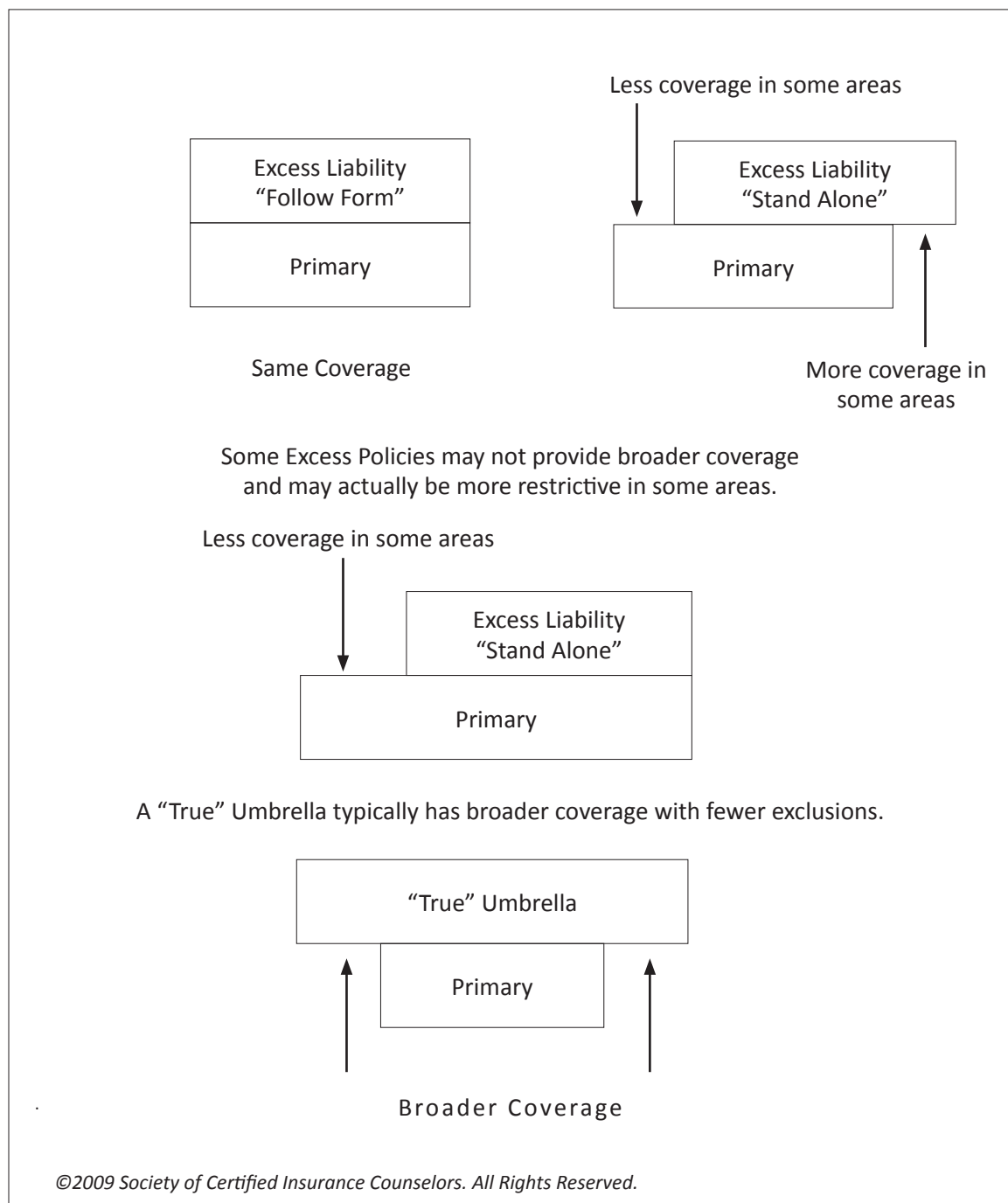
As an example, punitive damages may be excluded; and many Stand Alone Excess Policies contain an absolute pollution and/or a specific asbestos exclusion.

As previously stated, in some instances there is broader coverage than found in the underlying policy(ies). For example, the Commercial General Liability Policy is very restrictive on pollution coverage, whereas, a Stand Alone Excess Policy may be less restrictive by providing pollution coverage if such loss is sudden and accidental.

A Stand Alone Excess Policy, like the Follow Form Excess Policy, provides higher limits of liability and can be written either on a monoline or multiline excess basis.

With a basic understanding of the types of Umbrella and Excess Policies, the next step is to review some of the important provisions and features of these policies. Remember the wording in the Policy varies by carrier. The examination in this chapter now focuses on the common concepts of a Stand Alone Multiline Excess Policy that does provide broader coverage in some areas and becomes primary when the underlying policy aggregates are exhausted.

Umbrella / Excess Coverage Exhibit



SELF-INSURED RETENTION (SIR)

A Self-insured Retention is the amount that the insured is responsible for paying and applies only to certain loss situations. In a situation where a claim is not covered by an underlying policy but is payable under an Umbrella or Excess Policy, a Self-insured Retention (SIR) is applied to the loss payment. This predetermined amount is indicated in the Declarations. The SIR dollar amount can be as low \$5,000 or can be much higher depending on the amount the insured is willing to assume in a loss.

EXAMPLE

The named insured has a \$5,000,000 occurrence and aggregate limit on an Umbrella Policy with the following requirements:

<i>Self-Insured Retention (SIR)</i>	<i>\$ 25,000</i>
<i>Schedule of Underlying Insurance:</i>	
<i>Commercial General Liability</i>	
<i>General Aggregate</i>	<i>\$1,000,000</i>
<i>Products-Completed Operations Aggregate</i>	<i>\$1,000,000</i>
<i>Each Occurrence</i>	<i>\$1,000,000</i>
<i>Business Auto Liability</i>	
<i>Each Accident</i>	<i>\$ 500,000</i>
<i>Employers Liability</i>	
<i>Bodily injury by accident</i>	<i>\$ 500,000 Each Accident</i>
<i>Bodily injury by disease</i>	<i>\$ 500,000 Each Employee</i>
<i>Bodily injury by disease</i>	<i>\$ 500,000 Policy Limit</i>

The named insured suffers a liability claim of \$500,000 that is not covered by any of the underlying policies, but is covered by the Umbrella Policy.

Underlying Policies pay:	\$0
Umbrella Policy pays:	\$475,000
Named Insured pays:	\$25,000 SIR

The Umbrella Policy, in the above example, pays the amount of this covered liability loss less the Self-insured Retention. Again, this loss is subject to the Self-insured Retention because it is not covered in any of the underlying policies, but is covered by the Umbrella Policy.

Many people confuse a Self-insured Retention with a deductible. A deductible applies to payments of all covered losses within a policy. A Self-insured Retention only applies in those situations when the underlying policy does not provide coverage and the Umbrella or Excess Policy does.

If coverage is provided by the underlying policy, but a loss amount exceeds the limits of the underlying, then the Umbrella or Excess Policy provides excess limits. The Self-insured Retention does not apply in this situation, since coverage is provided by the underlying policy.

The following is a sample definition of Self-insured Retention.

“Self-insured retention” means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to “occurrences” or offenses not covered by the “underlying insurance”. The “self-insured retention” does not apply to “occurrences” or offenses, which would have been covered by “underlying insurance” but for the exhaustion of applicable limits.

© Insurance Services Office, Inc.

CONCURRENCY

Concurrency is a term used to describe a situation where there are two or more insurance policies written with the same or similar terms and conditions. If the policies do not have the same terms and conditions, then the policies are called non-concurrent. This concept was briefly introduced in the Basics of Property and Casualty Insurance. Concurrency also relates to dates of coverage.

Concurrent Dates

If the policy period of an Umbrella or Excess Policy is the same as the underlying policy(ies), this is referred to as concurrent dates. If the dates of coverage differ, then the Umbrella or Excess Policy is considered non-concurrent and could result in a gap of coverage if a claim occurs.

Underlying Limits Shown on the Declarations Must Be Unimpaired

When an Umbrella or Excess Policy is written, there is a provision in the conditions stating that the insured shall have unimpaired underlying limits. The term unimpaired means that the underlying required limits should not have been reduced or exhausted by loss payments that occurred prior to the effective date of the Umbrella or Excess Policy.

Following is an example of an Excess Policy in a non-concurrency situation:

EXAMPLE

Roberts' Wildlife Supply Company has a CGL with limits of \$500,000 per occurrence and \$1,000,000 aggregate limit that begins coverage January 1. Roberts purchases an Excess Policy written for \$3,000,000 with the Reliable Insurance Company for one year beginning on June 1. Reliable requires that Roberts' CGL has a \$1,000,000 aggregate.

\$500,000/\$1,000,000
CGL - Primary

\$3,000,000
Excess Policy

January _____ June _____ December

March 1 Loss
\$500,000

December 7 Loss
\$750,000

Roberts suffers a \$500,000 loss on March 1 that was paid by the CGL Policy. After this loss was paid, there is a remaining aggregate limit of \$500,000.

Roberts suffers an additional \$750,000 loss in December of the same year.

Paid by Primary Insurer (CGL): \$500,000

Paid by the Excess Insurer: \$0

A question that is sometimes asked is why the carrier for the Excess Policy does not pay the remaining amount of \$250,000 since the Excess Policy has adequate limits. The carrier does not pay until the unimpaired \$1,000,000 aggregate has been exhausted. When the named insured purchased the Excess Policy, the named insured was required to have \$1,000,000 underlying limit available to pay future claims beginning with the effective date of the Excess Policy. In the example, the aggregate had been reduced by the payment of the \$500,000 claim in March, which is before the effective date of the Excess Policy. The Excess Policy provision states that if there is failure to maintain the underlying limits, the Excess Policy treats the loss as though the limits are in effect. Therefore, the Excess Policy does not pay until the underlying limit of \$1,000,000 is paid. The named insured must pay if the underlying policy does not.

It is very important to have the limits required by the Umbrella or Excess Policy insurer. It is also essential to have the effective dates and expiration dates concurrent to avoid coverage problems.

ADDITIONAL TERMS AND CONDITIONS

Coverages

One of the purposes of an Umbrella or Excess Policy is to provide excess coverage over the underlying policies. The extent of the coverage provided varies by carrier.

Insuring Agreements

The explanation of coverage is usually found in the promises of the Umbrella or Excess Policy's insuring agreement. Normally, the Policy pays for damages those sums for which the insured is legally obligated to pay and provides defense of covered claims and lawsuits. Commonly, Umbrella and Excess Policies provide not only coverage for "bodily injury" and "property damage", but also "personal and advertising injury". Coverage is further defined within the terms and conditions, including definitions and exclusions. Since each policy form varies in what coverage is provided, it is very important for insureds and insurance professionals to read the particular Umbrella or Excess Policy.

Pay on Behalf versus Indemnify

In some Umbrella and Excess Policies, the Policy promises to pay on behalf of the insured. This means that the insurer pays, on behalf of the insured, the investigation and defense costs, as well as covered losses as defined by the Policy. Typically, the insured is not obligated to make any payments until the policy limits are exhausted.

We will pay on behalf of the "insured" the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies.

© Insurance Services Office, Inc.

"Pay on behalf of" is the preferred wording for the insureds when selecting Umbrella or Excess Policies, except for large accounts where the insured wants control of any defense and investigation and has the financial means to do so. Those larger accounts may prefer Umbrella or Excess Policies where the insuring agreement promises to indemnify the insured. This literally means that the insured must first make payment(s) related to a covered claim and then ask the insurer for reimbursement. These payments may include investigation and defense costs. Making these payments may not only cause inconvenience to the insured but also financial distress if the claim is very large. Therefore, the indemnification wording is typically softened to mean that the insured must be obligated to pay before the company steps in and makes the payment. Probably the only advantage of indemnity payment for the insured is that the insured has control over the defense and settlement.

We will indemnify the insured or pay to the insured "the ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies.

Format of Insuring Agreements

Coverage A and B Insuring Agreements

Some Umbrella and Excess Policies may contain insuring agreements based on the type of claim for which the insurance applies, similar to the CGL Policy. The "retained limit" found in the insuring agreements refers to the available limits of underlying insurance or the self-insured retention.

Coverage A – Bodily Injury and Property Damage Liability

We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies...

Coverage B - Personal and Advertising Injury Liability

We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “personal and advertising injury” to which this insurance applies...

© Insurance Services Office, Inc.

Coverage E and B Insuring Agreements

Some Excess Policies contain two insuring agreements, also referred to as dual agreements, based on the type of coverage provided. For purposes of this review, the dual agreements are referred to as Coverage E – Excess and Coverage B - Broader Than Excess.

The insuring agreement for Coverage E provides excess coverage over underlying policies and is usually follow form excess. It is important that the terms and conditions that apply to this insuring agreement are as broad as the underlying coverages.

Coverage E – Excess

“We” pay up to “our” limit, all sums in excess of “underlying insurance” for which an “insured” becomes legally obligated to pay as “damages” to which this insurance applies....

The insurance agreement for Coverage B provides coverage for those losses not covered by underlying policies. It contains terms and conditions with coverage that is broader than the underlying, such as the definition of “coverage territory” or “personal injury”.

Coverage B – Broader Than Excess

We pay up to our limit all sums in excess of Retained Limit shown on the declarations or the amount payable under “other insurance”, whichever is greater for which an “insured” becomes legally obligated to pay as “damages” because of “bodily injury”, “property damage”, “personal injury”, or “advertising injury” to which this insurance applies...

Coverage E and U Insuring Agreements

Some Umbrella Policies contain two insuring agreements. In some of these policies, the dual agreements are referred to as Coverage E – Excess Liability and Coverage U – Umbrella Liability.

Following is sample wording:

Coverage E – Excess Liability

We will pay on behalf of the insured those sums in excess of underlying insurance for which an insured becomes legally obligated to pay as damages to which this insurance applies.

Coverage U – Umbrella Liability

We will pay on behalf of the insured those sums in excess of the self-insured retention for which the insured becomes legally obligated to pay as damages because of bodily injury, property damage, or personal and advertising injury not covered by underlying insurance to which this insurance applies.

Singular Insuring Agreement

A few policies contain just one singular insuring agreement. Such insuring agreements provide coverage for damages because of “bodily injury”, “property damage”, “personal injury”, or “advertising injury” to which this insurance applies.

Defense

In Umbrella and Excess Policies, the treatment of defense varies greatly. There are two major issues:

- Obligation to provide defense; and
- Payment of defense costs.

The Policy frequently outlines the defense obligation as excess over underlying policies.

Duty to Defend

We will have the right and duty to defend the insured against any “suit” seeking damages for such “bodily injury” or “property damage” when the “underlying insurance” does not provide coverage or the limits of “underlying insurance” have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other “suit” seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. At our discretion, we may investigate any “occurrence” that may involve this insurance and settle any resultant claim or “suit”, for which we have the duty to defend. But....

© Insurance Services Office, Inc.

In the above umbrella sample,

1. Duty to defend applies:
 - when the underlying insurance does not provide coverage; or
 - the limits of underlying insurance have been exhausted.
2. When there is no duty to defend, the insurer:
 - still has the right to defend; or
 - to participate in the defense;
3. The umbrella insurer may investigate any occurrence that may involve the excess coverage.

4. The umbrella insurer can settle any resultant claim for which they have the duty to defend.

It is to the advantage of an umbrella or excess insurer to stay involved with the defense handled by the underlying insurer because a loss may exceed the underlying limits.

The insurer has no duty to defend suits in which the insurance does not apply.

When the Umbrella or Excess Policy provides broader coverage than the underlying policy, a careful review is needed to determine whether defense is included within the SIR. When defense coverage applies within the SIR, this is commonly known as “first dollar coverage”.

Sample wording:

Defense within SIR: the insurer has the right and duty to defend against any suit when the underlying insurance does not provide coverage.

Defense outside SIR: the insurer has no duty to defend any suit until after any retained limits (including SIR) have been exhausted.

Payment of Defense Costs

From the insured's view, it is usually preferable to have a provision within the Umbrella or Excess Policy that states that Supplementary Payments, including defense costs, are paid in addition to the policy limits. Many Umbrella and Excess Policies pay defense in addition to the limits, as found in most of the primary underlying policies. There are some Umbrella and Excess Policies where the payment of Supplementary Payments, including defense costs, reduces the policy limits.

Example of Defense Paid in Addition to the Policy Limits

We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend, when the duty to defend exists:

1. All expenses we incur ...

These payments will not reduce the limits of insurance.

© Insurance Services Office, Inc.

Example of Defense Paid Within the Policy Limits

The amounts stated in ITEM 3 of the Declarations are the limits of the Company's liability and shall be the maximum amount payable, including Defense Expenses, by the Company under this policy. The limits of liability available to pay damages or settlements shall be reduced, and may be exhausted, by the payment of Defense Expenses.

Coverage Territory

Most Umbrella and Excess Policies, other than Follow Form, provide an expanded definition of coverage territory. Coverage territory can be as broad as anywhere in the universe when the Policy does not define coverage territory. It can likewise be worldwide or less than worldwide.

Coverage applies to occurrences or offenses that happen anywhere in the world.

It can also be broad but with certain conditions.

Coverage territory means the world, provided that the insured's liability to pay damages as been determined on the merits in a suit in the United States of America, its territories and possessions, Canada, or Puerto Rico.

Limits

The limits vary significantly, but almost all Umbrella and Excess Policies begin at \$1,000,000. Many Policies are written with limits in increments of a million dollars rising up to hundreds of millions. They usually include per occurrence limits and usually include aggregate limits. The aggregate limit may be a single annual aggregate or separate aggregates may apply to specific coverages.

EXAMPLE

Fingers Manufacturing makes a number of products, resulting in multiple bodily injury claims under a CGL with \$500,000 Each Occurrence Limit and with a \$1,000,000 Products-Completed Operations Aggregate Limit.

Date	Loss	Paid from Underlying Occurrence limit	Balance of Aggregate	Paid from the Umbrella
3/20X1	\$700,000	\$500,000	\$500,000	\$200,000
5/20X1	\$350,000	\$350,000	\$150,000	\$0
8/20X1	\$200,000	\$150,000	\$0	\$50,000
11/20X1	\$125,000	\$0	\$0	\$125,000

All these claims were paid in the normal manner by the underlying CGL Policy until the loss in August 20X1. At that time, the Umbrella Policy had to pay the remaining amount of the claim (\$50,000) and then drop down in November 20X1 to pay first dollar coverage. This was possible because both the CGL Policy and the Umbrella Policy had the same (concurrent) effective dates. Note that the SIR does not come into play here.

Underlying Insurance Requirements

Umbrella and Excess Policies require certain underlying policies with prescribed limits. For example, the following underlying policies are usually required:

UNDERLYING POLICIES LIMIT REQUIREMENTS	
Commercial General Liability	
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Business Auto Liability	
Each Accident	\$1,000,000
Employers Liability	
Bodily injury by accident	\$500,000 Each Accident
Bodily injury by disease	\$500,000 Each Employee
Bodily injury by disease	\$500,000 Policy Limit
These limits are representative of what might be required, but some insurance companies writing Umbrella or Excess Policies might require higher limits while others may require less.	

Underlying requirements may also vary from one insured to another. Obviously, an insurer has an underlying requirement related to aircraft liability for those insureds that own or lease aircraft. It is important that the insured be aware of the underlying limit requirements and maintains the underlying limits to avoid gaps in coverage.

EXAMPLE OF GAP IN COVERAGE

The named insured has an Excess Policy with a \$5,000,000 limit. The Excess Policy has the following underlying limits requirements:

Self-Insured Retention (SIR)	\$10,000
Schedule of Underlying Insurance:	
Commercial General Liability	
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Business Auto Liability	
Each Accident	\$1,000,000
Employers Liability	
Bodily injury by accident	\$500,000 Each Accident
Bodily injury by disease	\$500,000 Each Employee
Bodily injury by disease	\$500,000 Policy Limit

The named insured erroneously maintained \$500,000 rather than the required \$1,000,000 limit on its underlying BAP. A covered auto liability loss of \$1,250,000 occurred.

\$5 Million Excess limit	\$250,000	Excess Policy Pays
\$1 Million Underlying Limit Requirement	\$500,000	Gap in Coverage
	\$500,000	Underlying BAP Pays

Note: The SIR does not apply in this situation as the BAP provided coverage, just not at the required limit.

Who Is An Insured

In Excess Policies, Who Is an Insured varies, depending on whether or not the Policy is based on “Follow Form” wording or if it contains its own description of Who Is An Insured.

Logically, if the Policy includes “follow form” wording, then it includes all those insureds that are included within the primary policies. It is not unusual for Umbrella and Excess Policies to correspond to the Who Is An Insured section of the CGL Policy and the Business Auto Policy. In some cases, the Umbrella or Excess Policy expands Who Is An Insured. Besides including named insureds, coverage usually extends to individual partners, members of a joint venture or limited liability company, officers, directors, stockholders of an organization, and trustees. Coverage can also extend to the named insured’s employees, volunteers, real estate managers, temporary custodians, or legal representatives.

The Umbrella or Excess Policy may be broad enough to include new acquisitions and subsidiaries, other than a partnership, joint venture or limited liability, without time or reporting limitations.

Also, it is common to see provisions in Umbrella or Excess Policies that state that if a person or organization is listed as an additional insured under an underlying policy, then that insured status is extended to the Umbrella or Excess Policy.

Damages

Umbrella and Excess Policies provide liability protection for damages in a number of ways. In Umbrella and Excess Policies, there are three areas of damages that are covered. They are Bodily Injury, Property Damage, and Personal and Advertising Injury.

Most Umbrella and Excess Policies contain the same definition of “bodily injury” as found in most underlying policies. It is very similar to the definition found in the CGL Coverage Form. In some cases, the definition of “bodily injury” may be broader and include items such as mental anguish, mental injury, shock or humiliation resulting from physical injury.

The coverage for “property damage” in most Umbrella and Excess Policies is also very similar to the CGL Policy. The coverage includes physical injury to or destruction of tangible property. This includes loss of use, as well as loss of use of tangible property which has not been physically injured or destroyed, provided such loss of use is caused by a covered occurrence. Some Umbrella and Excess Policies provide broadened coverage by including damage to alienated premises or damage to third party property in the insured’s care, custody or control. In some Policies, the definition of “personal injury” is frequently separated from “advertising injury”. This is different from Coverage B – Personal and Advertising Injury Liability in the CGL Policy. Personal injury can be defined in many different ways.

Finally, advertising injury is usually comparable to ISO’s CGL Policy language. However, some Umbrella and Excess Policies may provide broader coverage, including piracy and unfair competition. In other instances, Policies may be more restrictive by policy language or by endorsement.

Exclusions

There is a great deal of difference from one Umbrella/Excess Policy to another in the area of exclusions. Umbrella and Excess Policies have a number of exclusions previously mentioned in other policies and, in many instances, these exclusions have the same name and policy wording.

Selected Umbrella and Excess Policy Exclusions

- ***Expected or Intended Injury***

There is an exception to this exclusion, for bodily injury resulting from the use of reasonable force to protect persons or property.

- ***Aircraft***

While many Umbrella and Excess Policies exclude any coverage for aircraft, some provide limited coverage on an excess basis, and some provide liability coverage only if aircraft is chartered with a crew.

- ***Watercraft***

Many Umbrella and Excess Policies provide watercraft coverage on a follow form basis with the underlying coverage provided in the CGL Policy. Other Policies broaden watercraft coverage in terms of length, especially as related to non-owned watercraft. Still other

Policies may provide coverage if they meet underlying requirements. However, there may be specific restrictions on the type of body of water (such as no coverage for the Great Lakes or salt water).

- ***Property in Care, Custody, or Control***

These exclusions usually follow form with the primary policies. As mentioned, some Umbrella and Excess Policies provide broadened coverage with respect to personal property.

- ***Employment Related Practices***

Some Umbrella and Excess Policies exclude all bodily injury losses caused by employment-related practices, including discrimination. Others may exclude discrimination or provide discrimination coverage, but under limited conditions. In some cases, coverage may be bought back by endorsement. Discrimination may be included with the definition of personal injury and restricted by the use of an exclusion.

- ***Injury to Fellow Employee***

Some Umbrella and Excess Policies do not contain this exclusion, but many do. Those that exclude injury to a fellow employee may not apply the exclusion to executive officers.

- ***ERISA/Employee Benefits Liability***

Many Umbrella and Excess Policies either entirely eliminate coverage for liability arising out of the Employee Retirement Income Security Act (ERISA) or Employee Benefits Liability, or severely restrict any coverage.

In some cases, this exclusion is added by endorsement for those insureds with greater exposure (a large number of employees or self-administered employee benefits).

- ***Punitive Damages***

Punitive Damages is becoming a more common exclusion, usually attached by an endorsement. The exclusion of punitive damages is a serious limitation, since some states permit the awarding and insuring of punitive damages. In some cases, punitive damages are entirely excluded and in some instances excluded only if also excluded in the underlying policies. Some Punitive Damage Exclusions apply only to certain activities (such as liability arising out of discrimination).

- ***Pollution***

All Umbrella and Excess Policies have some type of pollution exclusion. Some have the same exclusion as found in underlying policies. Some contain an absolute pollution exclusion, similar to the Total Pollution Exclusion Endorsement that may be attached to the CGL Policy. A few have a Pollution Exclusion that contains an exception, which gives back pollution coverage when the occurrence is sudden and accidental. Individual companies use a variety of pollution exclusions which have exceptions for limited loss situations.

- ***Uninsured Motorists and Underinsured Motorists***

Some Umbrella and Excess Policies exclude Uninsured Motorists and Underinsured Motorists, unless provided for in an underlying policy, while other Policies contain an absolute exclusion.

- ***Asbestos***

Under this exclusion, there is no coverage for liability arising from the production and/or distribution of asbestos products, or ownership or control of property containing asbestos.

Many of the exclusions found in the Umbrella/Excess Policies have been reviewed. The number is indicative of the broad coverage that is provided and the diversity of the many Umbrella/Excess Policies offered by insurance carriers.

Structuring Excess Layers

There are many alternatives to structure excess layers of liability limits.

Single Layer is the simplest choice of providing excess liability limits. One company writes the excess limit over the underlying policies.

One single company writes \$10 million excess liability limits
Underlying policies

Multiple Layering is another alternative to providing high excess limits. This is achieved with two or more companies willing to write excess layers.

Company B - \$8 million excess over Company A
Company A - \$2 million excess over Underlying
Underlying policies

Quota Share is commonly seen in large accounts with large excess limits. Basically, the companies share a percentage of a layer of limits. Sometimes a layer with a single company is below or above the companies that have a quota share.

Company B 50% of \$10 million limit	Company C 50% of \$10 million limit
Company A - \$5 million excess over Underlying	
Underlying policies	

Buffer Layers

A buffer layer is sometimes used to meet Excess Policy requirements for underlying limits. This sometimes occurs when the CGL carrier can write higher limits - in order to meet the excess carrier's requirements - but the BAP carrier cannot.

Company B Excess	
CGL	Company A - Buffer Layer
	BAP

CONCLUSION

Due to the variety of Umbrella/Excess Liability Coverage Forms that are available, an Umbrella/Excess Policy can do more than just offer additional limits over an underlying policy. Depending on the terms and conditions within each company-specific coverage form, coverage may be broader than the underlying or in some areas more restrictive. It may also provide primary coverage when the underlying aggregate limits are exhausted. Since the majority of companies use their own specific form, it is important to understand the different terms and conditions offered in order to provide the appropriate umbrella/excess liability coverage the named insured needs.

CHAPTER 14: MISCELLANEOUS LIABILITY

CYBER LIABILITY

INTRODUCTION

The growth and dependency on technology has created exposures that are of an increased concern in today's business world. Companies that rely on computer technology and the Internet to promote or transact business have risks of loss of which they may not even be aware. In response to these exposures, Cyber Liability Insurance was developed to provide insurance protection for some of those cyber exposures not covered by the Commercial General Liability Policy or other liability policies. This section focuses only on the most common cyber liability exposures and cyber liability insurance coverages available to pay for claims for which an organization is legally obligated to pay.

SOURCES OF LIABILITY

As mentioned in earlier chapters of this book, there are three types of legal liability: contractual liability, tort liability and statutory liability. A business can be held legally responsible to pay for liability losses suffered by a third party. Types of parties that could be exposed to cyber risks by a company's use of technology are its website visitors, customers, clients, vendors, or suppliers.

Various legislation affects businesses that use computers or conduct Internet-related activities. These state and federal laws have established various regulations and requirements including, but not limited to, data security, security breaches, Internet privacy (e.g., personal, financial and medical data), email communications, electronic commerce, Internet access, computer and computer network access, digital copyrights, and copyright infringements.

The majority of the states have enacted legislation requiring notification of security breaches involving personal information. The effects of a data breach can be costly, depending on the forensic investigation and the type of notification requirement.

EXPOSURES

There are several types of third party claims that can arise from a company's use of computer technology and the Internet. The most common third party losses are due to:

- Security Breach;
- Privacy Violation, and
- Website Content.

Security Breach

Most businesses rely on computer technology and the Internet to develop, store, and transmit data. As reliance on computers and the Internet increases, so does the risk of a security breach, regardless of the size of the business. Unauthorized access to computer data or its network system is considered a security breach. A hacker is a commonly used term for an individual who has unauthorized access to a computer system or to certain computer files.

Common losses that could result from a security breach are:

- The unauthorized taking (theft) or misuse of personal information or data;
- Introduction of a malicious code or virus into a computer or its network system; and
- Denial of service attacks, which is also known as impaired access.

A business could be held legally liable if its customers are affected by a security breach.

Unauthorized Taking or Misuse of Personal Information

The unauthorized taking of personal information is commonly referred to as identity theft.

EXAMPLE

A named insured's client's personal records, plans, or any type of product knowledge can be stolen by a hacker who provides/sells the information, which causes financial loss or reputational loss to the client.

Misuse of personal information can include vandalism and tampering. Vandalism may include the destruction, alteration, or damage of a customer's or client's records. Tampering may include the alteration of data.

EXAMPLE OF VANDALISM AND TAMPERING

Client records, plans, or other important documents at any professional office (lawyer's, doctor's, accountant's, engineer's, etc.) that are destroyed or altered can cause financial loss or embarrassment to the client.

Transmission of a Malicious Code or Virus

A malicious code or virus that is transmitted to an organization's computer system can also cause damage to other parties' computer systems.

Two common ways a malicious code or virus can infect another party's computer system are:

1. The organization unknowingly transmits a malicious code to any entity with which they electronically transact business.
2. Another party visits the organization's website and contracts a virus by downloading infected data.

Damage to another party could result in:

- loss or corruption of data; or
- economic loss due to system failure or shutdown

Denial of Service

A Denial of Service Attack (DoS) “floods” a computer network with information, thereby impairing electronic access by an authorized third party to gain access to an organization’s network system. Not only can a DoS attack cause a business income loss to the organization itself, but it can result in economic loss to other entities that rely heavily on electronic communication with the affected organization.

Privacy Violation

There are many types of organizations that handle private and confidential data. Some claims could arise due to an unintentional or careless act of an organization’s employee, or it could be the result of a security breach.

EXAMPLE OF DISCLOSURE OF CONFIDENTIAL INFORMATION

An employee at a doctor’s office unintentionally emails medical information to the wrong electronic address.

Website Liability

As more businesses use the Internet and their websites as a media to promote or conduct their business, they also increase their risk to liability claims filed by a third party. These claims are usually due to an error or statement published or posted on a business’ website.

EXAMPLE OF COPYRIGHT INFRINGEMENT

A business copies articles, text, music, graphics, images, etc., and uses it on their website without obtaining the owner’s permission. The owner could sue for copyright infringement.

EXAMPLE OF DEFAMATION

A salesperson posts a false negative comment or an embarrassing photo about a competitor on their employer’s website. The competitor could sue for defamation.

COMMERCIAL GENERAL LIABILITY LIMITATIONS

Reasons that an organization may not purchase Cyber Liability Insurance are they may be unaware of the exposures or have a belief that coverage is available under their Commercial General Liability (CGL) Policy.

The CGL Coverage Form was not designed to provide liability coverage for electronic data and other cyber-related exposures. The definition of “property damage” in the ISO CGL Coverage Form clearly states that electronic data is not tangible property. However, some offenses, as a result of the use of Internet, email, or certain website notices, may fall within the definition of personal and advertising injury and coverage may be provided by Coverage B Personal and Advertising Injury Liability. However, as mentioned in Chapter 10, Personal and Advertising Injury Liability has sixteen exclusions for which coverage does not apply. This further limits the type of offenses that may be covered as a result of a cyber activity loss.

The intent not to provide coverage under a CGL Policy is further reinforced with the attachment of mandatory endorsement CG 21 06 Exclusion – Access or Disclosure of Confidential or Personal Information and Data-Related Liability-With Limited Bodily Injury Exception.

NONSTANDARD CYBER LIABILITY FORMS

Cyber Liability Policies are usually claims-made forms. Even though an ISO standardized form is available, many carriers prefer to use their own policy form.

Carriers may refer to their cyber policy coverage form by different names or titles. Just because the name includes the word cyber, Internet or security does not mean it provides the coverage the organization needs or expects. This makes it imperative to read the carrier-specific form carefully to understand the coverage provided.

Coverage analysis is critical when comparing policies. Most cyber liability coverage forms vary in the policy wording found in the insuring agreements, exclusions, definitions, and other provisions.

COMMON CHARACTERISTICS OF CYBER LIABILITY POLICIES

Like most liability policies, a Cyber Liability Policy has policy wording that must be recognized and understood to properly understand the benefits, limitations, and exclusions of the Policy. Cyber Liability Policy structure is similar to the CGL and typically includes:

- Insuring Agreement;
- Definitions;
- Exclusions;
- Limits of Liability; and
- Defense and Settlement.

Examined here are some provisions and definitions found in a Cyber Liability Policy that are less familiar and offer more of a challenge when comparing policies. The specific names of these policy provisions vary from carrier to carrier.

Multiple Insuring Agreements

Most Cyber Liability Policies offer multiple insuring agreements (or clauses as indicated in some policies). Coverage is determined based on the insuring agreement selected in the Declarations.

Some policies have a single insuring agreement, which may limit coverage based on just one type, or a combination of the following insuring agreements.

Examples of Multiple Insuring Agreements associated with Cyber Liability Policies:

- A. Privacy Injury Liability
- B. Security Breach Expense
- C. Network Security Liability
- D. Content Injury Liability

SAMPLE OF AN INSURING AGREEMENT

We will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages by reason of a Claim first made against the Insured during the Policy Period and reported to the Insurer for any Wrongful Acts taking place after the Retroactive Date and prior to the end of the Policy Period.

The common key points usually found in cyber liability insuring agreements are:

- Pay on behalf of
- Legal obligation
- Loss (or wording such as Damages and Claims Expenses)
- Resulting from claim first made
- Against an insured
- For a wrongful act
- Involving cyber activities (or e-commerce activity)
- Occurring after retroactive date
- Reported during the policy period (or, if applicable, extended reporting period)

Definitions Found in Insuring Agreements

To fully understand the cyber liability insuring agreement, a careful review of the definitions must be conducted to determine how broad or restrictive the coverage actually is.

Privacy Injury Liability

If a Cyber Liability Policy is written with multiple insuring agreements, one of the insuring agreements is usually a Privacy Injury Liability insuring agreement. Liability for privacy injury may also be provided in combination with other coverages in a single insuring agreement.

This insuring agreement may go by other coverage names, depending on the carrier, such as Cyber Liability, Internet Liability, or Security Breach Liability, just to name a few.

The purpose of this insuring agreement is to provide liability coverage due to a wrongful act associated with the unauthorized access to or unintentional release of a third party's personal information. These claims usually are a result of a security breach or some form of e-commerce activity or communication.

SAMPLE POLICY WORDING

Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any Insured, in their capacity as such, resulting in:

1. the failure by the Insured for which the Insured is legally responsible to properly handle, manage, store, destroy, or otherwise control
 - a. personal information or
 - b. third party corporate information in any format provided to the insured and specifically identified as confidential and protected under a nondisclosure agreement or similar contract with the Named Insured or Subsidiary.
2. an unintentional violation of the Insured's privacy policy that results in the violation of any Privacy Regulation.

Some policies may include a definition of privacy injury but others may just rely on the definition of wrongful acts to determine what is covered. A careful review of privacy injury liability should be conducted so as not to be confused with liability associated with personal and advertising injury offenses. However, some privacy injury liability wording may be broad enough to include liability coverage for certain types of "personal and advertising injury" offenses.

Most policies include definitions for "personal information" (social security numbers, medical data, account numbers, passwords, etc.) and "Privacy Regulation" (HIPAA, Gramm-Leach-Bliley Act of 1999, etc.).

Security Breach Expense

This insuring agreement may be titled differently, depending on the carrier, such as Data Breach Expenses, Data Breach Fund, Privacy Notification Expense, or Regulatory Action Expenses. The purpose of this insuring agreement is to cover the costs/expenses sustained by an organization relating to a security breach, as opposed to damages paid by an organization to a third party. These expenses are usually necessary in order to comply with state and federal regulations.

SAMPLE WORDING

We will pay for **Data Breach Expenses** sustained by the **Insured** during the **Policy Period** by reason of a **Claim** reported to the **Insurer** for any **Wrongful Acts** taking place after the **Retroactive Date** and prior to the end of the **Policy Period**.

The key points to this insuring agreement include a review of the carrier's definition of Data Breach Expenses to see how broad or restrictive the coverage is. For example, some carriers include coverage for the cost to conduct a forensic investigation and others exclude this expense.

Some carriers include crisis management as a data breach expense. Other carriers may offer it as its own insuring agreement, while other carriers do not provide crisis management coverage at all.

SAMPLE WORDING

Data Breach Expenses means those reasonable and necessary expenses incurred by the Insured or which the Insured becomes legally obligated to pay:

1. To retain third party computer forensics services to determine the scope of a failure of Network Security;
2. To comply with Privacy Regulations, including, but not limited to, the consumer notification provisions of Privacy Regulations of the applicable jurisdiction that most favors coverage for such expenses;
3. With the Insurer's prior written consent, to voluntarily notify individuals whose Personal Information has been wrongfully disclosed;
4. In retaining the services of a public relations firm, crisis management firm, or law firm for advertising or related communications solely for the purpose of protecting or restoring the Insured's reputation as a result of a Wrongful Act;
5. To retain the services of a law firm solely to determine the Insured's indemnification rights under a written agreement with an independent contractor with respect to a Wrongful Act expressly covered under Insuring Agreement A of this Policy and actually or allegedly committed by such contractor; and
6. For credit monitoring services, but only if such disclosure of Personal Information could result in the opening of an unauthorized line of credit or other financial account.

SAMPLE WORDING

“Security breach expenses” means:

1. Costs to notify all parties affected by a “security breach”;
2. Overtime salaries paid to “employees” assigned to handle inquiries from parties affected by a “security breach”;
3. Fees and costs of a company hired by you for the purpose of operating a call center to handle inquiries from parties affected by a “security breach”;
4. Post event credit monitoring costs for victims of a “security breach” for up to one year from the date of the “security breach”; and
5. Any other reasonable expenses incurred by you with our written consent.

Network Security Liability

This insuring agreement may go by other coverage names depending on the carrier, such as Network Protection Liability, Data Protection Liability, or Cyber Security Liability. The intent of this insuring agreement is to pay damages due to economic loss suffered by a third party, or damages sustained by a third party because of the insured’s lack of network security or the failure of network security.

Wrongful Act as it pertains to Network Security Liability typically includes wording such as any actual or alleged error, omission, neglect, or breach of duty committed by any Insured that results in a failure of network security. The key to understanding what is covered is in the carrier’s definition of Network Security.

Network Security could mean those actions that an Insured takes to protect its computer system against such things as:

- Unauthorized access;
- Denial of Service Attack or Denial of Electronic Access; or
- Transmission of unauthorized virus or any kind of malicious code

A careful review of what is covered should be conducted. For example, some policies may not provide liability coverage due to a Denial of Service Attack.

Content Injury Liability

This insuring agreement may go by other coverage names such as Website Publishing Liability, Internet Media Liability, and Media Injury. The purpose of this insuring agreement is to provide liability coverage due to errors or misstatements posted or published on an Insured’s web site. This could include content injury coverage for businesses that incorporate social networking such as chat rooms, bulletin boards, or blogs as part of their business activities.

SAMPLE WORDING

“Wrongful act” means: with respect to Web Site Publishing Liability, any actual or alleged error, misstatement or misleading statement posted or published by an “insured” on its web site that results in:

1. An infringement of another’s copyright, trademark, trade dress or service mark;
2. Any form of defamation against a person or organization; or
3. A violation of a person’s right of privacy.

A careful review of the definitions and exclusions should be conducted to determine the extent of coverage provided.

Limits of Liability

There may be many variations to the way that Limits of Liability are offered and written on a Cyber Liability Policy. The most common option is that it is written with an aggregate limit of insurance per insuring agreement subject to a policy aggregate.

Defense costs and claims expenses typically reduce the Limit of Liability in most Cyber Liability Policies.

Some policies contain a separate sublimit for Regulatory Proceedings (if applicable).

Defense Costs within the Limits of Liability

Defense expenses in most Cyber Liability Policies are paid within, and not in addition to, the Limit of Insurance.

SAMPLE WORDING

Defense Costs reduce the Limit of Liability and are subject to the retention.

Duty to Defend

Most Cyber Liability Policies are written on a Duty to Defend basis, which means the insurer has the right and obligation to defend against covered claims brought against an insured. However, a careful review of Cyber Liability Policies should be conducted to see if there is a modified defense provision for Privacy Regulatory Proceedings (if coverage is applicable). This modified defense provision may not obligate the insurer to defend.

Regulatory Proceedings Defense Coverage

Definitions and coverage for regulatory defense coverage varies by carrier. Like most other provisions in a Cyber Liability Policy, a careful review should be conducted to see if coverage is provided and to see how broad or restrictive the coverage is:

SAMPLE WORDING

Regulatory Proceeding means a request for information, demand, suit, civil investigation or civil proceeding by or on behalf of a governmental agency, commenced by a service of complaint or similar pleading alleging the violation of privacy regulations as a result of the Insured's Wrongful Act, and which may reasonably be expected to give rise to a covered Claim under an Insuring Agreement of this policy.

Cyber Liability Exclusions

The list of exclusions can be long, and there are several variations and exceptions depending on the type of Cyber Liability Coverages selected. A careful review of these exclusions should be conducted to make sure the insured has the coverage that is needed and expected.

CONCLUSION

As technology advances and evolves, so do Cyber Liability Policies. More and more carriers are entering the marketplace by offering some type of cyber liability insurance product. These coverage forms should be reviewed and analyzed carefully to ultimately provide the best protection available for the insured.

LIQUOR LIABILITY INSURANCE

INTRODUCTION

In an earlier chapter, the need for and coverages provided by the Commercial General Liability Policy (CGL) were reviewed. It was explained that the Policy provides a promise to pay all sums the insured becomes legally obligated to pay as a result of bodily injury, property damage, and personal and advertising injury (as these terms are defined in the Policy) to which the insurance applies. Remember: the Policy must be read as a whole; there are terms and conditions that limit or exclude the coverage provided. In addition, the insurer has a contractual duty to defend that is even broader than the duty to pay, as allegations against an insured may be false or fraudulent. An obligation to pay may never arise, but the insurer may still have an obligation to defend. However, if there is no coverage provided by the Policy, the insurer has no duty to defend.

NEED FOR THIS COVERAGE

The CGL specifically excludes the exposure an insured may have for bodily injury or property damage arising out of the causing or contributing to the intoxication of any person. The exclusion applies to both common law causes of action (e.g., those that might be based on negligence, such as serving 21 shots to a person on his/her 21st birthday) as well as statutory causes of action [e.g., those that might be based upon liability imposed through so-called dram shop statutes that specifically impose partial responsibility for the actions of the persons (minors, visibly intoxicated individuals, or habitual drunkards) to whom alcoholic beverages were furnished]. These exposures typically arise because an intoxicated patron causes an altercation on premises or an intoxicated patron injures someone else in an automobile accident. However, the exclusion under the CGL applies only if the named insured is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.

2. Exclusions

This insurance does not apply to:

c. Liquor Liability

“Bodily injury” or “property damage” for which any insured may be held liable by reason of:

- 1) Causing or contributing to the intoxication of any person;
- 2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the “occurrence” which caused the “bodily injury” or “property damage”, involved that which is described in Paragraph (1), (2) or (3) above.

However, **this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.** (emphasis added).

For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

CG 00 01 04 13©

Insurance Services Office, Inc., 2012

Unfortunately, the Policy does not define the phrase “in the business of” except to stipulate that permitting a person to bring alcoholic beverages (e.g. BYO) for consumption on an insured’s premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages. Therefore, under the rules of construction of an insurance policy, the policy is construed liberally in favor of the insured and strictly against the insurer. Inherent in this approach is the acknowledgment of the unequal bargaining power of the insured and insurer and an admission that insurance policies are, in most cases, contracts of adhesion.

As a result, there have been court cases where the jury and/or judge have been asked to determine what the phrase “in the business of” means in the context of the CGL Policy. The results have been at opposite extremes, especially when asked if the exclusion applies to non-profit organizations based upon this organizational characteristic. For example:

In a Massachusetts case, the Court found the exclusion inapplicable, stating the veterans’ organization was a non-profit group incorporated for charitable purposes.

The New Hampshire Supreme Court found that the phrase “in the business of” could include any regular activity which occupies one’s time and attention OR an activity with a direct profit motive. Resolving this ambiguity in favor of the insured, the Court stated that the phrase must be read in the narrower sense; therefore, this veterans’ organization did not have the same profit motive as a restaurant or tavern, and the exclusion did not apply.

These court cases obviously ignored the positions of the insurers involved. More recent decisions have focused more on the activities of the insured, rather than the insured’s organizational characteristics.

In a Louisiana case, the Court found that although the veterans’ organization was a non-profit organization, it was in the business of selling, serving, or furnishing alcoholic beverages on a night when it rented a hall for a party. It stated the policy language “in the business of” described the nature of the activity, not the specific purpose for which the activity was pursued (whether for profit or not).

In a Missouri case, the Court stated that a bar, although part of a non-profit organization, exposed its insurer to the same risks inherent in other profit-making establishments that served alcohol. Therefore, the liquor liability exclusion precluded coverage. The entity was “in the business of” selling and serving alcoholic beverages. The Court specifically noted that the organization was licensed to sell alcohol and the bar was open to the public.

As a result of the early court decisions, the insurance industry responded with an endorsement to policy language that does not use the phrase “in the business of”. The Amendment of Liquor Liability Exclusion is applicable based more upon the named insured’s activities and also for BYO businesses.

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

The following replaces Exclusion **c.** under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability**:

2. Exclusions

This insurance does not apply to:

c. Liquor Liability

“Bodily injury” or “property damage” for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the “occurrence” which caused the “bodily injury” or “property damage”, involved that which is described in Paragraph **(1)**, **(2)** or **(3)** above.

This exclusion applies only if you: *(emphasis added)*

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license;
 - (b) Is for the purpose of financial gain or livelihood;
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or
- (4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.

CG 21 50 04 13

© Insurance Services Office, Inc. 2012

Regardless of which method of excluding insurance protection is utilized by a specific insurer, the liquor liability exclusion of the CGL Policy is not absolute. Thus, it is possible that insurance protection could be provided under the CGL Policy for those who are truly not “in the business of” furnishing alcoholic beverages. The protection afforded these entities is commonly known as host liquor liability. As the phrase implies, it is intended to provide insurance protection for those entities that might provide alcoholic beverages to guests in social settings such as fundraisers,

parties, etc., where these entities are held responsible for the actions of their guests after their consumption of alcoholic beverages.

Since the exposure for those “in the business of” selling, serving, or furnishing alcoholic beverages is not properly addressed by the CGL Policy, more specific insurance is needed. Insurance protection for these exposures is available through standard coverage forms developed by “rating bureaus” such as ISO, as well as proprietary coverage forms developed by specialty insurers. Policies may be designed specifically for a particular state liquor liability (dram shop) statute while others are designed to cover both statutory and common law liability.

UNDERWRITING CONSIDERATIONS

As with any particular insurance coverage, there are specific underwriting considerations. Among these are the percent of alcohol sales compared to total sales, hours of operations, type of operations, number of years in business, loss experience, business practices (e.g., requiring verification of age of every patron served), citations for violation of liquor control laws, etc.

POLICY CHARACTERISTICS

Insuring Agreement

The Liquor Liability Policy’s insuring agreement addresses a very specific exposure – the selling, serving, or furnishing of any alcoholic beverage. However, while a patron being involved in an automobile accident after consuming alcoholic beverages at the insured’s premises may fall unambiguously within this insuring agreement, a patron causing a fight on premises may not be as clearly defined within these parameters. It is possible the fight resulted from the insured’s negligent security, etc. In this case, the claim may be addressed by the coverages of both the Liquor Liability Policy as well as the CGL Policy.

SECTION I – LIQUOR LIABILITY COVERAGE**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “injury” to which this insurance applies if liability for such “injury” is imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “injury” to which this insurance does not apply. We may, at our discretion, investigate any “injury” and settle any claim or “suit” that may result. But:

- 1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to “injury” only if:

- 1) The “injury” occurs during the policy period in the “coverage territory”; and . . .

CG 00 33 04 13

© Insurance Services Office, Inc., 2012

Injury is defined by this Policy to include all damages as a result of bodily injury, property damage and for care, loss of services, or loss of support. As can be deduced, this is broader than just damages for bodily injury and property damage as covered by the CGL Policy.

As previously stated, the insuring agreement might be limited to the dram shop statute of a particular jurisdiction. This type of insuring agreement is obviously more limited in scope, as it does not cover dram shop liability in other jurisdictions nor common law liability in any jurisdiction.

Exclusions

As with other coverage forms, the Liquor Liability Policy has exclusions that are applicable. Under the standard ISO coverage form, the exclusions for Expected or Intended Injury, Workers Compensation and Similar Laws, Employers Liability, and War are identical to those found in the CGL Policy. There are also exclusions unique to this particular policy.

This insurance does not apply to:

c. Liquor License Not In Effect

“Injury” arising out of any alcoholic beverage sold, served or furnished while any required license is not in effect.

CG 00 33 04 13

© Insurance Services Office, Inc., 2012

Insurers are not typically willing to provide insurance protection when the insured is engaged in illegal activities. However, this exclusion could be troublesome, as it applies whether or not the insured knows the entity is engaged in such activities.

This insurance does not apply to:

d. Your Product

“Injury” arising out of “your product”. This exclusion does not apply to “injury” for which the insured or the insured’s indemnities may be held liable by reason of:

- 1) Causing or contributing to the intoxication of any person;
- 2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- 3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

CG 00 33 04 13

© Insurance Services Office, Inc., 2012

This exclusion coordinates coverage between the CGL Policy and the Liquor Liability Policy. It makes it clear that the CGL Policy is the policy that addresses the products liability exposure of the entity. For example, a patron is served a drink where a piece of glass from the bottle is ingested by the patron. The patron suffers bodily injury as a result. The policy that responds to this injury is the CGL Policy.

This insurance does not apply to:

e. Other Insurance

Any “injury” with respect to which other insurance is afforded, or would be afforded but for the exhaustion of the limits of insurance.

This exclusion does not apply if the other insurance responds to liability for “injury” imposed on the insured by reason of the selling, serving or furnishing of any alcoholic beverage.

CG 00 33 04 13

© Insurance Services Office, Inc., 2012

This exclusion applies if the injury is covered by any other insurance, unless the other insurance is also applicable to the selling, serving, or furnishing of alcoholic beverages, in essence another Liquor Liability Policy. In that situation, the other insurance clauses of the policies determine how each policy responds.

Insurer specific exclusions may apply for claims arising from assault and battery, certain types of entertainment, acts of any insured other than the selling/serving/furnishing of alcoholic beverages, etc. In addition, punitive damages may be excluded specifically or through the insuring agreement being applicable to compensatory damages only.

Obviously, since one of the primary exposures of those establishments that sell, serve or furnish alcoholic beverages is responsibility for altercations on premises, a Liquor Liability Policy with an

assault and battery exclusion should be avoided, if possible. Some insurers are willing to allow the insured to buy back coverage for this exposure; unfortunately, a sublimit often applies.

Supplementary Payments

Many Liquor Liability Policies also provide coverage for certain Supplementary Payments similar to those provided by the CGL Policy. Payments made under Supplementary Payments are in addition to policy limits.

Who Is An Insured

As with any liability insurance policy, the “Who Is An Insured” provision should be perused. Some dram shop statutes allow claims against individuals (e.g., executive officers or bartenders) as well as the entity. Therefore, since bartenders may be employees and/or volunteers, it is important that these individuals be included as insureds.

Limits

Most Liquor Liability Policies have two Limits of Insurance applicable. The aggregate limit is the maximum amount the insurer pays for all claims arising out of the selling, serving, or furnishing of alcoholic beverages during the policy period. The common cause limit is the maximum amount the insurer pays for all claims arising out of the selling, serving, or furnishing of alcoholic beverages to any one person, regardless of the number of altercations or automobile accidents caused by that person.

Designated Premises

Most Liquor Liability Policies limit coverage in the Coverage Form to apply to specific premises either shown in the Declarations or, if restricted by endorsement, shown in the Schedule on the endorsement. The Policy must be expanded (usually by endorsement) to provide insurance protection for the selling, serving, or furnishing of alcoholic beverages at special events such as golf outings, bus trips, festivals, fairs, etc. In addition, this restriction does not meet the coverage needs of caterers, distributors, etc., where the selling, serving, or furnishing of alcoholic beverages takes place at locations other than the insured’s premises.

Representations versus Warranties

While most liability policies, including Liquor Liability Policies, are written based upon applications that contain representations made by an insured, there are some insurers who have warranty applications. In order for a policy to be voidable, representations must be false and material to the coverage provided. However, warranties must only be false for coverage to be void.

CONCLUSION

As with any insurance policy, all terms and conditions must be read and understood to determine the extent of insurance protection provided. Those in the business of selling, serving, or furnishing alcoholic beverages are in need of the broadest coverage available under a Liquor Liability Policy.

DIRECTORS AND OFFICERS LIABILITY INSURANCE

INTRODUCTION

Several directors are accused of collusion with a competitor to restrict competition and are prosecuted for breach of the Trade Practices Act. In a separate claim, they are accused of allegedly misappropriating trade secrets.

Directors and officers are charged with important executive management decision-making functions of an organization. These organizations include publicly or privately held corporations and not-for-profit organizations. With these functions come liability exposures related to the management duties owed. Directors and Officers Liability Insurance (D&O) provides certain protection when these duties are breached or allegedly breached and suits are filed against a director or officer.

It is easier to understand Directors and Officers Liability Insurance as an organizational liability policy, which includes coverage for many of the exposures created by others and not just directors and officers. An example is the exposures created by corporate governance.

SOURCES OF D&O LIABILITY

As mentioned in chapter 3, the two types of law that create legal liability are:

1. Common law - such as tort liability or contractual liability; and
2. Statutory law - created by the passing of various statutes.

Common Law Exposures

Duties of Directors and Officers

Due to common law, there are certain duties imposed on those individuals who serve as directors or officers of an organization.

The three basic duties directors and officers owe are:

1. Duty of Loyalty;
2. Duty of Obedience; and
3. Duty of Diligence.

Duty of Loyalty

Directors and officers have a duty to act in the best interests of the organization. This includes putting the organization's interests first and foremost above his or her individual interest. The director and officer should not enter into a conflict of interest, or engage in any acts or make

decisions that place the gain of the individual before that of the organization, or at the expense of the organization.

Duty of Obedience

Directors and officers have a duty to conform to the company charter and bylaws. The director and officer should act in accordance to the authority granted, and these acts should not exceed the authority conferred or in any way conflict with the mission or goal of the business. Duty of obedience also includes performing duties according to federal or state laws and regulations.

Duty of Diligence

Directors and officers have a duty to manage in an expedient and knowledgeable manner. This is known as the duty of diligence. The directors and officers are required to act with reasonable care in performance of their duties and in making informed decisions. Failure to act or inadequate or inappropriate acts can be to the detriment of the company.

Statutory Law Exposures

Directors and officers face potential liability exposures from a variety of legislative enactments. Examples of potential liability arising from various statutes include allegations of:

- Anticompetitive or deceptive business acts;
- Corporate fraud;
- Disclosure of trade secrets;
- Violation of employment-related practices;
- Infringement of copyright, patents, trademarks;
- Insider trading;
- Mismanagement of employee benefit or pension plans;
- Violation of securities laws.

THE NEED FOR D&O LIABILITY INSURANCE

There are various reasons why it is beneficial for an organization to purchase D&O Liability Insurance.

- Depending on the situation, directors and officers may have a personal liability exposure where their personal assets are placed in jeopardy in exchange for serving in an executive management capacity or for making discretionary business judgments.
- Some state laws require corporations to provide indemnification for directors and officers when certain types of claims are filed against them.
- There may not be any statutory protections or immunities for the organization or the individual serving as a director or officer of the organization for certain claims.
- Some corporate bylaws may not allow individuals serving as directors and officers to be indemnified for claims brought against them.

- If corporate bylaws provisions allow for directors and officers to be indemnified, the corporation can use D&O Liability Insurance as a means to reimburse itself.
- When corporations purchase D&O Liability Insurance, it makes it easier for corporations to attract quality “outside” individuals to serve in an executive management capacity.
- If a corporation does have D&O Liability Insurance, it can be used to reassure “inside” directors and officers in the event of a difficult financial situation.

Commercial General Liability Policy Limitations

Directors and officers are automatic insureds under a Commercial General Liability Policy, but only with respect to their duties as directors or officers. The CGL Policy provides coverage for the directors and officers when there is a legal obligation to pay for bodily injury, property damage, and/or personal and advertising injury when they are acting in their capacity as such, subject to policy terms and conditions.

However, some claims filed against directors and officers are for economic loss or claims other than for bodily injury, property damage, and/or personal and advertising injury as these terms are defined in the CGL Policy. The CGL Policy is not designed to provide liability coverage for these other types of claims associated with executive management duties and functions.

D&O LIABILITY INSURANCE COVERAGE

Nonstandard Forms

Directors and Officers Liability Insurance Policies are unique and are widely written as nonstandard, company specific forms. These are usually claims-made forms, rather than occurrence forms.

There is an ISO standard form available; however, many carriers prefer to use their own policy form.

Some policy characteristics are similar; however, the coverage language varies from carrier to carrier. Some forms are broad in scope while others are limited as to what is provided. It is imperative to read the carrier specific forms carefully in order to compare and understand the coverages provided.

Examples:

- Most D&O policies are written on a “pay on behalf of” basis; others are “indemnity” policies.
- Some policies provide advancement of defense costs; others do not.
- Some policies contain a severability provision (the wrongful act of a director or officer shall not be imputed to any other director or officer); others rescind coverage for all insureds, including the officers that are judged innocent.

These are just a few examples of why a careful examination must be conducted in order to provide the appropriate protection for the directors and officers.

D&O Policy Provisions

Every insurance policy has provisions that must be recognized to properly understand the benefits, limitations, and exclusions of the policy. Many provisions of the D&O policies are similar to those found in other liability policies.

Common Characteristics of D&O Policies

Insuring Agreements

Some of the concepts of an insuring agreement have been covered in previous chapters. To fully understand the unique concepts of the Directors and Officers Liability Insuring Agreement, the key definitions and provisions found in the Policy must be reviewed.

Depending on the carrier and the coverage selected, a D&O Policy can contain three different Insuring Agreements, also known as Sides or Clauses.

Side A is usually referred to as the Directors and Officers Liability Agreement.

Side B is usually referred to as the Company Reimbursement Agreement.

Side C is usually referred to as the Company, Corporate or Entity Liability Agreement.

Side A (D&O Liability)

Side A typically pays for directors and officers liability for situations that are non-indemnifiable by the corporation/organization.

EXAMPLES OF NON-INDEMNIFIABLE SITUATIONS

1. The organization lacks the funds to indemnify the director or officer.
2. The law prohibits the organization from indemnifying the director or officer in a shareholder derivative litigation situation.
3. The organization is not legally required to indemnify the director or officer.

Following are points that are typically found in a Side A Insuring Agreement:

- Pay on behalf of;
- Directors or Officers (Insured Persons) Loss;
- Legally obligated;
- Resulting from claim first made against a director or an officer;
- For a wrongful act by the director or officer;
- Except for loss which the company has paid or indemnified; and
- Reported during the policy period (or, if applicable, the discovery/extended reporting period).

Side B (Company Reimbursement Coverage)

The purpose of Side B is to provide the company/organization with insurance proceeds after the company has indemnified the director or officer.

Following are points that are typically found in a Side B Insuring Agreement:

- Pay on behalf of;
- Company Loss;
- As permitted or required by law;
- For loss which the company has paid or indemnified;
- A director and/or officer legally obligated to pay;
- Resulting from claim first made against a director or officer;
- For a wrongful act by the director and/or officer; and
- Reported during the policy period (or, if applicable, the discovery/extended reporting period)

Side C (Company/Corporate/Entity Liability)

Side C insurance usually defends the company/organization and pays settlements/judgments when the company/organization is a defendant in managerial litigation.

Following are points that are typically found in a Side C Insuring Agreement:

- Pay on behalf of;
- Company Loss;
- Legally obligated;
- Resulting from claim first made against the company;
- For a wrongful act by the company; and
- Reported during the policy period (or, if applicable, the discovery/extended reporting period)

This agreement varies by carrier and may have limitations on the types of claims that are filed against a company. Example: Coverage may only pay as a result of a securities claim.

Definitions

To fully understand the unique concepts of the Directors and Officers Liability Insuring Agreement, the key definitions and provisions found in the policy must also be reviewed. Definitions vary by carrier. Some of the key definitions that should be reviewed are:

- Director or officer;
- Company;
- Subsidiary;
- Loss;
- Wrongful act; and
- Outside position.

Director or Officer

Director or officer typically means an individual who is duly elected or appointed as a director or officer of the Company. Sometimes this definition also includes directors or officers of a subsidiary or their functional equivalent.

Some carriers include a broader definition to include any past, present, or future director or officer.

A broader definition could also include trustees, members of the board of directors, committee members, or any employees.

Company

The definition of Company typically means any company named in the Declarations. The definition may also be broad enough to include any subsidiary.

Subsidiary

As mentioned above, some carriers may extend coverage to a director or officer of a subsidiary. Some carriers are specific as to when and how coverage is extended for the wrongful acts of a director or officer of a subsidiary.

A basic definition of a subsidiary is any corporation in which more than fifty (50%) of the outstanding securities or voting rights representing the present right to vote for election of directors or an equivalent position is owned.

Loss

A careful review of this definition is needed because it defines the sums the carrier pays as a result of a covered claim. Following are some items that may or may not be included in the definition of a loss:

- Claims expenses;
- Compensatory damages;
- Damages, settlement, judgment amounts; and/or
- Legal fees and investigative costs.

Other items that may be included or excluded, depending on the carrier, are:

- Pre-judgment and/or post-judgment interest;
- Fines, penalties or taxes; and/or
- Punitive or exemplary damages subject to applicable law.

Wrongful Act

Wrongful acts vary by carrier and can mean any actual or alleged error, misstatement, misleading statement, act, omission, neglect, or breach of duty by the director or officer in such capacity.

Definitions may also include wording, which includes any matter claimed against the director or officer, solely by reason of their serving in such capacity.

Some carriers' definitions may include actual or alleged personal and advertising injury committed by the director or officer.

The wrongful act definition may also extend to an Outside Position held by a director or officer.

Outside Position

Outside Position may mean the service of a director or officer in the position of director, officer, trustee, or other equivalent executive position for an outside entity, but usually only if such service is with the knowledge and consent of the company.

Some policies may restrict coverage as excess to any D&O Liability Insurance the outside organization may have.

Some policies may limit coverage to only certain types of outside entities such as non-profit organizations, excluding for-profit organizations.

Limits of Liability

There may be various ways that limits of liability are offered and written on D&O Liability Insurance Policies. Following are a few options:

- A single limit of liability/aggregate and single retention;
- A single limit of liability and scheduled retentions;
- Scheduled limits of liability and scheduled retentions.

A commonly used variation is one single policy aggregate limit, whether a loss is covered under one or more insuring agreements.

Claims expenses, including defense costs, usually reduce the limit of liability in most D&O Policies.

Retention

Retention usually does not apply to losses pertaining to a Side A Insuring Agreement (D&O). However, most carriers do require a retention on Side B (Corporate Reimbursement) and Side C (Corporate Liability) Insuring Agreements.

Most carriers have an obligation to pay a loss only in excess of any applicable retention. However, some policies may include language that, if for whatever reason, a company fails to pay the retention, the carrier may pay the loss and seek reimbursement from the company for the applicable retention.

In some policies, a carrier may include a provision to waive retention in certain circumstances. Example: If it is established that no insured is liable for any loss in connection with a claim, then

no retention applies to costs of defense. In this case, the carrier reimburses the insureds for any covered costs of defense paid by them.

Exclusions

Most D&O Policies typically exclude any exposure and resulting claim that is better addressed by another specifically designed insurance policy such as a CGL Policy, Workers Compensation and Employers Liability Insurance Policy, Employment Practices Liability Insurance Policy, or Fiduciary Liability Policy. An example is a claim involving bodily injury to a third party.

Some D&O Policies have very broad coverage and only have a limited number of the exclusions listed below. Other Policies may not be as broad or the exclusions may have some exceptions.

Exclusions that can be found in a D&O Policy include:

- Fines and penalties;
- Punitive damages;
- Pollution exclusion;
- Prior or pending litigation;
- Personal profit, remuneration, or advantage;
- Dishonest, malicious, fraudulent, or criminal acts;
- Securities-related claims, also commonly known as “short swing” profits;
- Insured versus insured;
- Outside directorship; and
- Employee Retirement Income Security Act (ERISA)

If a D&O Liability Insurance Policy contains multiple insuring agreements, some of the exclusions may only apply to certain insuring agreements.

Depending on the business operations of the company, additional exclusions may be added by endorsements.

Severability Provision

Some D&O Policies contain a severability provision. This provision is also known as the “innocent bystander” provision. The wrongful act of a director or officer shall not be imputed to any other director or officer. In other words, an innocent director or officer is not barred from having defense coverage available if a claim is filed against several directors and officers, some of whom are found guilty.

CONCLUSION

There is a great expectation by others for the performance of individuals who serve as directors and officers of organizations. When those expectations are not met, such as when a director allegedly fails in his/her duties, the door is open for potential lawsuits. The CGL Policy does not provide coverage for most D&O exposures. To avoid any misunderstandings of coverage, it is important to understand D&O exposures and the types of protection available and needed by directors and officers and organizations.

The employment practices liability exposures and coverages are explained in a separate section in this chapter.

PROFESSIONAL LIABILITY

INTRODUCTION

Professional Liability insurance refers to the broad area of specialized policies designed to handle losses due to the professional services exposure. Professional liability insurance may be referred to by different names, depending on the profession. For example, professional liability insurance in reference to the medical profession may be called medical malpractice insurance.

Before the 1970's, the number of claims associated with the professional services exposures was very low, and the insurance coverage was usually only written for medical, legal, and financial professionals.

Since then, coverage for the professional liability exposures has evolved into a wide variety of stand-alone insurance products. The traditional professionals still exist, and certainly have a need; but there are now a whole host of new professionals requiring professional liability or errors and omissions insurance protection.

Traditional "professionals", including consultants such as landscape architects, beauticians, tax preparers, and educators are advised to purchase professional liability insurance coverage. In fact, many of these service providers have contractual obligations to maintain professional liability coverage. For example, a corporation contracts with a CPA firm to handle all their corporate tax issues. The contract requires the CPA firm to purchase and maintain Accountant's Professional Liability Coverage.

Definitions

Professional

A person who belongs to a learned profession or whose occupation requires a high level of training and proficiency. (Black's Law Dictionary Ninth Edition)

A professional is someone who has special training, skills, and experience - someone who has to know more than another person to do his or her job. Often, professionals have to be trained at special schools or be certified by organizations.

Professional Liability

While many definitions for professional liability exist, professional liability can best be described as: The legal liability arising out of the wrongful conduct of a professional, including the failure to perform to the expected standard of care of his or her specific profession.

Standard of Care

Professionals owe a higher standard of care to their clients. "Standard of care" and "duty owed" mean essentially the same thing.

The minimum standard of care or duty owed by a professional is the expected conduct of other similar professionals in similar situations.

It can be established through:

- Statutes and regulatory bodies;
- Professional industry associations;
- Local customary practice; and
- Expert witness testimony.

Professional standard of care can be found:

- In laws which impose licensing requirements and similar duties upon the professional;
- In customary practices of fellow practitioners within the jurisdiction where the professional conducts his or her service;
- In standards articulated by professional associations; and
- In case law (court precedent).

When a standard of care is breached and damages or injuries are caused by that breach, the professional can suffer significant financial consequences.

Distinction between CGL Insurance and Professional Liability Insurance

The easiest way to understand the distinction between CGL Insurance and Professional Liability Insurance is to remember that:

1. *CGL coverage* is designed to pay for damages as a result of bodily injury and/or property damage which the insured is legally obligated to pay due to the premises or operations of a business and/or arising out of products and completed operations. There is also a legal obligation of the insurer to pay for damages because of personal and advertising injury.
2. *Professional, miscellaneous professional, and errors and omissions policies* are designed to pay damages due to claims based on or arising from providing or failing to provide services to the standard of care required as a professional.

CGL AND THE PROFESSIONAL SERVICES EXPOSURES

A common misconception in the insurance industry is that the CGL Policy excludes all professional liability exposures. To the contrary, some liability exposures faced by professionals are covered under the CGL Policy. The CGL Policy, for example, covers professional liability exposures that result in bodily injury and/or property damage and are not otherwise excluded or limited.

However, because of this, many insurers attach exclusionary endorsements to avoid insuring professional liability exposures.

CGL Exclusionary Language

There are three areas within the unendorsed Commercial General Liability (CGL) Policy where language creates an exclusion relating to professional liability.

Section II – Who Is An Insured

The first exclusion is found in Section II - Who Is An Insured, and pertains to employees or volunteer workers. Though they are insureds under the Policy for many acts while within their scope of employment, they are NOT insureds when the injury arises from providing or failing to provide health care services.

Coverage B Personal and Advertising Injury Liability

The second exclusion is found in Coverage B Personal and Advertising Injury Liability. Insureds in the business of advertising, broadcasting, publishing, or telecasting; designing content of websites for others; and internet search, access, content, or service providers are excluded for much of the coverage otherwise provided in this section of the CGL Policy.

Definition of Insured Contract

A third exclusion that applies to professional services is found in the definition of insured contract within the CGL Policy. There is no coverage for that part of any contract or agreement that indemnifies an architect, engineer, or surveyor for injury or damage arising out of:

- preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or
- giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

It also does not provide coverage under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in the previous paragraph, and supervisory, inspection, architectural, or engineering activities.

CGL Exclusionary Endorsements

There are over fifty exclusionary endorsements available, including one that is not specific to any one profession, but can be added for "designated" professional services.

CG 21 16 Exclusion – Designated Professional Services can be used to exclude professional liability for tanning salons, veterinarians, appraisers, health clubs, and other businesses providing professional services.

THE BUSINESSOWNERS POLICY AND THE PROFESSIONAL SERVICES EXPOSURE

The same type of exclusionary policy language exists in the Businessowners Policy as is found in the CGL Policy. In addition, the Businessowners Policy has a specific Professional Services Exclusion

that states insurance coverage does not apply to bodily injury, property damage, or personal and advertising injury caused by any professional service.

The Businessowners Policy does offer endorsements to add back coverage for certain professional services. The following are a few types that can be added to a BOP.

- Barber Shops and Hair Salons Professional Liability
- Optical and Hearing Aid Establishments
- Funeral Directors Professional Liability
- Printers Errors & Omissions Liability
- Veterinarians Professional Liability
- Pharmacists
- Beauty Salons Professional Liability

Professional Liability Coverage

The CGL Policy is not designed to handle the unique, complex exposures to loss that professionals have. Professional liability coverage is usually tailored for specific professions and provides the necessary protection for a vast number of individuals performing professional services.

Claims-made Coverage Form

Professional Liability Policies are typically written on a claims-made coverage form versus the more commonly used occurrence form. Claims-made versus occurrence is explained in Chapter 2.

Definition of Claim

The simple definition of a professional liability claim is a demand made to the insured for monetary damages as a direct result of a wrongful act arising out of the insured's professional service.

However, the definition of a claim may be more complex. A claim may, according to policy language, also include a notification of actions. This may be a civil investigation or administrative proceeding. It may include an alternative dispute resolution, which includes a mediator or arbitrator, rather than a court hearing or trial.

Many Professional Liability Policies include language such as "written demand for damages" or "suit" and may require written notice of the claim to the insurer. To understand what constitutes a claim requires knowledge of both the definition of claim and when and how a claim must be reported to the insurer. Reporting requirements determine the date of the claim and which policy responds.

Claim Notice and Reporting

The Claim Notice and Reporting provision is often found in the Conditions section of the Policy and provides the requirements for proper reporting of claims that have been made against the insured. In many policies, though not found in all, an additional reporting option for potential claims exists.

First, as a condition to the right of coverage provided by the Policy, the requirement of timely notice is stated. This may be shown as “must give written notice . . . as soon as practicable” or it may state “shall immediately give written notice”.

There may also be language that offers the insured the opportunity to report incidents, which may give rise to a future claim, to the insurer before a claim is ever made against the insured.

Some policies have language that allows for additional time for claims to be reported when they first become known late in the policy period. This provision may also allow for the current policy limits of liability to be used to pay the claim while preserving the renewal policy limits for future claims.

Many wrongful acts result in only one claim being made. Sometimes multiple claims result from a single wrongful act. Subsequent claims are treated as reported when the initial claim is first made. These subsequent claims are known as related claims. As related claims, they may share the date of claim, per claim limit, and applicable deductible.

COMMON CHARACTERISTICS OF PROFESSIONAL LIABILITY POLICIES

Every insurance policy has provisions that must be examined to properly understand the benefits, limitations, and exclusions of the Policy. The provisions typically include:

- Insuring Agreement
- Definitions: insured, wrongful act, insured services
- Damages
- Exclusions
- Limits of Liability
- Defense and Settlement

The Insuring Agreement

Some of the concepts of an insuring agreement have been covered earlier in this chapter. To fully understand the unique concepts of the Professional Liability Policy Insuring Agreement (or clause, as shown in some policies), the key definitions and provisions found in the Policy must be reviewed.

Following are points that are usually made in an insuring agreement:

- Pay on behalf;
- Legal obligation;
- Includes defense expenses;
- Resulting from claim first made;
- Must be for a wrongful act;

- Involving insured services;
- Occurring after retroactive date; and
- Reported during the policy period (or, if applicable, during any Extended Reporting Period).

Insuring Agreement – Pay on Behalf versus Indemnify

Some Professional Liability Policies use the term “indemnify”, rather than “pay on behalf”, as it relates to payment of sums the insured is legally obligated to pay. This means the insured must first incur the expenses and/or damages and then be made whole or reimbursed by the insurer, rather than the insurer paying the expenses and damages directly. Written consent by the insurer is required prior to the insured incurring the expenses.

Who Is An Insured

Who Is An Insured may be extended, limited, or require specific notification to the insurer, due to policy language found in the definitions, exclusions, and other policy provisions.

Consider:

- Covered Organizations/Entities/Firms and Covered Persons;
- Named Insured(s);
- Newly Acquired Organizations/Entities/Firms;
- Employees - Past, Present, Future;
- Directors and Officers - Past, Present, Future;
- Predecessor Firms; and
- Estates, Heirs, Representatives.

Named Insured (as stated in the Declarations) may be referred to as Organization, Firm, Company, Insured or by a term that has been included in the definition of insured.

Other individuals who are also insureds may include: past, present or future directors, officers, employees, or partners.

Predecessor Firms may be included within the definition of insured (and thereby provided coverage within the Professional Liability Policy).

Like other liability policies, the Professional Liability Policy can include coverage for newly acquired entities for a certain length of time before the acquisition must be reported to the insurer. Professional Liability Policies may not give a specific time period and instead use the phrase “immediately report to the company”. Often the Policy refers to a “material change” which is then defined and often refers to an increase or decrease in the total number of individuals offering the “insured services” due to acquisition, merger, or dissolution of the named insured.

Wrongful Act

Policy language defining wrongful act varies in Professional Liability Policies. Some key points that may be found in the various definitions include:

- Actual or alleged;
- Negligent act, error, or omission;
- Committed or attempted;
- Performance of or failure to perform; and
- Must happen in connection with an insured service.

Insured Services

Services to be covered by the Professional Liability Policy are defined at the time of application for coverage, according to underwriting requirements. In order to fully cover the professional, the underwriter must be aware of all the services the professional plans to offer. If a service is not listed on the application form, it normally is not included in the Policy's scope of covered services/acts.

If a change occurs during the policy period, as to the services the insured offers, the company underwriter usually must be notified and the Policy endorsed, which may include a requirement for payment of additional premium. If not, a dispute may arise when the insured makes a claim due to an undisclosed service or act. A description of the insured service may also be found in the Policy's definitions section.

Excluded Exposures

Exposures that are typically excluded by Professional Liability Policies can be described in one of several ways:

1. The exposure and resulting claim is better addressed by another specifically designed policy. Claims arising from exposures addressed by other policies may include:
 - Employment Practices Liability;
 - Bodily Injury / Property Damage;
 - Personal Injury;
 - Related / Affiliated Entities;
 - Work-related Injuries;
 - ERISA Responsibilities; and
 - Motor Vehicles, Aircraft, Watercraft.
2. The exposure is uninsurable or within the insured's control. Four of these types of exposures are:
 - Intentional Acts;
 - Prior Claims;
 - Antitrust Violations; and
 - Nonmonetary Relief.
3. The exposure exists for a select group and should be approached individually. It is excluded because of the need for additional premium necessary to provide the coverage.

Limits of Liability

There are multiple ways that Limits of Liability may be offered and written on Professional Liability Policies. It is important to recognize the options and be able to explain them to the client.

Variations include:

- One single policy aggregate limit
- Identical per claim and policy aggregate
- Non-identical per claim and policy aggregate limit
- One per claim limit with no policy aggregate limit

It is very important to recognize when defense costs are within the Limit of Liability and when they are provided in addition to the Limit of Liability. This is often referred to as “inside the limits” or “outside the limits”. It is more common in Professional Liability Policies to provide defense costs inside the Limit of Liability, whereas in the CGL Policy, defense costs are almost always in addition to the Limit of Liability.

When defense costs and damages are paid within the Limit of Liability, any applicable per claim limit further reduces the amount an insurer has available to pay toward a single claim or its related claims.

Many Professional Liability Policies provide supplementary payments for costs such as a daily amount for the insured to attend the proceedings at the insurer’s request. These additional payments are subject to a daily limit (e.g., \$250) and a maximum per claim limit (e.g., \$5,000) and are available in addition to the Policy’s Limit of Liability.

Defense and Settlement

The growing trend in Professional Liability Policies is to design the Policy in a way that gives the insurer control over the payment of defense costs.

There are two major characteristics to consider.

1. The duty relating to defense
 - Duty to defend
 - No duty to defend
2. Whether defense costs are within the Limits of Liability or in addition to the Limits of Liability

“Duty to Defend” Policies

This type of policy language gives the insurer the responsibility to defend the insured against any allegation of a covered wrongful act. As long as the alleged wrongful act is covered, defense is provided, even if it is proven that the insured is not negligent or legally liable. With a duty to defend policy, the insurer typically selects counsel and maintains control over the investigation and settlement of the claim.

“No Duty to Defend” Policies

The insurer must pay eligible defense costs, but the insured selects counsel and exercises considerable control over the conduct of his/her own defense. The insurer requires notification of the claim and the insured must obtain prior written consent from the insurer to determine eligible defense expenses. The insurer remains involved and must give consent prior to any assumption of liability as well as be involved in the settlement or judgment proceedings prior to reimbursement.

Though this type of policy is less common in Professional Liability Policies, some larger organizations have the resources and skills to manage their own defense. Many smaller organizations can actually benefit from a “duty to defend” policy, which allows them to utilize the expertise offered by the insurer.

Consent to Settle

A consent to settle provision, often called a “Hammer Clause” or a “Blackmail Provision”, is found in many Professional Liability Policies. If an insurer seeks to obtain the permission or consent of the insured to settle the claim, the insured is unwilling to give consent, and additional defense costs or increased damages are incurred, the insured may be liable for these additional costs. Some examples are as follows:

- The claimant agrees to settle for an amount that the insurer is willing to pay, but the insured does not give consent. The claim is finally settled for the same amount but additional defense costs are incurred; the insured is responsible for these costs.
- An insurer seeks consent from an insured for an amount to settle, but the insured does not give consent. The case goes to court and is ultimately settled for a higher amount. The increased defense costs and the increased damage award are not paid by the insurer.
- An insurer seeks consent from an insured for an amount to settle, but the insured does not give consent. The case goes to court and ultimately no damages are awarded. Additional defense costs are incurred but are still lower than the original offer to settle. The insurer pays the additional defense costs.

Defense Costs

As mentioned earlier, it is more common in Professional Liability Policies to find defense costs inside the Limit of Liability. However, this can vary with the type of Professional Liability Policy or the type of organization seeking coverage.

Deductible Options

No Deductible for Defense Costs

Defense costs may be paid from “dollar one” while damages are paid subject to the deductible. This can be achieved by endorsement or be built into the policy language.

Early Settlement Incentive

Some policies offer incentives for settling the claim, by reducing or eliminating the deductible under certain circumstances. Professional liability claims, most frequently, are settled out of court. Claimants, insureds, and insurers may use alternative dispute resolution as a formal process for resolving a claim.

Batch Clauses

Professional Liability Policies can include anti-stacking provisions, which allow only one deductible to be applied to claims related to the same covered act. These are also referred to as batch clauses.

CONCLUSION

Claims arising from a rendering or failure to render professional services can result in large losses. Even when a judgment is ruled in the professional's favor, the costs of defense are significant. A client should be made aware that the typical CGL Policy or Section II of the BOP or Homeowners Policies do not provide coverage for professional liability exposures and that the purpose of a Professional Liability Policy is to offer protection against claims or suits brought against the professional.

CHAPTER 15: BUSINESSOWNERS POLICY (BOP)

INTRODUCTION

The Businessowners Policy (BOP) is a policy designed to provide property and liability coverages for small or less complex businesses. It is similar to the Homeowners Policy in this regard. This chapter examines the property and liability coverages found in the Insurance Services Office (ISO) 2013 edition of the Businessowners Coverage Form (BP 00 03). Most companies use a variation of the ISO version of the BOP, but modifications vary from slight to significant. Much of what is reviewed in the three chapters on Commercial Property and the chapter on Commercial General Liability apply to this chapter.

Eligibility

The first critical area in understanding the BOP is which types of businesses are eligible for this package policy. Generally, owners of small office buildings, owners of apartment buildings, small retailers, and other small businesses whose activities or operations involve processing and/or service are eligible for the BOP. Even some contractors and restaurant risks are eligible. Manufacturers, especially with their complex liability issues, and automobile repair facilities are not suited for the BOP. However, ISO continues to expand the BOP eligibility rules.

ISO Eligible

The following are some of the eligibility requirements for the ISO BOP. Many insurers depart from these requirements.

Risks, unless otherwise restricted in the ISO eligibility rules, are eligible if they do not exceed a total of 35,000 square feet or exceed \$6,000,000 in annual gross sales at each location.

Apartment buildings of any size are eligible; this includes residential condominium associations.

Contractors, such as carpentry, construction of residential property, drywall installation, and landscape gardening are eligible, but they are limited to smaller businesses that do most of their own work.

Convenience stores, with or without eligible limited cooking or fast food restaurants, meet eligibility requirements. The rules also specifically state that there can be no automotive service or repair, no car wash, and no propane or kerosene tank filling.

Office buildings cannot exceed six stories in height or 100,000 square feet of total floor area.

Eligible service and processing businesses not only have the size limitations mentioned but are also limited as to type. Examples of eligible processing and servicing businesses are bakeries, laundry and dry cleaners, funeral homes, and print shops.

Restaurants are classified for eligibility into four types: 1) Limited cooking establishments, 2) Fast Food, 3) Casual Dining, and 4) Fine Dining. These four types of eligible restaurants are further limited to no more than 7,500 square feet of floor space and limitations apply as to seating capacity as well as types and amounts of alcohol sales.

Building and business personal property for self-storage facilities are eligible under the Businessowners Program. Self-storage facilities are not to exceed two stories in height. No limitation applies to floor area. Self-storage facilities that permit cold storage or storage of industrial materials, chemicals, pollutants and waste are ineligible.

Wholesalers comprise a large area of eligibility for the ISO BOP. No more than 25% of annual gross sales may be derived from retail operations and no more than 25% of the total floor area may be open to the public. Eligible classifications do not include the operations of manufacturers' representatives or contractors. Some common classes of eligibility for wholesalers are businesses that distribute: Auto Parts and Supplies, Hardware and Tools, Clothing or Wearing Apparel, and Plumbing Supplies.

Not ISO Eligible

There are also many classes of business that are ineligible for the ISO BOP. These types of operations are generally ineligible for the BOP because of the severity of the risk or special coverage situations. Major categories of ineligible business classes include: Auto Repair, Financial Institutions, Manufacturers, Bars/Pubs/Cocktail Lounges, Self-storage Facilities that provide outdoor storage of any type of motorized vehicles, including campers and recreational vehicles, and Amusement Facilities.

STRUCTURE OF THE BUSINESSOWNERS POLICY

The ISO 2013 Businessowners Policy is made up of the following components:

Businessowners Policy Declarations (BP DS 01 07 13)

+

Businessowners Coverage Form (BP 00 03 07 13)

Section I – Property

Section II – Liability

Section III – Common Policy Conditions

+

Businessowners Endorsements

BUSINESSOWNERS POLICY DECLARATIONS

Each insurance company develops its own BOP Declarations to meet its particular needs or methodology. However, the common items are: name and mailing address of the insured, policy number, name and mailing address of the agency, designation of insured's legal status (such as partnership), policy period, addresses of locations the policy covers, limits of insurance, and a list of forms and endorsements selected by the insured and/or insurance company. The Declarations individualizes the insured's policy.

BUSINESSOWNERS COVERAGE FORM – PROPERTY – SECTION I

The Businessowners Coverage Form Property Section provides coverage for “direct physical loss of or damage to Covered Property...” It may be endorsed to provide coverage for named perils only with Named Perils (BP 10 09). A majority of the coverage provisions are similar to those found in the Commercial Property Coverage Forms. The specific Commercial Property Coverage Forms that provide coverages similar to the unendorsed BOP (BP 00 03) are:

- Building and Personal Property Coverage Form
- Causes of Loss – Special Form
- Business Income (and Extra Expense) Coverage Form

Definitions

A closer examination of the property coverage under the BOP requires a look at selected definitions. These definitions in the BOP are similar or the same as those found in the coverage forms identified above.

Operations

Operations means business activities occurring at the described premises.

Period of Restoration

Period of Restoration means the period of time that begins:

1. 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
2. Immediately after the time of direct physical loss or damage for Extra Expense, caused by or resulting from any Covered Cause of Loss at the described premises.

The Period of Restoration ends on the earlier of:

1. The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
2. The date when business is resumed at a new permanent location.

Specified Causes of Loss

Fire, Lightning, Explosion; Windstorm or Hail; Smoke; Aircraft or Vehicles; Riot or Civil Commotion; Vandalism; Leakage from Fire Extinguishing Equipment; Sinkhole Collapse; Volcanic Action; Falling Objects; Weight of Snow, Ice or Sleet; and, Water Damage.

Coverage**Covered Property**

Under Covered Property, the primary concern is with protecting the building(s) and the business personal property owned by the named insured. While the CP 00 10 – Building and Personal Property Coverage Form – covers the building or structure described in the Declarations, the BP 00 03 covers buildings and structures at the premises described in the Declarations. In other words, only the premises must be described for a building to be covered. This can present advantages and disadvantages. For example, there may be a small building covered on a BOP but not a CPP because it was not described. Since all buildings and structures on the premises are covered on a BOP (whether described or not), this could create insurance-to-value problems. Also, there is the issue that business personal property in an undescribed building is covered on a BOP but not on a CPP.

Building

This is essentially the same definition found in the Building and Personal Property Coverage Form except that the BOP defines personal property in apartments provided by the landlord as part of the building.

Under the BOP, coverage is provided for buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- Completed additions;
- Fixtures (including outdoor fixtures);
- Permanently installed machinery and equipment;
- Personal property in apartments, rooms or common areas furnished by you (the named insured) as the landlord;
- Personal property used to service or maintain the building (like fire extinguishers, outdoor furniture, floor coverings, and appliances used for maintaining the building).

Also included in the definition of building are additions and repairs in progress and material, equipment, supplies, and temporary structures within 100 feet of the described premises which are used for making additions or repairs, if no other insurance is available for such property.

As stated above, the BOP covers buildings and structures at the premises described in the Declarations while the Building and Personal Property Coverage Form covers buildings or structures described in the Declarations. This means that a building can be provided coverage under a BOP, even if it is not specifically scheduled; this is not true under the Building and Personal Property Coverage Form.

Business Personal Property

In the BOP, the definition of Business Personal Property and Personal Property of Others is different compared to the coverage provided by the Building and Business Personal Property Coverage Form. The BOP describes both as Business Personal Property.

Under the BOP, Business Personal Property is the named insured's personal property located in or on the buildings or structures at the described premises or in the open (or in a vehicle) within 100 feet of the buildings or structures or within 100 feet of the premises described in the Declarations, whichever is greater. This property may include the following items:

- Property the named insured owns and uses in his/her business. This description is broader than what is found in the Building and Personal Property Coverage Form, which specifically lists the items that are included (e.g., furniture).
- Property of others in the named insured's care, custody, or control, but only for the amount the named insured may be legally liable, plus the cost of labor, materials or services furnished or arranged by the named insured on personal property of others.

EXAMPLE

A customer brings a clock into the named insured's store for replacement of some worn-out parts. The named insured starts the work, and a tornado damages the store and the clock. The value of the labor and materials used by the named insured are Covered Property.

- *Tenant's improvements and betterments. The coverage includes the value of improvements and betterments to a building or structure the named insured occupies but does not own, and that are made or acquired by the named insured at his or her expense, but cannot be legally removed.*
- Any leased personal property which the named insured has a contractual obligation to insure.
- Exterior building glass, if the named insured is a tenant and no limit of insurance is shown in the Declarations for Building. The named insured must own the glass or it must be in the named insured's care, custody, or control.
- Business personal property in an undescribed building at the insured premises is covered on a BOP but not under a Building and Personal Property Coverage Form.

Property Not Covered

As found in almost all property policies, not all property is covered property. There are several classifications of building and personal property items that are not covered. However, a much shorter list of property not covered is contained in the BOP than found in the Building and Personal Property Coverage Form. These excluded items of property are:

- Aircraft, autos, and other vehicles subject to motor vehicle registration;
- Money and securities except as provided in the Money and Securities Optional Coverage, or the Employee Dishonesty Optional Coverage;
- Contraband, or property in the course of illegal transportation or trade;
- Land, water, growing crops, or lawns (other than lawns which are part of a vegetated roof);

- Outdoor fences, radio or television antennas (including satellite dishes) or towers, signs (other than those attached to the buildings), trees, shrubs or plants (other than those which are part of a vegetated roof), all except as provided in the Outdoor Property Coverage Extension or Outdoor Signs Optional Coverage;
- Watercraft, which includes motors and accessories while afloat;
- Accounts, bills, food stamps, other evidences of debt, accounts receivables, or “valuable papers and records,” unless otherwise covered in the Policy;
- Computers (as defined) which are permanently installed or designed to be permanently installed in any aircraft, watercraft, or motor truck, unless held as stock.
- Electronic Data (as defined), except where coverage is provided under the Additional Coverage section of the Policy. This exclusion does not apply to pre-packaged software held as “stock” or to electronic data which operates or controls the building’s elevator, lighting, HVAC or security system.
- Animals, unless boarding them for others or being held for sale while inside of buildings.

This description of Property Not Covered means that the BOP automatically covers property such as underground pipes, flues and drains; bridges; foundations; retaining walls; and piers, wharves and docks. These items must be added by endorsement to the Building and Personal Property Coverage Form in order to be Covered Property. In addition, since these items are not excluded, they must be included when determining the limits of insurance.

Causes of Loss

Unlike the Building and Personal Property Coverage Form or the Business Income (and Extra Expense) Coverage Form, the BOP does not have separate Causes of Loss Forms attached. The causes of loss are contained within the Businessowners Coverage Form.

Named Perils Endorsement (BP 10 09)

This endorsement can be attached to the Businessowners Coverage Form. This endorsement provides the same causes of loss coverage as the Causes of Loss - Basic Form, plus limited off-premises transit coverage. This named perils approach is not often used but is the coverage of choice for some of the businesses because it provides basic coverage at an economical price. The named perils are displayed in the chart on the following page. There are several that are not self-evident, which are explained below.

- ***Windstorm or Hail***

Windstorm and hail are covered; however, the Named Perils Endorsement does not provide coverage from weather damage such as ice (other than hail), snow or sleet. Additionally, certain property, such as fabric awnings or canopies, is not covered for the windstorm or hail cause of loss. Damage by hail to lawns, trees, shrubs or plants which are part of a vegetated roof is also excluded.

- ***Aircraft or Vehicles***

Damage resulting from actual contact with aircraft or vehicles is covered. The coverage does not apply to damage caused by vehicles owned by the named insured or operated in connection with the named insured’s business.

- **Vandalism**

Willful and malicious damage to Covered Property is covered. The endorsement does not pay for a loss caused by theft, except for damage to the building caused from breaking in or exiting of burglars.

- **Sinkhole Collapse**

Sinkhole Collapse means damage caused by the sudden sinking or collapsing of land into an underground empty space, typically caused by the action of water on limestone or dolomite. However, the coverage does not include the actual cost of filling sinkholes or sinking into man-made underground cavities.

- **Transportation**

The Transportation Cause of Loss includes loss or damage to Covered Property in the course of transit, arising from collision, derailment or overturn of a vehicle, stranding or sinking of a vessel, or collapse of bridges, piers, or docks.

The differences between the Named Perils Endorsement and the unendorsed Businessowners Coverage Form are summarized in the following chart:

BUSINESSOWNERS COVERAGE FORM CAUSES OF LOSS		
CAUSES OF LOSS	ENDORSED WITH BP 10 09	UNENDORSED BP 00 03
Fire	Yes	Yes
Lightning	Yes	Yes
Explosion	Yes	Yes
Windstorm or Hail	Yes	Yes
Smoke	Yes	Yes
Aircraft	Yes	Yes
Non-owned Vehicles	Yes	Yes
Riot & Civil Commotion	Yes	Yes
Vandalism	Yes	Yes
Sprinkler Leakage	Yes	Yes
Sinkhole Collapse	Yes	Yes
Volcanic Action	Yes	Yes
Transportation	Yes	Yes
Theft	No	Yes
Direct Physical Loss or Damage	No	Yes
NOTE: All of these causes of loss are subject to the exclusions and limitations in the Policy.		

The unendorsed Businessowners Coverage Form (BP 00 03) is by far the most commonly written.

This Form includes causes of loss which are similar to the Causes of Loss – Special Form. The Property Section of the BOP provides coverage on an open perils basis. The BOP states that it covers direct physical loss to covered property unless it is excluded or limited. The limitations are as follows:

- ***Steam***

There is no coverage for loss or damage to steam boilers, steam pipes, steam engines, turbines, hot water boilers or water heating equipment caused by a condition inside such equipment. However coverage applies if there is an explosion of gases or fumes.

- ***Missing Property***

There is no coverage for property that is missing with no physical evidence to show what may have happened to it.

- ***Unauthorized Transfer***

Property that is transferred to someone or somewhere away from the described premises, based on unauthorized instructions, is not covered.

- ***Interior Damage***

Damage to the interior of the building or structure or to personal property within the building or structure, from rain, snow, sleet, ice, sand or dust, is not covered unless the building or structure first sustains damage by a covered cause of loss, or the damage is caused by or resulting from thawing of snow, sleet, or ice on the building.

- ***Lawns, Trees, Shrubs or Plants***

Coverage for lawns, trees, shrubs or plants which are part of a vegetated roof are not covered for loss resulting from changes in atmosphere or temperature, disease, frost or hail, rain, snow, ice or sleet.

- ***Property covered for “specified causes of loss”***

Animals and fragile articles are only covered for “specified causes of loss” or glass breakage. “Specified Causes of Loss” include Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

- ***Theft***

Loss by theft is covered only up to \$2,500 for: furs or garments with fur; jewelry, watches, precious stones, gold; and patterns, dies and molds.

Other exclusions that further define this coverage are reviewed later in this chapter.

Additional Coverages

Similar to the Commercial Property Coverage Forms, there are a number of Additional Coverages found in the Property Section of the Businessowners Coverage Form. It is very common for individual companies to modify the ISO Additional Coverages in their own coverage forms by either adding or deleting coverages. Many of the BOP Additional Coverages are the same as the Building and Personal Property Coverage Form. The following is a complete list of the Additional Coverages found in the BOP, with an explanation where coverage varies from the Building and Personal Property Coverage Form.

- **Debris Removal**
- **Preservation of Property**
- **Fire Department Service Charges**

This provision pays up to \$2,500 for service at each premises described in the Declarations, when the fire department is called to protect Covered Property from a Covered Cause of Loss. The limit is the most that will be paid regardless of the number of responding units or services performed. The limit can be increased. The coverage applies to liability for fire department service charges assumed by contract or agreement before the loss or required by local ordinance. The ISO Building and Personal Property Coverage Form has an internal limit of \$1,000.

- **Collapse**
- **Water Damage**
- **Business Income**

This Additional Coverage provides funds to pay the business owner the actual loss of Business Income due to the necessary suspension of “operations” during the “period of restoration”. The suspension of “operations” must be caused by a direct physical loss at the premises described in the Declarations. The cause of loss must be a covered cause of loss. “Business Income” is defined in the BOP as net income (net profit or loss before income tax) that would be earned and continuing normal operating expenses incurred. The “period of restoration” begins 72 hours after direct physical loss caused by a covered cause of loss and ends on the reasonable date when the property should be repaired and/or rebuilt with similar quality.

This Additional Coverage provides for Extended Business Income, which is an additional period of up to 60 days beyond the date that operations are resumed. The additional time permits a transition period to revive the business to the level of normal income flow.

Although there is no specific dollar limit on Business Income Coverage in the BOP, payments are made for actual loss of business income sustained within 12 consecutive months from a direct physical loss. There is also a 60 day limitation for ordinary payroll (as defined).

The BOP’s Business Income Additional Coverage has two positive advantages over coverage found in the Commercial Property Coverage Forms. First, “Business Income” is not subject to a specific dollar limit and therefore does not require the named insured to predetermine an amount, which is often very difficult to calculate. Secondly, the BOP’s Business Income Coverage is not subject to coinsurance, which is one of the most complex and difficult to understand aspects of the stand-alone Business Income Coverage Forms. However, the BOP’s coverage is limited to only 12 months of coverage, and this is potentially inadequate for some insureds. Note that the 12 months can continue past the policy expiration.

Two endorsements are available to modify the Business Income Additional Coverage limit of insurance and 12 month time period. The BP 14 06 Business Income, Extra Expense and Related Coverages Limit of Insurance changes the unlimited actual loss sustained basis to a specific limit of insurance. The BP 14 07 Business Income and Extra Expense – Revised Period of Indemnity endorsement is used to shorten or lengthen the 12 month time period.

- **Extra Expense**

Extra Expense Coverage is included in the BOP as an Additional Coverage. This Coverage pays those extra expenses that are incurred by the insured to avoid or minimize the cessation of business operations, and to continue “operations” at the described premises or at another location during the “period of restoration”.

As an example, a named insured moves temporarily to another location because of a physical loss at the premises described in the Declarations, caused by a Covered Cause of Loss. The Extra Expense Additional Coverage pays for the additional rent, change of telephones, and other necessary expenses.

Extra Expense Additional Coverage also pays for expenses incurred to minimize the suspension of operations if operations cannot be continued.

Like the Business Income Additional Coverage, Extra Expense Additional Coverage is not subject to a specific dollar limit of coverage, but only pays for covered extra expenses incurred within 12 consecutive months from date of direct physical loss. Unlike Business Income Additional Coverage, it is not subject to the 72-hour deductible.

- ***Pollutant Clean Up and Removal***

- ***Civil Authority***

- ***Money Orders and Counterfeit Money***

An amount of up to \$1,000 is provided for a loss due to the named insured's acceptance in good faith of counterfeit money or money orders acquired during the regular course of business.

- ***Forgery and Alteration***

This Additional Coverage provides up to \$2,500 for a loss caused by forgery or alteration of any check, draft, promissory note, or similar monetary instrument that is issued by the named insured, or represented or impersonated to be issued by the named insured.

- ***Increased Cost of Construction***

This Additional Coverage is similar to the Building and Personal Property Coverage Form. The BOP pays up to \$10,000 after a covered loss for the increased cost of construction necessary to comply with the minimum standards of an ordinance or law related to construction or repair of covered buildings. The Building and Personal Property Coverage Form also includes a 5% limitation.

- ***Business Income from Dependent Properties***

This built-in Additional Coverage is similar to the business income endorsement used with the Business Income (and Extra Expense) Coverage Form or the Business Income (without Extra Expense) Coverage Form. The BOP pays the actual loss of Business Income the named insured sustains due to the physical loss or damage to a dependent property or secondary dependent property caused by a covered cause of loss, up to a maximum of \$5,000. The named insured may purchase a higher limit.

- ***Glass Expenses***

- ***Fire Extinguisher Systems Recharge Expense***

The BOP pays up to \$5,000 for recharging or replacing the fire extinguishing equipment.

- ***Electronic Data***

This Additional Coverage is similar to the Building and Personal Property Coverage Form. It provides for the cost to replace or restore electronic data that has been destroyed or corrupted by a covered cause of loss. Limited coverage for virus and harmful code is included. In the BOP, the total limit available for this Coverage is \$10,000 in any one policy year. The coverage does not apply to the insured's stock of prepackaged software or to electronic data used in the operation of the building's elevator, lighting, HVAC or security system.

- ***Interruption of Computer Operations***

This Additional Coverage is similar to the Business Income (and Extra Expense) Coverage Form's Additional Coverage. A named insured may extend this insurance to apply to a suspension of operations caused by an interruption in computer operations due to destruction or corruption of electronic data by a covered cause of loss. Numerous restrictions apply to this Additional Coverage, and the maximum that can be collected by a named insured is limited to \$10,000 in the policy year.

- ***Limited Coverage for "Fungi", Wet Rot, Dry Rot and Bacteria***

Coverage Extensions

There are seven Coverage Extensions provided under the Property Section of the Businessowners Coverage Form. Each Extension is additional insurance. The Coverage Extensions in the BOP are reviewed where they differ from the Building and Personal Property Coverage Form.

- ***Newly Acquired or Constructed Property***

- ***Personal Property Off Premises***

- ***Outdoor Property***

This Coverage Extension provides coverage for damage to outdoor property due to the specified perils of fire, lightning, explosion, riot or civil commotion or aircraft. The outdoor property covered is fences, antennas, signs (other than signs attached to the buildings), trees, shrubs, and plants other than trees, shrubs and plants which are part of a vegetated roof. The limit is \$2,500, but not more than \$1,000 for any one tree, shrub, or plant. This is a higher built-in limit than found in the Building and Personal Property Coverage Form.

- ***Personal Effects***

Personal Effects can be defined as personal property that is portable in nature, such as clothing, jewelry, radios, etc. Under the BOP, an amount up to \$2,500 at each described premises can be extended to cover loss to the personal effects of the named insured or named insured's employees, which includes temporary or leased employees. This Extension does not apply to the peril of theft and does not cover tools and equipment used in the named insured's business. Unlike the Building and Personal Property Coverage Form, this Extension does not apply to personal property of others.

- ***Valuable Papers and Records***

This Extension is similar to the one in the Building and Personal Property Coverage Form. It pays for the loss to valuable papers and records, including the cost to research, replace, or restore lost information or damaged records. It pays up to \$10,000 at the described premises, and up to \$5,000 at other locations. There is no coverage for records stored at other locations. The insured may purchase higher limits.

- ***Accounts Receivable***

The BOP also has an Extension which applies to loss resulting from a covered cause of loss to the named insured's accounts receivable (money owed to the named insured by the named insured's clients) records. It covers a loss up to \$10,000 per occurrence at the described premises and up to \$5,000 at any other location.

- ***Business Personal Property Temporarily In Portable Storage Units***

Under this Coverage Extension, Business Personal Property will be covered while stored temporarily in a portable storage container (including a detached trailer) located within 100 feet of the buildings or structures described in the Declarations, or within 100 feet of the

described premises, whichever is greater. Unless a higher limit is selected, the most that will be paid is \$10,000. Coverage ends 90 days after the property was stored. Coverage does not apply when the storage unit is at the location for more than 90 consecutive days, even if the property has been stored for fewer than 90 days.

Exclusions

The exclusions are important to understanding the coverage of the Property Section of the Businessowners Coverage Form, especially since the BOP expresses coverage in broad terms and removes coverage through exclusions. The majority of the exclusions are similar to exclusions found in the Causes of Loss - Special Form. All of the BOP property exclusions are shown; and explanations are provided when additional clarification is needed.

- ***Ordinance or Law***
- ***Earth Movement***
- ***Governmental Action***
- ***Nuclear Hazard***
- ***Utility Services***
- ***War and Military Actions***
- ***Water***
- ***Certain Computer-Related Losses***
- ***“Fungi”, Wet Rot, or Dry Rot***
- ***Virus or Bacteria***
- ***Electrical Apparatus***
- ***Consequential Losses***
- ***Smoke, Vapor, Gas***
- ***Steam Apparatus***
- ***Frozen Plumbing***

Unless you do your best to maintain the heat in the building or structure or drain the equipment and shut off the supply.

- ***Dishonesty***

The BOP does not intend to automatically provide employee dishonesty coverage. This coverage should be provided in a Commercial Crime Policy. In addition to employees (including temporary or leased employees), there is no coverage for dishonest acts committed by the named insured, partners, directors, or representatives. This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

- ***False Pretense***
- ***Exposed Property***
- ***Collapse***
- ***Pollution***
- ***Neglect***

- **Other Types of Losses**

There are several types of losses not covered by the BOP which also are commonly excluded under many commercial and personal lines property forms. Some specific causes of loss this Policy excludes are: wear and tear, rust, corrosion, decay, settling and cracking, mechanical breakdown, and loss to personal property due to dampness or dryness or other extreme temperature changes.

- **Errors or Omissions**

This exclusion makes it clear that the BOP does not intend to pay for programming or processing errors.

- **Installation, Testing, Repair**

The BOP does not cover losses arising from errors in design, testing, or repair of the computer system.

- **Electrical Disturbance**

This exclusion applies to a loss to electronic media and records caused by an electrical disturbance. There is coverage provided for damage caused by lightning, and there is also coverage under the Coverage Extensions.

- **Continuous or Repeated Seepage or Leakage of Water**

- **Weather Conditions**

- **Acts or Decisions**

- **Negligent Work**

This exclusion is related to loss from alleged faulty, inadequate, or defective planning, zoning, development, design, workmanship, construction, or improper material use or maintenance.

EXAMPLE

The named insured's property is built on an earthquake fault, and the fault shifts and settles, which causes damage to the building. The BOP denies the claim not only on the basis of earth movement, but also in the situation where the named insured alleges the cause of loss is the concurrent causation of faulty zoning by the county (or responsible organization) in issuing a permit to build at the location with the earthquake fault.

- **Loss or Damage to Products**

The ISO BOP does not pay for loss or damage to a product or merchandise that is caused by an error or omission in the production process.

- **Business Income and Extra Expense Exclusions**

The BOP does not cover Extra Expense or increased Business Income loss caused by or resulting from a delay in rebuilding or repair due to a strike, or the suspension of a lease, license, or contract.

- **Accounts Receivable Exclusions**

This group of exclusions applies only to Accounts Receivable:

- Alteration, falsification, concealment, or destruction of records of accounts receivable due to wrongful giving or taking of money or securities, or similar property;
- Bookkeeping, accounting, or billing errors or omissions; and
- No payment for a loss found only because of an audit of records or inventory.

Limits

The Limits of Insurance in the BOP for different coverages are contained throughout the Policy. The first source of limits in the Businessowners Coverage Form are those designated limits in the Declarations. The coverage limits in the Declarations show the limits of coverage on Buildings and Business Personal Property for any one occurrence. The Limits Section of the Policy explains how the limits apply.

- **Outdoor Signs**

The only specified limit detailed in the Limits Section is the \$1,000 limit on outdoor signs attached to the building.

- **Building Limit – Automatic Increase**

The BOP Policy provides an automatic increase in the building limit. An automatic increase of 8% is provided unless a different percentage is shown in the Declarations. The amount of increase is based on the number of days since the beginning of the policy year.

EXAMPLE

Justin has a BOP with a building limit of \$100,000. The annual increase he has elected is 6%. The number of days since the beginning of his policy year is 219. The amount of increase for a midterm loss is computed as follows:

The amount of increase is: $\$100,000 \times .06 \times (219/365) = \$3,600$

- **Business Personal Property Limit – Seasonal Increase**

The Limits Section also explains that a seasonal increase is built into the BOP adding a 25% increase for Business Personal Property. One complication of this automatic increase is that the seasonal increase provision applies only if the limit of insurance for Business Personal Property is 100% of the average monthly values during the 12 months prior to the loss.

- **Other Coverage Limits**

The majority of specific dollar limits in the BOP are found in earlier portions of this chapter under the Additional Coverages and Coverage Extensions. These other coverage limits are summarized in the following chart:

SUMMARY OF OTHER COVERAGE LIMITS	
Debris Removal	The BOP pays a limit of 25% of direct damage loss, and if loss plus the debris removal cost results in a total loss or exceeds the 25% limit, then an additional \$25,000 is available.
Forgery Or Alteration	The BOP pays up to \$2,500 for any covered loss, including legal expenses, unless a higher limit has been selected.
Increased Cost of Construction	The BOP limit is \$10,000.
Fire Extinguisher Systems Recharge Expense	The BOP pays up to \$5,000 for any one occurrence.
Newly Acquired Or Constructed Property	The limit on this coverage is \$100,000 for Business Personal Property and \$250,000 per Building.
Personal Property in Transit and Off-Premises	The BOP limit is \$10,000.
Outdoor Property	The limit under the BOP is \$2,500, not to exceed \$1,000 per tree, shrub, or plant.
Personal Effects	The BOP limit is \$2,500.
Valuable Papers And Records	The BOP limit is \$10,000 at the described premises and \$5,000 not at described premises. A higher limit may be selected.
Accounts Receivable	The BOP limit is up to \$10,000 on the premises and \$5,000 off the premises for any one occurrence. The limit may be increased.
Business Income	There is no dollar limit (limited to 12 consecutive months actual loss sustained, subject to 72-hour deductible and 60-day limit on ordinary payroll expenses).
Business Income From Dependent Properties	The BOP limit is \$5,000, unless a higher limit has been selected. This limit can also apply to secondary dependent properties.
Extra Expense	Under the BOP there is no dollar limit for Extra Expense, but it is limited to 12 consecutive months and actual loss sustained.
Business Personal Property Temporarily in Portable Storage Units	The limit is \$10,000 unless a higher limit is chosen, and applies to Business Personal Property in the temporary storage unit for no more than 90 days.
Fire Department Service Charge	The BOP has a limit of \$2,500 per occurrence.
Pollutant Cleanup And Removal	The BOP limit is \$10,000 annual Aggregate.
Money Orders And Counterfeit Money	The BOP pays up to \$1,000.

Deductibles

The deductibles shown in the Declarations of the BOP apply per occurrence to any covered loss. However, a special Optional Coverages deductible applies if needed to satisfy the requirements of a deductible in the Declarations for each of the following:

- Money and Securities (Burglary and Robbery if Named Perils Endorsement used);
- Employee Dishonesty;
- Outdoor Signs; and
- Forgery or Alteration.

No deductible applies to:

- Fire Department Service Charge;
- Business Income;
- Extra Expense;
- Civil Authority; and
- Fire Extinguisher Systems Recharge Expense.

Property Loss Conditions

A number of loss conditions in the BOP are the same as those examined in the Commercial Property Coverage Forms chapter. The property loss conditions are listed, and where differences exist, additional review is provided.

- ***Abandonment***
- ***Appraisal***
- ***Duties in the Event of Loss or Damage***

The Duties in the Event of Loss in the BOP are similar to those found in the other property policies examined to this point. There is one additional requirement found in the BOP, which is to resume operations as quickly as possible. This requirement is based on the automatic inclusion of Business Income coverage in the form.

- ***Legal Action Against Us***
- ***Loss Payment***

The majority of this provision in the BOP is similar to the Homeowners Policy and Building and Personal Property Coverage Form. The insurance company has the option to pay either the value of the lost or damaged property, or to rebuild, repair, or replace the damaged property with like kind and quality, or take the property at an agreed or appraised value. The types of property eligible to be valued on a replacement cost basis must meet certain conditions. In order to receive full replacement cost coverage, the named insured must carry an amount of insurance equal to at least 80% of the replacement cost of the property, and must actually repair or replace the damaged or lost property. The actual “insurance-to-value” clause in the BOP is similar to the Homeowners Policy. If the insured does not want to have replacement cost as the basis of value, the Actual Cash Value Option is available. Otherwise, replacement cost is the basis of value in the BOP for all covered property with the exception of the following, which are valued on an actual cash value basis:

- Used or secondhand merchandise;

- Property of others (unless it is subject to a written contract – then payment based on the lesser of the contract requirement, replacement cost, or the limit of insurance);
- Household contents (except contents provided by the landlord);
- Manuscripts; and
- Works of art, antiques and rare articles.
- ***Recovered Property***
- ***Resumption of Operations***
- ***Vacancy***

Property General Conditions

The Property General Conditions in the BOP track with those found in the Commercial Property General Conditions:

- Control of Property
- Mortgageholders
- No Benefit to Bailee
- Policy Period, Coverage Territory

Optional Coverages

The Optional Coverages are written as part of the Policy; but they must be selected by the named insured and activated by an entry in the BOP Declarations before they apply to a loss. The four Optional Coverages available under the BOP are:

- Outdoor Signs
- Money and Securities (Burglary and Robbery if the Named Perils Endorsement is used)
- Employee Dishonesty
- Equipment Breakdown Protection Coverage

Each Optional Coverage compares to similar coverages found in or added to a Commercial Property Policy, Crime Policy, or Equipment Breakdown Coverage Form. The following provides a general description of the four Optional Coverages found in the BOP.

Outdoor Signs

If a limit of insurance for outdoor signs is shown in the Declarations, it replaces all other references to outdoor signs in the BOP. This Optional Coverage extends coverage to all outdoor signs at the described premises and provides coverage on an open perils basis with limited exclusions such as wear and tear.

Money and Securities

Although the BOP provides some theft coverage, it excludes coverage for money and securities. If the Money and Securities Optional Coverage is activated, coverage is provided for theft,

disappearance, and destruction at the insured premises, at a financial institution, at the named insured's living quarters, or in transit between these locations. It does not include coverage for employee dishonesty or loss by false pretense. There is a separate limit for inside the premises and outside the premises.

Burglary and Robbery

This Optional Coverage is applicable and necessary only if the Named Perils Endorsement is attached to the BOP. It replaces the Money and Securities Optional Coverage. The Named Perils Endorsement does not include any theft coverage within the named causes of loss. The limited theft coverage contained in the burglary and robbery optional coverage adds coverage for loss or damage to business personal property, as well as money and securities, resulting from actual or attempted burglary or robbery. Only burglary and robbery are covered. Burglary is the taking of property from inside the insured premises as evidenced by actual marks of forced entry or exit. Robbery is the unlawful taking of property (including money) from a person by violence or threat of violence.

Employee Dishonesty

This cause of loss is excluded under the BOP but may be included on a limited basis by selection of the Employee Dishonesty Optional Coverage. It pays for loss of Business Personal Property including money and securities, which result from employee dishonesty.

Equipment Breakdown Protection Coverage

This Optional Coverage is very similar to a stand-alone Equipment Breakdown Coverage Form. If selected, this Coverage pays for direct damage to covered property caused by a mechanical breakdown or electrical failure to pressure, mechanical or electrical machinery and equipment. Equipment Breakdown also responds to Outdoor Signs and loss of Business Income and Extra Expense if breakdown is a covered cause of loss. This Optional Coverage contains a suspension clause. If an unsafe condition is discovered by an insurance company representative, it allows coverage to be suspended until the condition is corrected.

Endorsements

There are many endorsements used to modify the BOP. Some are used to exclude and restrict coverage, but most are used to add coverage. The following endorsements are typical of other endorsement modifications:

Protective Safeguards (BP 04 30)

The objective of this endorsement is to identify protective devices the named insured utilizes to protect covered property. Because the insured receives a premium discount for these devices, this endorsement assures that the named insured does in fact maintain the devices. A named insured who does not notify the insurer that the device (or devices) is (are) not in working order is subject to coverage suspension.

EXAMPLE

Terry's Office Supply has a BOP written on his building and business personal property. He receives a discounted premium for a central station automatic fire alarm. One day while moving some materials, he hits the alarm box and knocks it off the wall. Under the provisions of this endorsement, Terry has to notify the insurer; otherwise the protection related to a fire loss is not paid.

Utility Services – Direct Damage (BP 04 56)

This endorsement is designed to pay for loss to the named insured's property resulting from an interruption of utility services listed in the schedule of this endorsement. The three main categories of utility services are:

- Water Supply Property;
- Communication Supply Property (including telephone, radio, microwave, or television); and
- Power Supply Property (property supplying electricity, steam, or gas).

The interruption of utility services must arise from direct damage to the utility company from a covered cause of loss. For example, a fire is a covered cause of loss, but an equipment malfunction is not.

Although not all BOP insureds are interested in this endorsement, those insureds whose businesses are likely to sustain damage to property arising from an interruption in utility service can benefit from such coverage. Examples are a florist and a store that sells food that could spoil as a result of a power outage.

Utility Services – Time Element (BP 04 57)

The previous endorsement only applies to direct physical loss of or damage to the covered property and does not apply to the loss of income or incurred extra expenses that result from a loss arising from a utility failure outside the covered building.

This time element endorsement provides coverage for a loss of income or extra expense arising from a loss of the utility services shown on the schedule of this endorsement. The loss to the property of the utility service must arise from a covered cause of loss, such as a fire at a switching station.

As respects both of these utility services endorsements, the coverages provided are very similar to endorsements by the same name in the Commercial Property Endorsements chapter.

BUSINESSOWNERS COVERAGE FORM SECTION II – LIABILITY

As mentioned in the beginning of this chapter, generally owners of small office buildings, owners of apartment buildings, small retailers, and other small businesses whose activities or operations involve processing and/or service (like a print shop) are eligible for a Businessowners Policy. The BOP Program is not designed for manufacturers, especially in regards to liability issues.

Definitions

Among the definitions found in the BOP, many relate to the BOP's Liability coverage and are the same as those found in the CGL Coverage Form. However, the definition of Products-Completed Operations Hazard found in the BOP is broadened to include liability coverage for the consumption of the named insured's product on the named insured's premises. This is accomplished by endorsement under the CGL Policy.

Businessowners Liability Section

The Businessowners Liability Section is similar to the Commercial General Liability Coverage Form in terms of content, but it differs in format. The BOP does not describe Coverage A – Bodily Injury and Property Damage, Coverage B – Personal and Advertising Injury Liability, and Coverage C – Medical Payments in the same manner as the CGL Policy. Instead the BOP combines Coverages A and B under the heading of Business Liability. Coverage C – Medical Payments is labeled as Medical Expenses in the Businessowners Liability Section.

Business Liability

All the liability coverages, as examined in the Commercial General Liability Policy, are contained within this coverage section. As the CGL Policy chapter states, the CGL Policy promises to pay for the legal obligations for damages for bodily injury, property damage, or personal and advertising injury to which the insurance applies. This insurance applies to bodily injury and property damage that arise from an occurrence that takes place in the coverage territory. The same is true for the Business Liability Section of the Policy. The definition of coverage territory is the same as in the CGL Policy. Coverage applies to the following exposure areas:

- Premises;
- Operations;
- Products/completed operations;
- Contractual liability for bodily injury and property damage;
- Contingent or protective liability; and
- Personal and advertising injury liability.

Personal and advertising injury liability does not apply to the business of advertising, publishing, broadcasting, or telecasting done by or for the named insured. Therefore, just as in the CGL Coverage Form, if a Businessowners Policy is written for a radio and/or television station or an advertising agency, this portion of the Policy does not apply to what are considered to be their professional liability exposures.

The Businessowners Liability Section does not state that it will pay for all of the exposures listed above. The exposure areas and related coverages are tailored by the exclusions and the definitions. Additionally, just as with the CGL Policy, the BOP insuring agreement promises that the insurer will defend any suit seeking damages related to bodily injury, property damage, or personal and advertising injury to which coverage applies. But, if there is no coverage, no defense is provided.

Coverage Extension – Supplementary Payments

The Supplementary Payments Coverage Extension is the same as the CGL Policy. It includes:

- All expenses the insurer incurs;
- Up to \$250 for the cost of bail bonds because of an accident or traffic law violation arising out of the use of a covered vehicle;
- Premiums on appeal bonds and bonds to release attachments;
- Interest accruing after a judgment;
- Other reasonable expenses incurred by the insured at the insurance company's request, including loss of earnings up to \$250 a day;
- All costs taxed against the insured in the suit;
- Pre-judgment interest.

Exclusions

The numerous exclusions found in the Liability Section of the BOP are identical to those examined in the Commercial General Liability Policy, with one exception. The BOP contains a specific exclusion related to professional services.

Professional Services Exclusion

The Professional Services Exclusion states that this insurance does not apply to bodily injury, property damage, or personal and advertising injury due to rendering or failure to render any professional services. The BOP states that this includes, but is not limited to:

- Legal, accounting or advertising services;
- Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- Supervisory, inspection or engineering services;
- Medical, surgical, dental, x-ray or nursing services treatment, advice, or instruction;
- Any health or therapeutic service treatment, advice, or instruction;
- Any service, treatment, advice, or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming;
- Optometry or optical or hearing aid services;
- Body piercing services;
- Services in the practice of pharmacy.

The CGL Policy does not have a specific professional services exclusion unless added by endorsement.

Medical Expenses

Medical Expenses coverage is similar to that reviewed in the Commercial General Liability Policy and in the Homeowners Policy Liability Section. One obvious change is the title of Medical Expenses instead of Medical Payments. Unlike Business Liability, this coverage is not subject to legal liability. The coverage pays medical expenses for bodily injury caused by an accident on premises the named

insured owns or rents, or because of the named insured's operations. The coverage is intended for premises and operations only, and not for products and completed operations. Medical Expenses coverage contains its own limit of insurance.

Selected Medical Expenses Exclusions

This insurance does not pay expenses for bodily injury:

1. To any insured; except volunteer workers
2. To a person hired to do work for the insured or a tenant of an insured;
3. To those areas excluded under Business Liability Coverage.

In addition to the Business Liability and Medical Expense coverages that have been examined, the following are important concepts for review.

Who Is An Insured

The Who is an Insured provision in the Liability Section of the BOP is the same as the CGL Policy, except as respects newly acquired or newly formed organizations. In the CGL Policy, there is coverage for newly acquired or newly formed organizations, unless the organization is a partnership, joint venture, or limited liability company. This automatic coverage is for a period up to 90 days. The unendorsed BOP has no such automatic coverage.

Limits

The Liability Section of the BOP Limits provision is similar to the CGL Policy, but differs in several ways. The BOP has a single limit for liability and medical expenses, which covers personal and advertising injury as well as bodily injury and property damage. Each of the liability limits within the BOP represents the most that the Policy pays.

LIMITS OF INSURANCE	
Coverage	Limit Of Insurance
Liability And Medical Expenses	\$ Per Occurrence
Medical Expenses	\$ Per Person
Damage To Premises Rented To You	\$ Any One Premises
Other Than Products/Completed Operations Aggregate	\$
Products/Completed Operations Aggregate	\$

Liability and Medical Expense Limit

This is the maximum that is paid for bodily injury, property damage, medical expense arising out of any one occurrence and personal and advertising injury sustained by any one person.

Medical Expenses Limit

In addition to being subject to the occurrence limit reviewed above, medical expenses are first subject to a per person limit shown in the Declarations. Payments made for medical expenses reduce the General Aggregate Limit.

Property Damage to Premises Rented to You

The coverage and limits apply similar as the CGL Policy. This limit is subject to the occurrence limit reviewed above and also reduces the General Aggregate Limit.

Products/Completed Operations Aggregate Limit

This is the most that is paid during the policy period, regardless of the number of products and/or completed operations claims.

General Aggregate Limit

The General Aggregate is the maximum that is paid during the policy period, regardless of the number of occurrences. The General Aggregate is applicable to all covered claims other than the products and /or completed operations claims.

Selected Endorsements

Although there are many endorsements available in the BOP Program for liability coverage, the number is small in comparison to those that may be attached to the Commercial General Liability Coverage Form. Many of the BOP endorsements correspond with the CGL Policy endorsements. There is one endorsement that does not correspond and which is commonly added to a Businessowners Policy.

Hired Auto and Non-Owned Auto Liability – BP 04 04

This particular endorsement is used for an insured entity that does not own any autos and does not have a Commercial Auto Policy. For example, the owner or business entity may have no reason to own an auto for business purposes, such as a retail store that provides no delivery.

This endorsement provides bodily injury and property damage liability for those coverages selected and indicated on either the Declarations or in the endorsement Schedule. Coverage may be purchased for the following:

- **Hired Auto Liability.** Coverage is provided for liability arising out of the maintenance or use of any hired auto by the named insured or the named insured's employee while in the course of the named insured's business.
- **Non-owned Auto Liability.** Coverage is provided to any person for liability arising out of the use of any non-owned auto while in the course of the named insured's business.

A hired auto is an auto the named insured leases, hires, rents or borrows. Those autos leased, hired, or borrowed from employees or members of their households, partners, or executive officers do not qualify as hired autos. An example of a hired auto is a car rented by the named insured or an employee while on company business.

A non-owned auto is an auto not owned, leased, hired or borrowed by the named insured, that is used in connection with the named insured's business. This includes autos owned by employees, partners, executive officer or household members, but only while used in the named insured's business or the named insured's personal affairs. An example of a non-owned auto is an employee using his/her personal car to go pick up the mail or office supplies on behalf of the named insured's business.

This Hired Auto and Non-owned Auto Liability endorsement does not cover damage to an auto leased by the insured. The contractual liability exclusion in the Businessowners Policy precludes coverage for damage to the hired auto. The only way to provide such coverage is through the purchase of a Business Auto Policy.

It is always preferable to provide coverage for commercial auto exposures through the use of commercial auto coverage forms. The Business Auto Policy may be written covering only hired autos and non-owned autos if the insurer is willing to do so.

BUSINESSOWNERS COVERAGE FORM SECTION III – COMMON POLICY CONDITIONS

Unlike the Commercial Property Policy and the Commercial General Liability Policy, which use Common Policy Conditions shared with other coverage forms, the BOP has its own set of conditions, which are contained in the Businessowners Coverage Form. However, the conditions found in the BOP are basically the same Common Policy Conditions found in the Commercial Property Policy (as well as Commercial Property Conditions) and the conditions found in the Commercial General Liability Policy. Refer to these earlier chapters for an explanation of policy conditions. To review, the Conditions in the BOP are:

- Cancellation
- Changes
- Concealment, Misrepresentation, or Fraud
- Examination of Your Books and Records
- Inspections and Surveys
- Insurance Under Two or More Coverages
- Liberalization
- Other Insurance
- Premiums
- Premium Audit
- Transfer of Rights of Recovery Against Others to Us
- Transfer of Your Rights and Duties Under the Policy

One of the most significant differences for liability insurance is found in the Other Insurance provision. The BOP Common Policy Conditions state that the BOP is excess over any other applicable coverage. The CGL Policy states that it is primary unless one of the few exceptions applies.

CONCLUSION

The BOP is an excellent choice for small and middle sized businesses. This chapter describes the basic eligibility requirements and policy provisions that make the BOP unique. This is the knowledge needed to properly compare the coverage provided by other Businessowners Policies available in today's insurance marketplace.

SECTION THREE

**PERSONAL LINES
INSURANCE**

CHAPTER 16: HOMEOWNERS POLICY

INTRODUCTION

This chapter examines the most widely used method of insuring residential property – the Homeowners Policy Program. The Homeowners Policy is the first package policy to be used within the insurance industry. A package policy combines property and liability coverages into one policy. Over the years, the Homeowners Policy Program has evolved into the most widely used set of policies protecting people from exposures arising out of owning and/or occupying residential property. It also offers protection for personal liability arising out of owning, occupying, and maintaining property, as well as for other personal activities on and away from an “insured location” (as defined in the policies).

The basis of this review is the ISO wording which is the foundation for the vast majority of policies and/or policy provisions. Optional endorsements, state specific provisions, and insurance companies often modify the ISO policy wording that this chapter examines.

The ISO manual rules for eligibility for the Homeowners Policy Program focus on the central concept of insurance coverage for owner-occupied residential dwellings. With the exception of the HO-4 (tenant’s form), the Homeowners Policy Program requires owner-occupancy. The Homeowners Program also allows for a residence to be titled in the name of a trust and occupied by the grantor of the trust if the Policy is properly endorsed.

The Homeowners Policy can be written on a residence that contains up to four family units, but one of the units must be occupied by an owner. The Homeowners Policy Program rules also permit the occupancy of up to two roomers or boarders, or one additional family, per family unit.

Despite the fact that the Homeowners Policy Program is designed for non-business purposes, the Policy permits incidental business occupancies such as an office in the residence.

Another use for the Homeowners Policy Program is providing insurance for a residential building under construction. The rules require that the Policy is written only for dwellings that the policyholder intends to occupy upon completion.

HOMEOWNERS POLICY COVERAGE FORMS

Currently under the Homeowners Policy Program, there are six available policies. Each of these policies is designed to address a specific residential exposure. The Homeowners Policy Program also contains more than 100 endorsements. Only a few selected endorsements are reviewed in this chapter.

The Homeowners Coverage Forms currently available are:

- Homeowners 2 – Broad Form HO 00 02
- Homeowners 3 – Special Form HO 00 03
- Homeowners 4 – Contents Broad Form HO 00 04
- Homeowners 5 – Comprehensive Form HO 00 05
- Homeowners 6 – Unit-Owners Form HO 00 06
- Homeowners 8 – Modified Coverage Form HO 00 08

In comparing the various coverage forms, keep in mind that property covered on an open perils basis is covered for any peril unless specifically excluded or limited. If insured on a named peril basis, the property is covered only if the loss or damage is the result of a specifically named peril. Basic named peril coverage insures very limited coverage while broad named peril coverage includes a more extensive list of covered perils. The following is a brief description of the coverage forms.

Homeowners 2 – Broad Form HO 00 02

The Broad Form (HO-2) provides coverage for the residence and personal property on a broad named peril basis. The perils covered are later described in detail.

Homeowners 3 – Special Form HO 00 03

The Special Form (HO-3) is the most popular of the Homeowners Policies used to insure an owner-occupied residence. It provides coverage for the residence and other structures on an open perils basis and coverage for personal property on a broad named perils basis.

Homeowners 4 – Contents Broad Form HO 00 04

The Contents Broad Form (HO-4) is designed for someone who rents or leases an apartment or single or multi-family residence. This Coverage Form is frequently called the tenant's form. It provides coverage similar to that found in the Homeowners 2 - Broad Form, on a broad named perils basis. The biggest difference is the lack of dwelling coverage under this Form because the insured does not own the residence.

Homeowners 5 – Comprehensive Form HO 00 05

The Comprehensive Form (HO-5) is useful for insuring dwelling and personal property where there is a desire to have the same perils apply to both dwelling and personal property. It is often used for higher valued dwellings. It provides coverage for the residence, other structures, and personal property on an open perils basis.

Homeowners 6 – Unit-Owners Form HO 00 06

The Unit-Owners Form (HO-6) is commonly referred to as the condominium form because it is most frequently used to insure individual residential condominium units.

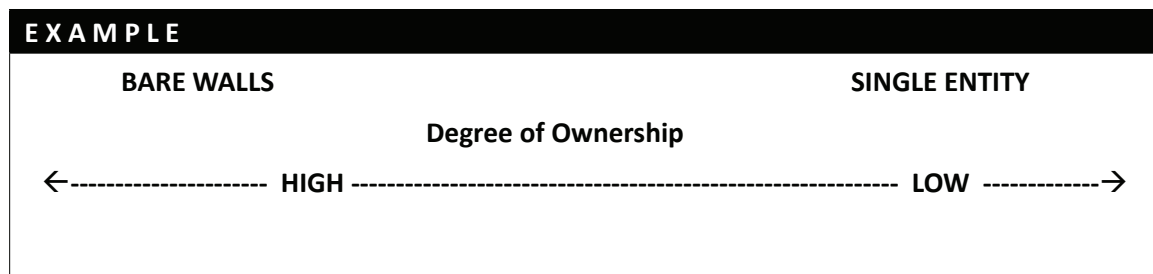
Some people describe a condominium as a box of air. This simple definition is not adequate for insurance purposes. The following is the insurance definition:

A condominium is a type of property ownership where the interest of the owner includes:

- air space of the individual unit,
- may include certain property outside the individual unit's air space (examples are an air conditioner, balcony, or garage), and
- an undivided interest with all other unit-owners in common elements (hallways, sidewalks, pools, recreational facilities, storage facilities, etc.).

The areas referred to as common elements include the parts of the condominium structure owned together by all unit-owners.

The responsibilities, which are related to ownership and insurance, are found in a contract commonly referred to as the Declarations or Declarations of Ownership. The Declarations determine what the unit-owner owns. Normally the level of ownership falls somewhere along a spectrum. One end of the ownership spectrum is the bare walls concept and on the opposite end is the single entity concept.



Under the bare walls concept, the unit-owner is responsible for insuring all building items defined as part of the condominium unit in the Declarations of Ownership. Typically under the bare walls concept, the unit-owner's responsibility is outlined for insuring everything from the unfinished walls in and includes such things as kitchen and bathroom fixtures and cabinets, appliances, lighting fixtures, wall coverings, carpeting, and other property installed within the unit.

Under the single entity (sometimes called broad form) concept, most building items (like fixtures, appliances, and wall coverings) are part of the building, depending on the particular Declarations of Ownership. These building items are normally the responsibility of the condominium association to insure, which results in less for the unit-owner to insure. The condominium association, using a Commercial Property Policy, typically insures building items. The unit-owner should insure any property owned individually by using the Unit-owners Form (HO-6). The coverage under the HO-6 provides protection for broad named perils. Specific homeowners coverages and the unique features of the Unit-Owners are further examined later in this chapter.

Both the bare walls and single entity concepts are insured using the HO-6; however, determining the unit-owner's responsibility is important in setting the appropriate limits and selecting needed endorsements.

Homeowners 8 – Modified Coverage Form HO 00 08

The Modified Coverage Form (HO-8) is the most limited Coverage Form. Not only is the HO-8 limited in the covered causes of loss, but it only pays actual cash value (ACV) on both dwelling and personal property losses.

Since a low value residence in an older neighborhood may have a replacement cost significantly higher than the market value of the residence, the insurance company's underwriting department may not be willing to write a policy providing replacement cost valuation. The HO-8 may be the only Homeowners Coverage Form available if the dwelling is older and lower in value; however, this Form is not available in all states.

POLICY STRUCTURE

Every Homeowners Policy, regardless of the insurance company, is issued with the following components:

- Homeowners Declarations
- Homeowners Coverage Form
 - Insuring Agreement
 - Definitions
 - Section I- Property Coverages
 - Section II- Liability Coverages
 - Policy Conditions
- Endorsements
 - State specific provisions
 - Other endorsements

Declarations

The Declarations Page is usually the first page of the Policy and contains important information about the Homeowners Policy. While many companies have a company-specific form, the following information is generally found in the Declarations:

- Named Insured;
- Location of the Residence Premises;
- Policy Period;
- Limits of Liability;
- Premium;
- Forms and Endorsements;
- Deductible;
- Mortgagee(s)/Lienholder(s); and
- Loss Payee(s) - Personal Property.

Insuring Agreement

This portion of the Policy establishes the contract between the insured and the insurance company. In exchange for premium paid by the insured, the insurer agrees to provide specified coverages contingent on certain duties or conditions.

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

© Insurance Services Office, Inc.

Definitions

At the beginning of each homeowners coverage form is a section titled Definitions. This section contains words and phrases with special meaning that are important in understanding the coverages provided. Though some words appear only in a particular portion of the Policy, these definitions apply to the entire Policy.

You and **Your** refer to the named insured and spouse, if a resident of the named insured's residence. These words do not appear in quotes when used in the Policy; however, because these are defined words, this chapter presents them in quotation marks to improve clarity.

A word or phrase found in the Homeowners Policy with quotation marks around it indicates the word or phrase is defined in this section. (Other words, not specifically defined, are given their ordinary meaning in the context of the Policy.)

Aircraft Liability, Hovercraft Liability, Motor Vehicle Liability, and Watercraft Liability

The Policy defines these terms so that coverage from these exposures can be modified or excluded in the Liability Section of the Policy. The definition includes liability arising from the ownership, maintenance, occupancy, operation, use, loading, unloading, entrustment, negligent supervision of these craft, and vicarious liability for the actions of a child involving these craft.

Note: Boats, planes, hovercraft, cars, and recreational vehicles are better insured by policies other than Homeowners Policies, as later evidenced in the exclusions.

Bodily Injury

The Homeowners Policy defines this as bodily harm, sickness, or disease. This also includes required care, such as medical treatment, loss of services, and death.

Business

In addition to a trade, profession, or occupation, engaged in on a full-time, part-time or occasional basis, the Homeowners Policy expands this definition to say a "business" is any other activity engaged in for money or other compensation; however, there are four exceptions to this definition.

Notice that there is no requirement for profit or an expectation of profit. Also note the definition does not differentiate between the business of a child and that of an adult.

3. “Business” means:

- a.** A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
- b.** Any other activity engaged in for money or other compensation, except the following:
 - (1)** One or more activities, not described in (2) through (4) below, for which no “insured” receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2)** Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3)** Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (4)** The rendering of home day care services to a relative of an “insured”.

© Insurance Services Office, Inc.

Note that the first exception to the exclusion says “one or more activities”.

EXAMPLE

As Rod approaches retirement, he decides to turn some of his hobbies into money-making ventures. He sets up shop in his garage. During this policy period he receives \$800 for his custom fishing lures and \$1500 from pet grooming. Because he has more than \$2000 in total compensation, this is considered a “business” during his next Homeowners policy period.

Notice that there is no requirement for profit or an expectation of profit.

EXAMPLE

Using the example above, Rod spends \$1,200 for supplies, so his profit is only \$1,100 (\$800 + \$1,500 - \$1,200 = \$1,100). This is still considered a “business” for the next policy period because he receives \$2,300 in total compensation during the 12 months prior to the policy period.

The purpose of the Homeowners Policy is to afford coverage for liability arising from normal living activities. This Policy is not designed to provide protection for most business activities. There are limitations and exclusions in Section I – Property and Section II – Liability of the Policy. Exclusions related to business in the Homeowners Policy make a Commercial General Liability Policy necessary for most people with a home-based business or extensive business exposures, though additional business-related coverage is available through endorsements to the Homeowners Policy.

Employee

An “employee” is specified as an employee of an “insured” or leased to an “insured” whose duties are other than housekeeping or domestic services. This defined term is not used anywhere in the Homeowners Policy, but it is used in several endorsements used in the Homeowners Program.

Insured

“Insured” includes “you” (named insured and spouse not shown in the Declarations if resident of the household) and certain other residents of the household.

5. “Insured” means:

a. You and residents of your household who are:

(1) Your relatives; or

(2) Other persons under the age of 21 and in your care or the care of a resident of your household who is your relative;

b. A student enrolled in school full-time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:

(1) 24 and your relative; or

(2) 21 and in your care or the care of a resident of your household who is your relative;

© Insurance Services Office, Inc.

Relatives could include children/stepchildren, parents, grandchildren, grandparents, siblings, in-laws, aunts/uncles/nieces/nephews, cousins, etc.

An example of other persons under the age of 21 is a child in foster care or a court-appointed ward. It could also be a high school exchange student or a non-related child who is in “your” care or the care of a resident relative (a neighbor’s child “you” are caring for while the parents are on a six month job assignment).

This definition is important in the study of Property Coverages; however, the Homeowners Policy expands the definition for Section II- Liability Coverages. In addition to the above, under Section II, “insured” also means:

c. Under Section II:

- (1)** With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person described in 5.a. or b. “Insured” does not mean a person or organization using or having custody of these animals or watercraft in the course of any “business” or without consent of the owner; or
- (2)** With respect to a “motor vehicle” to which this policy applies:
 - (a)** Persons while engaged in your employ or that of any person described in 5.a. or b.; or
 - (b)** Other persons using the vehicle on an “insured location” with your consent.

© Insurance Services Office, Inc.

A person or organization is also considered an “insured” if the person or organization is legally responsible for an animal or watercraft owned by “you” or an “insured” as defined. However, this does not include a person or organization using or having custody of these properties in the course of “business”, or without consent of an “insured”.

EXAMPLE

Amy, a neighbor, volunteers to walk Veronica’s dog. While Amy is walking the dog, the dog jumps on a small child, knocking her to the ground and causing a broken arm. Amy is considered an “insured” under Veronica’s Homeowners Policy.

Using a similar example, if the person walking the dog is an employee of a kennel where Veronica is boarding her dog, there is no coverage for the kennel or its employee. If Veronica is sued as a result of the child’s injuries, she still has coverage under her Homeowners Policy.

EXAMPLE

Mike’s watercraft is stolen, and the thief injures someone while operating the stolen boat. There is no coverage for the thief since the thief did not have Mike’s consent to use the watercraft. Depending on the type of watercraft, there may be limited coverage for Mike because the Homeowners Policy provides only limited coverage for watercraft, as reviewed later in this chapter.

With respect to a “motor vehicle” to which this Policy applies, persons while engaged in “your” employ, or any other person using the vehicle on an “insured location” with “your” consent has coverage as an “insured”. There is limited coverage for “motor vehicles” under this Policy.

EXAMPLE

A gardener, employed by Janet, is operating a lawn tractor and hits a neighbor's child who is playing in Janet's yard. The gardener is also considered an "insured". Likewise, if a friend of Janet is operating her motorized go-cart on an "insured location", he is considered an "insured".

Insured Location

Insured locations are places for which the policy provides premises liability coverage. Insured location is generally thought of as the "residence premises"; however, here is the ISO Homeowners Policy definition:

1. "Insured location" means:
 - a. The "residence premises";
 - b. The part of other premises, other structures and grounds used by you as a residence; and
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
 - c. Any premises used by you in connection with a premises described in **a.** and **b.** above;
 - d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
 - e. Vacant land, other than farm land, owned by or rented to an "insured";
 - f. Land owned by or rented to an "insured" on which a one-, two-, three- or four-family dwelling is being built as a residence for an "insured";
 - g. Individual or family cemetery plots or burial vaults of an "insured"; or
 - h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

© Insurance Services Office, Inc.

As defined, "insured location" is much broader than just "residence premises". This broadening feature allows liability coverage to extend to locations other than the "residence premises".

EXAMPLE

Debbie is staying in the guest room at a friend's house for the week. The guest room is an "insured location" under Debbie's Homeowners Policy for that week.

EXAMPLE

If Sarah rents the dining room at a local country club for a wedding reception and rents a party room at an apartment complex for a bridal shower, both are considered “insured locations”.

Motor Vehicle

Notice there is no mention of registration requirements or road use design in this definition.

1. “Motor vehicle” means:
 - a. A self-propelled land or amphibious vehicle; or
 - b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in **a.** above.

© Insurance Services Office, Inc.

This definition is very broad and, as a result, it includes cars, trucks, recreational vehicles, motorized children’s riding toys, riding lawn mowers, etc.

Occurrence

1. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:
 - a. “Bodily injury”; or
 - b. “Property damage”.

© Insurance Services Office, Inc.

EXAMPLE

Steven’s lawnmower pushes against the neighbor’s fence when he is mowing his lawn. After many months of this, the neighbor’s fence is damaged and now needs to be repaired. One “push” against the fence is unlikely to cause damage; but after many “pushes,” damage results.

Property Damage

1. “Property damage” means physical injury to, destruction of, or loss of use of tangible property.

© Insurance Services Office, Inc.

Residence Employee

This includes an employee of an “insured” whose duties are related to the maintenance or use of the “residence premises”, including household or domestic service, or a person who performs similar duties elsewhere not related to the “business” of an “insured”. A “residence employee” is

not a temporary employee furnished when a permanent “residence employee” is on leave or for seasonal or short-term workloads.

This definition is significant because there are exceptions for a “residence employee” in many of the exclusions and/or limitations found in the Liability Coverage Section.

Residence Premises

11. “Residence premises” means:

- a.** The one-family dwelling where you reside;
- b.** The two-, three- or four-family dwelling where you reside in at least one of the family units; or
- c.** That part of any other building where you reside;
and which is shown as the “residence premises” in the Declarations.

“Residence premises” also includes other structures and grounds at that location.

© Insurance Services Office, Inc.

In addition to the dwelling, a “residence premises” also includes other structures and grounds at that location. The point here is that the “residence premises” is the dwelling that is owner-occupied and shown in the Declarations. This definition reinforces the eligibility requirements.

While the Homeowners Program provides both property and liability coverage, the Policy is divided into three sections. Because a vast majority of Homeowners Policies follow the HO-3 Form, the first focus is on Section I - Property Coverages of the HO-3.

SECTION I – PROPERTY COVERAGES

The following property coverages are available within a Homeowners Policy Program. The actual number of coverages and the protection provided by each varies with the particular type of Homeowners Policy.

- Coverage A – Dwelling
- Coverage B – Other Structures
- Coverage C – Personal Property
- Coverage D – Loss of Use

While many of the coverage parts are the same or very similar in the various Homeowners Policy Forms, there are some differences in Section I - Property Coverages. Because comparing six separate Forms side by side can be confusing, this chapter looks at the most common Homeowners Policy, the HO-3. All other Homeowners Policies are separately compared to and contrasted with the HO-3 later in this chapter.

Coverage A – Dwelling

Coverage A – Dwelling pays for direct physical loss to the dwelling on the “residence premises” shown in the Declarations page. This includes structures attached to the building as well as materials and supplies located on or next to the “residence premises” if these materials and supplies are for construction, alteration, or repair of the dwelling or other structures on the “residence premises”. There is no coverage for the materials and supplies off-premises, such as lumber and other building materials that are located at a vacant lot owned by the named insured.

Land is not covered under Coverage A – Dwelling. The Policy pays for a covered loss to the dwelling up to the limit of liability shown in the Declarations. One of the most difficult aspects of coverage is determining the correct limit of insurance. It is important to consider that only the residence is included in the estimate of value and not the value of the land. Additionally, the insurance requirements state that one must carry insurance equal to at least 80% of the full replacement cost of the building at the time of loss to receive the replacement cost of a loss. This value does not include footings, foundations, piers, or underground pipes, wiring, or drains. Remember, market value and taxable value may have little or no bearing on insurance values, particularly replacement cost.

Coverage B – Other Structures

Coverage B – Other Structures pays for direct physical loss to other structures on the “residence premises” that are not attached to the dwelling (set apart by a clear space) or connected only by a fence, wire, or wall. Land is not covered under Coverage B – Other Structures.

EXAMPLE

Other structures might include a detached garage, playscape, gazebo, deck, or storage building.

Other structures are also not covered in the following two situations:

1. The structure cannot be used for any “business” purposes, but it can contain “business” property that is solely owned by an “insured” or a tenant, provided the stored property is not gaseous or liquid fuel other than fuel in a parked vehicle or craft.
2. The structure cannot be rented to a person other than a tenant of the dwelling, unless rental is for use solely as a private garage.

EXAMPLE

Beverly rents her detached garage to her neighbor, Jim, who only uses the garage to store his classic 1957 Chevy. This separate structure is covered. If the neighbor uses the garage in his classic car restoration business, the separate structure is not covered.

The limit automatically available for Coverage B is 10% of Coverage A and does not reduce the limit available for Coverage A. Endorsements are available for structures that may need additional coverage.

EXAMPLE

Dave's home is covered for its replacement cost of \$100,000. The home suffers major fire damage, and Dave's detached garage (with a replacement value of \$12,000) is also destroyed by the fire. Dave collects \$10,000 for the detached garage.

Coverage C – Personal Property

Most individuals have an exposure to loss of personal property, whether they live in a single or multi-family residence, condominium, or apartment. This coverage is similar in all Homeowners Policies.

Covered Personal Property

Coverage C – Personal Property pays for direct physical loss resulting from a covered peril to personal property owned or used by an “insured” anywhere in the world. This includes personal property of others while the property is located on part of the “residence premises” occupied by an “insured” (this precise wording eliminates coverage for roomers or boarders while in that part of the dwelling they rent). However, the property of a guest or “residence employee” while on any premises occupied by an “insured” is covered. This extends coverage to a maid or nanny who traveled with the “insured” on vacation.

The coverage limit for personal property is shown in the Declarations. The ISO program sets the Coverage C limit at 50% of the Coverage A limit on the HO-3. The Homeowners Policy grants world-wide coverage for an amount up to the Personal Property limit. However, in those cases where property is usually located at an “insured’s” residence other than the “residence premises”, or is located at a self-storage facility, only 10% of Coverage C limits or \$1,000, whichever is greater, is available for payment.

EXAMPLE

The Wise Family insures their residence under a Homeowners 3 for \$100,000 under Coverage A and \$50,000 under Coverage C. They own a cabin at Lake Muddy. The cabin is not insured under a Homeowners Policy. Most of the contents of the cabin are hand-me-downs from their residence. A fire occurs at the cabin, causing damage to the cabin as well as the personal property contained within the cabin. Since this personal property is usually located at the cabin, which is an “insured’s” other residence, it is covered up to 10% of the Coverage C limit, or in this example, \$5,000.

The 10% maximum does not apply to personal property in a newly acquired principal residence for 30 days from the time the policyholder begins to move the property there. If property is moved because the “residence premises” is being repaired, renovated, rebuilt or is otherwise not fit to live in or store property in, the 10% limit does not apply.

Special Limits of Liability for Personal Property

Special Limits of Liability are provisions within the Policy, which stipulate certain types of property are covered for a specified limit, or certain property is only covered for a specified amount if the loss is the result of certain perils. This description reflects the limitations in the ISO Homeowners Policies; however, individual companies frequently provide different limits and/or limit different types of property.

There are 11 special limits for personal property in the HO-3 and most ISO Homeowners Policies. They are:

1. \$200 for money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, and medals, scrip, stored value cards, and smart cards;
2. \$1,500 for securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets, and stamps, including the cost to research or restore material;
3. \$1,500 for watercraft, including trailers, engines, motors, furnishings, and equipment;
4. \$1,500 for trailers not used for watercraft;
5. \$1,500* for theft of jewelry, watches, furs, precious and semi-precious stones;
6. \$2,500* for theft of firearms and related equipment;
7. \$2,500* for theft of silverware, goldware, platinumware, and pewterware;
8. \$2,500 for property on the “residence premises” that is primarily used for “business”;
9. \$1,500 for property off the “residence premises” that is primarily used for “business”; This limit does not apply to items such as tapes, wires or disks that are used with electronic equipment, if these items are in or upon a “motor vehicle”;
10. \$1,500 for portable electronic equipment in or on a “motor vehicle” if such equipment reproduces, receives, or transmits audio, visual or data signals and is designed to be powered by more than one power source (one of which is a “motor vehicle’s” electrical system);
11. \$250 for antennas, tapes, wires, records, disks, or other media that are used with electronic equipment that reproduces, receives, or transmits audio, visual or data signals if these items are in or upon a “motor vehicle”;

Keep in mind that some of these special limits apply only to the peril of theft, while others apply to all covered perils. There are endorsements available to increase these special limits.

Personal Property Not Covered

Certain types of personal property are not covered. They include the following:

1. Property specifically described and insured in this or other insurance, regardless of the limit insured for;

EXAMPLE

Bettie has a special policy that schedules specific pieces of jewelry. There is no longer any coverage for those specifically scheduled items under Coverage C – Personal Property in her Homeowners Policy.

2. Animals, birds, or fish;
3. “Motor vehicles” including their equipment and parts, but not audio, visual or data equipment that is designed to be powered by a source other than a “motor vehicle”. This limitation does not include vehicles not subject to motor vehicle registration which are:
 - Used solely to service a residence, or
 - Designed to assist the handicapped (e.g., an electric wheelchair);

4. Aircraft and parts except model or hobby aircraft not designed to carry people or cargo;
5. Hovercraft and parts;
6. Property of roomers or boarders not related to an “insured”;
7. Property in a rental apartment except as provided in Additional Coverages (reviewed later);
8. Property rented or held for rental to others while off the “residence premises”, such as furniture owned by the “insured” used to furnish a dwelling they rent to others;
9. “Business” data that is stored in paper records, electronic data processing tapes, disks, or other media (the cost of blank tapes, disks, and prerecorded computer software are covered);
10. Credit cards, electronic fund transfer cards, or access devices used solely for deposit, withdrawal, or transfer of funds except as provided in Additional Coverages (reviewed later);
11. Water or steam.

Coverage is available for most of the excluded property on this list under other types of insurance policies or by endorsement to the Homeowners Policy. For example, automobiles should be covered under a policy that addresses specific automobile exposures, such as the Personal Automobile Policy.

Coverage D – Loss of Use

If a covered loss makes a portion or all of the “residence premises” unfit to live in, there are two types of Loss Of Use Coverage available. Limited amounts of these types of coverage are also available if civil authority prohibits use of the “residence premises”.

Additional Living Expense is any necessary increase in living expenses incurred to maintain the household’s normal standard of living.

This expense is paid for the shortest time required to repair or replace the damaged property. If the damage is severe enough to require permanent relocation, the expense is paid for the shortest time required to settle somewhere else.

EXAMPLE

A fire damages a portion of the “residence premises” and Glenn and his family stay in a hotel room while repairs are made. The expense of living at a hotel is covered as an Additional Living Expense; however, property taxes on the home are not considered an Additional Living Expense since taxes are incurred whether or not a loss occurs.

Fair Rental Value is equal to the dollar amount of rent to be received for that part of a residence that is rented or held for rental at the time of a loss, less any expenses which do not continue. As with the Additional Living Expense, this expense is paid for the shortest time required to repair or replace the damaged property.

EXAMPLE

Jerry rents a portion of his house to a tenant. A fire makes that portion of the house unlivable, but the area where Jerry lives is still inhabitable. Jerry may claim the loss of Fair Rental Value for the rented portion.

Under certain conditions, a third type of Loss of Use coverage applies when the “residence premises” is not damaged, but access to it is denied. **Civil Authority Prohibits Use** coverage pays for losses as described in Additional Living Expense and Fair Rental Value if authorities prohibit access to the “residence premises” because of direct damage to neighboring premises by a covered peril. The maximum time period for this coverage is two weeks for any one event.

EXAMPLE

A wildfire burns neighboring premises and threatens Chris’ neighborhood. Authorities do not let people into the threatened area until the danger passes. Chris is covered under Coverage D - Loss of Use.

Loss of Use coverages can extend beyond the end of the policy period for a loss that occurred during the policy period.

The following chart summarizes the four types of property coverage in the ISO HO-3. Keep in mind that individual insurance companies may have different automatic limits in their policies. The most common variation is found in Coverage C – Personal Property.

HO-3 PROPERTY COVERAGE LIMITS	
Coverage A – Dwelling	Insured selects
Coverage B – Other Structures	10% of Coverage A (5% of A for 3 & 4 family dwelling)
Coverage C – Personal Property	50% of Coverage A (30% of A for 3 family & 25% of A for 4 family)
Coverage D – Loss of Use	30% of Coverage A

Additional Coverages

There are a number of broadening coverages described in a section of the Homeowners Policy titled Additional Coverages.

Debris Removal

This Additional Coverage pays reasonable expenses for the removal of debris of covered property arising from a covered cause of loss. This Coverage is included in the limit that applies to the damaged property. If that limit is not enough to pay for the actual damage to the property plus the debris removal expense, an additional 5% of that limit is available for debris removal expense.

EXAMPLE

Michelle's family is celebrating the 4th of July with fireworks and sparklers. Michelle has a Homeowners Policy with a limit of \$60,000 for Coverage C – Personal Property. Her attached garage is full of personal property because she is repainting inside her house. The property suffers a total fire loss. The value of the property loss is \$62,000, and Michelle is responsible for an additional \$1,500 for debris removal. The Policy pays a total of \$61,500: \$60,000 for loss to the personal property (the limit of insurance) and \$1,500 for the debris removal. (There is up to \$3,000 (5% of \$60,000) coverage available for debris removal in this example.)

Debris Removal also pays up to \$1,000 for reasonable expenses to remove fallen trees under certain circumstances. If the tree is on the "residence premise", it must fall as a result of windstorm, hail, weight of ice, snow, or sleet. If a neighbor's tree damages the "insured's" property, it can fall as a result of any of the named perils insured against in Coverage C – Personal Property. The felled tree must damage a covered structure, block a driveway preventing a "motor vehicle" registered for use on public roads from entering or leaving the residence, or block a ramp designed to assist a handicapped person. The \$1,000 limit is the most paid for any one loss, regardless of the number of fallen trees; however, \$500 is the most the Policy pays to remove any one tree.

Reasonable Repairs

A policyholder who takes steps solely to protect damaged covered property from further damage is reimbursed for expenses for reasonable repairs.

Payment under this Additional Coverage reduces the limit applicable to the loss.

EXAMPLE

Buying a tarp to cover a hole in the roof or hiring a contractor to board up a damaged wall after a covered loss is paid under this Additional Coverage.

Trees, Shrubs, and Other Plants (Including Lawns)**3. Trees, Shrubs And Other Plants**

We cover trees, shrubs, plants or lawns, on the “residence premises”, for loss caused by the following Perils Insured Against:

- a. Fire or Lightning;
- b. Explosion;
- c. Riot or Civil Commotion;
- d. Aircraft;
- e. Vehicles not owned or operated by a resident of the “residence premises”;
- f. Vandalism or Malicious Mischief; or
- g. Theft.

© Insurance Services Office, Inc.

Trees, shrubs, and other plants are commonly damaged by wind, hail, snow, and ice. Note that these perils are omitted. Also, there is no coverage for any property grown for “business” purposes.

The limit for a loss is 5% of Coverage A – Dwelling not to exceed \$500 for any one tree, shrub, or plant.

This Additional Coverage is additional insurance.

Fire Department Service Charge

This Additional Coverage pays up to \$500 for liability “you” assume through a contract or agreement with a fire department when the fire department is called to save or protect covered property from covered perils. This Coverage is available when the property is located outside the jurisdictional limits of the responding fire department.

This Additional Coverage is additional insurance and not subject to a deductible.

Property Removed

At times, it becomes necessary to remove covered property from a premises to protect it from damage when a covered peril endangers that property. This Additional Coverage provides coverage for direct loss from any cause (all-risk coverage) to such property and extends this coverage for 30 days from the time of removal.

This Additional Coverage does not increase the limits of insurance that apply to the property being removed.

EXAMPLE

A hurricane threatens Jeff's house located near the coast. Jeff moves covered personal property inland and places the items in a storage unit to protect them from the approaching hurricane. Three days later, heavy rains flood the storage unit and damage the personal property. Flood is a standard exclusion; but, under this provision, the damage is covered, subject to the applicable deductible and policy limits.

Credit Card, Electronic Fund Transfer Card or Access Devices, Forgery, and Counterfeit Money

Under Coverage C – Personal Property, Property Not Covered, credit cards and fund transfer cards are excluded from coverage, except as provided in this Additional Coverage.

This coverage pays up to \$500 for:

1. the legal obligation of an “insured” to pay because of the theft or unauthorized use of credit cards issued in an “insured’s” name;
2. the loss resulting from theft or unauthorized use of an electronic fund transfer card or access device issued in an “insured’s name”;
3. the loss to an “insured” caused by forgery or alteration of any checks or negotiable instrument; and
4. the loss to an “insured” through acceptance in good faith of counterfeit U.S. or Canadian paper currency.

This Additional Coverage does not apply to losses arising out of “business” use or dishonesty of an “insured”. A series of acts committed by one person is considered to be one loss.

EXAMPLE

Linda's son, who resides with her, forges several of her checks. This loss is not covered since the son is an “insured” by definition.

This Additional Coverage is additional insurance and not subject to the deductible.

Loss Assessment

Some policyholders own a dwelling in a neighborhood where the residents are members of a homeowners association. This association of property owners typically owns and maintains common areas and recreational facilities for residents' use. The association members typically have obligations related to exposures created by these common areas and recreational facilities, and they can be subject to assessments for loss to the association's property. If not covered by an association insurance policy, sometimes referred to as the master policy, losses to the common areas and/or recreational facilities are typically shared by members of the association.

Under Additional Coverages, Loss Assessment pays up to \$1,000 for “your” share of an assessment by the association resulting from a direct loss to commonly owned property caused by a peril covered under Coverage A, except earthquake and volcanic eruption. The

limit applies per loss, regardless of the number of assessments. Higher limits are available through an endorsement.

Collapse

This Additional Coverage provides payment for collapse, which is the abrupt falling down or caving in of a building or part of a building as a result of one or more named perils.

The loss must result from one the following perils:

1. Perils Insured Against in Coverage C (reviewed later in this chapter);
2. hidden decay (unless known to an “insured”);
3. hidden insect or vermin damage (unless known to an “insured”);
4. weight of contents, equipment, animals, or people;
5. weight of rain that collects on a roof;
6. use of defective material or methods in construction, remodeling, or renovation, if a collapse occurs during such activity.

Loss to certain residential property, such as awnings, fences, swimming pools, etc., is only covered for collapse as a result of a building collapse.

This Additional Coverage does not extend coverage to a building in danger of falling down even if there is evidence such as cracking or leaning. Also there is no coverage for the portion of the building that remains standing when part of a building collapses.

Policy limits are not changed by this Additional Coverage.

Glass or Safety Glazing Material

This Additional Coverage pays for the breakage of glass or safety glazing material that is a part of a covered building, storm door, or storm window. The Coverage also pays for damage to covered property caused solely by the broken pieces of glass.

There is no coverage, unless breakage is caused by earth movement, if the dwelling is vacant more than 60 consecutive days immediately before the loss.

This Additional Coverage does not increase the limits that apply to the damaged property.

Landlord's Furnishings

Landlord's Furnishings Additional Coverage extends Coverage C – Personal Property to pay for appliances, carpeting, and other household furnishings in each apartment on the “residence premises” regularly rented or held for rental. Such loss must result from a covered peril other than theft. This Additional Coverage pays up to \$2,500 in each apartment and is subject to policy limits.

Ordinance or Law

The Ordinance or Law Additional Coverage pays for increased cost due to the enforcement of any ordinance or law regulating the use, construction, repair, or demolition of a building or other structure. It does not cover costs incurred as a result of pollutants.

This Additional Coverage may be used towards:

- a. Demolishing, reconstructing, or repairing the portion of the building damaged by a Peril Insured Against;
- b. Demolishing and reconstructing the undamaged portion of the building if total demolition is required as the result of a Peril Insured Against;
- c. Remodeling, removing, or replacing the undamaged portion of the building if such renovations are necessary when a portion of the structure is damaged by a Peril Insured Against.

EXAMPLE

A small fire damages a house. Because the aluminum wiring in the house is damaged, local building code requires that all wiring be replaced with copper wiring. In order to replace the aluminum wiring, the contractor must remove an undamaged wall to access the wiring. The Additional Coverage- Ordinance or Law provides coverage towards the additional costs of removing the undamaged wall, replacing the aluminum wiring with copper wiring, and replacing the wall once the re-wiring is completed.

The amount of coverage is 10% of Coverage A – Dwelling (although higher limits are obtainable by endorsement).

This Additional Coverage is additional insurance.

Grave Markers

This provides \$5,000 of actual cash value coverage for damage to grave markers and mausoleums located on or away from the “residence premises” if the damage is caused by a Peril Insured Against under Coverage C – Personal Property.

This Additional Coverage does not increase the limits of liability that apply to the damaged property.

SECTION I – PERILS INSURED AGAINST

Homeowners Policies describe the perils that are covered by using one of two approaches. The first is the named peril approach where each and every covered peril is individually listed. The second approach is where the Policy states very broadly what is covered. For example, the Policy states that risk of direct physical loss or damage is covered, if not specifically excluded (referred to as open perils).

Coverage A – Dwelling and Coverage B – Other Structures

The ISO HO-3 provides coverage for the dwelling (Coverage A) and other structures (Coverage B) on an open perils basis. In other words, this Policy makes broad promises to cover dwellings and other structures for any peril unless it is specifically excluded. The HO-3 does not insure for loss caused by:

1. Collapse, other than described in Additional Coverages;
2. Freezing of plumbing, heating, air conditioning, or appliances unless heat is maintained in the building or the water supply is shut off and the water is drained from the system and appliances;
3. Freezing, thawing, weight of water or ice on fences, patios, swimming pools, foundations, retaining walls, piers, or docks;
4. Theft in or to a residence under construction. This also excludes construction-related materials and supplies;
5. Vandalism and malicious mischief, and any ensuing loss caused by the vandals if the dwelling is vacant more than 60 consecutive days;
6. Mold, fungus, or wet rot, unless it is hidden from view and results from the accidental discharge or overflow of water or steam from an appliance, utility, or heating, air-conditioning, plumbing or fire sprinkler system;
7. Wear and tear, inherent vice (characteristic of a property which causes it to self-destruct, such as metal rusting when exposed to water), mechanical breakdown, rust or other corrosion, mold, rot, and similar causes of loss;
8. Smoke from agricultural smudging or industrial operations;
9. Pollution (discharge, dispersal, seepage, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant), unless such pollution arises from a Peril Insured Against under Coverage C (for example, a fire causes a container of paint solvents to explode, resulting in damage to covered property and causing a pollution loss);
10. Settling, cracking, bulging, or expansion of pavements, patios, foundations, walls, and floors;
11. Birds, rodents, or insects;
12. Nesting, infestation or release of waste products or secretions by any animal; and
13. Animals owned or kept by an “insured”.

If any of the listed excluded perils cause damage to plumbing, heating, air conditioning, sprinkler systems, or household appliances, the Policy pays for ensuing water damage.

Coverage C – Personal Property

Whereas the HO-3 covers the dwelling and other structures on an open perils basis, Coverage C- Personal Property is covered only for named perils.

HO-3 COVERAGE C - PERSONAL PROPERTY	
Perils Insured Against	Named Perils
Fire or Lightning	Yes
Windstorm or Hail	Yes
Explosion	Yes
Riot or Civil Commotion	Yes
Aircraft	Yes
Vehicles	Yes
Smoke	Yes
Vandalism or Malicious Mischief	Yes
Theft	Yes-Limited
Falling Objects	Yes
Weight of Ice, Sleet, or Snow*	Yes
Accidental Discharge or Overflow of Water or Steam	Yes
Cracking, Burning, or Bulging of Heating System or Air Conditioner or Hot Water Heater	Yes
Freezing	Yes
Sudden & Accidental Damage from Artificially Generated Electrical Current	Yes
Volcanic Eruption	Yes
* Only applies to property contained within a building.	

The following is a more detailed explanation of the coverages provided by selected perils under the Homeowners Policies:

Windstorm or Hail

The Policy does not pay for a loss to the property within a building caused by rain, snow, sleet, sand, or dust unless the direct force of windstorm or hail damages the building and the rain, snow, sleet, sand, or dust enters through that opening. Examples are the wind blowing out a window, or hail breaking a sky light.

Watercraft and their trailers are only covered for wind or hail while in a fully enclosed building.

Theft for Coverage C – Personal Property

This covered peril does not apply to following losses:

- Theft committed by an “insured”;
- Theft of building supplies for use in a dwelling under construction or any property in a building under construction until it is both finished and occupied;
- Theft from that part of a “residence premises” rented by an “insured” to someone other than another “insured”;

EXAMPLE

Personal property belonging to Harry, the homeowner, is stolen from a room that he rents to a friend (non-relative). There is no coverage under Harry’s Homeowners Policy for this stolen personal property.

- Theft of watercraft and their accessories and furnishings while off the “residence premises”;
- Theft of trailers and camper trailers while off the “residence premises”;
- Theft of property while at any other residence owned by, rented to, or occupied by an “insured” except when the “insured” is temporarily there. Property of an “insured” who is a student is covered at the residence the student occupies while attending school, as long as the student has been there any time during the 90 days immediately preceding the theft loss.

EXAMPLE

Larry goes to his lake house, where he plans to spend the weekend. While he is at the grocery store, a thief steals personal property from the lake house. Larry is temporarily residing there, so there is coverage.

Falling Objects

There is no coverage for property contained within a building, unless the roof or an outside wall of the building is damaged first by a falling object.

EXAMPLE

When a door in a residence slams shut, the vibration causes a plate to fall from a shelf in a china cabinet, breaking several expensive pieces of crystal. There is no coverage for this loss.

Accidental Discharge or Overflow of Water or Steam from within Plumbing, Heating, Air Conditioning, Fire Protective Sprinkler, or from within an Appliance.

This peril does not include loss:

- To the system or appliance from which the water or steam escapes; or
- On the “residence premises” caused by accidental discharge or overflow which occurs off the “residence premises”.

Sudden and Accidental Tearing Apart, Cracking, Burning, or Bulging of Steam or Hot Water Heating or Air Conditioning Systems, Automatic Fire Protective Sprinklers, or Hot Water Heater.

This peril does not include damage to the system or appliance.

Freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system is not covered unless reasonable care is used to maintain heat in the building or the water supply is shut off and all systems and appliances are drained. Similarly, if the building is protected by an automatic fire protective sprinkler system, reasonable care must be used to maintain the water supply and heat must be maintained in the building.

The explanations of the perils described are not intended to be comprehensive, but should give additional insight into the coverage related to the perils. It is important to keep in mind that the different Homeowners Policies include coverage for different perils. Other Homeowners Policies are compared to and contrasted with the HO-3 later in this chapter.

Also note that Coverages A, B, and C have specific perils that apply or are excluded. Coverage D – Loss of Use does not have specific perils but applies only when the “residence premises” is not fit to live in as a result of a covered peril.

EXCLUSIONS – SECTION I PROPERTY

Exclusions are very important in the understanding of what coverage the Homeowners Policy provides. There is usually a need to clarify the broad promise of the insuring agreement. This is especially true of the open perils approach as used in the HO-3.

The following exclusions bar coverage for any property loss caused directly or indirectly by the listed causes. These are excluded regardless of any other events contributing before, during, or after the loss.

Ordinance or Law

The Homeowners Policy excludes any expenses related solely to the compliance of laws or ordinances. Please keep in mind some coverage is given back in the Additional Coverages of the Homeowners Policy.

EXAMPLE

Fire completely destroys Kathryn’s garage. The garage contains a traditional hot water heater that heats water for the entire house. If the local building code requires a tankless water heater, the additional costs are not covered beyond the coverage given back in the Additional Coverages.

Earth Movement

The Policy does not cover any earth movement including: earthquake, land shock or tremor, landslide, mudslide, mudflow, subsidence, sinkhole or earth sinking, rising, or shifting or from any event caused by or resulting from human or animal force or any act of nature. The only exceptions

to this exclusion occur if a loss is caused by fire, explosion, or breakage of glass resulting from earth movement.

Water

The Homeowners Policy is not a flood policy; therefore, water damage caused by a sewer backup, flood, tidal wave, or any other cause is not covered. A separate flood policy must be purchased. This exclusion does not apply to water damage from an appliance, which is specifically given back in Accidental Discharge or Overflow of Water or Steam peril.

Power Failure

Power failure taking place away from the “residence premises” is excluded. However, if the failure results in a loss from a Peril Insured Against on the “residence premises”, coverage is provided for the loss caused by that peril.

Neglect

There is no coverage for losses resulting from the insured’s failure to take all reasonable steps to protect insured property at the time of or after the loss.

War

Nuclear Hazard

Intentional Loss

This excludes any damage that an insured causes or conspires to commit with the intent to cause a loss. Such damage is excluded even for an insured that did not cause the damage. It is this specific exclusion that was added to address the issue of arson by insureds. Most states make an exception to this exclusion for victims of domestic violence and do not allow an insurer to deny coverage for innocent insureds for damage resulting from domestic violence.

Governmental Action

The destruction, confiscation, or seizure of property described in Coverage A, B, or C by a public authority is not covered. This exclusion does not apply if such action is taken to prevent the further spread of fire.

OTHER HOMEOWNERS FORMS

While a vast majority of Homeowners Policies are written using the HO-3, there are circumstances when another Homeowners Policy is more appropriate for a particular exposure. The Homeowners Policy pays for covered property for losses arising from perils shown in the specific Homeowners Coverage Form. Coverages A and B have the greatest variance in perils among Forms.

HO-2

The significant difference between the HO-2 and the HO-3 is in the covered perils for Coverage A and Coverage B. Whereas Coverage A and Coverage B are covered for open perils in the HO-3, the HO-2 covers the Dwelling and Other Structures for the same named perils as Coverage C - Personal Property.

HO-4

A person that does not own a home still has some of the same exposures as one who does. The Contents Broad Form (HO-4) is designed to provide a tenant with similar coverage (other than dwelling and other structures coverage) as an HO-3.

Coverage A- Dwelling, Coverage B- Other Structures

The HO-4 Contents Broad Form, the “tenant’s form”, has no coverage for Coverage A – Dwelling or Coverage B - Other Structures. However, under the Additional Coverages of Coverage C – Personal Property, the HO-4 provides limited coverage for alterations, improvements, and betterments, which resembles Coverage A.

Coverage C- Personal Property

The Coverage C limit is set by the policyholder on the HO-4 rather than a set percentage of another coverage.

Additional Coverages

Trees, Shrubs, and Other Plants (Including Lawns)

The limit on a HO-3 for a loss is 5% of Coverage A – Dwelling, not to exceed \$500 for any one tree, shrub, or plant; however, the HO-4 limits the payment to 10% of Coverage C – Personal Property.

Loss Assessment

Because there is no Coverage A, the HO-4 provides Loss Assessment Additional Coverage for perils covered under Coverage C except earthquake and volcanic eruption.

Landlord’s Furnishings

This Additional Coverage is not applicable under the HO-4.

Building Additions and Alterations

This Additional Coverage is applicable only in the HO-4 and provides coverage under Coverage C – Personal Property for any building improvements or installations made or acquired at the policyholder’s expense to that part of the “residence premises” used exclusively by the policyholder.

The maximum limit for this Coverage is 10% of the Coverage C limit. This Additional Coverage is additional insurance.

EXAMPLE

Carol spends several hundred dollars to install two ceiling fans and several lighting fixtures in an apartment she rents. If these improvements are damaged or destroyed by a covered peril, Carol has coverage under her Coverage C – within the Building Additions and Alterations Additional Coverage sublimit.

HO-5

The HO-5 offers the broadest coverage of all of the Homeowners Policies. The main difference between the HO-3 and the HO-5 is which perils are covered for Coverage C - Personal Property. While the HO-3 provides only named perils coverage, the HO-5 provides coverage for Coverage C on an open perils basis.

HO-6

This Coverage Form is designed to provide coverage for a condo owner.

Coverage A- Dwelling

The HO-6 Unit-Owners Form specifies coverage under Coverage A – Dwelling for the following:

- Alterations, appliances, fixtures, and improvements that are part of the building contained within the “residence premises”.
- Items of real property that pertain exclusively to the “residence premises”.
- Property that is “your” insurance responsibility under a corporation or property owners’ association agreement.
- Structures owned solely by “you” other than the “residence premises” at the location of the “residence premises” (this would include a storage shed, for example). It is important to consider these items when determining the appropriate amount of coverage.

Coverage B - Other Structures

The HO-6 Unit-Owners Form does not have Coverage B – Other Structures. However, the Form provides coverage under Coverage A – Dwelling for structures owned solely by the named insured other than the “residence premises” at the location of the “residence premises”, such as a garage, carport, shed, etc.

Coverage C- Personal Property

The Coverage C limit is set by the policyholder on the HO-6.

Additional Coverages***Trees, Shrubs, and Other Plants (Including Lawns)***

For most homeowners policies, the limit for a loss is 5% of Coverage A – Dwelling, not to exceed \$500 for any one tree, shrub, or plant, except the HO-6, which limits the payment to 10% of Coverage C – Personal Property.

Loss Assessment

While the Loss Assessment Additional Coverage of the HO-6 is the same as the HO-3, this exposure could be even more significant for condominium owners. An endorsement to increase loss assessment coverage is highly recommended for condominium owners.

Landlord’s Furnishings

This Additional Coverage is not applicable under the HO-6.

HO-8

The HO-8 offers the most restrictive coverage; however, there is still more coverage than the coverage offered by a Dwelling Policy.

Coverage C

The coverage limit for personal property is shown in the Declarations. The ISO program sets the Coverage C limit at 50% of the Coverage A limit on the HO-8.

Special Limits of Liability for Personal Property

There are 11 special limits for personal property in the HO-3 and most ISO Homeowners Policies, with the exception of the Homeowners 8, which contains only eight. These Special Limits do not apply under a HO-8.

1. \$1,500 for trailers not used for watercraft.
2. \$1,500* for theft of jewelry, watches, furs, precious and semi-precious stones.
3. \$2,500* for theft of firearms and related equipment.

Additional Coverages

The following Additional Coverages do not apply to the HO-8:

- Collapse
- Landlord's Furnishings
- Ordinance or Law

Perils Insured Against

Theft

The HO-8 further limits theft coverage to property on the "residence premises", in a bank or other safety deposit box or in a self-storage facility. Also a maximum of \$1000 is paid for any one loss that is caused by theft.

Perils Not Included

While most homeowners policies provide coverage, there is no coverage under the HO-8 for the following perils:

- Falling Objects;
- Weight of Ice, Sleet, or Snow;
- Accidental Discharge or Overflow of Water or Steam;
- Cracking, Burning, or Bulging of Heating System or Air Conditioner or Hot Water Heater;
- Freezing; and
- Sudden & Accidental Damage from Artificially Generated Electrical Current.

SUMMARY OF HOMEOWNERS POLICY VARIATIONS - SECTION I

For assistance in comparing and contrasting the standard ISO limits for each coverage, refer to the following chart.

STANDARD ISO HOMEOWNERS PROPERTY COVERAGE LIMITS				
Coverage	HO-2, HO-3 and HO-5	HO-4	HO-6	HO-8
Coverage A – Dwelling	Insured selects	No Coverage A (10% Coverage C available for alterations)	\$5,000 Additional limit may be requested	Insured selects
Coverage B – Other Structures	10% of Coverage A (5% of A for 3 & 4 family dwelling)	No Coverage B	No Coverage B (Other structures included in Coverage A)	10% of Coverage A
Coverage C – Personal Property	50% of Coverage A (30% of A for 3 family & 25% of A for 4 family)	Insured selects	Insured selects	50% of Coverage A
Coverage D – Loss of Use	30% of Coverage A	30% of Coverage C	50% of Coverage C	10% of Coverage A

The chart below gives a summary of how each Policy approaches the perils.

SUMMARY OF PERILS APPROACH		
Name of Form	Coverage A & B	Coverage C
Broad – HO-2	Broad Named Perils	Broad Named Perils
Special – HO-3	Open Perils	Broad Named Perils
Contents Broad – HO-4	Not applicable	Broad Named Perils
Comprehensive - HO-5	Open Perils	Open Perils
Unit-Owners - HO-6	Broad Named Perils	Broad Named Perils
Modified - HO-8	Basic Named Perils	Basic Named Perils
NOTE: There is no Coverage B in the HO-6		

HOMEOWNERS POLICY COVERAGE A - DWELLING AND COVERAGE B - OTHER STRUCTURES			
Perils Insured Against	HO-8 Named Perils	HO-2 & 6 Named Perils	HO-3 & 5 Open Perils
Fire or Lightning	Yes	Yes	Yes
Windstorm or Hail	Yes	Yes	Yes
Explosion	Yes	Yes	Yes
Riot or Civil Commotion	Yes	Yes	Yes
Aircraft	Yes	Yes	Yes
Vehicles	Yes	Yes	Yes
Smoke	Yes	Yes	Yes
Vandalism	Yes-Limited	Yes	Yes
Theft	Yes-Limited	Yes-Limited	Yes
Falling Objects	No	Yes	Yes
Weight of Ice, Sleet, or Snow	No	Yes	Yes
Accidental Discharge or Overflow of Water or Steam	No	Yes	Yes
Cracking, Burning, or Bulging of Heating System or Air Conditioner or Hot Water Heater	No	Yes	Yes
Freezing	No	Yes	Yes
Sudden & Accidental Damage from Artificially Generated Electrical Current	No	Yes	Yes
Volcanic Eruption	Yes	Yes	Yes
Direct Loss Except Theft to Dwelling Under Construction	No	No	Yes
V&MM if Vacant more than 60 Consecutive Days	No	No	No
<ul style="list-style-type: none"> Under the Homeowners 8 Coverage A–Dwelling and Coverage B–Other Structures are covered for direct physical loss resulting from only 10 basic named perils: fire or lightning; windstorm or hail; explosion; riot or civil commotion; aircraft; vehicles; smoke; vandalism or malicious mischief; theft; and volcanic eruption. Remember that the HO-4 Contents Broad Form has no Coverage A – Dwelling. Under the Additional Coverages, there is some protection for alterations, improvements, and betterments, which resembles Coverage A. Homeowners 2 and 6 provide coverage for direct physical loss resulting from broad named perils. This includes the perils listed above in the Homeowners 8, plus 6 additional perils. Homeowners 3 and 5 provide coverage under Coverages A and B for direct physical loss resulting from direct loss (open perils) except any perils, which are excluded. 			

Coverage C – Personal Property

The Homeowners Policies pay for covered Personal Property for losses arising from the perils shown in the specific Homeowners Policy Form.

HOMEOWNERS POLICY COVERAGE C - PERSONAL PROPERTY			
Perils Insured Against	HO-8 Named Perils	HO-2,3,4 &6 Named Perils	HO-5 Open Perils
Fire or Lightning	Yes	Yes	Yes
Windstorm or Hail	Yes	Yes	Yes
Explosion	Yes	Yes	Yes
Riot or Civil Commotion	Yes	Yes	Yes
Aircraft	Yes	Yes	Yes
Vehicles	Yes	Yes	Yes
Smoke	Yes	Yes	Yes
Vandalism or Malicious Mischief	Yes- Limited	Yes	Yes
Theft	Yes- Limited	Yes- Limited	Yes
Falling Objects	No	Yes	Yes
Weight of Ice, Sleet, or Snow*	No	Yes	Yes
Accidental Discharge or Overflow of Water or Steam	No	Yes	Yes
Cracking, Burning, or Bulging of Heating System or Air Conditioner or Hot Water Heater	No	Yes	Yes
Freezing	No	Yes	Yes
Sudden & Accidental Damage from Artificially Generated Electrical Current	No	Yes	Yes
Volcanic Eruption	Yes	Yes	Yes
* Only applies to property contained within a building.			

CONDITIONS

The Conditions found in the Homeowners Policy apply to all homeowners policy forms. Selected homeowners policy conditions are examined here.

Insurable Interest and Limit of Liability

The insurer is not liable for any amount greater than the “insured’s” interest at the time of the loss or the applicable limit of liability, whichever is less.

Deductible

The insurer only pays the part of the loss that is in excess of the deductible shown in the Declarations. If more than one deductible is applicable to the loss, only the highest deductible applies.

Duties After Loss

Duties After Loss include:

- Give prompt notice to the insurance company or its agent;
- Protect the property from further damage;
- Make reasonable repairs to protect the property;
- Keep accurate records and prepare an inventory of damaged personal property;
- Show the damaged property and provide records related to the property; and
- Send a signed and sworn proof of loss within 60 days after the company so requests.

In addition to these duties, the Homeowners Policies requires the “insured” to:

- Notify the police in case of theft;
- Notify the credit card or electronic fund transfer card company in case of loss under that Additional Coverage; and
- Provide evidence or affidavit supporting a claim under credit card, fund transfer card, forgery, or counterfeit money coverage, stating the amount and cause of loss.

Loss Settlement

The Loss Settlement Condition is an important provision. An explanation with some specific examples is imperative to understanding this Condition of the Homeowners Policy.

Actual Cash Value (ACV)

Actual Cash Value is generally considered the cost to repair an item or the replacement cost, less any depreciation applicable to the damaged item. The unendorsed Homeowners Policy pays the lesser of ACV or the cost to repair or replace for the following types of property:

1. Personal property;
2. Awnings, carpeting, household appliances, outdoor antennas, and outdoor equipment;
3. Structures that are not buildings such as a deck or a fence; and
4. Grave markers, including mausoleums.

Endorsements are available to change loss settlement from actual cash value to replacement cost for some of these types of property.

Replacement Cost

The Homeowners Policy (Other than an HO-8) provides that the residence under Coverage A – Dwelling and buildings covered under Coverage B – Other Structures are paid at repair or Replacement Cost, without any deduction for depreciation, provided the limit of insurance in the Homeowners Policy on the damaged building is at least 80% of the full replacement cost of the building at the time of loss. This replacement cost does not include the cost of complying with any ordinance or law. Of course, payment does not exceed the policy limits.

Here is an example where the “insured” meets the requirement.

EXAMPLE

Greg has a ten-year-old dwelling with a replacement cost of \$100,000. The amount of insurance under Coverage A is \$80,000. Greg sustains a loss from a covered peril to the roof of the residence that costs \$10,000 to repair. The amount required to meet the replacement cost condition is \$80,000 (80% of \$100,000). Since Greg has at least this amount, the Policy pays replacement cost without deduction for depreciation, up to the Limit of Liability and less the deductible.

If the amount of insurance on the damaged building is less than 80% of the full replacement value at the time of loss, the Homeowners Policy pays the greater of the following amounts:

- the ACV of the building or the part destroyed; or
- that proportion of the amount of insurance actually carried on the residence to the amount required (80% of the full replacement cost) times the amount of the loss.

In this example, the “insured” is underinsured.

EXAMPLE

The dwelling has a \$100,000 replacement cost value, but there is only a \$60,000 limit of liability under Coverage A. The roof has an Actual Cash Value of \$6,000; however, it costs \$10,000 to replace the roof. The ACV loss settlement is \$6,000 (\$10,000 – \$4,000 depreciation) minus the deductible.

Using the proportion formula, the amount paid is:

Amount of insurance

Amount of insurance required X Loss - minus any deductible

The amount of insurance required is 80% of \$100,000. Then, employ the formula above:

\$60,000 (amount of insurance carried)

\$80,000 (amount of insurance required) X \$10,000 (covered repair costs)
minus the deductible equals amount paid OR

3/4 of \$10,000 (\$7,500) minus the deductible equals the amount payable.

The amount from the formula (\$7,500) is used since it is larger than the \$6,000 ACV.

The Replacement Cost Condition encourages an “insured” to carry an amount of insurance closer to the actual replacement cost. In the case where an “insured” is carrying an amount of insurance less than the required 80% of the replacement cost, the claims adjuster should also calculate both options to determine which option gives the “insured” a larger payment. From the example above, the “insured” wants to receive the payment on the adjusted or penalized replacement cost basis of \$7,500 instead of \$6,000 on an actual cash value basis. The deductible is then applied to the loss payment.

If the “insured” carries insurance limits equal to 100% of the value of the dwelling, the “insured” may still fall short of being fully compensated should a total loss occur. For example, the house burns, but the cost to demolish the structure costs more than the Policy provides. The decision regarding the amount of insurance coverage should be the “insured’s” and not the agent’s or CSR’s.

Other Insurance

If a loss is covered by other insurance, the Homeowners Policy pays in proportion to its limits. This pro rata basis is introduced and further explained in the Property and Casualty Insurance Basics in chapter 2. In addition, the Homeowners Policy is excess to any service agreement, property restoration plan, home warranty, etc.

Our Option

The insurance company must give the “insured” written notice as to how it plans to settle the claim within 30 days from the day the company receives the “insured’s” sworn proof of loss. It is the company’s option to pay in cash or repair or replace with like kind and quality for any damaged property. The “insured” does not have the option of requesting repair, replacement, or money.

SECTION II – LIABILITY

Up to this point in the chapter, the focus is on the property coverage aspects of the Homeowners Policy. Section II provides Liability Coverages in this Policy.

There are two coverage parts in Section II of the Homeowners Policy: Coverage E – Personal Liability and Coverage F – Medical Payments to Others. The main purpose of Section II – Liability Coverages is to protect the named insured and other individuals who are an “insured” by definition from the financial responsibility arising out of legal obligations from covered “occurrences”.

Coverage Forms

Unlike the differences between Coverage Forms in the Homeowners Section I – Property, all ISO Homeowners Coverage Forms provide the same liability coverage.

Definitions

Before examining the two Section II - Liability Coverages provided by the Homeowners Forms, it is important to understand the key definitions of terms and phrases used in the Forms. Because the Definitions Section appears at the beginning of the Policy, the defined words and phrases apply to the entire Policy. Refer back to the Definitions Section for necessary clarification. These definitions are important to the study of Section II of the Homeowners Policy. Remember, in Section II – Liability, there are two coverages:

- Coverage E – Personal Liability
- Coverage F – Medical Payments to Others

Coverage E – Personal Liability

Coverage E – Personal Liability in the Homeowners Policy makes two promises.

First, it agrees to pay up to the limit of liability shown in the Declarations for “bodily injury” and “property damage” for which an “insured” is legally liable. This includes any prejudgment interest.

The second promise agrees to provide a defense at the insurance company’s expense. The company has the right to choose any legal counsel, and the insurer can settle any claim or suit that the insurer feels is appropriate. The insurer must defend, even if the suit is groundless, false, or fraudulent. This clearly states the duty to defend. The insurer’s duty to defend ends when the policy limit is exhausted by payment of a judgment or settlement.

Legal claims for damages can arise out of the failure to maintain an “insured location” in a proper manner or they can arise out of activities on or away from an “insured location”. Some examples of liability situations that Coverage E – Personal Liability typically covers include:

EXAMPLES

1. A guest falls in Alex’s home when a loose stairwell railing breaks away. The guest suffers cracked ribs and sues Alex, the homeowner.
2. Jim is a novice volleyball player and homeowner. In an attempt to spike the ball, he injures a bystander, who demands restitution from Jim for his injury.
3. Mary is putting up decorations for a celebration at a community center. She bumps a ladder, knocking another volunteer off the ladder, which results in a broken arm. The injured volunteer then makes a claim against Mary.
4. Kirk cuts down a tree on his property, and it falls onto a neighbor’s automobile. The neighbor wants payment for the damage to the automobile and for the loss of use of the automobile. (Loss of use includes expenses for a rental vehicle until the damaged auto is repaired or replaced in a timely manner.)

Damages for “bodily injury” can include the payment of medical bills, loss of income, pain and suffering, and death benefits. In the Homeowners Policy, “bodily injury” does not mean personal injury. Specified types of personal injury, such as libel, slander, wrongful entry, and wrongful eviction, can be covered by endorsement.

Damages for “property damage” may also include payment for loss of use.

Coverage F – Medical Payments to Others

Coverage F – Medical Payments to Others is no-fault coverage provided to certain persons for their “bodily injury” arising from an accident while they are on an “insured location” or arising from certain activities by an “insured”. Medical Payments to Others is goodwill coverage. Payment of claims is not based on a legal obligation but rather is based on a moral (no-fault) obligation. This coverage pays the necessary medical expenses that one incurs or medically ascertains within three years of the accident. It also pays for funeral expenses.

Notice that the coverage is Medical Payments to Others. Coverage does not apply to “you” or anyone who is a regular resident of “your” household. An exception from the regular resident requirement applies to “residence employees”. Thus, a housekeeper living in the house with “you” can still collect under this coverage.

EXAMPLE

Meredith invites a friend to her house for dinner. For no apparent reason, the friend stumbles over his own feet, falls, and hurts his arm. The next day his arm is swollen, and the friend goes to a doctor, where examination reveals a hairline fracture. This type of claim is covered under Coverage F – Medical Payments to Others. If a resident of the household suffers a similar injury, there is no Coverage F for the resident, unless he/she is a “residence employee”.

In the above example, there is no apparent negligence by the “insured”. The accident arose out of the visitor not paying attention while walking. The damages resulting from the accident are not paid under Coverage E Personal Liability since the “insured” is not legally obligated to pay for damages. This coverage provides goodwill and helps maintain positive relations between “insureds” and injured persons. Also, by paying the medical bills quickly and without establishing fault, some of the more expensive lawsuits are hopefully avoided on small injury claims.

The amount payable for Coverage F – Medical Payments to Others is shown in the Declarations on a per person basis for any one accident. This limit is selected by the “insured” within the parameters set by the insurance company.

Coverage F – Medical Payments to Others applies only:

1. To a person on the “insured location” with the permission of an “insured”; or
2. To a person off the “insured location”, if the “bodily injury”:
 - a. Arises out of a condition on the “insured location” or the ways immediately adjoining;
 - b. Is caused by the activities of an “insured”;
 - c. Is caused by a “residence employee” in the course of the “residence employee’s” employment by an “insured”; or
 - d. Is caused by an animal owned by or in the care of an “insured”.

© Insurance Services Office, Inc.

SECTION II – EXCLUSIONS

The exclusions in Section II – Liability Coverages are divided into three separate types of exclusions. There are exclusions that apply to both Coverage E and F, exclusions that only apply to Coverage E, and exclusions that apply only to Coverage F.

Applicable to Coverage E and Coverage F

1. “Motor Vehicle Liability”

Remember that “motor vehicle liability” is a defined term, and, therefore, this exclusion removes coverage for everything included in the definition.

This exclusion is written in two parts. The first part defines there is no applicable coverage under the Homeowners Policy as follows:

A. “Motor Vehicle Liability”

1. Coverages E and F do not apply to any “motor vehicle liability” if, at the time and place of an “occurrence”, the involved “motor vehicle”:
 - a. Is registered for use on public roads or property;
 - b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the “occurrence”; or
 - c. Is being:
 - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
 - (2) Rented to others;
 - (3) Used to carry persons or cargo for a charge; or
 - (4) Used for any “business” purpose except for a motorized golf cart while on a golfing facility.

© Insurance Services Office, Inc.

While much “motor vehicle liability” is excluded, there is some giveback of coverage. If the previous exclusion does not apply, there is still no coverage except for the following situations:

2. If Exclusion A.1. does not apply, there is still no coverage for “motor vehicle liability”, unless the “motor vehicle” is:
 - a. In dead storage on an “insured location”;
 - b. Used solely to service a residence;
 - c. Designed to assist the handicapped and, at the time of an “occurrence”, it is:
 - (1) Being used to assist a handicapped person; or
 - (2) Parked on an “insured location”;
 - d. Designed for recreational use off public roads and:
 - (1) Not owned by an “insured”; or

© Insurance Services Office, Inc.

EXAMPLES

There is “motor vehicle liability” for the following types of vehicles:

- A car that is on blocks in the garage at the “insured’s” residence with the engine removed as the “insured” rebuilds the car;
- A lawn tractor used only to service a residence;
- A motorized wheelchair that is being used by a handicapped person.
- A four-wheel ATV that an “insured” rents;
- A four-wheel ATV that an “insured” owns while it is on the “insured’s” “residence premises”.

While there is coverage for a non-owned recreational off-road vehicle, coverage is more restrictive for owned recreational vehicles. If owned by an “insured”, there is coverage for such a vehicle on a specified “insured location”. The Policy also extends coverage to any location for toy vehicles such as a Princess Jeep or Kiddie Convertible that are designed for small children under the age of seven. In order to have coverage, the toy must be battery powered and the speed may not exceed 5 miles per hour.

(2) Owned by an “insured” provided the “occurrence” takes place:

- (e)** On an “insured location” as defined in Definition B.6.a., b., d., e. or h.; or
- (f)** Off an “insured location” and the “motor vehicle” is:
 - (i)** Designed as a toy vehicle for use by children under seven years of age;
 - (ii)** Powered by one or more batteries; and
 - (iii)** Not built or modified after manufacture to exceed a speed of five miles per hour on level ground;

© Insurance Services Office, Inc.

- e. A motorized golf cart that is owned by an “insured”, designed to carry up to four persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an “occurrence”, is within the legal boundaries of:
- (1) A golfing facility and is parked or stored there, or being used by an “insured” to:
 - (a) Play the game of golf or for other recreational or leisure activity allowed by the facility;
 - (b) Travel to or from an area where “motor vehicles” or golf carts are parked or stored; or
 - (c) Cross public roads at designated points to access other parts of the golfing facility; or
 - (2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an “insured’s” residence.

© Insurance Services Office, Inc.

If the golf cart is owned by the “insured”, there is coverage for specific golfing activities. There is also liability coverage for golf cart use in a neighborhood if the “insured” lives in a residential community with a property owners’ association that allows golf carts to be used on the streets.

EXAMPLE

Michael lives in a country club community. In his community, the homeowners association bylaws allow residents to drive golf carts within the community. In a rush to the golf course, Michael strikes a jogger. Liability coverage is not excluded.

The following chart provides a summary of the coverage or the lack of coverage for motor vehicles. In many instances, coverage is better provided by a Personal Auto Policy or a recreational vehicle policy.

HOMEOWNERS MOTOR VEHICLE LIABILITY COVERAGE	
Types of Vehicles	Coverage – HO Section II
All Motor Homes	No coverage unless in dead storage on “insured location”.
All Camper Vans and Pickup Campers	No coverage unless in dead storage on “insured location”.
All Camper Trailers, Travel Trailers, and towing units.	No coverage while being towed. If owned, covered while detached from a towing unit.
Motorcycles and Motorized Bikes	No coverage, except for recreational vehicles not subject to registration.
	If owned and not subject to registration, vehicle is covered while on an “insured location”.
	If non-owned and not subject to registration, vehicle is covered.
Snowmobiles	If owned and not subject to registration, vehicle is covered while on an “insured location”. If non-owned and not subject to registration, vehicle is covered.
Golf carts	Non-owned golf carts are not covered under Homeowners Policies. They are covered under Personal Auto Policies.
	Owned golf carts, not subject to registration, are covered on an “insured location”.
	Owned golf carts, not subject to registration, are covered off an “insured location” when used to play golf on a golf course or for other activity allowed by the golfing facility. Also covered traveling to or from storage area and while crossing roads at designated points to access other parts of the golf course.
	Owned golf carts, not subject to registration, are covered if being used in a private residential community that allows use on its public roads and contains an “insured’s” residence.
ATVs All-Terrain Bikes, Dune Buggies, & Other Recreational Vehicles	If owned and not subject to motor vehicle registration, covered while on an “insured location”.
	If non-owned and not subject to motor vehicle registration, vehicle is covered.
Motorized Conveniences (lawn tractors, motorized wheelchairs)	No coverage unless used solely to service a residence or if designed to assist the handicapped under certain conditions.

2. “Watercraft Liability”

The Homeowners Policy greatly narrows the particular types of watercraft that are covered. Watercraft are better suited for a watercraft policy.

B. “Watercraft Liability”

1. Coverages **E** and **F** do not apply to any “watercraft liability” if, at the time of an “occurrence”, the involved watercraft is being:
 - a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;
 - b. Rented to others;
 - c. Used to carry persons or cargo for a charge; or
 - d. Used for any “business” purpose.

© Insurance Services Office, Inc.

However, there is liability coverage if the watercraft is stored at the time of the occurrence. Also, other liability coverage is based on the type of watercraft, ownership, size, and horsepower.

- b. Is a sailing vessel, with or without auxiliary power, that is:
 - (1) Less than 26 feet in overall length; or
 - (2) 26 feet or more in overall length and not owned by or rented to an “insured”; or
- c. Is not a sailing vessel and is powered by:
 - (1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:
 - (a) 50 horsepower or less and not owned by an “insured”; or
 - (b) More than 50 horsepower and not owned by or rented to an “insured”; or
 - (2) One or more outboard engines or motors with:
 - (a) 25 total horsepower or less;
 - (b) More than 25 horsepower if the outboard engine or motor is not owned by an “insured”;
 - (c) More than 25 horsepower if the outboard engine or motor is owned by an “insured” who acquired it during the policy period; or
 - (d) More than 25 horsepower if the outboard engine or motor is owned by an “insured” who acquired it before the policy period, but only if:
 - (i) You declare them at policy inception; or
 - (ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

© Insurance Services Office, Inc.

Reference to the following chart helps in understanding what is and is not covered.

WATERCRAFT EXCLUSIONS			
Outboards	Owned are covered if 25 total hp or less	Borrowed are covered	Rented are covered
Inboards or Inboards/ Outdrives	Owned are not covered	Borrowed are covered	Rented are covered if 50 hp or less
Sailing Vessels	Owned are covered if less than 26 feet	Borrowed are covered	Rented are covered if less than 26 feet

3. “Aircraft Liability”

4. “Hovercraft Liability”

5. Expected or Intended “Bodily Injury” or “Property Damage” by the Insured

EXAMPLE

The Homeowners Policy does not pay for damages caused when Jeff cuts down the neighbor’s tree because he is tired of sweeping leaves and twigs from his driveway.

6. “Business”

Remember that the Homeowners Policy is designed to cover personal risks. This Policy is not intended to cover business risks. Neither the coverage nor the premium charged is adequate for a “business” activity exposure. For proper coverage, “business” activity exposures need Commercial Liability Policies or special Business-in-the-Home Endorsements that attach to the Homeowners Policy and are offered by many insurers.

Most claims for damage arising out of or in connection with a “business” or professional service related to the “business” engaged in by the “insured” are excluded.

There are some exceptions to the exclusion and any situation that falls in one of the exceptions is therefore covered.

This Exclusion **E.2.** does not apply to:

- (1) The rental or holding for rental of an “insured location”;
 - (a) On an occasional basis if used only as a residence;
 - (b) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
 - (c) In part, as an office, school, studio or private garage; and
- (2) An “insured” under the age of 21 years involved in a part-time or occasional, self-employed “business” with no employees;

© Insurance Services Office, Inc.

EXAMPLES

The following situations are covered for liability:

- An “insured” rents his residence to others for two weeks during the summer while he takes a vacation.
- An “insured” rents a bedroom and bathroom to a college student.
- An “insured” rents a converted bedroom to a neighbor for use as an insurance agency office.
- The 17-year old son (who is an “insured”) makes \$3,000 each summer mowing lawns.

7. Professional Services

Any claims for damages arising out of the “insured’s” providing or a failure to provide professional services are excluded.

EXAMPLE

A client sues Tami, an accountant, for improperly filing tax returns. There is no coverage under the Homeowners Policy. A separate Professional Liability Policy is necessary to cover this exposure.

8. “Insured’s” Premises Not an “Insured Location”

This exclusion prevents coverage for any “bodily injury” or “property damage” claims arising out of any premises that is owned by or rented to an “insured” or rented to others by an “insured” if it is not an “insured location”. In simpler terms, if premium is not collected for the premises, coverage is not given.

9. War

Damage or any claim related to an act of war is excluded.

10. Communicable Disease

Any claim for damages as a result of a communicable disease transmitted by an “insured” is excluded. Therefore, if an “insured” transmits hepatitis to another person, there is no coverage under this Policy.

11. Sexual Molestation, Corporal Punishment, or Physical or Mental Abuse

This exclusion bars any claims for damages arising out of sexual molestation, corporal punishment, or physical or mental abuse.

12. Controlled Substance

Any claims for damage arising out of the use, sale, manufacture, delivery, transfer, or possession by any person of a controlled substance(s) as defined by the Federal Food and Drug Law, including, but not limited to, cocaine, LSD, marijuana, and all narcotic drugs, are excluded. Exclusion does not apply to the legitimate use of prescription drugs by a person following the lawful orders of a licensed healthcare professional.

Applicable to Coverage E – Personal Liability Only

These 6 exclusions apply only to Coverage E:

1. Liability

Personal Liability is excluded for loss assessment except as provided in the Additional Coverages – Loss Assessment.

It also excludes any Personal Liability assumed by an “insured” under contract, unless it is written and directly relates to the ownership, maintenance, or use of an “insured location”, or where “you” assume the liability of others prior to an “occurrence”.

2. Owned Property

Personal Liability for “property damage” to property owned by an “insured” is excluded. You cannot be liable to yourself.

3. Rented Property

This exclusion prevents any payment for personal liability for “property damage” to property rented to, occupied or used by, or in the care of the “insured”. This rather common “property damage” exclusion is found in most insurance policies that provide liability coverage. The latter portion of this exclusion is frequently referred to as the care, custody, or control exclusion. Remember, some coverage is available in Additional Coverages – Damage to Property of Others.

This exclusion does not apply to “property damage” caused by fire, smoke, or explosion.

EXAMPLE

Paula leaves an iron plugged into the outlet at a hotel. While Paula is out of the room visiting friends, the iron starts a fire in the hotel room, and there is damage from smoke and fire. This damage is covered. There is no coverage if she leaves the water running in the bathtub and the tub overflows and causes damage to the bathroom floor.

4. Work-Related Injury or Disease

Personal Liability for “bodily injury” to anyone who is eligible to receive any benefits under a workers compensation or similar law is excluded if an “insured” voluntarily provides or is required to provide such benefits.

EXAMPLE

If a “residence employee” is or should be covered under a Workers Compensation and Employers Liability Insurance Policy, there is no work related injury or disease coverage.

5. Nuclear

Under this exclusion, Personal Liability for “bodily injury” and “property damage” does not cover an “insured” that is also covered under a nuclear energy liability policy (provided by a government pool).

6. Other Insureds

This exclusion takes away coverage for liability of one “insured” for “bodily injury” to another “insured”.

Applicable to Coverage F – Medical Payments to Others Only

These four exclusions apply only to Coverage F:

1. Residence Employee

Claims for “bodily injury” to a “residence employee” are excluded if the “bodily injury” occurs off the “insured location” and does not arise out of the course of the “residence employee’s” employment by an “insured”.

What this exclusion is saying in terms of coverage is that Coverage F applies to a “residence employee”, if “bodily injury” occurs on an “insured location”, or arises out of employment on or away from an “insured location”.

2. Work-Related Injury or Disease

Claims for “bodily injury” to anyone who is entitled to receive benefits under a workers compensation law, non-occupational disability law, or occupational disease law are barred by this exclusion.

3. Nuclear

Damage claims for “bodily injury” from any nuclear radiation or radioactive contamination are excluded.

4. Residents of Insured Location

This exclusion eliminates coverage to those who reside on the “insured location” unless they are a “residence employee”. Remember, the coverage part is called Medical Payments to Others.

Note: There are a number of exclusions; however, looking at all the liability claims made under the Homeowners Policy, these exclusions seldom come into play. The liability coverage found in Section II is very broad.

ADDITIONAL COVERAGES

In addition to Coverage E – Personal Liability and Coverage F – Medical Payments to Others, there are four types of additional coverages that are provided in Section II of the Homeowners Policy. All amounts paid under these four Additional Coverages are paid in addition to the limits of liability shown in the Declarations for Coverage E and Coverage F.

1. Claims Expense

The first type of Additional Coverage deals with a very important area, claims expense, which has four components:

- (a) Defense expense.
- (b) Premiums on bonds that are required in a suit (e.g. an appeal bond).
- (c) Reasonable expenses incurred by an “insured” at the insurance company’s request for helping the insurance company in the investigation or defense of a claim or suit. This includes not only travel expenses to attend a trial and living expenses while there, but also a loss of earnings of up to \$250 per day.
- (d) Interest assessed on a judgment ordered by the court, because the judgment is not paid within a prescribed time period.

Here is a quick example of how Claims Expense works.

EXAMPLE

Shane’s neighbor files a lawsuit against him when the neighbor falls on Shane’s property. The insurance company investigates the claim and hires an attorney to defend Shane. Total expenses for the investigation, court costs, and attorney fees are \$32,000. The insurer asks Shane to appear at the trial, and Shane is away from work for four days.

The company pays Shane’s expenses to travel to the trial and up to \$1,000 for loss of Shane’s earnings (\$250 maximum/day x 4 days). If the trial is held in another city, the cost of Shane’s food and a hotel room are also included.

Because of a mistake by the insurer, the judgment is not paid when it is supposed to be paid, and the court assesses a penalty of \$5,000 post-judgment interest.

All of these expenses are paid under this category of Claims Expense and do not reduce the Coverage E – Personal Liability limits.

2. First Aid Expense

Expenses for first aid to others that an “insured” incurs for “bodily injury” covered under this Policy are paid under this Additional Coverage. This Additional Coverage does not apply to any treatment of an “insured”.

First aid is generally thought of as imperative (urgent or compelling) medical treatment that is required before regular medical treatment begins.

The amount of these expenses is paid in addition to any other covered expenses.

EXAMPLE

Jack invites a friend to his house for dinner. For no apparent reason, the friend stumbles over his own feet, falls, and cuts his head. Jack applies a pressure bandage. This is considered first aid.

3. Damage to Property of Others

The third Additional Coverage provides up to \$1,000 for the replacement cost per “occurrence” for “property damage” caused by an “insured”. The “insured” does not have to be liable for the damage, only cause it.

This Additional Coverage pays up to \$1,000 even if the “property damage” is caused intentionally by an “insured” who is under 13 years of age. It also pays for property in the care/custody/control of an “insured”.

There are a few exclusions that apply to this Additional Coverage. The Damage to Property of Others does not pay for “property damage” which is:

1. Recoverable under Section I – Property Coverages;
2. Caused intentionally by an “insured” who is 13 years or older;
3. Property owned by an “insured”;
4. Property owned by or rented to a tenant, an “insured”, or a resident in the named insured’s household; or
5. Arising out of a “business” engaged in by an “insured”.

EXAMPLE

Jeff borrows a friend’s camera. Jeff drops the camera, causing \$300 damage. There is no coverage in Coverage E – Personal Liability of his Homeowners Policy because of the care, custody, or control exclusion; however, the claim is payable under Additional Coverage – Damage to Property of Others.

4. Loss Assessment

Loss Assessment is the fourth Additional Coverage in Section II of the Homeowners Policy. Though the concept of loss assessment is applicable in Homeowners – Section I, it also applies to Section II.

Many homes are located in neighborhoods with a neighborhood homeowners association. Owners or tenants generally have the privilege of using the association’s recreational facilities and common areas, but they also have obligations related to their maintenance and operation.

As an owner or tenant, they are subject to assessments for losses to property owned by the association and for liability claims against the association or its directors/officers/trustees. This same situation exists for condominium associations arising out of commonly owned property.

Loss Assessment Additional Coverage pays up to \$1,000 for “your” share of an assessment for a liability loss that caused “bodily injury” or “property damage” and is not excluded under Section II. It also pays for an assessment related to the liability for an act of a director, officer, or trustee, if the person is elected by the neighborhood association, corporation, or other association of property owners, and serves in that position without pay for performing his/her duties. Higher limits are available by endorsement.

CONDITIONS

Remember, Conditions are rights and/or obligations required of both the “insured” and insurance company to carry out the Policy provisions. In the Homeowners Policy, the Conditions are divided into those Conditions that apply to Section I or Section II only and those Conditions that apply both to Section I and Section II. Section I Conditions are reviewed earlier in this chapter. The focus here is on the Section II Conditions, with just a brief mention of selected Conditions that are applicable to Section I and Section II.

Conditions Applicable to Section II

This chapter examines the following selected Section II Conditions:

- Limit of Liability
- Duties After a Loss
- Conditions Applicable to Medical Payments – Coverage F
- Other Insurance – Coverage E
- Concealment and Fraud

Limit of Liability

The insurer’s total liability under Coverage E – Personal Liability resulting from any one “occurrence” does not exceed the limit of liability found in the Declarations.

This limit does not change no matter how many “insureds” are involved, the number of people injured, or the number claims made.

Under Coverage F – Medical Payments to Others, the most payable to one person as the result of one accident is the amount shown in the Declarations. Medical Payments is not subject to a per occurrence limit.

Duties After “Occurrence”

These duties center on timeliness and cooperation. Under Section II of the Homeowners Policy, the “insured” must perform the following duties:

- Give written notice to the insurer or its agent as soon as practical, including identification of the parties and facts of the “occurrence”.
- Promptly forward to the insurer every notice, demand, or summons related to the “occurrence”. A notice may be very formal, such as a letter from an attorney, or as simple as a note from an injured person or a medical bill. A demand is a request that certain things be done, such as the payment of a specified amount of money. A summons is a document from the court, ordering a person to make an appearance at a hearing or trial. It is very important that the insurer receives these items as soon as possible, so it may investigate and properly defend an “insured”.
- Assist the insurer to make settlements, help with the conduct of suits, and attend hearings and trials.
- Under the Additional Coverage - Damage to Property of Others – Section II, submit a sworn statement of loss within 60 days and show the damaged property if the “insured” retains possession.
- An “insured” is not to make any voluntary payment or assume an obligation other than first aid. If an “insured” assumes an obligation or makes a voluntary payment, it is at their own risk, and the “insured” may not get reimbursement.

Duties of an Injured Person – Coverage F – Medical Payments to Others

The person injured or someone acting on their behalf must give the insurer a written proof of loss as soon as practical, and authorize the insurer to receive copies of medical bills and reports. Also, if the insurer requests, the injured person must submit to a physical exam by a doctor of the insurer’s choice.

Payment of Claim – Coverage F – Medical Payments to Others

Under this condition, payment under Coverage F is not an admission of liability under Coverage E – Personal Liability. Remember, Medical Payments to Others is a goodwill payment.

Other Insurance

This condition states that this insurance is excess over other valid and collectable insurance, except insurance that is specifically designed as excess coverage, such as a Personal Umbrella Policy.

Concealment or Fraud

Under Section II – Liability Coverage, the insurer does not provide coverage to an “insured” that intentionally conceals or misrepresents any facts, engages in fraudulent conduct, or makes a false statement relating to this insurance.

Section I and Section II

Only a few of the Homeowners Policy conditions are examined here, since the majority of conditions found in Section II of the Homeowners Policy are the same as in Section I of the Homeowners Policy.

The selected conditions include:

- Waiver or Change of Policy Provisions
- Cancellation and Non-renewal
- Subrogation

Waiver or Change of Policy Provisions

A waiver (giving up a known right) or change of a provision of this Policy must be in writing by the insurer before it is valid.

Cancellation and Non-renewal

Notification and premium refund requirements vary by state.

Insurers can cancel only for the reasons allowed in that state, and written notice specifying the cancellation date must be sent to the named insured. The named insured can cancel at any time by returning the Policy to the company or sending written notice indicating the date cancellation is to take effect.

The insurer may choose to not renew a Homeowners Policy, but the insurer must comply with state regulations, which includes timely written notification to the named insured of the non-renewal.

Subrogation

If the insurance company pays an “insured” for a loss, the “insured” may be required to assign their rights of recovery for a loss to the insurance company.

Subrogation does not apply under Section II to Coverage F – Medical Payments to Others or Additional Coverage – Damage to Property of Others.

CONCLUSION

The Homeowners Policy is one of the most commonly sold products within the insurance industry. As evident in this chapter, it provides broad coverage for both property and liability exposures. With the increasing number of lawsuits, the increased need for individuals to protect their assets is very important. Section II, in particular, provides very broad liability coverage for the majority of the liability exposures from the use of residential premises and personal activities. The limited number of exclusions centers on exposures that usually can be better covered under other liability policies.

CHAPTER 17: DWELLING POLICY AND MOBILE HOMES

INTRODUCTION

The Homeowners Policy Program is most commonly used to insure personal residences; however, not all residential situations are eligible for insurance under the Homeowners Policy Program. As a reminder, the Homeowners Policy Program only allows up to two boarders and up to a four-family dwelling. The Dwelling Policy Program is available for the insured that has a dwelling with more than two boarders, more than four units, or is otherwise not eligible for a homeowners policy.

THE DWELLING POLICY

Individuals face a large number of exposures to financial loss in their lives. Many of these exposures result from loss or damage of property and/or from legal liability to others. (Liability exposures and coverages will be reviewed later.) The largest asset most people have is a dwelling and the personal property located at this dwelling. This chapter will primarily examine the Dwelling Policy, which is one type of policy used to protect those facing these loss exposures.

Characteristics and Purpose

At one time, the Dwelling Policy was a more common method of providing coverage for residential property. With the development of the Homeowners Policy, the Dwelling Policy is not as widely used because the coverage is far more restrictive. The Dwelling Policy is commonly used in the following situations:

1. When the house to be insured is not owner occupied.
2. When the residence to be insured is not eligible for a homeowners policy (see the Homeowners chapter for a review of eligibility requirements).
3. When an insurance company's underwriting guidelines do not permit a homeowners policy to be written, but do permit the writing of a dwelling policy. For example, many insurance companies may not write a homeowners policy on a house over 50 years old or a house with a value of less than \$40,000.
4. When an individual does not want the broader coverage found in a homeowners policy because the individual believes it is too expensive or not needed.

The Dwelling Policy Program consists of three coverage forms:

- The DP-1 Basic (DP 00 01)
- The DP-2 Broad (DP 00 02)
- The DP-3 Special (DP 00 03)

As might be expected, protection broadens from the Basic Form to the Broad Form to the Special Form. Each Form is individually examined in this chapter. However, for now, the review applies to all three forms unless one form is specifically referenced.

Eligibility

The Insurance Service Office (ISO) Manual's Dwelling Policy Rules for eligibility focus on the central concept of insurance coverage for residences. The Dwelling Policy can be written for a residence occupied by its owner, but the Rules also permit a Dwelling Policy to be written in a situation where the residence is occupied by a non-owner. In addition, the Dwelling Policy may be written on a residence containing up to four family units (four-plex).

The Dwelling Policy Rules permit occupancy of up to five boarders per family. (As a reminder, the Homeowners Program only allows up to two boarders.) The most limited version, Dwelling Policy – Basic Form, which is referred to in this chapter as DP-1, can be written on mobile homes. The Dwelling Policy can also be written on a residence under construction.

Renters or tenants of a single or multi-family residence can buy a Dwelling Policy to insure their personal property.

Despite the fact that the Dwelling Policy is designed for non-business situations, the Policy does permit incidental occupancies, such as an insured who is an accountant with an office in the residence. However, occupancies are limited under the Dwelling Policy. For example, an architect who has refurbished an old house and whose offices occupy 80% of the space is not eligible for a Dwelling Policy; commercial insurance is needed in this case.

Definitions

Unlike the Homeowners Policies, the Dwelling Policy Program contains very few definitions. These definitions are:

“You” or “your” refers to the person named in the Declarations and the resident spouse. This chapter will refer to this definition as insured.

“We,” “us” and “our” refer to the company providing the insurance.

Policy Structure

There are five coverages available under the Dwelling Policy Forms:

- Coverage A – Dwelling
- Coverage B – Other Structures
- Coverage C – Personal Property
- Coverage D – Fair Rental Value
- Coverage E – Additional Living Expense (not included in DP-1 but may be endorsed)

Note: there is no automatic liability coverage, as is included with the Homeowners Policies.

The coverages may be selected and purchased individually on the DP-2 and DP-3, and the coverage limits can be selected by the insured on all policies. For example, a tenant of a house is not interested in buying Coverage A – Dwelling since the tenant does not own the house. However,

this same person is very interested in purchasing Coverage C – Personal Property to pay for losses to contents.

Coverage A - Dwelling

Coverage A – Dwelling provides protection for direct physical loss to the dwelling at the Described Location (the location shown on the Declarations) and includes coverage for:

- structures attached to the dwelling;
- materials and supplies that are on or next to the Described Location and are used for construction, alteration, or repair of the dwelling or attached structures; and
- building and outdoor equipment on the Described Location used to service the Described Location if not otherwise covered.

Building and outdoor equipment includes items such as storm shutters, lawn sprinklers, and pool cleaning equipment. Coverage A does not apply to land.

Coverage B – Other Structures

Coverage B – Other Structures provides coverage to other structures on the “Described Location” not attached to the dwelling, meaning either set apart by a clear space or connected only by a fence, wire, or wall. Other structures might include a detached garage, playscape, gazebo, deck, or storage building.

There are two situations where other structures are not covered:

- The structure cannot be rented to a person other than a tenant of the dwelling, unless rental is for use solely as a private garage; and
- The structure cannot be used for any commercial, manufacturing, or farming purposes, but it can contain commercial, manufacturing, or farming property that is solely owned by an insured or the tenant of an insured, provided the stored property is not gaseous or liquid fuel, other than fuel in a parked vehicle or craft.

EXAMPLES

Michael rents his detached garage to his neighbor, Jim. The garage is used to store samples for Jim’s flooring business. This separate structure is not covered. If Jim uses the garage solely to store a vehicle, the separate structure is covered. There also is coverage if the flooring samples belong to Michael and are used in a business that he owns, since Michael is the insured.

For structures that are covered under Coverage B, 10% of Coverage A is available. On the DP-1, this amount of coverage is included in the Coverage A limit. The DP-2 and DP-3 provide the 10% of Coverage A as additional insurance.

Coverage C – Personal Property

Coverage C – Personal Property pays for direct physical loss caused by a covered peril to the insured’s personal property. Personal property is anything an insured owns, wears, or uses and

not otherwise excluded. This includes personal property of any family member who resides in the household, and, at the request of the insured, property owned by others, which is on the Described Location such as borrowed property. Coverage C does not cover all personal property. The following types of personal property are not covered:

- accounts, bank notes, bullion, coins, currency, deeds, gold other than goldware, silver other than silverware, manuscripts, medals, stamps, tickets, personal records, securities, and platinum other than platinumware;
- animals, birds, or fish;
- aircraft and parts, except model or hobby aircraft;
- hovercraft;
- motor vehicles and their accessories (including parts, sound receiving and transmitting devices), except those vehicles used solely to service a residence (e.g., a riding lawnmower) or designed for helping the handicapped (e.g., electric wheelchair);
- watercraft, except rowboats and canoes;
- data stored in books or on electronic media; however, the policy will pay for a blank tape or disk or a prerecorded computer program;
- credit cards or fund transfer cards;
- water and steam; and
- gravemarkers or mausoleums.

Many of the items excluded are not covered in the Dwelling Policy because these items should be covered by other insurance, or because these items are uncommon to most insureds. Some excluded items of personal property may be covered for certain perils by endorsement to the Dwelling Policy.

Personal property that is moved from the location described in the Declarations to a newly acquired residence is covered for 30 days or until the end of the policy period, if less than 30 days. This 30-day time frame begins when the first property is moved.

Unlike the Homeowners Policy, there is not an automatic percentage of the Coverage A – Dwelling limit provided. Coverage C – Personal Property must be selected and a premium charged for coverage to apply.

Coverage D – Fair Rental Value

An insured may rent all or a portion of the dwelling to others under a Dwelling Policy. These situations give rise to a possible loss of rental income (a type of indirect loss) to the dwelling owner if the rented dwelling is unfit to be occupied.

Coverage D – Fair Rental Value pays for a loss arising out of the insured's loss of income as a result of not being able to rent to others, because all or a portion of the "described location" is uninhabitable as a result of damage by a covered cause of loss. When Coverage A – Dwelling is purchased, Coverage D automatically applies up to the limit found in the Declarations.

If a neighboring location is damaged by a covered peril that causes a civil authority to prohibit the use of the described location, Coverage D provides Fair Rental Value for up to two weeks.

If the described premises suffers direct damage from a covered peril, Coverage D provides coverage for the shortest time required to repair or replace the rented property.

This coverage is not ended by the expiration of the Policy. Cancellation of a lease is not covered.

Coverage E – Additional Living Expense

Coverage E – Additional Living Expense provides coverage when a residence sustains covered damage to the extent that the insured is unable to use all or part of the dwelling for a period of time. In some cases, the insured may move into a hotel or apartment for days, weeks, or months. When this occurs, there are expenses in addition to normal living expenses. These expenses can include hotel expenses, increased food expenses, and increased travel expenses back-and-forth to work or school. Only those expenses that are an increase to normal living expenses are paid. Expenses such as property taxes and the mortgage payment are not covered as these expenses are ongoing and would have to be paid regardless of damage sustained.

As with Coverage D- Fair Rental Value, two weeks of coverage is available if a civil authority prohibits the use of the dwelling. Otherwise, covered expenses are paid for the shortest reasonable amount of time to repair or restore the dwelling, or to move into another dwelling if the insured dwelling is not rebuilt.

Coverage E is not included in the DP-1 Basic Form but may be added by endorsement.

Other Coverages

The Dwelling Policy also provides for other coverages. All forms of the Dwelling Policy have a section titled Other Coverages.

Other Structures

An amount equal to 10% of the limit of insurance for Coverage A – Dwelling may be used for other structures. The loss must be caused by a covered peril to property described in Coverage B – Other Structures. Amounts paid under the Other Structures coverage are in addition to the Coverage A limit for DP-2 Broad Form and DP-3 Special Form. Under the DP-1 Basic Form, the limit for Other Structures is included within the Coverage A limit.

Debris Removal

Debris Removal pays reasonable expenses for removal of debris from covered property arising from a covered peril. Reasonable expenses to remove ash or dust from a volcanic eruption that damages the building or property within the building are also covered. These costs are included within the limits that apply to the damaged property.

Improvements, Alterations, and Additions

Some tenants improve the residence rented or leased by putting in additions or improvements. Examples are carpeting, improved lighting fixtures, and window blinds. In insurance language,

these are called tenant's improvements and betterments. If the insured is a tenant, he or she may apply 10% of the Coverage C limit to improvements, alterations, or additions made or acquired by him or her.

If the residence is damaged by a covered peril, the tenant could suffer a loss of the improvements made. This coverage protects an insured that is a tenant against loss if that property has been damaged by a covered peril. It is important to remember that any payment made under the Improvements, Alterations, and Additions provision reduces the limit of insurance for Coverage C under the DP-1 Basic Form, but is treated as additional insurance under the DP-2 Broad Form and DP-3 Special Form, and does not reduce the Coverage C limit.

Worldwide Coverage

The insured's personal property is normally at the described location, but it is common for the insured to carry personal property to other locations. For example, the insured may go on a winter vacation to the mountains and take his/her clothes and ski equipment. Property covered under Coverage C, other than rowboats and canoes, has coverage anywhere in the world up to 10% of the Coverage C limit, so long as the damage is caused by a covered peril. Claims paid under the Worldwide Coverage provision reduce the Coverage C limit. In the Homeowners Policy, with few exceptions, unless the personal property is in a self-storage unit or at another residence, the full Coverage C limit is available for worldwide coverage.

Rental Value and Additional Living Expense

Up to 20% of the Coverage A – Dwelling limit applies in those situations when Coverage D – Fair Rental Value and Coverage E – Additional Living Expense are needed. On the DP-2 and DP-3, this limit is separate and does not reduce Coverage A.

EXAMPLE

Elsa has a limit of \$50,000 listed in the Declarations for Coverage A. The Dwelling Policy has \$10,000 available for losses under Fair Rental Value and/or Additional Living Expense. Because she has a DP-3, the amount Elsa uses here does not reduce the limit of Coverage A whether applied to a Fair Rental Value claim or Additional Living Expense claim.

As a reminder, the DP-1 includes Rental Value in the Dwelling Policy (Additional Living Expense is available by endorsement.) Payment under this coverage is not additional insurance.

Reasonable Repairs

An insured who takes steps to protect covered property from further damage is reimbursed by the insurer for expenses incurred for that protection. Examples include buying a tarp to cover a hole in the roof of the residence after a windstorm or hiring a contractor to board up a damaged wall after a fire. Expenses paid under this policy provision are included within the applicable limit of insurance.

Property Removed

This provision of the Dwelling Policy provides coverage when it becomes necessary to remove covered property to protect it from direct loss when a premise is endangered by a covered peril. When property is removed under this provision, the Dwelling Policy extends coverage for 30 days for damage from any cause. This is true all-risk insurance.

Payments made under this coverage are subject to the policy limits.

EXAMPLE

Paul's house is on fire. While moving property out of the house to protect it, Paul drops a television set. This is covered despite the fact that dropping is not an otherwise covered peril.

Trees, Shrubs, and Other Plants

Under the DP-2 and DP-3, trees, shrubs, and other plants are covered for the following named perils: fire or lightning, explosion, riot and civil commotion, aircraft, vehicles not owned or operated by the insured or a resident of the Described Location, and vandalism or malicious mischief. Some common perils such as wind, ice, hail, and snow that damage trees, shrubs, and other plants are not covered.

The limit for a claim under this provision is 5% of Coverage A and cannot exceed \$500 for any one tree, shrub, or plant. This coverage pays in addition to the amount of the Coverage A limit.

The DP-1 – Basic Form does not cover a loss to lawn, plants, shrubs, or trees outside of buildings.

Fire Department Service Charge

This coverage pays up to \$500 for liability assumed by the insured through a contract or agreement with a fire department when called to save or protect covered property from a covered peril. The property must be located outside the city or fire protection district. This is additional insurance and no deductible applies.

Collapse

In accordance with policy provisions, collapse is the abrupt falling down or caving in of a building or any part of a building. A building or part of a building in danger of falling down or caving in is not considered collapse. This Other Coverage provision of the DP-2 and DP-3 provides payment for damage to covered property caused by collapse of a building if the collapse results from a peril listed in this provision.

Collapse perils include:

- perils insured against in Coverage C – Personal Property (reviewed later in this chapter);
- hidden decay (unless the insured was aware of such);
- hidden insect or vermin damage (unless the insured was aware of such);

- weight of contents, equipment, animals, or people;
- weight of rain which collects on a roof;
- use of defective materials or methods in construction, remodeling, or renovation, if collapse occurs during such activity.

This coverage is not provided by the DP-1.

Glass or Safety Glazing Material

The DP-2 and DP-3 will pay under this coverage for the breakage of glass, which is a part of the residential structure, storm doors, or storm windows. Like all Other Coverage provisions, the damage must be from a covered peril, and the coverage is within the limits applicable to the damaged property. Coverage does not apply if the building has been vacant for more than 60 consecutive days prior to the loss. The coverage includes breakage of glass caused directly by earth movement.

Again, the DP-1 does not extend this coverage.

Ordinance or Law

Following a loss, sometimes an ordinance or law causes an undamaged portion of a building to be demolished and hauled away or construction costs to increase in order to be in compliance with current building codes. The DP-2 and DP-3 provide some additional insurance for these potential increased costs. Coverage may be used in the following ways:

- Demolition and repair of the damaged portion of the building or other structure;
- Removal and reconstruction of the undamaged portion when the structure must be completely demolished;
- Remodeling or removing of the undamaged portion when such work is necessary to repair the damaged portion.

If the insured is the owner of the building and has purchased Coverage A, 10% of Coverage A may be used towards Ordinance or Law coverage. If the insured is the owner of the described location but does not have Coverage A, 10% of the total limit is available for Coverage B. A tenant may use up to 10% of the limit for Improvements, Alterations and Additions (previously reviewed in Other Coverages) for this coverage.

Ordinance or Law coverage does not pay for any loss in value to the structure as a result of compliance. Pollution coverage is also excluded.

Coverage may be added to the DP-1 or increased on the DP-2 and DP-3 by endorsement.

SUMMARY OF OTHER COVERAGES			
ADDITIONAL COVERAGE	FORMS	LIMIT	ADDITIONAL INSURANCE
Other Structures	1, 2 & 3	10% of Coverage A	DP 2 & 3
Debris Removal	1, 2 & 3	Limit applying to damaged property	Not additional
Improvements, Alterations & Additions (if a tenant)	1, 2 & 3	10% of Coverage C	DP 2 & 3
World Wide Coverage	1, 2 & 3	10 % of Coverage C	Not additional
Rental Value	1	20% of Coverage A	Not additional
Rental Value & Additional Living Expense	2 & 3	20% of Coverage A (combined limit for both coverages)	Additional
Reasonable Repairs	1, 2 & 3	Limit applying to damaged property	Not additional
Property Removed	1, 2 & 3	Limit applying to damaged property	Not additional
Trees, Shrubs & Other Plants	2 & 3	5% of Coverage A or \$500 per plant	Additional
Fire Dept. Service Charge	1, 2 & 3	Up to \$500, No deductible	Additional
Collapse	2 & 3	Limit applying to damaged property	Not additional
Glass or Safety Glazing	2 & 3	Limit applying to damaged property	Not additional
Ordinance or Law	2 & 3	10% of Coverage A, B, or C as policy dictates for situation	Additional
*Form DP-1 includes Rental Value and is not additional insurance. Additional Living Expense may be endorsed on the DP-1.			

DWELLING PROPERTY COVERAGE FORMS

Thus far, all three Dwelling Policy Forms have been examined jointly. Each of the Forms is summarized below in terms of perils insured against and coverages provided. For ease of reference, the abbreviated references of DP-1, DP-2 and DP-3 are used to refer respectively to the Basic, Broad, and Special Forms of the Dwelling Policy.

- DP-1 – Basic – DP 00 01
- DP-2 – Broad – DP 00 02
- DP-3 – Special – DP 00 03

DP-1 – Basic Form

This Basic Form provides the least amount of coverage. It is used more commonly when someone wants a lower premium, to protect an owner on a property that is rented to others, or on older, lower valued dwellings. The DP-1 may also be used to insure a mobile home. Mobile homes are reviewed in more detail later in this chapter.

Coverage

The DP-1 provides Coverage A through Coverage D exactly as described earlier in this chapter. They are:

- Coverage A – Dwelling
- Coverage B – Other Structures
- Coverage C – Personal Property
- Coverage D – Fair Rental Value

Coverage E – Additional Living Expenses is not provided under the DP-1; however, this coverage may be added by endorsement. The DP-1 also lacks some of the Other Coverages offered in the DP-2 and DP-3. Other Coverages not included in the DP-1 include Trees, Shrubs and Other Plants; Collapse; Glass or Safety Glazing Material; and Ordinance or Law. Any payment made under Coverage B and Coverage D reduces the Coverage A limit. These two coverages are not additional insurance and do not provide additional limits under the DP-1.

Perils Insured Against

The DP-1 provides limited named perils coverage. It insures for loss resulting from fire, lightning, and internal explosion. Internal explosion means any explosion that occurs in an insured building. The coverage extends to damage to personal property. The coverage does not include internal explosions resulting from electrical arcing, loss from steam boilers or steam pipes, or breakage of relief valves or breakage of water pipes.

Extended Coverage may be selected on the Declarations of the DP-1 to add coverage for the perils of windstorm or hail, explosion, riot or civil commotion, damage by aircraft, damage by vehicles, smoke, and volcanic eruption. Most of these extended coverages carry stipulations. For example, the peril of smoke does not include any damage caused by smoke from a fireplace. Vandalism

may also be added on the Declarations for additional premium, and only if Extended Coverage has been added.

DP-2 – Broad Form

The DP-2, as its name indicates, provides a broader version of the DP-1.

Coverage

In addition to the availability of Coverages A through D, the DP-2 also includes Coverage E. Each of the first three coverages, A-C, are treated as a separate item in terms of limit, which means that payments under Coverage B and C do not reduce the limits of Coverage A. While Coverages D and E do not reduce any other limit, these two coverages have a combined limit equivalent to 20% of Coverage A.

The DP-2 contains four Other Coverage provisions not found in the DP-1. These are:

- Trees, Shrubs, and Other Plants;
- Collapse;
- Glass or Safety Glazing Materials;
- Ordinance or Law.

Perils Insured Against

The major difference between DP-1 and DP-2 is the inclusion of more covered perils. DP-2 provides seven additional perils to the standard and Extended Coverages provided by the DP-1. These perils include:

- Vandalism or malicious mischief unless in connection with a theft or burglary, or the building has been vacant for more than 60 consecutive days;
- Property damage by a burglar, unless vacancy of more than 60 consecutive days; also, not including any stolen property;
- Damage to the inside of the building or property inside the building caused by falling objects (excluding antennas and aerials or outside walls);
- Weight of ice, sleet, or snow (certain property not included, e.g. awnings, fences, pavement, etc.);
- Accidental discharge, overflow of water or steam from within a plumbing, heating, air-conditioning, or automatic fire protective sprinkler system or household appliances (unless vacancy of more than 60 consecutive days). Coverage does not include damage to the system or appliance;
- Cracking, burning, or bulging of heating, air conditioning, or automatic fire protective sprinkler system, or water heater;
- Freezing of plumbing, heating, air conditioning, or household appliances, as long as either heat was maintained in the building or the water was shut off and pipes drained; and
- Power surge from artificially generated electric current.

DP-3 – Special Form

DP-3 provides the most complete coverage of any of the Dwelling Policy Forms. The primary difference between DP-3 and DP-2 is that the Special Form includes broader coverage related to perils.

Coverage

Like DP-2, the Special Form (DP-3) includes Coverages A through E. The DP-3 also includes the eleven Other Coverages found in DP-2, and like the DP-2, some of those Other Coverages are additional insurance.

Perils Insured Against

The perils are not specifically named for Coverage A and Coverage B in DP-3 as the Policy uses the open perils approach. The DP-3 promises to pay for direct physical loss to Coverage A and Coverage B unless excluded or limited. In Coverage C, the Policy pays on a broad named perils basis, which is the same as found in the DP-2. Due to the open perils approach used for Coverages A and B, there is some additional exclusionary or limiting language that applies to the DP-3.

The following are other limits or exclusions in the DP-3 and preclude damage resulting from:

- collapse other than coverage provided in Other Coverages;
- freezing of a plumbing, heating, air conditioning or sprinkler system or household appliance, or by discharge, leakage, or overflow from within the automatic fire protective system or appliance, unless heat has been maintained in the building or the water has been shut off and the system and appliances drained;
- freezing, thawing, or weight of water or ice to certain structures including fences, patios, swimming pools, and foundations;
- theft of building equipment or materials, outdoor equipment such as the riding lawn mower, or other property not considered part of a covered building or structure;
- theft in or to a building under construction;
- wind, hail, ice, snow or sleet to outdoor antennas, wiring, or towers, or trees, shrubs, plants, or lawns;
- vandalism, malicious mischief, theft, or attempted theft, including ensuing damage if the dwelling has been vacant for more than 60 consecutive days;
- constant or repeated leakage of water or steam; however, accidental discharge, overflow of water or steam from within plumbing of heating, air-conditioning systems, or automatic fire protective sprinklers or household appliances is covered, but coverage does not include damage to the system or appliance;
- wear and tear, marring, deterioration;
- hidden defects, mechanical breakdown (furnace stops working);
- smog, rust or other corrosion, mold, wet or dry rot;
- smoke from agricultural or industrial operations;
- pollution unless caused by Coverage C Peril Insured Against;

- settling, shrinking, bulging, or expansion and resulting cracking of pavements, patios, foundations, floors, or walls;
- birds, rodents, insects, or domestic animals.

Even with these limitations, there is still very broad coverage available under the DP-3.

The following charts summarize the three Dwelling Policy Forms in terms of a general perils approach and specific perils insured against. These are intended as aids in learning the individual coverages.

SUMMARY OF PERILS APPROACH		
Name of Form	Coverage A & B	Coverage C
Basic – DP-1	Named Perils	Named Perils
Broad – DP-2	Broad Named Perils	Broad Named Perils
Special – DP-3	Open Perils Direct Physical Loss not Otherwise Excluded or Limited	Broad Named Perils

SUMMARY OF PERILS INSURED AGAINST DWELLING POLICY: COVERAGE A (DWELLING) AND COVERAGE B (OTHER STRUCTURES)			
Perils Insured Against	DP-1	DP-2	DP-3
Fire or Lightning	Yes	Yes	Yes
Internal Explosion	Yes	Included In Explosion	Included in Explosion
Windstorm or Hail	May Add	Yes	Yes
Explosion	May Add ¹	Yes	Yes
Riot or Civil Commotion	May Add	Yes	Yes
Aircraft	May Add	Yes	Yes
Vehicles	May Add	Yes	Yes
Smoke	May Add ²	Yes	Yes
Volcanic Eruption	May Add	Yes	Yes
Vandalism or Malicious Mischief	May Add	Yes	Yes
Damage by Burglars	No	Yes	Yes
Falling Objects	No	Yes	Yes
Weight of Ice, Sleet or Snow	No	Yes	Yes
Accidental Discharge or Overflow of Water or Steam	No	Yes	Yes
Cracking, Burning or Bulging of Heating System, Air Conditioner, or Hot Water Heater	No	Yes	Yes
Freezing	No	Yes-(limited)	Yes-(limited)
Accidental Damage from Artificially Generated Electrical Current	No	Yes	Yes
Theft of Building	No	No	Yes-(limited)
Direct Loss unless Specifically Excluded	No	No	Yes
1. Does not include explosion of boilers and steam pipes if owned or controlled by the insured. 2. Excludes smoke from fireplaces.			

SUMMARY OF PERILS INSURED AGAINST DWELLING POLICY COVERAGE C (PERSONAL PROPERTY)			
Perils Insured Against	DP-1	DP-2	DP-3
Fire or Lightning	Yes	Yes	Yes
Internal Explosion	Yes	Included In Explosion	Included In Explosion
Windstorm or Hail	May Add	Yes	Yes
Explosion	May Add ¹	Yes	Yes
Riot or Civil Commotion	May Add	Yes	Yes
Aircraft	May Add	Yes	Yes
Vehicles	May Add	Yes	Yes
Smoke	May Add ²	Yes	Yes
Volcanic Eruption	May Add	Yes	Yes
Vandalism or Malicious Mischief	May Add	Yes	Yes
Damage by Burglars	No	Yes	Yes
Falling Objects	No	Yes	Yes
Weight of Ice, Sleet or Snow	No	Yes	Yes
Accidental Discharge or Overflow of Water or Steam	No	Yes	Yes
Cracking, Burning or Bulging of Heating System, Air Conditioner, or Hot Water Heater	No	Yes	Yes
Freezing	No	Yes-(limited)	Yes-(limited)
Accidental Damage from Artificially Generated Electrical Current	No	Yes	Yes
Theft	May Add	May Add	May Add
1. Does not include explosion of boilers and steam pipes if owned or controlled by the insured. 2. Excludes smoke from fireplaces.			

EXCLUSIONS

Exclusions are very important in understanding the coverages provided by an insurance policy. Exclusions restrict and clarify the broad promises made by the insuring agreement. This is especially true in the open perils approach, as is seen in the specific exclusions and limitations that apply to the DP-3.

The General Exclusions eliminate coverage on all dwelling forms for loss caused directly or indirectly by the following perils (note that these perils are excluded regardless of any other events that may contribute before, during, or after the loss):

- Ordinance or Law
- Earth Movement
- Water
- Power Failure (Off Premises)
- Neglect
- War
- Nuclear Hazard
- Intentional Loss
- Governmental Action

Ordinance or Law

The Ordinance or Law Other Coverage provision in the DP-2 and DP-3 granted limited protection for costs resulting from the enforcement of building or zoning laws. Many jurisdictions have specific ordinances or laws, which state that if a building is damaged, it must be rebuilt to meet certain specifications or codes. These ordinances or laws can regulate the use, construction, repair, or demolition of a building or other structure.

Frequently, the ordinance or law requires changes to the existing design or construction material, which will increase the cost to repair or replace a damaged building. The increased cost of construction necessary to comply with these laws is not covered beyond what is provided in the Other Coverage provision for Ordinance or Law coverage.

There may be other building ordinances or laws which state that if a certain percentage (typically 51% to 75%) of a building is damaged or destroyed, the remaining undamaged portion of the building must be torn down, and the entire building be rebuilt to current code. The cost to tear down and replace the undamaged portion of the building is not covered beyond what coverage is found in the Ordinance or Law provision.

The cost of pollutant expense in or on an insured structure required because of ordinance or law is not covered by the Policy.

Glass damaged in a covered loss will be replaced with safety glazing materials if required by an ordinance or law; otherwise, Ordinance or Law coverage is not included in the DP-1. However, an endorsement may be used to add coverage. Additional coverage other than that found in the standard DP-2 or DP-3 policies may also be purchased by endorsement.

Earth Movement

The Policy does not cover any earth movement, including: earthquake, land shock wave or tremor, landslide, mudslide, mudflow, subsidence, sinkhole or earth sinking, rising, or shifting or from any event caused by or resulting from human or animal force or any act of nature. The only

exceptions to this exclusion occur if a loss is caused by fire or explosion directly resulting from earth movement.

EXAMPLE

If an earthquake ruptured a gas line coming into a building, which started a fire that caused damage to the building, the damage would be covered.

Water

The exclusion for water includes:

- Flooding due to surface water, tidal wave, or overflow of a body of water;
- Back up of sewers or drains, unless modified by an endorsement;
- Below surface water; or
- Water-borne material.
- This exclusion applies regardless caused or whether or not it is caused by an act of nature or otherwise caused. However, direct loss by fire or explosion resulting from the above is covered.

Power Failure

Power Failure taking place off the Described Location is not covered. If the power failure is the result of a covered Peril Insured Against on the Described Location, then the loss is covered.

EXAMPLE

A power station fails, resulting in no electricity to Mary's residence. Since the residence has no power, food in Mary's freezer spoils. There is no coverage under the Dwelling Policy because of the Power Failure Exclusion.

Neglect

There is no coverage for losses resulting from the insured's failure to take all reasonable steps to protect insured property at the time of or after the loss.

EXAMPLE

A windstorm causes a hole in the roof of Bill's residence. He should cover the hole with a tarp to prevent further damage. If Bill fails to cover the hole, any additional damage that could have been prevented by covering the hole is not covered.

War

This excludes damage from declared or undeclared war, civil war, rebellion, revolution, warlike act by the military, or destruction or seizure or use of property for military purposes. Riot and civil commotion are not war.

Nuclear Hazard

Nuclear Hazard involves any nuclear reaction, radiation, or radioactive contamination of any consequence. It is excluded except for any ensuing (following) loss from fire.

Intentional Loss

This excludes any damage that an insured causes or conspires to commit with the intent to cause a loss. Such damage is excluded even for an insured that did not cause the damage. It is this specific exclusion that was added to address the issue of arson by insureds.

Governmental Action

The destruction, confiscation or seizure of property described in Coverages A, B or C by a public authority is not covered.

Plants and Trees (DP-1 only)

There is no coverage for plants, trees, shrubs or lawns outside of buildings. House plants kept indoors are covered as personal property.

Concurrent Causation Exclusions (DP-3 Coverage A and B Only)

Concurrent causation is when two causes of loss contribute to the damage at the same time or in sequence. When any of these three exclusions contribute in any way with an excluded peril, there is no coverage.

1. Weather conditions that contribute to the cause of the loss.

EXAMPLE

Excess rain causes a landslide, which is excluded under Earth Movement. The loss is excluded.

2. Acts or decisions by any person, group, organization, or governmental body. This exclusion also applies to the failure to act or make a decision.

EXAMPLE

Failure to open the floodgates causes a flood, which is excluded under the Water Exclusion. The loss is excluded.

3. Faulty, inadequate, or defective planning, zoning, developing, surveying, designing, constructing, repairing, renovating, and materials used in constructing, repairing, or renovating, or maintenance of any property.

EXAMPLE

Failure of the storm sewers to be able to adequately carry water away from the site due to improper design causes surface water to damage the property, which is excluded under the Water Exclusion. This loss is excluded.

CONDITIONS

Conditions are rights and responsibilities of both the insured and insurance company to carry out the policy provisions. Many of these conditions were generally reviewed in Chapter 2 – Property & Casualty Insurance Basics under policy provisions. The following conditions are examined below:

1. Policy Period
2. Insurable Interest and Limit of Liability
3. Concealment or Fraud
4. Duties After Loss
5. Loss Settlement
6. Loss to a Pair or Set
7. Glass Replacement
8. Appraisal
9. Other Insurance and Service Agreement
10. Subrogation
11. Our Option
12. Loss Payment
13. Mortgage Clause
14. Cancellation and Non-renewal
15. Assignment
16. Death
17. Recovered Property

Policy Period

Policy Period means that the Dwelling Policy pays only for losses that occur during the policy period stated in the Declarations.

Insurable Interest and Limit of Liability

The Dwelling Policy pays up to the limit of liability or the insured's financial interest at the time of the loss.

Concealment or Fraud

Concealment or Fraud states the entire Policy is void if any insured, either before or after a loss, intentionally conceals or misrepresents any material fact, or engages in fraudulent conduct related to the policy.

Your Duties After Loss

Your Duties After Loss requires the insured to give prompt notice to the insurance company or its agent and to protect the property insured under the Policy from further damage. Prompt is not defined, and written notice is not required. The Policy also requires the insured to:

- make reasonable repairs to protect the property and keep record of repair expenses;
- prepare an inventory of damaged personal property;

- show damaged property as requested by the insurance company;
- provide records related to property;
- submit to an examination under oath, if requested by the insurance company; and
- send a signed proof of loss within 60 days after the company requests it.

Loss Settlement

Loss Settlement explains the basis of value, either actual cash value (ACV) or replacement cost, the Policy will use to pay claims. For the DP-1, everything is paid on an actual cash value basis. However, the DP-2 and DP-3 require more explanation.

Both DP-2 and DP-3 pay Actual Cash Value (ACV) for the following types of property:

- personal property;
- awnings;
- carpeting;
- household appliances;
- outdoor antennas and outdoor equipment; and
- structures that are not buildings (a fence).

Loss to any building covered under Coverage A and B can be paid on replacement cost, without any deduction for depreciation, if the amount of insurance (under the Dwelling Policy) on the damaged building is at least 80% of the full replacement value of the building or structure at the time of loss.

The following items are not included when determining the replacement cost:

- excavations, footings;
- foundations; or
- underground flues, pipes, wiring, or drains.

If the amount of coverage meets or exceeds 80% of the replacement cost at the time of the loss, the amount paid under the Dwelling Policy will be for the lesser of the policy limit, the replacement cost for the portion of the building that was damaged, or the amount actually spent on the repairs or replacement. If the building is rebuilt at a different location, the payment will not exceed the cost of building at the original location.

If the amount of insurance on the damaged building is less than 80% of the full replacement value of the building at the time of loss, the Policy will pay the greater of the following amounts:

1. the actual cash value (ACV) of the building or the part destroyed; or
2. that proportion of the amount of insurance actually carried to the amount required (80% of the full replacement cost) times the loss.

$$\frac{\text{Amount of insurance carried}}{\text{Amount of insurance required}} \times \text{Loss} = \text{Payment}$$

EXAMPLE

A covered loss occurs to a dwelling with the following information:

Replacement cost of the dwelling	\$100,000
Insurance carried	\$ 70,000
Replacement Cost of loss to dwelling	\$ 32,000
Actual Cash Value of loss to dwelling	\$ 25,000

The calculation of replacement cost would be as follows:

\$70,000

$$\$80,000 \text{ (80\% of \$100,000)} \times \$32,000 = \$28,000$$

Replacement cost coverage is not available as the insurance carried is less than 80% of the amount required.

The Policy pays \$28,000 from the formula because the formula generated number is greater than ACV of \$25,000.

The insurer does not pay more than the actual cash value until the building or structure has actually been repaired or replaced. If the insured does not make repairs immediately, an actual cash value claim can be made. The insured can then notify the insurance company within 180 days after the loss of the intent to repair or replace the damaged property. When repair or replacement is completed, the insurance company will pay the additional cost.

Replacement cost to repair or replace the damaged building is automatically paid if the loss is less than 5% of the amount of insurance on the building and less than \$2,500.

Loss to a Pair or Set

If a loss involves a pair (two items) or set (three or more items), the insurance company can:

1. repair or replace any part to restore to the same value as prior to the loss, or
2. pay the difference between the actual cash value of the property before the loss and after the loss.

The insured cannot give the remaining items of the pair or set to the insurance company and ask to be paid for the entire pair or whole set. The insurance company must value the lost or damaged item in terms of its value as a part of a pair or set.

EXAMPLE

If a pair of crystal lamps has a value of \$600, the insurance company cannot simply say that since one lamp was destroyed, its value is \$300, because the value is based on the pair and not two individual lamps. If it is assumed the remaining individual lamp has a value of \$250 after loss rather than \$300, the loss payment the insured receives is equal to the value of the two lamps (\$600) less the value of the remaining lamp (\$250) or \$350.

Appraisal

If the insured and the insurance company cannot agree on the amount to be paid on a covered loss, either party may provide the other with written notice that they wish to use the Appraisal provision. Under this provision, each party selects an appraiser. The two appraisers pick an umpire. Each party is responsible for the cost of their own appraiser, and both parties share the cost of the umpire. A loss payment amount agreed to by any two parties is binding.

Other Insurance and Service Agreement

Claims made on a property that is covered by other fire insurance in addition to this Dwelling Policy are paid based on the proportion of this insurance to the total amount of coverage on the property. If the property is covered by a warranty, service agreement or similar arrangement, the Dwelling Policy pays in excess of such plan.

Subrogation

When the insurance company pays the insured for a loss, the insured may be required to assign his/her rights of recovery against another party to the insurance company. In other words, the insured must allow the insurance company to seek reimbursement from another party if that other party is responsible for the loss.

Our Option

The insurance company has the option to repair or replace any part of the damaged property with property of like kind and quality if the insurance company gives the insured written notice within 30 days from the day it receives the insured's sworn proof of loss. The insured does not have the option of requesting repair, replacement, or reimbursement. The insurance company is not required to settle the claim by writing a check to the insured.

Loss Payment

The Loss Payment condition states that losses will be adjusted with the insured, and payments will be made to the insured unless the Policy Declarations shows another named entity, such as a mortgagee.

The loss is payable within 60 days of the receipt of proof of loss if (1) an agreement was made with the insured; or (2) a final judgment has been rendered; or (3) an appraisal award has been filed with the insurance company.

Mortgage Clause

When applicable, the mortgagee has certain rights. A covered loss under Coverage A or B is paid to the insured and mortgagee in the order that the names appear on the Policy. If the company

denies a claim to the insured, but the denial does not apply to the mortgagee, then the mortgagee may make a claim by submitting a signed, sworn proof of loss statement within 60 days.

Cancellation and Nonrenewal

The Cancellation condition states that the insured may cancel at any time by giving written notice. The insurance company can only cancel the policy at certain times and for certain reasons. Cancellation and nonrenewal requirements may vary from state to state.

Death

If the insured dies during the policy period, the insurance company will insure their legal representative, but only with respect to property covered at the time of death. Any covered property that is in the temporary custody of a person will be covered until the appointment and qualification of a legal representative.

Recovered Property

The Recovered Property condition of the Dwelling Policy specifies that if either the insured or insurance company recovers property for which a claim payment has been made, that party will notify the other. The insured has the option of retaining the property; however, if the insured keeps the property, an adjustment will be made to the loss payment.

Selected Endorsements

Many endorsements are available to modify the Dwelling Policy. The endorsements considered below are:

- Dwelling Under Construction (DP 11 43),
- Broad Theft Coverage (DP 04 72), and
- Personal Liability (DL 24 01).

Dwelling Under Construction

The eligibility rules of the Dwelling Policy permit a dwelling under construction. The Dwelling Under Construction (DP 11 43) endorsement provides property protection for a dwelling or structure while it is being constructed. It has the same coverage as found in the particular Dwelling Policy to which this endorsement is attached. A limit shown in the Declarations of the Dwelling Policy is provisional. As construction proceeds, the actual amount of insurance on any date is a percentage of the provisional amount. The percentage is based on:

- Actual dwelling value on that date, and
- Dwelling value at the date of completion.

Theft Coverage Endorsements

The Broad Theft Coverage (DP 04 72) endorsement may only be used in a Dwelling Policy written for the owner-occupant of the described dwelling. Coverage may be provided for both on and off-premises theft. A limit of insurance is selected or scheduled for on-premises coverage. Off-premises coverage may be selected or scheduled for a limit up to the amount in effect for on-premises coverage. The endorsement contains its own limit(s) of insurance, distinct from any Coverage C (Personal Property) policy limits.

On-premises theft coverage covers not only the Described Location, but also places of safekeeping, such as public warehouses or safety-deposit boxes in banks. The endorsement insures against the perils of theft (including attempted theft) and vandalism or malicious mischief as a result of theft. Some types of property are not covered, e.g., autos, aircraft. Some types of property are subject to “internal” limits that restrict how much will be paid for the theft of those types of property. Some examples are: \$200 on money, \$1,500 on the theft of jewelry/watches/ furs, and \$2,500 on the theft of firearms.

A Limited Theft Coverage (DP 04 73) endorsement can be written on any eligible occupancy and is commonly used for a non-owner occupancy. It provides on-premises coverage only.

Personal Liability Endorsement

Dwelling Policies address losses to property; the unendorsed Dwelling Policy does not provide coverage for personal liability. Much of the needed liability coverage can be provided under the Dwelling Policy by the Personal Liability (DP 24 01) endorsement.

Liability exposures come from the negligent conduct of an insured arising out of the use of his/her premises or negligent conduct of an insured away from those premises. There are two coverages under the Personal Liability endorsement to the Dwelling Policy:

1. Coverage L – Personal Liability
2. Coverage M – Medical Payments

The liability coverage under this endorsement, Coverage L, is based on the insured’s negligent activity (a failure to act as an ordinarily prudent person would under similar circumstances). Coverage M will pay if a person enters the insured’s dwelling and is injured through no fault of the insured. It is frequently referred to as goodwill coverage and pays for medical expenses up to a limited amount.

Coverage provided by the Personal Liability endorsement is very similar to the coverage found in Section II of all Homeowners Policies. The important points are:

- A personal liability endorsement to Dwelling Policies is available, and
- For those without a Dwelling or Homeowners Policy, a Personal Liability Policy can be written as a separate policy.

This coverage is reviewed in much more detail in a later chapter.

MOBILE HOMES

Personal residences generally are built on a permanent foundation and based on the specific building codes of the state and city where the home is located; however, this is not true of all residences.

Characteristics

A mobilehome is distinctive in that it is:

- built in a factory rather than on location;
- required to follow a federal building code rather than state and local codes;
- built on a steel chassis and has wheels; and
- generally a depreciating asset.

Due to the uniqueness of mobilehomes, there are specific underwriting considerations to take into account.

Coverage Options

ISO provides several options for insuring a mobilehome. Under the Homeowners Program, a mobilehome may be insured if a specific endorsement (MH 04 01) is added to a HO-2 or HO-3. The endorsement modifies and in some cases removes the coverage found in the HO-2 or HO-3. In addition to the changes found in the Mobilehome endorsement, the Policy limits for Coverage C and D are also reduced. The mobilehome must also meet specific size requirements.

A mobilehome may also be covered by a DP-1. Note that mobile homes are ineligible for a DP-2 or DP-3. No additional endorsements are required when using a DP-1; however, other rules apply.

While ISO offers options for mobilehome coverage, the reality is that most Mobilehome Policies are written on company-specific forms by companies that specialize in mobilehomes.

Underwriting Considerations

Each company has specific underwriting guidelines. The following are general underwriting considerations:

- size;
- value of the unit;
- location;
- stability; and
- age.

Some of these considerations are used in determining eligibility while others have an impact on pricing.

CONCLUSION

While the Homeowners Policy is one of the most commonly sold products within the insurance industry, not every personal residence qualifies. Though the Dwelling Program and Mobilehome Policies offer more restricted coverages, these products may serve as the solution for these unique exposures.

CHAPTER 18: PERSONAL AUTOMOBILE

INTRODUCTION

The impact of the automobile on the growth and development of society is undeniable. In terms of laws and insurance, a great deal of attention is directed towards the automobile. Automobile insurance is one of the most widely sold forms of insurance. Generally, automobile insurance is purchased:

- To protect an individual's or organization's assets from legal obligations arising from the ownership, maintenance, or use of an automobile;
- To assist in the payment of medical bills for bodily injury as a result of an automobile accident;
- To provide coverage to an individual when injured by a person that does not have insurance or enough insurance to compensate for damages;
- To protect a major, valuable asset (an automobile) of an individual or organization.

PERSONAL AUTO INSURANCE

Most people are involved in more than one car accident within their lifetime. Fortunately, most of the accidents are not serious in terms of physical damage or bodily injury. However, some accidents cause death and serious financial loss. The likelihood of accidents is so high that almost every state mandates that an owner and/or operator have automobile insurance. The Personal Auto Policy (PAP) is the most common way for drivers to protect themselves from the financial consequences of injuring other people and/or damaging other's property, as well as their own injuries and own property damage.

Eligibility

Insurance companies have a variety of specific eligibility criteria. Generally, eligibility factors for the Personal Auto Policy fall into two categories: (1) ownership; and (2) types of autos.

Ownership

To be considered for a Personal Auto Policy, a vehicle must generally be owned by one of the following:

Individual

Autos owned by an individual, or an individual and spouse living in the same house, are eligible for the Personal Auto Policy.

Jointly Owned

Autos are eligible for the Personal Auto Policy if jointly owned by:

- a. two or more relatives; or
- b. two or more unrelated persons who reside in the same household

The Joint Ownership Coverage endorsement is required for both of the above situations.

Trusts

Autos owned by a trust can be insured using the Trust endorsement.

Types of Autos

The following chart is designed to help in understanding which automobiles are eligible to be covered under the Personal Auto Policy.

OWNED	LEASED
1. Private Passenger Autos 2. Pickups and Vans Gross Vehicle Weight Rating (GVWR) of 10,000 lbs. or less (may vary by state) <ul style="list-style-type: none"> • Not used for the delivery or transportation of goods or materials (there are certain exceptions for some incidental business or for farming or ranching exposures) 3. Trailers 4. Miscellaneous Vehicles - by endorsement	Leased if: 1. under a written lease; and 2. for a continuous period of at least six months

PERSONAL AUTO POLICY (PAP)

The Insurance Services Office (ISO) Personal Auto Policy (PAP) is used in almost all states. The coverages, definitions and wording in state/insurer specific forms are similar to the ISO Policy.

Policy Structure

The Personal Auto Policy (PAP) is constructed as shown in the following diagram.

PERSONAL AUTO POLICY			
Agreement			
Definitions			
Part A – Liability Coverage	Part B – Medical Payments Coverage	Part C – Uninsured Motorists Coverage	Part D – Coverage For Damage To Your Auto
Duties After An Accident Or Loss			
General Provisions			

Agreement

In return for the payment of premium and subject to the terms of the contract (the Policy), the insurance company agrees to provide coverage as stated.

Definitions

The Definitions section of the Personal Auto Policy contains certain words or terms that have a special meaning and apply to the entire Policy. There are additional definitions in each coverage section that apply only to that coverage section. It is important to understand how the ISO Policy defines the following words:

F. Throughout this policy, “you” and “your” refer to:

1. The “named insured” shown in the Declarations; and
2. The spouse if a resident of the same household.

If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered “you” and “your” under this policy but only until the earlier of:

1. The end of 90 days following the spouse’s change of residency;
2. The effective date of another policy listing the spouse as a named insured; or
3. The end of the policy period.

© Insurance Services Office, Inc.

“You” and **“your”** refer to the person shown in the Declarations and that person’s spouse if a resident of the same household. Under certain circumstances an unnamed spouse maintains “you” status for a specified period of time if no longer a resident of the same household as the named insured. (From a practical point of view, both spouses should be named in the Declarations.) A “you” receives the broadest coverage.

“We”, **“us”**, and **“our”** refer to the insurance company providing coverage.

While “you”, “your”, “we”, “us”, and “our” appear in quotation marks when defined in the Definitions section, these words do not have quotation marks throughout the Policy. All other defined words appear in quotation marks throughout the Policy.

“Bodily injury” usually pertains to bodily harm in the Personal Auto Policy; however, the ISO Personal Auto Policy definition is:

D. “Bodily injury” means bodily harm, sickness or disease, including death that results.

© Insurance Services Office, Inc.

“Business” includes trade, profession, or occupation. The Personal Auto Policy excludes certain “business” exposures.

“Family member” is an important definition since a “family member” receives the second broadest coverage under the PAP.

- F. “Family member” means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

© Insurance Services Office, Inc.

“Occupying” is a very broad definition in terms of coverage arising from “occupying” an auto, and it includes a person sitting on the tailgate of a truck or someone that shuts a finger in the car door.

- G. “Occupying” means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

© Insurance Services Office, Inc.

“Property damage” means physical damage to or destruction of tangible property, and also includes loss of use of tangible property. Loss of use typically includes reimbursement for a rental car, cab, or bus fare. Loss of use also provides payment for loss of income for a commercial building that is forced to close after being hit by a covered auto.

“Trailer” means any vehicle designed to be pulled by a private passenger auto, pickup, or van including a farm wagon or implement while being pulled by such vehicles.

“Your covered auto” has a four-part definition:

- J. “Your covered auto” means:
1. Any vehicle shown in the Declarations.
 2. A “newly acquired auto”.
 3. Any “trailer” you own.
 4. Any auto or “trailer” you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

This Provision (J.4.) does not apply to Coverage For Damage To Your Auto.

© Insurance Services Office, Inc.

1. Any vehicle shown in the Declarations is a “your covered auto”. This definition gives coverage to any declared vehicle, even if it is not eligible for a Personal Auto Policy. For example, a motorcycle or a dump truck listed in the Declarations is a “your covered auto” under the Personal Auto Policy.
2. A “newly acquired auto” is a “your covered auto”. This type of “your covered auto” is later defined in detail.
3. Any “trailer” owned by the named insured and/or resident spouse is a “your covered auto”.
4. A temporary substitute auto includes any auto or “trailer” that the named insured and/or resident spouse does not own while used as a temporary substitute for any “your covered auto” while that vehicle is out of use because of breakdown, repair, service, loss, or destruction. The use of the word any provides very broad coverage.

EXAMPLES

If David borrows a neighbor’s dump truck because his covered auto does not start, the dump truck is a “your covered auto” by definition.

If David borrows his neighbor’s dump truck because he does not want to haul tree limbs in his Volkswagen, the dump truck is not a “your covered auto”.

"YOUR COVERED AUTO"	
Declared	Any vehicle on Declarations whether it is an eligible vehicle or not
"Newly Acquired Auto"	Vehicle that meets the definition of a "newly acquired auto"
Trailer	Any owned "trailer"
Substitute	A temporary substitute by definition

"Newly acquired auto" is defined as a private passenger auto or a pickup or van (if that pickup or van has no other insurance) and which the named insured and/or resident spouse become the owner of during the policy period. The pickup or van must have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less and cannot be used for the delivery or transportation of goods and materials unless incidental to the named insured's and/or resident spouse's business of installing, maintaining, or repairing furnishings or equipment or for farming or ranching.

Coverage for a "newly acquired auto" applies as described below. If the named insured and/or resident spouse requests coverage after the specified time period has elapsed, any coverage that is provided for the "newly acquired auto" begins at the time that person requests that coverage.

For Liability, Medical Payments, and Uninsured Motorists Coverages, a "newly acquired auto", whether a replacement vehicle (replaces a vehicle shown in the Declarations) or an additional vehicle (a new vehicle in addition to those shown in the Declarations), has the broadest coverage provided for any vehicle shown in the Declarations.

If the "newly acquired auto" is a replacement vehicle, the coverage is provided for the remainder of the policy period. If the "newly acquired auto" is an additional vehicle, the named insured and/or resident spouse must ask for coverage within 14 days after he or she becomes the owner. If the named insured and/or resident spouse does not ask for coverage within 14 days, any coverage he or she requests becomes effective at the date and time he or she makes the request. When there is "Collision" and/or Other Than "Collision" Coverage on the policy, the coverage applies if the named insured and/or resident spouse ask for that insurance within 14 days after he and/or she become the owner. The "newly acquired auto" has the broadest coverage provided to any auto shown in the Declarations. If no auto has "Collision" and/or Other Than "Collision" Coverage, the "newly acquired auto" has "Collision" and Other Than "Collision" Coverage, subject to a \$500 deductible, if that coverage is requested within four (4) days of acquiring the auto. Otherwise, that coverage begins at the date and time he or she asks for it.

If the Policy provided Other Than "Collision" Coverage, but did not provide "Collision" Coverage, the named insured and/or resident spouse have two different time periods in which to give notice: (14 days for Other Than "Collision" Coverage and four days for "Collision" Coverage) so that coverage could apply on the day he and/or she became the owner.

EXAMPLE

Rod has a PAP on his 2005 Honda with the following limits and deductibles:

Liability	Bodily Injury Limit	\$50,000/\$100,000
	Property Damage	\$50,000
“Collision”		\$500 deductible
Other Than “Collision”		\$200 deductible

Rod buys a 2015 Mustang to replace his Honda. He automatically has Liability Coverage for the remainder of his policy period for his “newly acquired auto”. He must request “Collision” and Other Than “Collision” Coverage within 14 days after he becomes the owner to have that coverage effective on the day he becomes the owner. If he does not request “Collision” and/or Other Than “Collision” Coverage within 14 days, that coverage is effective at the date and time he requests it.

EXAMPLE

Michael has a PAP on his 2008 Ford with the following limits:

Liability	Bodily Injury Limit	\$100,000/\$300,000
	Property Damage Limit	\$50,000
Other Than “Collision”		\$200 deductible

Michael buys a 2014 Chevrolet as a second (additional) vehicle. Michael must request Liability and Other Than “Collision” Coverage for the added vehicle (2014 Chevrolet) within 14 days for it to have coverage from the day he became the owner. If he does not request Liability and/or Other Than “Collision” Coverage within 14 days, coverage applies on the day and at the time he asks for it. Michael must request “Collision” Coverage within 4 days after he becomes the owner to have that coverage (\$500 deductible) effective the day he becomes the owner. If he does not request “Collision” Coverage within four days, “Collision” applies from the day and at the time he asks for it.

COVERAGE FOR A “NEWLY ACQUIRED AUTO”		
COVERAGE	REPLACEMENT AUTO	ADDITIONAL AUTO
Liability, Medical Payments, Uninsured Motorists, and Underinsured Motorists	Covered to end of policy period. No notice required.	Covered if company notified within 14 days.
“Collision” and/or Other Than “Collision” if carried on the Policy	Automatically gets the broadest coverage carried on any auto if the company is notified within 14 days.	Automatically gets the broadest coverage carried on any auto if the company is notified within 14 days.
“Collision” and/or Other Than “Collision” if not carried on the Policy	Automatically covered with a \$500 Deductible if company is notified within 4 days.	Automatically covered with a \$500 Deductible if company is notified within 4 days.

There are four Coverage Parts in the Personal Auto Policy. Each Coverage Part has its own insuring agreement, definitions that apply to that coverage part, and exclusions. The definitions previously reviewed apply to all of the coverage parts.

PART A – LIABILITY COVERAGE

The legal obligations to others from an auto accident are the most common liability exposures the average person faces daily.

Insuring Agreement

The Insuring Agreement in this coverage part promises to pay for damages for “bodily injury” and “property damage” that any “insured” becomes legally obligated to pay due to an auto accident. Notice that “insured” is in quotations and has a specific definition that applies to this Coverage Part.

The insurance company has the choice to settle any claim or suit for such damages or the insurance company can defend an “insured” against any claim for damages. If the company chooses to defend, the defense expenses are paid in addition to the limits of liability. The insurance company’s duty to defend lasts until the limits of the Policy have been paid.

The Personal Auto Policy has exclusions and limitations. If there is no coverage provided by the Policy, the insurance company has no duty to defend any “insured”.

EXAMPLE

While driving a stolen auto, an “insured” has a negligent accident that causes “bodily injury” and “property damage”. There is an exclusion for Liability Coverage if an “insured” is using a vehicle without the reasonable belief they are entitled to use it. In this case, the insurance company has no obligation to defend the “insured”.

Insured

B. “Insured” as used in this Part means:

1. You or any “family member” for the ownership, maintenance or use of any auto or “trailer”.
2. Any person using “your covered auto”.
3. For “your covered auto”, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or “trailer”, other than “your covered auto”, any other person or organization but only with respect to legal responsibility for acts or omissions of you or any “family member” for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or “trailer”.

© Insurance Services Office, Inc.

By definition, each of the following is an “insured” for Liability Coverage:

- You (named insured and resident spouse) and any “family member” for the ownership, maintenance, or use of any auto or “trailer”. Remember, if prior to the beginning of the policy period or during the policy period, a spouse, who is not named in the Declarations, ceases to be a resident of the same household as the named insured, she/he remains a you by definition until the end of 90 days following the residency change, until the spouse gets his/her own Personal Auto Policy, or until the Policy expires, whichever comes first.
- This change in status as a you may also change the status of individuals as “family members”. If the named insured moves out of the household, not only will the unnamed spouse remaining in the family home eventually lose status as a you, but any children (or other relatives) residing in the family home will lose status as a “family member”. This is why it is best to name both spouses in the Declarations.
- Notice in the definition above that you and “family members” are “insureds” for any auto or “trailer”. This includes a borrowed dump truck if no exclusion applies.
- Any person using “your covered auto”. The types of “your covered auto” are any auto declared in the Declarations, a “newly acquired auto” (replacement and/or added), an owned “trailer”, and a temporary substitute.
- For “your covered auto”, any person or organization with respect to legal responsibility for any acts or omissions of an insured person having Liability Coverage under this Policy.

EXAMPLE

Mary uses her covered auto to take youth group members from the First Community Church to a district youth rally. Mary is involved in an accident and four of the youths in her car are injured. Claims are made against Mary and First Community Church. Mary is an “insured” under her PAP, since she is the named insured, and the First Community Church is an “insured” under Mary’s PAP, since it is an organization held responsible for the acts of an “insured”.

- For any autos or “trailer”, other than “your covered auto”, any person or organization has coverage for legal responsibility for acts or omissions of the named insured and/or resident spouse or any “family member” who is an “insured”. This coverage provision applies only if the person or organization does not own or hire the auto or “trailers”.

EXAMPLE

Mary borrows her friend’s auto to take a group of young persons from the First Community Church to a district youth rally. There is no insurance on the friend’s auto. Mary is involved in an accident and four of the youths in her car are injured. Mary is an “insured” under her PAP, since she is covered for any auto as a named insured, and the First Community Church is an “insured” under Mary’s PAP, since it is an organization held responsible for the acts of a named insured in an auto other than “your covered auto” and the church does not own nor did it rent the auto Mary is driving. However, Mary’s friend is not an “insured” under Mary’s PAP; she owns the auto Mary is driving.

Supplementary Payments

Supplementary Payments, under the PAP, are payments or benefits made on behalf of an “insured”. They are paid as separate items and do not reduce the other liability limits of the Policy.

The following are paid by the Personal Auto Policy on behalf of an “insured”:

- Up to \$250 for the cost of bail bonds due to an auto accident that results in covered “bodily injury” and/or “property damage”. For example, the “insured” is arrested as a result of an automobile accident where there is “property damage”. The company pays the cost of a bail bond (not to exceed \$250) that the insured posted in order to be released.
- Premiums on appeal bonds, and bonds to release attachments in any suit the Personal Auto Policy defends.
- If the insurance company wishes to appeal a lawsuit covered under the PAP, the Policy pays the premium charged for an appeal bond.
- At times a court may attach (take over or lock up) the “insured’s” property. If this is done, the “insured” may go before the court and request a release of the attachment. The court usually does not release the attachment unless a bond is posted to guarantee court requirements pertaining to the attachment. The company pays the premium charged for a release of attachment bond.
- Any accrued interest after a judgment is entered in any suit the insurance company defends until the insurance company offers payment. Since this interest is accruing after the entry of a judgment, it is known as post-judgment interest.

- Up to \$200 a day for loss of earnings because of attendance at hearings or trials at the insurance company's request.
- Other reasonable expenses incurred at the insurance company's request. This includes expenses such as mileage to attend a trial or the cost of sending a copy of a police report, etc.

Exclusions

There are thirteen exclusions under the Part A – Liability Coverage of the Personal Auto Policy. Nine of these exclude people, and the other four exclude vehicles.

The first group of liability exclusions excludes people. There is no Liability Coverage for any “insured”:

1. For “bodily injury” or “property damage” caused intentionally.
2. For “property damage” to property owned or being transported by that “insured”. This is a logical exclusion because one cannot be liable to oneself for one's own property, and property being transported for others should be covered under some type of cargo/inland marine policy.
3. For “property damage” to property rented to, used by, or in the care of that “insured”. This is the care, custody, or control exclusion found in some form in almost every liability policy. The exception to this exclusion is “property damage” to a residence or a private garage. Therefore, if an “insured” rents a dwelling or garage and accidentally hits and damages it with a covered auto, the damage to the house or garage is covered.
4. For “bodily injury” to an employee of that “insured” during the course of employment. There is an exception to this exclusion for “bodily injury” to a domestic employee of an “insured” who is not covered under workers compensation insurance, unless workers compensation benefits are required or available for that domestic employee.
5. For liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. However, this exclusion does not apply to a share-the-expense car pool. The carrying of people or property for a fee is a commercial liability exposure that is better protected by a Business Auto Policy.
6. While employed or engaged in an automobile business relating to selling, repairing, servicing, storing, or parking of cars. This exclusion includes road testing and delivery. This exclusion eliminates coverage under the Personal Auto Policy for the auto business (garage mechanic or the parking lot attendant) while driving a customer's auto. It does not eliminate coverage for an “insured” who is being sued for the negligent operation of “your covered auto” while it is being used by someone in the auto business.

EXAMPLE

Jim takes his car to an auto repair shop. While test-driving Jim's covered auto, the mechanic has an accident. The auto shop, the mechanic, and Jim are sued. Jim has coverage under his PAP for Liability Coverage, but the auto shop and mechanic do not.

7. Maintaining or using any vehicle while employed or engaged in any “business” (other than farming or ranching) not described in the Auto Business Exclusion (# 6 above). However, there is an exception; the exclusion does not apply to the maintenance or use of a private passenger auto, pickup, or van. Also, this exclusion does not apply to

a “trailer” if used with a private passenger auto, pickup, or van. Therefore, if no other exclusion applies, coverage exists for the “business” use of owned or non-owned private passenger autos, pickups, and vans. There is no coverage for a moving truck used in “business”.

8. Using a vehicle without a reasonable belief that an “insured” is entitled to do so. This exclusion does not apply to a “family member” using “your covered auto”, which is owned by the named insured and/or resident spouse. This exclusion eliminates coverage for a thief.

EXAMPLE

Bill’s 14-year old unlicensed son resides with him. Bill’s son, Will, sneaks out of the house one night and takes Bill’s car. Will is involved in an accident. Will is covered even though he knows he should not be using the car.

9. For “bodily injury” or “property damage” for which that person is covered or should be covered under a nuclear energy liability policy.

The next four exclusions state that the Personal Auto Policy does not provide Liability Coverage for ownership, maintenance, or use of the following types of vehicles:

1. Any vehicle having fewer than four wheels or designed mainly for use off public roads. However, this exclusion does not apply to a vehicle being used by an “insured” for a medical emergency, to any “trailer”, or to any non-owned golf cart. The basic purpose of this exclusion is to eliminate coverage for recreational vehicles. There is no mention of registration or licensing requirement for public road use, only the stipulation that the vehicle must be designed mainly for use off public roads. Endorsements are available to buy back coverage on some of the vehicles excluded by this exclusion.
2. Any vehicle other than “your covered auto”, which is owned by the named insured and/or resident spouse, or furnished or available for his and/or her regular use. The insurance company does not intend to provide coverage for a risk for which a premium has not been assessed.
 - a. Examples of vehicles furnished or available include an assigned or available company car, or a motor-pool vehicle (school district, police department, government agency vehicles are common examples of such vehicles). Some courts have held that autos owned by roommates, non-resident family members, or friends’ vehicles that are furnished or available for the named insured’s and/or resident spouse’s regular use are excluded.
 - b. Coverage for a non-owned vehicle is available by the Extended Non-Owned Coverage - Vehicles Furnished or Available for Regular Use endorsement.
3. Any vehicle other than “your covered auto”, which is owned by any “family member”, or is furnished or available for the regular use of any “family member”. This exclusion is similar to the one above; however, it does contain an exception for the named insured and/or resident spouse having coverage under their PAP.

EXAMPLE

Judy is the named insured on her PAP. Judy's son, Jeff, resides in her household. Jeff owns a 1970 Volkswagen and insures it under a PAP in his name. Judy uses Jeff's Volkswagen and is involved in an accident. Judy has coverage under Jeff's PAP (she is a "family member"), and Judy has coverage under her own policy (she is a named insured) if Jeff's insurance is not adequate to cover the loss.

EXAMPLE

Using the same situation above, John is a second son who resides in Judy's household. John owns no auto and is not a named insured on any PAP. If John drives his brother Jeff's 1970 Volkswagen, he is covered under Jeff's PAP (as a "family member"); John has no coverage under Judy's PAP (he is not a named insured or resident spouse under Judy's PAP). If John drives Judy's covered auto, he has coverage under Judy's PAP as a "family member" but has no coverage under Jeff's PAP (he is not a named insured and/or resident spouse).

4. Any vehicle while located inside a racing facility if there to compete in, practice or prepare for a prearranged or organized race or speed contest.

Limit of Liability

The insurer only pays up to the amount shown in the Declarations as the Limit of Liability. Subject to the per person limit, the Limit of Liability shown in the Declarations for each accident for "bodily injury" is the insurer's maximum limit for all damages for "bodily injury" resulting from one auto accident. The Limit shown for Property Damage Liability is the maximum paid for all "property damage" resulting from one auto accident. These Limits are the maximum that are paid for one accident regardless of the number of "insureds", claims made, vehicles on the Policy, or vehicles involved in the accident.

The limits found in most Personal Auto Policies are split limits in which a specified limit is provided per person and per accident for "bodily injury" and per accident for "property damage".

A combined single limit does not separate the limit per person nor assign a specific amount to "bodily injury" or "property damage". If requested, and if the insurance company is willing, many states have an endorsement that provides a combined single limit of liability. The advantage is that the limit can apply to either coverage as needed.

Out of State Coverage

Compulsory automobile insurance laws vary greatly from state to state. The Out of State Coverage provision serves as a safety net for those who carry minimum or low liability limits in the state where their covered auto is principally garaged. It also provides the minimum amounts of coverage that might be required in one state but not another. If they are involved in an accident in another state that requires higher mandatory liability limits or requires additional mandatory coverages, such as Personal Injury Protection, their Personal Auto Policy provides these required limits and/or coverages.

EXAMPLE

Ray lives in California and causes an automobile accident while traveling in Washington. He carries the minimum liability limits required by California. Ray's limits do not meet the minimum required limits based on Washington's financial responsibility law. Without this provision, Ray is not in compliance with Washington law and faces legal consequences in Washington. The Out of State Provision increases Ray's limits to those required in Washington while he is in Washington.

COVERAGE PART B – MEDICAL PAYMENTS COVERAGE (MED PAY)

This coverage pays for reasonable medical expenses and funeral services on a no-fault basis. Liability need not be established. If an "insured", as defined by this Policy Coverage Part, incurs covered losses as a result of "bodily injury" caused by an accident, the Policy pays.

Some states have Personal Injury Protection (PIP) instead of or in addition to Medical Payments Coverage. Besides medical expenses and funeral services, Personal Injury Protection (PIP) pays, subject to Policy provisions, for lost wages or for expenses due to a loss of services.

This analysis focuses on Medical Payments Coverage provided by an unendorsed Personal Auto Policy. However, coverage varies from state to state based on state specific endorsements.

Insuring Agreement

The Insuring Agreement in this coverage part promises to pay for reasonable and necessary medical expenses and funeral services if an "insured" suffers "bodily injury" caused by an accident. The expenses must be incurred for treatment or services given within 3 years from the date of the accident.

Insured

By definition, the following are given "insured" status for Medical Payments Coverage:

- You (named insured and/or resident spouse) or any "family member" while "occupying" a motor vehicle designed for use mainly on public roads or a trailer of any type; or
- You (named insured and/or resident spouse) or any "family member" as a pedestrian when struck by a motor vehicle designed for use mainly on public roads or a trailer of any type; or
- Any other person while "occupying" "your covered auto".

The broad definition of "occupying" means in, upon, getting in, on, out, or off.

EXAMPLE

Danielle's daughter, who resides in Danielle's household, injures her ankle while stepping off a school bus. This coverage part pays for reasonable and necessary medical expenses under Danielle's Personal Auto Policy, since the child is a "family member" and the "bodily injury" is the result of an accident while the child was "occupying" a motor vehicle designed mainly for use on public roads.

Exclusions

There is no Medical Payments Coverage for any “insured” for “bodily injury” sustained while:

- “Occupying” any motorized vehicle having less than four wheels. For example, an “insured” takes a ride on a friend’s motorcycle and suffers injuries; no coverage applies.
- “Occupying” “your covered auto” when it is being used as a public or livery conveyance. However, this exclusion does not apply to a share-the-expense car pool.
- “Occupying” any vehicle located for use as a residence or premises. This normally includes a motor home or trailer if it is being used as a residence or premises, but also includes a private passenger auto if someone is living out of it.
- In the course of employment if workers compensation benefits are required or available for the “bodily injury”. If the named insured and/or resident spouse are injured while driving “your covered auto” on business for the named insured’s and/or resident spouse’s employer, the PAP does not pay for his and/or her medical expenses unless his and/or her employer is not required to purchase a Workers Compensation and Employers Liability Insurance Policy.
- “Occupying”, or when struck by, any vehicle (other than “your covered auto”) that is owned by named insured and/or resident spouse OR furnished or available for his and/or her regular use. Again, the insurance company does not intend to provide coverage for an exposure for which it does not receive premium.

EXAMPLE

Elsa, a policyholder, purchases a “newly acquired auto” which is an additional auto (does not replace one already insured). No notice is given to the agent or company. 60 days after purchasing the “newly acquired auto”, Elsa is injured in an accident while “occupying” that auto. There is no Medical Payments Coverage under Elsa’s PAP since this auto is not a “your covered auto”. Notice had to be given within 14 days to have coverage. Since no notice was given, coverage does not begin until the date and at the time Elsa asks for it.

- “Occupying”, or struck by, any vehicle (other than “your covered auto”) that is owned by OR furnished to or available for the regular use of any “family member”. This exclusion does not apply to the named insured and/or resident spouse. This is similar to the exclusion found in the Liability Coverage Part.
- An “insured” is “occupying” a vehicle without reasonable belief that the particular “insured” is entitled to do so. This exclusion does not apply to any “family member” “occupying” a “your covered auto” that is owned by the named insured and/or resident spouse.
- “Occupying” a vehicle when it is being used in the “business” of an “insured” unless the vehicle is a private passenger auto, pickup, or van or a “trailer” used with any of these vehicles.
- Caused by or the consequence of the discharge of a nuclear weapon, war, civil war, insurrection, rebellion, revolution. Note that riot, civil commotion, and terrorism are not excluded.
- Caused by any type of nuclear reaction, radiation, or radiation contamination.
- “Occupying” any vehicle located inside a facility designed for racing and involved in competing or practicing for a prearranged or organized race or speed contest.

Limit of Liability

The Limit of Liability shown in the Declarations for this coverage is the maximum amount the insurer pays for each person injured in one accident. Any amount paid for this coverage is not to be duplicated by the amount an “insured” is entitled to receive under Coverage A – Liability Coverage, Coverage C – Uninsured Motorist Coverage or Underinsured Motorists Coverage provided by this Policy.

Other Insurance

The insurance company pays its share of the loss for covered expenses if there is other applicable auto medical payments coverage. However, any coverage the named insured’s Policy provides for any vehicle the named insured and/or resident spouse do not own (including a temporary substitute for “your covered auto”) is paid as excess.

COVERAGE PART C – UNINSURED MOTORIST COVERAGE (UM)

The coverage provided in this Coverage Part protects an “insured” from owners or drivers of vehicles who do not have insurance or the assets to compensate people who suffer a loss through their negligent ownership, maintenance, or use of an “uninsured motor vehicle”. This coverage also varies from state to state, as some states include coverage for an underinsured motor vehicle in the uninsured motor vehicle coverage. Other states have an optional coverage to provide protection from an underinsured motorist that is purchased separately from Uninsured Motorist Coverage. The purpose of Underinsured Motorists Coverage is to protect an “insured” from the risk that a negligent owner and/or driver of a vehicle causes a covered loss to the “insured” and has inadequate limits to compensate the “insured” for the loss. This analysis focuses on the coverage provided by the unendorsed Personal Auto Policy.

Insuring Agreement

The insurer promises to pay damages an “insured” is legally entitled to recover as compensatory damages from the owner or driver of an “uninsured motor vehicle”. There are two keys to this coverage. First, the damages must result from “bodily injury” sustained by an “insured” and caused by an accident. Secondly, the accident must be caused by an “uninsured motor vehicle”.

Some states allow an “insured” to recover “property damage” losses under this Coverage Part as well. For the purpose of this analysis, only “bodily injury” benefits are examined.

The Insuring Agreement specifies the PAP pays compensatory damages. There is no intent to cover punitive damages under this Coverage Part.

The insurance company wants an opportunity to be involved in the investigation and analysis of the facts, so the Policy states that any judgment for damages arising out of a suit brought without the insurer’s written consent is not binding on the insurer. Some states do not allow the enforcement of this provision.

Insured

By definition, the following are “insureds” for Uninsured Motorists Coverage:

- B. “Insured” as used in this Part means:
1. You or any “family member”.
 2. Any other person “occupying” “your covered auto”.
 3. Any person for damages that person is entitled to recover because of “bodily injury” to which this coverage applies sustained by a person described in 1. or 2. above.

© Insurance Services Office, Inc.

Uninsured Motorist Coverage is very broad for the named insured and/or resident spouse and “family members”. The second type of “insured” is any person “occupying” “your covered auto”. As a reminder, the definition of “occupying” is very broad. The third type of “insured” is any person who is not directly involved in the accident, but as a result of “bodily injury” to an “insured” has suffered a loss. Some states do not include this third classification of “insured” in their Uninsured Motorist Coverage definition.

EXAMPLE

A policyholder is killed by an “uninsured motor vehicle”. Her child, who lives in another city and is not in the vehicle at the time of the accident, might have a cause of action to recover damages from the owner/operator of the “uninsured motor vehicle”. If so, she is an “insured” under the policyholder’s PAP.

Uninsured Motor Vehicle

An “Uninsured Motor Vehicle” is defined as a land motor vehicle or trailer of any type:

- For which no liability policy or bond applies at the time of the accident. (This is the most common definition of an “uninsured motor vehicle”.);
- Which has a liability policy or bond at the time of the accident, but its limit is less than the minimum limit specified by the financial responsibility law of the state in which “your covered auto” is principally garaged. (Someone is injured in a state that has lower liability requirements than that person’s home state. The other driver, who is negligent, carries that state’s minimum limits of liability);
- Which is a hit-and-run vehicle, and neither the driver nor owner can be identified, and which hits the named insured and/or resident spouse, a “family member”, a vehicle that the named insured and/or resident spouse or a “family member” is “occupying”, or “your covered auto”; (Some states have no requirement that the hit-and-run vehicle actually makes physical contact, only that the facts of the accident be proven. This is sometimes referred to as a phantom vehicle.);
- For which an insuring or bonding company either (1) denies coverage, or (2) is or becomes insolvent. (This rarely happens.)

As previously indicated, in states that allow underinsured motor vehicle coverage, some add underinsured to the definition of an “uninsured motor vehicle” while other states have a separate endorsement for underinsured coverage.

The definition of an “uninsured motor vehicle” goes on to state what is not an “uninsured motor vehicle”. An “uninsured motor vehicle” does not include any vehicle or equipment:

- owned by or furnished for the regular use of the named insured and/or resident spouse or any “family member”;
- owned or operated by a self-insurer who qualifies under applicable motor vehicle laws, unless that self-insurer becomes insolvent;
- a motor vehicle owned by a government unit or agency;
- operated on rails or crawler treads;
- designed mainly for off-road use and operated off public roads at the time of an accident; or
- while located for use as a residence or premises.

Exclusions

Since Uninsured Motorists Coverage has the characteristics of liability insurance, several of the exclusions are the same or similar to those found in the earlier analysis of liability insurance coverage.

- There is no coverage while an “insured” is “occupying” or is struck by a “motor vehicle” that is owned by that “insured”, and is not specifically insured for Uninsured Motorists Coverage. This same exclusion applies to any “family member”.
- There is no coverage if an “insured” or their legal representative settles a claim and such settlement prejudices the insurance company’s right to recover payment.
- There is no coverage while “your covered auto” is being used as a public or livery conveyance. Again, this exclusion does not apply to a share-the-expense car pool.
- There is no coverage for any “insured” using a vehicle without a reasonable belief that the “insured” is entitled to do so. This exclusion does not apply to a “family member” using “your covered auto” that is owned by the named insured and/or resident spouse.
- This coverage is intended to cover the “insureds” of the Policy. This Coverage does not pay or reimburse another insurer for workers compensation or disability benefits.
- There is no coverage for punitive or exemplary damages.

Limit of Liability

The Limit of Liability shown in the Declarations for this Coverage is the maximum amount the insurer pays for any one person injured in one accident. The Declarations also indicates the maximum amount the Policy pays for any one accident. Any amount paid for this Coverage is not to be duplicated by the amount an “insured” is entitled to receive under Coverage A – Liability Coverage or Coverage B – Medical Payments Coverage provided by the Policy.

Also, any payment a person is entitled to under workers compensation or disability benefits is not paid under the Personal Auto Policy. This does not mean that a person eligible for workers

compensation benefits cannot collect under Uninsured Motorist Coverage; however, the person cannot receive payment for the same element from both policies.

EXAMPLE

Andrew has a Personal Auto Policy with Uninsured Motorist Coverage. While conducting company business, he is involved in a wreck in his personal car with an uninsured motorist. His employer's Workers Compensation and Employers Liability Insurance Policy pays for his medical bills. While he cannot collect for his medical bills under his Uninsured Motorists Coverage, he can still seek payment for his pain and suffering under his Personal Auto Policy.

Other Insurance

Any coverage the named insured's Policy provides for any vehicle the named insured and/or resident spouse do not own (including a temporary substitute for "your covered auto") is paid as excess. The insurance company pays its share of the loss for covered expenses if there is other applicable coverage. The portion of the loss is a pro-rata share based on the insurance company's responsibility to provide either primary or excess coverage.

Arbitration

If the "insured" and insurer are unable to come to an agreement on legal entitlement to damages or the amount of recoverable damages, the Policy addresses the procedures for arbitration in an uninsured motorist claim; however, disputes on the coverage provided by Uninsured Motorist Coverage are not settled through arbitration. If both parties agree to arbitration, each party chooses and pays for an arbitrator. The costs for the third arbitrator, who acts as an umpire, are shared equally. If there is not an agreement in 30 days, either party may request that the selection of the umpire be made by a judge. If two of the three arbitrators agree, the decision is binding in the determination of the "insured's" legal entitlement to coverage and the amount of damages as long as the amount does not exceed the minimum limit for bodily injury liability established by that particular state.

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

This coverage is frequently called physical damage. This portion of the Personal Auto Policy pays for damages to the "insured's" auto.

Insuring Agreement

The Personal Auto Policy promises to pay for direct and accidental loss to "your covered auto" or any "non-owned auto" including its equipment, minus any deductible shown in the Declarations. Only the highest deductible applies if there is a loss to more than one "your covered auto" or "non-owned auto" from the same "collision". Coverage for other than "collision" and "collision" apply only if the Declarations indicate the coverages apply to that auto. A loss to a "non-owned auto" has the broadest coverage applicable to any "your covered auto". The Declarations Page of the Personal Auto Policy is like a menu, and everything is a la carte. The named insured must select the coverage and pay a premium.

EXAMPLE

Jeff has three autos insured on his PAP. Auto #1 has coverage for “collision” and other than “collision” with \$500 deductibles for each. Auto #2 has coverage for other than “collision” with a \$200 deductible. Auto #3 has no coverage for “collision” or other than “collision”. A “non-owned auto” has a \$500 deductible for “collision” and a \$200 deductible for other than “collision” under Jeff’s PAP.

Collision

“Collision” means the upset (for example, a car leaves the road and turns over while going down an embankment) of “your covered auto” or a “non-owned auto” or their impact with another vehicle or object.

Other than Collision

Other than “collision” is not specifically defined in the Personal Auto Policy. The Policy states the following losses are considered other than “collision”:

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with a bird or animal;
10. Breakage of glass, unless caused by a “collision”, then “you” may elect to have the loss considered a “collision”.

This is not an all-inclusive list of other than “collision” losses. Any direct and accidental loss (except losses defined as “collision”) to “your covered auto” or any “non-owned auto” are other than “collision” if not excluded.

Non-owned Auto

A “non-owned auto” is defined as a private passenger vehicle, pickup, van, or “trailer” that is not owned by or furnished or available for the regular use of the named insured and/or resident spouse or any “family member” while in the custody or being operated by him and/or her or any “family member”. It is also a temporary substitute vehicle of any type. As previously stated, the PAP provides coverage equal to the broadest coverage on any “your covered auto”.

Transportation Expense

Subject to a special limit (\$600), the following losses are paid under this coverage:

1. The expense of providing temporary transportation (up to \$20 per day) is paid for a covered loss to “your covered auto” or a “non-owned auto”. If the loss is not covered by

other than “collision” or “collision” as outlined in the Insuring Agreement, this coverage does not apply.

EXAMPLE

Many times this coverage is misinterpreted as having a maximum time period of 30 days. If the transportation cost (bus fare) is only \$10 per day and it takes 70 days to repair the covered vehicle, this coverage applies for 60 days (\$600 divided by \$10 = 60).

2. If the named insured and/or resident spouse become legally responsible for expenses in the event of a loss to a “non-owned auto”, these expenses can be paid under this coverage. If the loss is a result of collision or other than “collision”, that coverage must be shown for any “your covered auto”. A maximum of \$20 per day is paid for any loss of use expenses.
3. If the loss is caused by a total theft of “your covered auto” or “non-owned auto”, this coverage is subject to a 48-hour waiting period deductible. On other covered losses, coverage begins when the vehicle is not usable for more than 24 hours.

Payments under transportation expenses are limited to the period of time reasonably required to repair or replace the “your covered auto” or the “non-owned auto”. Additional limits are available by endorsement, subject to insurance company guidelines. In addition, broader coverage may be purchased by endorsement.

Towing and Labor Costs Coverage

This coverage is available by endorsement. The insurer agrees to pay for towing or any labor cost incurred at the point of disablement any time a covered auto is disabled. The disablement can be for any reason. The amount paid is limited by the amount found in the Schedule of the endorsement itself.

EXAMPLE

If a covered auto has a flat tire, this endorsement pays for the labor costs of the service call to change the tire but does not cover the cost of repairing or replacing the tire. If a covered auto runs out of gas, the labor costs to bring gasoline to the site are covered but not the cost of the gasoline. If a dead battery needs to be replaced, the service call and labor cost of installing the battery at the site of disablement is covered but not the cost of the battery.

Exclusions

There are 13 physical damage exclusions in the Personal Auto Policy:

1. Loss that occurs while “your covered auto” or any “non-owned auto” is being used as a public or livery conveyance, with the exception of a share-the-expense car pool. This exclusion is found in all coverage parts.

2. Damage due to and confined to:

- Wear and tear;
- Freezing;
- Mechanical/electrical breakdown;
- Road damage to tires.

However, if any of these losses are the result of the total theft of “your covered auto” or any “non-owned auto”, there is coverage for these losses.

Since the exclusion includes the condition confined to, if an electronic part shorts out and a fire ensues, the damage caused by the fire is covered. The electronic part that shorted out is not covered.

3. Specific losses, which are considered uninsurable or catastrophic in nature (radioactive contamination, discharge of a nuclear weapon, war, civil war, insurrection, rebellion, and revolution). There is no exclusion for riot or terrorism.
4. Loss to electronic equipment that reproduces, receives or transmits audio, visual, or data signals, including but not limited to radios, stereos, tape decks, compact disk systems, navigation systems, internet access systems, personal computers, video entertainment systems, telephones, televisions, two-way mobile radios, scanners, or citizens band radios.
5. This exclusion does not apply if the equipment is permanently installed in “your covered auto” or any “non-owned auto”; However, there is a \$1,000 limit of insurance for equipment permanently installed in locations not used by the auto manufacturer for installation of such equipment.
6. Coverage for excluded equipment or additional limits may be purchased by endorsement, subject to insurance company underwriting guidelines. Other endorsements may further limit electronic equipment or vehicle customization.
7. Loss to tapes, records, disks, or other media used with the equipment described in Exclusion #4. Coverage for these items may be purchased by endorsement, subject to insurance company guidelines.
8. A total loss to a covered auto due to destruction or confiscation by government authority. The rights of a loss payee (lender) are not excluded.
9. Loss to an unlisted camper body, “trailer”, or motor home, including certain facilities or equipment. The following two exceptions apply:
 - There is coverage for a “trailer” the named insured and/or resident spouse do not own, but the policy only provides a limit of \$1,500 for such “trailer”.
 - There is coverage for a “trailer” or camper body, including certain facilities or equipment that the named insured and/or resident spouse acquire during the policy period and ask the insurance company to cover within 14 days of him and/or her becoming the owner.

10. Loss to any “non-owned auto” without the reasonable belief that the named insured and/or resident spouse or that “family member” is entitled to use it. The Personal Auto Policy does not cover any damages incurred for a car stolen by the named insured and/or resident spouse or any “family member”.
11. Loss to any radar or laser detection equipment. Radar detectors are designed to enable drivers to drive at excessive speeds while avoiding a speeding ticket. The insurance company does not intend to support such a practice.
12. Loss to custom furnishings such as special carpeting, furniture, bars, or custom murals, paintings, decals, graphics in or on a van or pickup. This exclusion does not apply to a cap, cover, or bedliner in or upon any “your covered auto” that is a pickup. This exclusion does not apply to a private passenger auto.
13. Many states and companies also have an endorsement that excludes coverage for custom equipment in excess of \$1,500 on any type of vehicle. Coverage for custom equipment may be purchased by endorsement.
14. Loss to any “non-owned auto” being maintained or used in an auto “business”.
15. Loss to any auto if located inside a racing facility for the purpose of competing in or practicing or preparing for any prearranged or organized race or speed contest.
16. Loss to or loss of use of a “non-owned auto” rented by the named insured and/or resident spouse or any “family member” if the rental company cannot recover said loss from the named insured and/or resident spouse or that “family member” because of contract provisions or state law.

Limit of Liability

The Limit of Liability for Damage to Your Auto is the lesser of the actual cash value (adjustment is made for depreciation and physical condition) or the amount required to repair or replace the property with like kind and quality. The Personal Auto Policy does not pay more than \$1,500 for a non-owned trailer. Coverage for electronic equipment is limited to \$1,000 if it is permanently installed in a location other than where the auto manufacturer installs such equipment. There is no coverage under the Personal Auto Policy for electronic equipment that is not permanently installed.

EXAMPLE

Feeling the speakers installed by the auto manufacturer are insufficient, Paul permanently installs additional speakers under the front seats in his new sports car. While the Other than “Collision” Coverage pays for the speakers if they are stolen, the policy pays a maximum of \$1,000 since the auto manufacturer did not intend for speakers to be installed under the seats.

Other Insurance

The insurance company has the option of paying for the loss in money, repairing the vehicle, or replacing the vehicle or its equipment. The insurer may also return stolen property to the named insured and/or resident spouse at the address on the Policy and pay for any damage from the theft. Any loss paid in money includes applicable sales tax.

No Benefit to Bailee

The Personal Auto Policy does not benefit any bailee for hire.

Other Sources of Recovery

If there are any other sources of recovery for a loss, the insurer pays the pro-rata responsibility with respect to the Personal Auto Policy's Limit of Liability in proportion to the total of all applicable limits. Any coverage the named insured's Policy provides for any vehicle the named insured and/or resident spouse do not own (including a temporary substitute for "your covered auto") is paid as excess to any other recoverable source.

Appraisal

If the "insured" and insurer do not agree on the amount of loss, either party may request an appraisal. The insurer does not waive any Policy rights by agreeing to an appraisal.

PART E – DUTIES AFTER AN ACCIDENT OR LOSS

The duties after an accident or loss are consistent with most other insurance policies. Some of the "insured's" duties are:

- Give the insurance company prompt notice of accident or loss;
- Cooperate in an investigation;
- Promptly send copies of notices and/or legal papers;
- If required, submit to physical exams and exams under oath;
- Promptly notify the police of a hit-and-run driver;
- Protect the damaged property from further damage;
- Promptly notify the police of theft of a covered auto;
- Allow the insurance company to inspect and appraise damaged property before it is repaired or disposed of.

PART F – GENERAL PROVISIONS (SELECTED)

The General Provisions are applicable to all the coverages included within the Personal Auto Policy.

Changes

If changes occur, such as changing vehicles, drivers, or the place(s) of garaging vehicles, the insurer can change the premium charged. If the insurer makes a change in coverage, which broadens coverage without an additional premium charge, then the named insured's Policy immediately changes so as to receive the broader coverage. This broadening of coverage without an increase in premium is often titled Liberalization in other insurance policies.

Policy Period and Territory

The Policy is applicable to accidents and losses that occur during the policy period and in the policy territory. The policy territory is restricted to the United States, its territories and possessions, Puerto Rico, and Canada.

Two or More Auto Policies

If two or more policies issued to the named insured apply to the same accident, the maximum limit does not exceed the highest limit of any one policy.

CONCLUSION

Coverage under the Personal Auto Policy can be further modified by endorsements that broaden coverage, restrict coverage, clarify coverage and/or comply with specific state requirements. In addition, it is not uncommon for specific insurers to provide a personal auto policy that is different in certain areas than the ISO PAP. Regardless, the PAP is one of the most widely used policies within the insurance industry.

CHAPTER 19: WATERCRAFT

INTRODUCTION

Watercraft is any water vessel ranging from a canoe to a ski boat to a freighter traveling the ocean. There are many ways to insure watercraft. In the chapter on Homeowners Policies, it is stated that limited coverage for watercraft is provided in the Homeowners Policy. This limited coverage is not suitable for most types of watercraft, and, therefore, another type of policy is used to provide coverages including liability, hull (coverage for damage to the watercraft), medical payments, trailers, motors, and optional equipment.

This chapter examines the coverages provided by the Watercraft Policy.

CHARACTERISTICS

The Watercraft Policy is most commonly used to insure pleasure boats that are 26 feet or less in length. Value and speed are underwriting considerations as well, and a combination may be used. For example, according to one set of underwriting guidelines, a boat is eligible to be written on a Watercraft Policy if it is no longer than 26 feet in length with a value not exceeding \$50,000. The maximum value may vary by company. A Watercraft Policy is also used to provide coverage for “personal watercraft” which includes jet skis, wave runners, and wet bikes.

A watercraft larger than those described above is usually insured using a Yacht Policy. Underwriting a yacht is more complex and evaluates more carefully characteristics such as value, length, beam, navigation area, yacht construction, and other factors specific to the underwriting company.

The Watercraft Policy provides liability coverage for owned, covered watercraft as well as rented or borrowed watercraft that meets the policy definition of “non-owned watercraft” and is not otherwise limited or excluded. The coverage for rented or borrowed watercraft is most important because coverage is very limited in the Homeowners Policy. It is also important that the coverage for “non-owned watercraft” extends to wave runners and jet skis, as these are popular among many who are vacationing.

The Watercraft Policy provides physical damage coverage for the boat (the hull) and all permanently attached equipment, including motors. Outboard motors, which may be detached, may have to be separately scheduled.

The Watercraft Policy can also include coverage for boating equipment, such as anchors, batteries, covers, electronic navigation equipment, fire extinguishers, flares, horns, life preservers, lines, oars, oar locks, pumps, sails, and seat cushions. These items are not individually scheduled, but a limit of insurance is required for the value of these items combined.

A watercraft trailer used for transporting the watercraft must be scheduled. The schedule includes the description of the trailer and the value.

An important concept relating to the Watercraft Policy is the concept of warranty. A warranty is an expressed or implied assurance of some particular condition in connection with the contract. Warranties include seaworthiness, private pleasure use only, and legal purpose. When an insured breaches a warranty, the insurance coverage is void.

Warranties

Seaworthiness: This warranty implies that the watercraft is fit to be used in the navigational area where it is operated.

Private Pleasure Use Only: This warranty is a promise by the insured that the watercraft is never used for any business or commercial purpose.

Legal Purpose: The warranty of legal purpose states that the watercraft is one which is used expressly for legal purposes. Where there is an express warranty of legality, it will have precedence over an implied warranty to the extent the two are inconsistent.

Navigation Limitation

The Navigation Area or Limit designates where the watercraft may be operated. There is no coverage if the watercraft is used outside the stated area. There may also be a Navigation Period stated in the Declarations; this is the period of time when coverage is provided for the use of the watercraft.

EXAMPLE

If the Navigation Area is designated as inland lakes, rivers and waterways and the boat is taken to Florida and used in the Gulf, when damage occurs coverage does not apply.

The period of time not in the Navigation Period is referred to as the lay-up period, and there is no coverage for the use of the watercraft during the lay-up period.

EXAMPLE

If the Navigation Period of the watercraft is from April 1 to November 1, then the lay-up period is from November 2 through March 31. If the insured uses the watercraft during the lay-up period and incurs damages, the damages are not covered.

Eligibility

This is determined based on the insurance company's underwriting criteria. Standards for acceptability will vary by insurance company. Many items considered by underwriters include the following: (List is not all-inclusive.)

- Age of watercraft
- Hull construction
- Length and beam (width)
- Horsepower
- Maximum speed
- Type of boat (e.g., inboard, inboard/outdrive, outboard, jet, sail with or without auxiliary power)
- Navigation area
- Deductibles
- Lay-Up period (Navigation Period)
- Value
- Use of watercraft, e.g. skiing, cruising, charters, racing, fishing, etc.
- Docking and storage locations
- Safety equipment
- Age and experience of owner
- Loss experience
- Other operators

WATERCRAFT POLICY STRUCTURE

The Policy begins with the Agreement and Definitions, and is then divided into the following parts:

- Part A Liability Coverage
- Part B Medical Payments Coverage
- Part C Section reserved for future use
- Part D Coverage For Damage To Your Watercraft
- Part E Your Duties After Accident Or Loss
- Part F General Provisions

WATERCRAFT POLICY

Agreement

AGREEMENT

With respect to the property and coverages for which a Limit of Liability is shown and for which a premium applies, we will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

© Insurance Services Office, Inc.

The Agreement is straightforward and states the insurer's promise and the insured's obligations.

Definitions

The words "you" and "your" are defined in the Watercraft Policy similarly to what is found in the Personal Auto Policy.

1. "You" and "your" refer to:
 - a. The "named insured" shown in the Declarations; and
 - b. The spouse, if a resident of the same household.
2. If the spouse ceases to be a resident of the same household during the policy period or prior to the inception of this policy, the spouse will be considered "you" and "your" under this policy but only until the earlier of:
 - a. The end of 90 days following the spouse's change of residency;
 - b. The effective date of another policy listing the spouse as a named insured; or
 - c. The end of the policy period.

© Insurance Services Office, Inc.

As with many other personal lines policies, if the spouse is not listed as a named insured on the policy, the spouse will automatically be a "you" if a resident of the same household. Named insured status will continue for a spouse who ceases to be a resident of the named insured's household for a limited period of time as stated in the Policy, but no longer than 90 days.

The words "we," "us," and "our" refer to the insurance company. In addition, there are words or phrases that have special meaning in the policy and appear in quotation marks.

1. "Bodily injury" means bodily harm, sickness or disease, including death that results.
2. "Business" includes trade, profession or occupation.
3. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.
4. "Newly acquired property":
 - a. "Newly acquired property" means any of the following types of property you become the owner of during the policy period:
 - (1) A watercraft, other than a "personal watercraft";
 - (2) An "outboard motor"; or
 - (3) A "watercraft trailer".
 - b. Coverage for "newly acquired property" is provided as described below:
 - (1) "Newly acquired property" will have the broadest coverage we now provide for any property of the same type shown in the Declarations. Coverage begins on the date you become the owner. However, for this coverage to apply, you must ask us to insure it within 14 days after you become the owner.
 - (2) If you ask us to insure "newly acquired property" after 14 days, any coverage we provide for "newly acquired property" will begin at the time you request the coverage.
5. "Non-owned watercraft" means any watercraft, including its motor and "watercraft trailer", which is not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member".
6. "Occupying" means:
 - a. In;
 - b. Upon; or
 - c. Getting in, on, out or off.
7. "Outboard motor" means any motor designed to be attached to a watercraft, including:
 - a. Fuel tanks and other pressure control tanks; and
 - b. Electric starting equipment or controls necessary for the operation of the motor.
8. "Personal watercraft" means a recreational watercraft powered by an inboard motor with its primary source of propulsion being a water-jet pump, which is capable of carrying one or more persons in a sitting, standing or kneeling position.
9. "Property damage" means physical injury to, destruction of or loss of use of tangible property.
10. "Watercraft trailer" means a vehicle that is designed to:
 - a. Be pulled by a private passenger auto, pickup or van; and
 - b. Transport a watercraft on land.
11. "Your covered watercraft" means:
 - a. Any watercraft shown in the Declarations, including its dinghies and tenders.
 - b. Any "outboard motor" shown in the Declarations.
 - c. Any "watercraft trailer" shown in the Declarations.
 - d. "Newly acquired property".

© Insurance Services Office, Inc.

These definitions become very important in the analysis of coverage. For example, a child living with the named insured is a “family member”. But, if the parents become divorced and the child moves with the spouse who is not listed as a named insured, that child no longer qualifies under the definition of “family member”. Note the definition of “your covered watercraft”; it not only includes the watercraft shown in the Declarations but includes “newly acquired property” as defined. It is important to recognize that the definition of “newly acquired property” does not include “personal watercraft”.

The Policy is specific about when leased watercraft is considered owned.

For purposes of this policy, a watercraft, “outboard motor” or “watercraft trailer” shall be deemed to be owned by a person if leased:

1. Under a written agreement to that person; and
2. For a continuous period of at least six months.

© Insurance Services Office, Inc.

Liability Coverage

Insuring Agreement

The insuring agreement of this coverage part follows the format of other liability insuring agreements. It pays based on legal liability. It defends based upon covered allegations. The duty to defend is broader than the duty to pay.

1. We will pay damages for “bodily injury” or “property damage” for which any “insured” becomes legally responsible because of a watercraft accident. Damages include prejudgment interest awarded against the “insured”. We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for “bodily injury” or “property damage” not covered under this policy.

© Insurance Services Office, Inc.

Insured

It is important to qualify as an “insured” if seeking coverage under the policy. The liability coverage defines who will be given insured status.

2. “Insured” as used in this Part means:

- a.** You or any “family member” for the:
 - (1)** Ownership, maintenance or use of “your covered watercraft”; or
 - (2)** Maintenance or use of a “non-owned watercraft”.
- b.** Any person using “your covered watercraft”.
- c.** For “your covered watercraft”, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
- d.** For a “non-owned watercraft”, any other person or organization but only with respect to legal responsibility for acts or omissions of you or any “family member” for whom coverage is afforded under this Part. This Definition **2.d.** applies only if the person or organization does not own or hire the watercraft.

© Insurance Services Office, Inc.

An example was previously stated of how a child who was a “family member” is removed from that status. This means that that child may also no longer qualify as an “insured” for specific exposures that may exist, such as using a “non-owned watercraft” that belongs to a friend or relative.

Supplementary Payments

Supplementary Payments are provided under the liability section and apply in addition to the limits of liability. There is an amount available, up to 10% of the limit of liability, for expenses in attempting to or actually raising, removing, or destroying the wreck of a covered watercraft from a body of water. Supplementary Payments also pays for bail bonds, appeal bonds, interest on a judgment, a limited loss of earnings incurred as a result of attending hearings or trials, and other reasonable expenses incurred by the insured at the request of the insurance company.

Exclusions

Liability exclusions include any intentional “bodily injury” or “property damage”. “Bodily injury” to a person who qualifies as a named insured, as well as “bodily injury” to anyone who qualifies as a “family member” is excluded. Coverage is also excluded for “property damage” to property rented to, used by or in the care of the “insured”; the exception to this exclusion is “non-owned watercraft”. There is no coverage provided if the injured person is entitled to benefits under the Jones Act, USL&H Act, or Workers Compensation Act. The coverage is also excluded for watercraft, motors and/or trailers while rented to others, used as a public livery conveyance, or hired for charter. Additional exclusions include no coverage for any insured while employed or otherwise engaged in the “business” of selling, repairing, servicing, storing, or docking watercraft, except for a “your covered watercraft”; no coverage for other business activities of any insured with the exception of business entertaining; and no coverage for anyone using a watercraft without a reasonable belief of being entitled to do so (does not apply to a “family member” using an owned

covered watercraft). There are also exclusions that apply to specific types of watercraft. These are stated in the policy and are self-explanatory:

- a. Any “personal watercraft” owned by you or any “family member”.
- b. Any watercraft, motor or trailer, other than “your covered watercraft”, which is:
 - (1) Owned by you; or
 - (2) Furnished or available for your regular use.
- c. Any watercraft, motor or trailer, other than “your covered watercraft”, which is:
 - (1) Owned by any “family member”; or
 - (2) Furnished or available for the regular use of any “family member”.
However, this Exclusion 2.c. does not apply to you while you are maintaining or “occupying” any watercraft, motor or trailer which is:
 - (1) Owned by a “family member”; or
 - (2) Furnished or available for the regular use of a “family member”.
- a. Any watercraft, motor or trailer which, at the time of an accident, is:
 - (1) Being operated in; or
 - (2) Practicing or preparing for;
any prearranged or organized race, stunt activity or other speed competition. This Exclusion 2.d. does not apply to a sailing vessel or a predicted log cruise.

© Insurance Services Office, Inc.

Limit of Liability

The limit of liability applies per watercraft accident. If there is other applicable insurance, the policy pays its share on a pro rata basis. However, it is specifically excess over insurance provided for a “non-owned watercraft”, as well as automobile insurance when a watercraft trailer is being towed.

Medical Payments Coverage

Part B of a Watercraft Policy provides coverage for Medical Payments and pays reasonable expenses incurred by an “insured” for necessary medical and funeral expenses rendered within three years because of bodily injury caused by an accident. The definition of insured under this coverage is as follows:

1. “Insured” as used in this Part means:
 - a. You or any “family member” while:
 - (1) “Occupying”;
 - (2) Towed by; or
 - (3) In the water, when struck by;
a watercraft.
 - b. Any other person while:
 - (1) “Occupying”;
 - (2) Towed by; or
 - (3) In the water, when struck by;
“your covered watercraft”.

© Insurance Services Office, Inc.

Many of the exclusions found in the Medical Payments Section are the same exclusions found under Part A - Liability Coverage. There is no coverage provided if the injured person is entitled to benefits under the Jones Act, USL&H Act, or Workers Compensation Act. The coverage is also excluded for a watercraft, motor and /or trailer while rented to others, used as a public livery conveyance, or hired for charter. Additional exclusions include injuries sustained while “occupying” any watercraft located for use as a residence or premises; using a watercraft without a reasonable belief of being entitled to do so (does not apply to a “family member” using an owned covered watercraft); or “business” use (does not apply to entertainment). There are also exclusions that apply to specific types of watercraft such as “personal watercraft”, and watercraft furnished or available for the regular use of the named insured and resident spouse, as well as owned by or furnished or available for the regular use of a “family member”.

EXAMPLE

If the owner of a watercraft charts his boat to others and an accident occurs while the boat is operating as a charter, the Policy coverage does not apply. On the other hand, if the owner of the watercraft is a stockbroker who takes a group of his clients out for an evening of entertainment, coverage applies when an accident occurs because the boat is being used by the insured for entertainment (an exception to the “business” exclusion).

The Limit of Liability for Medical Payments applies separately for each person. If there is other applicable insurance, the policy pays its share on a pro rata basis. However, this coverage is specifically excess over insurance provided for a “non-owned watercraft” as well as automobile insurance when a watercraft trailer is being towed.

EXAMPLE

The watercraft is insured with a \$1,000 limit for Medical Payments. Three people are injured in a covered loss. Each person can collect up to \$1,000 for medical expenses from the Medical Payments Coverage.

Coverage For Damage To Your Watercraft***Insuring Agreement***

Part D of a Watercraft Policy provides coverage for damage to the watercraft and pays for direct and accidental loss to the covered watercraft and boating equipment, less any deductible. If loss to more than one item of covered property results from the same loss, the deductible applies only once. Boating equipment is defined as follows:

“Boating equipment” as used in this Part means accessories and other equipment, excluding “outboard motors”, which are:

- a. Owned by you;
- b. Integral to the operation, maintenance or use of “your covered watercraft”; and
- c. In or upon “your covered watercraft”.

This includes, but is not limited to, anchors, batteries, covers, dinghies and tenders, electronic navigation equipment, fire extinguishers, flares, horns, life preservers, lines, oars, oar locks, pumps, sails, seat cushions, and other similar equipment.

© Insurance Services Office, Inc.

Additional Coverage

There are three Additional Coverages under this Coverage Part. All are additional limits of insurance, and no deductible is applicable. They are:

- 1. Salvage Expense Coverage
- 2. Towing And Assistance Expense Coverage
- 3. Personal Effects Coverage

An additional amount of insurance equal to 25% of the Part D limit is provided for salvage expense coverage if the watercraft becomes endangered and the insured becomes legally responsible under Maritime Salvage Law.

EXAMPLE

In a case of an \$80,000 watercraft, the salvage coverage provides a \$20,000 limit. The \$20,000 limit is 25% of the Part D limit of \$80,000.

The additional coverage Towing and Assistance Expense Coverage is provided with a \$500 limit for any one disablement, subject to a policy period aggregate of \$1,000.

Part D also provides Personal Effects Coverage with a limit of \$500 for any one loss. Personal effects include, but are not limited to, cameras, cellphones, clothing, coolers, fishing equipment, portable radios, water skiing equipment, or other sporting equipment. However, personal effects does not include animals, “boating equipment”, fuel, jewelry, money, watches, or permanently attached equipment.

Deductible

Deductible options are available in various forms. A percentage deductible ranging as high as 5% is usually used for high-valued watercraft. A flat specified deductible amount, usually ranging from \$250 to \$1,000, is available for less expensive watercraft.

EXAMPLE

A percentage deductible is based on the amount of insurance for the hull. If the hull is insured for \$100,000 with a 5% deductible, the deductible for any loss is \$5,000. This eliminates payment for all losses under \$5,000.

Exclusions

Exclusions include loss to the covered watercraft if it is being rented to others, used as a public livery, or hired for charter.

Other exclusions similar to those found in many personal lines policies include the following:

- Wear and tear;
- Failure to maintain;
- Marring, scratching, chipping, or denting;
- Freezing or overheating;
- Extremes of temperature;
- Ice damage while afloat or laid-up;
- Delay or loss of use;
- Latent defect;
- Mechanical or electrical breakdown;
- While in an organized or prearranged race or stunting activity (other than a sailing vessel or a Predicted Log Race);
- War, nuclear, etc.;
- Confiscation by government or civil authorities (doesn't apply to loss payees);
- Diminution in value.

Limit of Liability

In the event of loss, the insurance company pays the lesser of the:

1. Amount shown in the Declarations;
2. Actual Cash Value of the stolen or damaged property; or
3. Amount necessary to repair or replace the property with other property of like kind and quality.

Depreciation and betterment apply.

Your Duties After Accident Or Loss

Duties after accident or loss are defined in Part E of the Watercraft Policy and require that the insured promptly notify the insurance company with the details of a loss. Furthermore, the insured is required to notify the police or other authority if covered property is stolen.

The insured must cooperate and submit a proof of loss statement when required by the insurance company. The insured must also take reasonable steps after a loss to protect the damaged property from further loss.

Uninsured Watercraft Coverage

Uninsured boater's coverage is available under a Watercraft Policy as an option by endorsement. It provides payment up to a specified limit when a person defined as an "insured" in this Coverage Part suffers "bodily injury".

2. "Insured" as used in this coverage Part means:

- a. You or any "family member".
- b. Any other person "occupying", or when towed by, "your covered watercraft".
- c. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in **2.a.** and **2.b.** of this definition.

© Insurance Services Office, Inc.

CONCLUSION

The coverage afforded by Homeowners Policies is not adequate for the exposures associated with most types of watercraft (except perhaps canoes, rowboats, kayaks, and very small fishing boats). The Watercraft Policy fills a need for those individuals who own sailing vessels, speedboats, pontoon boats, and other watercraft that are not considered personal watercraft or yachts. While some endorsements are available for personal watercraft to be added to a Watercraft Policy, specialty policies are available for personal watercraft as well as yachts.

CHAPTER 20: PERSONAL UMBRELLA/EXCESS LIABILITY

INTRODUCTION

While the Homeowners Personal Liability and the Personal Auto Policy provide sufficient personal protection for most losses, substantial claims sometimes require an additional layer of protection. This additional protection is found in a Personal Umbrella or Excess Liability Policy.

PERSONAL UMBRELLA/ EXCESS LIABILITY

While ISO does have a Personal Umbrella Program, most companies had already developed a company-specific Personal Umbrella Policy when the ISO Program was introduced in late 1997. Because the company-specific forms have been court tested, many companies are reluctant to change forms; however, the ISO form is based largely on the company forms that are available. Because this market was somewhat established before a standard form was introduced, Personal Umbrella Policies and Excess Liability Policies are non-standard and vary greatly from company to company.

Underlying Policies

Because Personal Umbrella and Excess Liability Policies are designed to provide additional coverage, insurance companies require certain primary or underlying coverages with at least a specific minimum limit of liability. An underlying policy is any policy that provides primary coverage and includes the following:

- Personal Auto Policy
- Homeowners Policy or Personal Liability Policy
- Watercraft Policy
- Recreational Vehicle Liability Policy

Characteristics of Most Personal Umbrella Policies

While Personal Umbrella Policies vary, there are some common elements found in most policies. These include:

- Catastrophic policies that are designed, priced, and marketed to cover large losses;
- Excess policies that pay in addition to another policy or after someone else pays;
- A Personal Umbrella Policy may be broader in some instances, but is not designed to pay first dollar for claims. It applies only after the underlying policy or the policyholder pays a portion of the claim;
- Casualty policies that generally do not cover damage to property of the insured or in the insured's care, custody, or control;
- Written in \$1,000,000 increments from \$1,000,000 to \$5,000,000 or more.

Reasons to Purchase

Any person could gain peace of mind by purchasing a Personal Umbrella or Excess Liability Policy; however, there are other reasons why an individual should purchase such a policy.

Peace of mind

Unfortunately, society is extremely litigious (lawsuit-happy). Aside from possible defense coverage, a Personal Umbrella Policy provides additional asset protection if the “insured” is involved in a catastrophic loss.

Higher limits

The Umbrella Policy is designed to pay large claims. While a Personal Auto Policy may have a \$500,000 limit for Liability Coverage, the Personal Umbrella Policy usually has a limit of \$1,000,000 or more.

EXAMPLE

Lauren has a Personal Auto Policy with a \$500,000 limit for Coverage A- Liability. She also has a Personal Umbrella Policy with a \$1,000,000 limit of liability. If Lauren swerves to avoid a puppy and causes an at-fault auto accident that results in a 20-car pileup, \$500,000 is insufficient to cover the damages. Assuming there are no applicable exclusions, Lauren has \$1,500,000 available to pay for the resulting damages because her Personal Umbrella Policy pays higher limits.

Broader coverage

Sometimes the Personal Umbrella Policy (PUP) provides broader coverage. Broader coverage may include:

- Less restrictions;
- Larger coverage territory;
- Broaden definitions.

For example, some of the restrictions that appear in the Homeowners Policy may not appear in the PUP. The ISO Homeowners Policy covers only “bodily injury” and “property damage” whereas the ISO Personal Umbrella Policy provides some coverage for “personal injury”. Additional examples are found in the Personal Auto Policy. While an ISO Personal Auto Policy defines the coverage territory as the United States, its territories and possessions, Puerto Rico, and Canada, Personal Umbrella Policies often expand the coverage territory to include worldwide coverage. Definitions in the Umbrella Policy may also be broader than those found in the underlying policies.

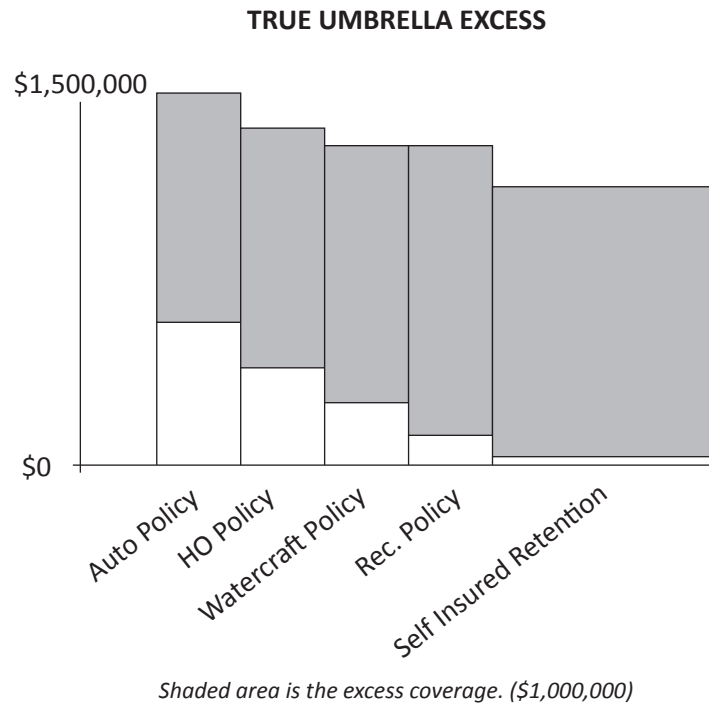
Types of Umbrella Policies

The origin and evolution of the Personal Umbrella and Excess Liability Policies have led to three different types of policies.

Traditional True Umbrella

What is referred to as the traditional true umbrella is characterized by higher limits and broader coverage. This type of policy provides additional limits for claims covered under the underlying policy; if a claim is payable under the Personal Auto Policy, the Personal Umbrella Policy provides additional funds when the PAP’s limit of liability is exhausted. This type of

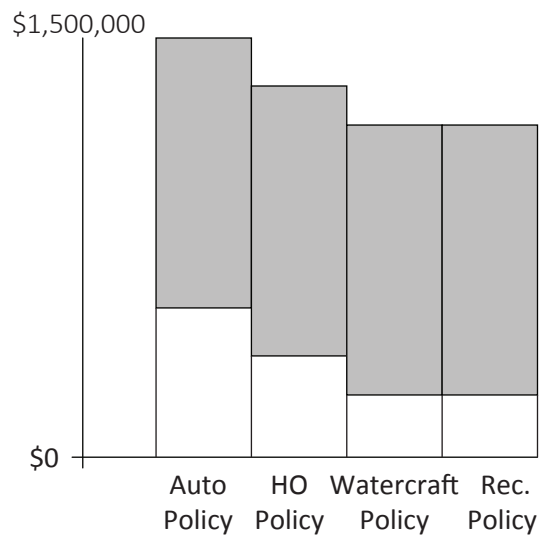
policy also provides coverage, in some cases, when a loss is not covered by the underlying policy but not excluded by the PUP. The unendorsed Homeowners Policy does not provide coverage for “personal injury”; however, a true umbrella policy may provide this coverage. A true umbrella is a stand-alone policy with its own insuring agreement, own definitions, own provisions, own exclusions, and own limitations.



Following Form Excess Personal Liability Policy

A following form, Excess Personal Liability Policy, provides coverage using the same restrictions and exclusions found in the underlying policy. If a loss is excluded under the Personal Auto Policy, for example, there is not any coverage under an Excess Personal Liability Policy. The coverage follows the coverage found in the underlying policy. An excess policy provides higher limits, so if the underlying limits are exhausted, additional funds are available from the Excess Personal Liability Policy. A following form policy generally has identically worded insuring agreement, definitions, provisions, exclusions, and limitations as the underlying policy.

FOLLOWING FORM EXCESS



Shaded area is the excess coverage. (\$1,000,000)

Hybrid Policy - Combination Policy

An excess policy provides coverage for the same losses covered under the underlying policy, and a true umbrella provides coverage for the same losses covered under the underlying policy, as well as coverage for some losses not covered by the underlying. Remember that many insurance carriers have a company-specific Personal Umbrella Policy, so not all policies can be categorized as either a true umbrella or following form. There is a third classification, a hybrid policy.

A hybrid policy provides the true umbrella coverage for some exposures, while other exposures, such as recreational vehicles, only have excess coverage. Usually a hybrid policy has its own insuring agreement, though portions may replicate the wording found in an underlying policy. A hybrid policy may provide broader coverage; however, in some instances, coverage is narrower. For example, there is sometimes a variance in Uninsured Motorist Coverage. Whereas a true umbrella or following form provides coverage if the Personal Auto Policy provides coverage, a hybrid policy may not provide coverage or may require that the coverage is purchased separately.

The hybrid umbrella policy is most common in today's marketplace, so it is important to carefully analyze an Umbrella Policy to determine how a specific personal umbrella policy fits with a client's exposures and underlying coverages.

UMBRELLA POLICY STRUCTURE

Declarations

While the Declarations is usually a company specific form, most contain the following information:

- Policy Period
- Named Insured
- Policy Limits
- Self Insured Retention (if not a following form)
- Underlying Requirements including Limits of Liability

Policy period

If the Personal Umbrella Policy has a policy period that is different from the policy period on the underlying coverage, there are two potential problems. First, the umbrella policy requires underlying coverage, so a lapse in coverage on an underlying policy means that the insured is not maintaining the underlying insurance as the policy provision requires. The umbrella policy responds as though the required “underlying insurance” is in place, which potentially causes a gap for which the “insured” is personally responsible. Also, while concurrency of effective dates is not generally an issue in personal lines insurance, some coverage in an underlying policy may have an aggregate limit. For example, ISO now offers a personal injury endorsement for the Homeowners Policy that has an aggregate limit. If there are multiple claims, the policyholder may not meet the personal injury underlying limit requirement (if there is one).

Named insured

Generally, the umbrella policy and the underlying policies should name the same person(s).

Policy limits

All umbrella policies have a per occurrence limit shown on the Declarations. Some may also have an aggregate limit. The per occurrence limit is the most the umbrella policy will pay for all claims regardless of the number of people involved. For example, an individual causes a major wreck that involves 10 people. Each person makes a claim. Even though there are multiple claims, this is still considered one occurrence. Most personal lines coverages have a per occurrence limit; however, an umbrella policy may have an aggregate limit. The aggregate limit shown in the Declarations is the most the Policy pays in the policy period regardless of the number of occurrences. The aggregate limit may only apply to a specific coverage such as personal injury.

Self Insured Retention (if the Policy has one)

Both the true umbrella and the hybrid umbrella policies have a self-insured retention or SIR. Because the Following Form, Excess Liability Policy, does not provide primary coverage, this type of policy does not have a SIR. Remember, most umbrella policies do not provide first dollar claim coverage. In cases where the umbrella policy provides broader coverage than the underlying policy, the insured must retain or be personally responsible for a portion of the loss. This amount is a predetermined dollar amount that is called the self-insured retention. This is titled Retained Limit by some insurers. Unlike a deductible that applies to all claims, the SIR only applies when the umbrella policy provides primary coverage.

EXAMPLE

Walter Ferguson has the following underlying policies:

Personal Auto Policy:	\$250,000
Homeowners Policy Personal Liability:	\$300,000
Watercraft Policy:	\$100,000
Self-insured Retention:	\$500

Walter calls Sally, the secretary of Happy Valley Investment Club, an incompetent bookkeeper. Sally successfully sues Walter for slander in the amount of \$500,000. Walter's unendorsed Homeowners Policy does not provide personal injury coverage, but his Umbrella Policy does.

Homeowner Policy pays:	\$0
Umbrella Policy pays:	\$499,500
Walter pays:	\$500

The Umbrella Policy pays the amount of this covered personal injury loss less the Self Insured Retention. This loss is subject to the Self Insured Retention because it is not covered in the Homeowners Policy.

Underlying Limits and Requirements

This portion of the Declarations shows which underlying policies and what limits of liability the Personal Umbrella Policy requires to be in place.

"Underlying insurance" is defined by the ISO Personal Umbrella Policy as:

P. "Underlying insurance" means any policy providing the "insured" with primary liability insurance covering one or more of the types of liability listed in the Declarations and at limits no less than the retained policy limits shown for those types of liability listed in the Declarations.

© Insurance Services Office, Inc.

While underlying requirements vary based on the umbrella insurer's underwriting requirements, the following is an example of typical requirements:

EXAMPLE

Common underlying requirements are:

Personal Auto: \$250,000 Each Person/\$500,000 Each Occurrence for Bodily Injury and \$100,000 for Property Damage or \$500,000 Combined Single Limit

Personal Liability: \$300,000 Each Occurrence

If the underlying requirement is fulfilled, the "insured" is not personally responsible for paying any amount until both the underlying and umbrella limits of liability are exhausted. Again, a SIR does not apply to claims that the underlying insurance covers.

EXAMPLE

Josh is practicing his golf swing in his front yard and injures two walkers when a wayward ball strikes his neighbor, bounces, and hits her husband. Josh is found liable for \$500,000. Josh carries the required limits of liability on his Homeowners Policy.

Homeowners Personal Liability: \$300,000 Each Occurrence

Personal Umbrella: \$1,000,000 Each Occurrence with a \$1,000 SIR

Josh's Homeowners Policy pays \$300,000 (the limit of liability). His Personal Umbrella Policy pays the remaining \$200,000. No SIR is required because the claim is covered by underlying insurance.

If the “insured” does not meet the underlying coverage requirement, the “insured” is personally responsible for the difference.

EXAMPLE

Using the above example, Josh’s Umbrella Policy requires him to carry \$300,000 of liability coverage on his Homeowners Policy. In order to save money on the premium, Josh drops his liability coverage to \$100,000.

Homeowners Personal Liability: \$100,000 Each Occurrence

Personal Umbrella: \$1,000,000 Each Occurrence with a \$1,000 SIR

Josh’s Homeowners Policy pays \$100,000 (the limit of liability). Josh is personally responsible for \$200,000 (the difference between the underlying requirement and the amount Josh carries). His Personal Umbrella Policy pays the remaining \$200,000.

Definitions

Many of the definitions found in an ISO Personal Umbrella Policy are the same or similar to those found in the Personal Auto or Homeowners Policy; however, an umbrella policy is not always written by the same company as the underlying coverage. It is important to compare the definitions in the umbrella policy to those found in the underlying policies. Here are some of the key definitions in the ISO Personal Umbrella Policy:

“You” and **“your”** refer to the person(s) shown in the Declarations and a resident spouse. Note that the Personal Umbrella Policy does not give “you” status to a spouse that has recently moved out whereas the Personal Auto Policy gives up to 90 days of “you” status.

“We”, “us”, “our” refer to the insurance company.

“Aircraft Liability”, “Hovercraft Liability”, “Recreational Motor Vehicle Liability” and **“Watercraft Liability”** include liability arising from the ownership, maintenance, occupancy, operation, use, loading, unloading, entrustment, negligent supervision of these craft, and vicarious liability for the actions of a child involving these craft.

“Auto”, while many umbrella policies do not define, ISO Personal Umbrella Policy broadly defines as:

E. "Auto" means:

1. A private passenger motor vehicle, motorcycle, moped or motor home;
2. A vehicle designed to be pulled by a private passenger motor vehicle or motor home; or
3. A farm wagon or farm implement while towed by a private passenger motor vehicle or motor home.

© Insurance Services Office, Inc.

"Bodily injury" includes bodily harm, sickness, or disease including care, loss of services or resulting death.

"Business" in the ISO Personal Umbrella Policy is defined with the same language as found in the ISO Homeowners Policy:

G. "Business" means:

1. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
2. Any other activity engaged in for money or other compensation, except the following:
 - a. One or more activities, not described in b. through d. below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - d. The rendering of home day care services to a relative of an "insured".

© Insurance Services Office, Inc.

"Family member" is a resident of "your" household that is related to "you". This also includes a ward or foster child or person under 21 years old who is in the care of "you" or any "insured" that is 21 years old or older.

“Fuel system” is a defined term because coverage is removed in the exclusions section.

- I. “Fuel system” means:
1. One or more containers, tanks or vessels which have a total combined storage capacity of 100 or more U.S. gallons of liquid fuel; and:
 - a. Are, or were, located on any single location covered by “underlying insurance”; and
 - b. Are, or were, used to hold liquid fuel that is intended to be used solely for one or more of the following:
 - (1) To heat or cool a building;
 - (2) To heat water;
 - (3) To cook food; or
 - (4) To power motor vehicles, other motorized land conveyances or watercraft owned by an “insured”;
 2. Any pumping apparatus, which includes the motor, gauge, nozzle, hose or pipes that are, or were, connected to one or more containers, tanks or vessels described in Paragraph I.1.;
 3. Filler pipes and flues connected to one or more containers, tanks or vessels described in Paragraph I.1.;
 4. A boiler, furnace or a water heater, the liquid fuel for which is stored in a container, tank or vessel described in Paragraph I.1.;
 5. Fittings and pipes connecting the boiler, furnace or water heater to one or more containers, tanks or vessels described in Paragraph I.1.; or
 6. A structure that is specifically designed and built to hold the liquid fuel that escapes from one or more containers, tanks or vessels described in Paragraph I.1.

© Insurance Services Office, Inc.

“Insured” is defined in the ISO Personal Umbrella Policy as:

J. “Insured” means:

1. You.
2. A “family member”.
3. Any person using an “auto”, “recreational motor vehicle”, or watercraft, which is owned by you and covered under this Policy. Any person using a temporary substitute for such “auto” or “recreational motor vehicle” is also an “insured”.
4. Any other person or organization but only with respect to the legal responsibility for acts or omissions of you or any “family member” while you or any “family member” is using an “auto” or “recreational motor vehicle” covered under this Policy. However, the owner or lessor of an “auto” or “recreational motor vehicle” loaned to or hired for use by an “insured” or on an “insured’s” behalf, is not an “insured”.
5. With respect to animals owned by you or any “family member”, any person or organization legally responsible for such animals. However, a person or organization using or having custody of such animals in the course of any “business” or without the consent of the owner is not an “insured”.

© Insurance Services Office, Inc.

1. The named insured and resident spouse is considered an “insured”.
2. A resident of “your” household that is related as defined in the “family member” definition is considered an “insured”.
3. A person using an “auto”, “recreational motor vehicle” or watercraft that is owned by “you” and covered by this policy is considered an “insured”. This also includes any person that is using a temporary substitute for an owned covered “auto” or “recreational motor vehicle”.
4. The Personal Umbrella expands the vicarious liability coverage found in the Personal Auto Policy to include any person or organization that is legally responsible for “you” or a “family member” while using an “auto” or “recreational motor vehicle” that is covered under this Policy. The owner or lessor of a non-owned “auto” or “recreational motor vehicle” is not an “insured”.
5. Any person or organization that is legally responsible for animals owned by “you” or any “family member” is an “insured” unless custody of the animals is through the course of “business” (such as a kennel) or without the consent of the animal’s owner.

“Personal injury” is a defined term and definitions vary by company. However, as defined in the ISO Personal Umbrella Policy, “personal injury” includes:

- False arrest, detention or imprisonment
- Malicious prosecution
- Wrongful eviction

- Wrongful entry
- Invasion of privacy
- Slander
- Libel

“Property damage” is physical injury, destruction or loss of use of tangible property.

“Recreational motor vehicle” means motorized land vehicle that is designed for recreational use off public roads. Examples of such vehicles include an all-terrain vehicle, dune buggy, golf cart and snowmobile.

“Retained limit” is the total limit of any underlying coverage that is available or should be available except the insurer is insolvent or bankrupt. If the loss is covered by the umbrella policy but not the underlying coverage, the “retained limit” is the self-insured retention or deductible as stated in the Declarations of the Umbrella Policy.

Insuring Agreement

The Umbrella Policy pays in excess of any “underlying insurance” or applicable SIR for “bodily injury” and “property damage” losses for which an “insured” is legally liable. The Policy also pays for damages from “personal injury” if an “insured” is legally liable.

Defense Coverage

Even if a suit has no merit, the umbrella insurer provides legal representation for an “insured” accused in a lawsuit of “bodily injury” or “property damage” or of “personal injury” caused by a covered type of offense. The insurer is not required to provide a defense if the suit is covered by “underlying insurance”, or there is not applicable “underlying insurance” in place and the claim is for an amount less than the SIR shown in the Declarations.

Because the outcome of a suit may involve an amount that triggers coverage from the PUP, the umbrella insurer has the right to participate in the investigation, defense, or settlement of any suit. The umbrella insurer incurs its own expenses but does not contribute to any expenses incurred by any other insurer.

Defense costs are paid regardless of where the suit is filed (worldwide defense coverage); however, the duty to defend ends when the limit of liability for this Policy is exhausted by payment of judgments or settlements. Most personal umbrella policies pay defense costs in addition to the limit of liability, but some companies include defense costs as part of the limit.

Exclusions

Though most umbrella policies provide broader coverage than what is typically found in other personal lines policies, the policies contain exclusions that apply. Exclusions vary by policy, but most of the exclusions found in the ISO Personal Umbrella Policy are similar to those that appear in other umbrella policies.

Intentional Acts

Like most umbrella policies, the ISO Policy excludes expected or intended “bodily injury” or “property damage”. As in the Homeowners Policy, there is an exception in most policies for damages arising from the intentional use of reasonable force when protecting persons or property.

Personal Injury

Commonly, an umbrella policy excludes personal injury arising out of a criminal act. The ISO Policy also excludes personal injury that:

- an “insured” causes knowing that the act inflicts “personal injury”
- comes from written or oral communication that an “insured” knows to be false
- results from material that was first published before the policy period began
- is directly or indirectly related to the employment of the person by an “insured”

Business

Most Personal Umbrella Policies exclude “business” related exposures; however, many policies give back some level of coverage. Some policies afford coverage for an auto that is used in “business”. Other policies exclude all “business” related exposures but make an exception for any “business” activities that are covered by an underlying policy.

Public or Livery Conveyance

As with the Personal Auto Policy, “bodily injury” and “property damage” that result from people or property being carried for a fee are excluded. And, as with the PAP, this exclusion does not apply to a share-the-expense carpool. The ISO policy does not apply this exclusion for a vehicle being used for volunteer or charitable purposes.

Professional Services

This Policy is designed to cover personal activities and exposures. The Policy does not cover damages caused by professional services, including a failure to render such services.

Aircraft Liability

A policy from a company that specializes in “aircraft liability” insurance is needed by those seeking such coverage.

Hovercraft Liability

“Bodily injury” or “property damage” that arises out of the ownership or use of a hovercraft is excluded by most Personal Umbrella Policies.

Watercraft Liability

“Bodily injury” or “property damage” that arises out of the ownership or use of a watercraft is generally excluded unless the “underlying insurance” provides coverage.

Recreational Motor Vehicle Liability

While this exclusion does not appear in all policies, the ISO Personal Umbrella Policy provides coverage if the “recreational motor vehicle” is owned by the insured and covered by “underlying insurance” or if owned by someone other than “you” or a “family member”. There is no coverage for a “recreational motor vehicle” owned by “you” or a “family member” except on an excess basis.

War

Most personal umbrella policies exclude “bodily injury” or “property damage” if damage is a direct or indirect result of war, insurrection, rebellion, or revolution.

Use without Reasonable Belief of Permission

As with underling policies, the Personal Umbrella Policy is not designed to cover a thief; therefore, there is no coverage for any person that uses an “auto”, “recreational motor vehicle” or watercraft without the reasonable belief of permission. This exclusion does not apply to a “family member” using an “auto”, “recreational motor vehicle” or watercraft that “you” own.

Racing

The ISO Personal Umbrella Policy excludes the use of an “auto” participating or competing in, practicing or preparing for any prearranged or organized racing or speed contest, driver skill training, or driver skill event. Note there is no requirement that such activities take place in a racing facility. This exclusion does not apply to a motorcycle rider skill training course used to improve rider skills.

The racing exclusion also applies to watercraft being operated in or practicing or preparing for any prearranged or organized race, stunt, activity, speed contest, or any other competition. This exclusion does not apply to sailboats or watercraft involved in predicted log cruises.

Bodily Injury or Personal Injury to You or a Family Member

The Personal Umbrella Policy provides third party coverage only, so there is no coverage for the named insured, resident spouse or “family member”.

Communicable Diseases and Abuse

There is no coverage for the transmission of a communicable disease, abuse including sexual molestation, corporal punishment or physical or mental abuse.

Drugs

The legitimate use of a prescription drug as ordered by a licensed health care professional is covered; however, there is otherwise no coverage for the use, sale, manufacture, or possession of a controlled substance.

Directors and Officers

Directors and officers are best covered by a specialized D&O Policy. Usually under the PUP, there is a giveback that provides coverage if the entity is a not-for-profit and the “insured” receives no more than reimbursement for expenses. Otherwise, there is no coverage for “bodily injury” or “personal injury” resulting from an act or omission as an officer or member of a board of directors.

Property Damage to an Insured’s Property

The Personal Umbrella Policy is a liability policy and does not provide coverage for property that an “insured” owns.

Damage to Property in an Insured’s Care, Custody or Control

This excludes “property damage” to the extent the “insured” is contractually liable for property that an “insured” rents, occupies, uses or is in an “insured’s” care, custody or control. There is coverage if the damage results from fire, smoke or explosion.

Work-Related Injury or Disease

“Bodily injury” to anyone who is eligible to receive any benefits under a workers compensation or similar law is excluded if an “insured” voluntarily provides or is required to provide such benefits.

Nuclear

Although the likelihood of an occurrence may be remote, “bodily injury” or “property damage” is excluded if the “insured” is also an “insured” under a nuclear energy liability policy.

Escape of Fuel from a Fuel System

Most Personal Umbrella Policies have a pollution exclusion. The ISO PUP has less restrictive wording and excludes any “bodily injury”, “personal injury” or “property damage” involving the escape of fuel from a “fuel system”.

Lead Poisoning

There is no coverage for “bodily injury” or “personal injury” under the Personal Umbrella Policy for an “occurrence” or offense that involves the absorption, ingestion, or inhalation of lead.

Lead Contamination

The Personal Umbrella Policy does not cover “personal injury” or “property damage” if the cause is lead contamination.

Assessments

Liability coverage does not apply to assessment charges against “you” as a member of an association, corporation, or community of property owners.

Automobile No-fault or PIP Coverage

No-fault, PIP or similar automobile claims are not covered under the Personal Umbrella Policy.

Uninsured Motorists Coverage

Many states exclude this coverage or require additional premium if coverage is desired. The ISO Policy states that there is no Uninsured Motorist Coverage unless purchased by endorsement.

Conditions***Maintenance of Underlying Coverage***

“You” must maintain underlying coverage with at least the minimum limit of liability as shown in the Declarations. Failure to maintain the required “underlying insurance” causes the “insured” to pay the difference, as the Umbrella Policy pays the claim as if the underlying coverage is in place.

Duties After a Loss

As with other policies, the “insured” must notify the insurer promptly of any loss and cooperate in the investigation and settlement of any claim.

Appeals

This provision is unique to the Personal Umbrella Policy and allows the umbrella carrier to appeal a judgment that exceeds the “underlying insurance” limit of liability or applicable Self-Insured Retention. If an “insured” or the insurer of the underlying coverage decides not to appeal the judgment, the umbrella carrier may appeal at its expense.

EXAMPLE

Bob has the following insurance coverage:

Personal Auto: \$250,000 per Person/\$500,000 per Occurrence for Bodily Injury

Personal Umbrella: \$1 million with a SIR of \$1,000

Bob causes an at-fault auto accident that severely injures Fred. A jury awards Fred \$1.25 million for his injuries. Because Bob has sufficient coverage from both his Personal Auto Policy and Personal Umbrella Policy, he is not out-of-pocket and decides not to appeal the decision.

The insurance company that provides his personal auto coverage determines that their company probably has to pay the full limit of liability even if they appeal the decision, so they have no intent to incur the additional legal costs of an appeal.

The umbrella insurer determines that \$1.25 million seems excessive for Fred's injuries. The insurance company providing the umbrella coverage may appeal the decision at their own expense.

Bankruptcy of an Underlying Insurer

The coverage that a Personal Umbrella Policy provides does not replace the required underlying coverage. If, for example, the insurer of a Personal Auto Policy is insolvent, the Personal Umbrella Policy does not provide primary coverage. The Personal Umbrella Policy pays only after the underlying requirement is met either by another insurer or the policyholder.

Policy Period and Territory

On the ISO Policy, the Personal Umbrella Policy covers an "occurrence" that happens anywhere in the world during the policy period in the Declarations. Some umbrella policies provide less broad coverage; , while the ISO Personal Umbrella Policy provides a broader coverage territory than the ISO Personal Auto Policy (US, Puerto Rico, US Possessions and Canada), not all umbrella policies provide this coverage territory.

CONCLUSION

Though there are restrictions, the Personal Umbrella Policy provides valuable coverage in substantial claims. It is difficult to predict what type of loss could occur. A Personal Umbrella Policy provides an additional layer of protection over personal lines policies such as the Personal Auto, Homeowners, Watercraft, and/or Recreational Vehicle Policies. As this chapter demonstrates, an array of umbrella solutions are available, so it is important to carefully evaluate which policy is best for an individual client.

CHAPTER 21: MISCELLANEOUS PERSONAL LINES

PERSONAL LIABILITY INSURANCE

INTRODUCTION

It is the responsibility of the property owner to maintain safe conditions for people coming on or about the property. A property owner and/or tenant are often held liable for injuries that occur on owned or leased property. In addition, individuals are at risk of being held responsible for injury or damage arising out of their personal activities both on and off premises.

The Personal Liability Policy protects the insured from claims for bodily injury and/or property damage to others. It is needed by those who do not have a policy providing liability coverage such as a Homeowners Policy. The Personal Liability Policy is available as a separate policy or the same coverages can be added with an endorsement to a Dwelling Policy. It pays up to the limit of liability stated in the Declarations for damages for which an insured is legally liable. The insurance company also provides defense coverage.

PERSONAL LIABILITY POLICY

Agreement

The insurance company provides the insurance described in the Policy in return for the premium and compliance with all applicable provisions of the Policy.

Definitions

Definitions are important in understanding the coverage provided. The definitions apply to liability coverage or medical payments to others coverage or to both. Any word or phrase found in the Policy with quotation marks has special meaning and is defined in the Policy. In the next paragraph, the word you is in quotation marks and refers to the named insured and the resident spouse. These defined terms apply to the entire Policy.

In this policy, “you” and “your” refer to the “named insured” shown in the Declarations and the spouse if a resident of the same household. “We”, “us” and “our” refer to the Company providing this insurance.

© Insurance Services Office, Inc.

Other words and phrases found in the policy such as “Aircraft Liability”, “Hovercraft Liability”, “Motor Vehicle Liability” and “Watercraft Liability” are defined so that their use throughout the policy may be understood and their exposures can be modified or excluded.

As defined in the Policy, these terms include “bodily injury” or “property damage” arising out of the:

- ownership of such vehicle or craft by an “insured”;
- maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- entrustment of such vehicle or craft by an “insured” to any person;
- failure to supervise or negligent supervision of any person involving such vehicle or craft by an “insured”;
- vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

1. “Aircraft Liability”, “Hovercraft Liability”, “Motor Vehicle Liability” and “Watercraft Liability”, subject to the provisions in b. below, mean the following:

a. Liability for “bodily injury” or “property damage” arising out of the:

- (1)** Ownership of such vehicle or craft by an “insured”;
- (2)** Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- (3)** Entrustment of such vehicle or craft by an “insured” to any person;
- (4)** Failure to supervise or negligent supervision of any person involving such vehicle or craft by an “insured”; or
- (5)** Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

b. For the purpose of this definition:

- (1)** Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;
- (2)** Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
- (3)** Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and
- (4)** Motor vehicle means a “motor vehicle” as defined in 7. below.

© Insurance Services Office, Inc.

Business is another word defined in the Policy. The definition of “business” is broad in that it includes any trade, profession or occupation and can be full-time, part-time or occasional. There are four exceptions found in the Policy’s definition of “business” as it relates to other activities engaged in for money or other compensation. These exceptions are based upon specific activities or amount of compensation received. It is important to understand that compensation is gross income and not net income.

3. “Business” means:

- a.** A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
- b.** Any other activity engaged in for money or other compensation, except the following:
 - (1)** One or more activities, not described in (2) through (4) below, for which no “insured” receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2)** Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3)** Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (4)** The rendering of home day care services to a relative of an “insured”.

© Insurance Services Office, Inc.

To illustrate the application of one of these exceptions, the following situations are offered.

EXAMPLE

During the policy period, the insured begins to charge for the repairs he makes on clocks as part of his hobby. He collects \$1,500 in this first 9 months. During this same period, the insured begins to sell his wood carvings (another hobby of his) for a total of \$2,500 in sales.

The Personal Liability Policy provides coverage for the insured’s activities for the period until the renewal of the Policy; this coverage is based on the fact that there was no compensation received for the 12 months before the current policy period, and is therefore not a “business”.

However, when the Policy renews, the insured does not have coverage for these activities as it is a “business” based upon his total compensation exceeding \$2,000 in the 12 months prior.

Insured

The definition of “Insured” applies to the entire Policy. Coverages in the Personal Liability Policy are shown as one coverage section - Liability Coverages. This includes Coverage L – Personal Liability and Coverage M – Medical Payments to Others.

5. 5. “Insured” means:
 - a. You and residents of your household who are:
 - (1) Your relatives; or
 - (2) Other persons under the age of 21;
 - b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:
 - (1) 24 and your relative; or
 - (2) 21 and in your care;
 - c. With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above. “Insured” does not mean a person or organization using or having custody of these animals or watercraft in the course of any “business” or without consent of the owner; or
 - d. With respect to a “motor vehicle” to which this policy applies:
 - (1) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (2) Other persons using the vehicle on an “insured location” with your consent.

Throughout this policy, when the word an immediately precedes the word “insured”, the words an “insured” together mean one or more “insureds”

© Insurance Services Office, Inc.

Individuals who are provided coverage under a Personal Liability Policy are specifically described in the Policy as Named Insureds (including the spouse if a resident of the same household) and “insureds” as defined. All named insureds are “insureds” while not all “insureds” are named insureds. The first part of the definition of “insured” includes individuals who are:

- named insured(s);
- relatives residing in the household;
- persons under 21 in the care of a “you” and/or resident relative;
- full-time students under age 24 and related or under 21 and in the care of a “you” or resident relative, who were residents of the household before moving out to attend school.

EXAMPLES

Stacy, Janet's & Tom's daughter, is a student living on campus during the school year and returns home at breaks and holidays. Stacy is an "insured" under her parents' Personal Liability Policy.

Beverly, the named insured's sister and Beverly's daughter, Tatiana (the named insured's niece), reside with the named insured after they arrive in the United States as new citizens. Because they are resident relatives, they are "insureds" under the Personal Liability Policy.

Also, included in the definition of "Insured" is any person or organization legally responsible for animals and watercraft owned by an insured. This includes animals or watercraft owned not only by a "you", but also owned by the resident relatives, including full time students under age 24 and residents under age 21 in the care of a resident relative. Not included is a person or organization using or having custody of these animals or watercraft in the course of any business or without the consent of the owner.

EXAMPLE

John's neighbor, Tom, is walking John's dog when the dog bites a jogger and causes a cut that requires treatment. Tom is considered an "insured" under John's Personal Liability Policy as he has custody of the dog with John's consent and is not in the course of any "business". If, however, John's neighbor Tom owned a dog-walking business and the dog bite took place while he was walking John's dog, Tom would not be an insured on John's Personal Liability Policy.

The definition of "insured" also includes employees or other persons using a "motor vehicle" on an "insured location" with the consent of the "insured". An employee of the insured, while cutting the grass at the insured's residence with the insured's lawn tractor, is an insured when the lawn tractor throws a rock and breaks the windshield of a passing car.

The Policy contains a "motor vehicle liability" exclusion; however, there are exceptions found in this exclusion that allow coverage to exist in the example above. The exclusions are reviewed later in this chapter.

Insured Location and Residence Premises

The Personal Liability Policy is designed to cover the "residence premises" but is also broad enough to provide coverage for other locations. Insureds encounter liability exposures well beyond their residence. Many personal activities take place at locations that are found in the definition of "insured location". The first location is the residence premises. Therefore, it is important to recognize this defined term as well.

The “residence premises” is clearly defined; and, as the name implies, it is where the named insured resides.

- 6. “Insured location” means:**
- a.** The “residence premises”;
 - b.** The part of other premises, other structures and grounds used by you as a residence; and
 - (1)** Which is shown in the Declarations; or
 - (2)** Which is acquired by you during the policy period for your use as a residence;
 - c.** Any premises used by you in connection with a premises described in a. and b. above;
 - d.** Any part of a premises:
 - (1)** Not owned by an “insured”; and
 - (2)** Where an “insured” is temporarily residing;
 - e.** Vacant land, other than farm land, owned by or rented to an “insured”;
 - f.** Land owned by or rented to an “insured” on which a one, two, three or four family dwelling is being built as a residence for an “insured”;
 - g.** Individual or family cemetery plots or burial vaults of an “insured”; or
 - h.** Any part of a premises occasionally rented to an “insured” for other than “business” use.
- 11. “Residence premises” means:**
- a.** The one family dwelling where you reside;
 - b.** The two, three or four family dwelling where you reside in at least one of the family units; or
 - c.** That part of any other building where you reside; and which is shown as the “residence premises” in the Declarations.

“Residence premises” also includes other structures and grounds at that location.

© Insurance Services Office, Inc.

There are many reasons an insured might rent a hall, none of which are business related. A daughter’s wedding reception, a family reunion, birthday party or anniversary are just a few possibilities. The Personal Liability Policy recognizes the rental hall as an “insured location” because it is a part of a premises occasionally rented to an “insured” for other than “business” use.

If a “you” purchases a cabin at the lake for personal residential use during the policy term, the newly acquired residence is considered an insured location on the Personal Liability Policy. If it is acquired before the policy period, it needs to be shown in the Declarations to be an “insured location”.

When the “you” purchases 200 acres of undeveloped land in the country, the land is an “insured location” as the land is vacant and not being farmed. If the insured builds a cabin on the property, it is no longer vacant land and, therefore, not an “insured location” unless it is listed in the Declarations of the Personal Liability Policy or acquired during the policy period.

If the insured leases the vacant land to a neighbor who begins to farm the land, it is no longer an “insured location” because vacant land cannot be farm land.

Coverage L – Personal Liability

A property owner or tenant is often held liable for injuries that occur on owned or leased property. Examples are if a person slips, trips, or falls as a result of a dangerous or hazardous condition. Property owners and those who lease the premises are often accountable for falls as a result of water, ice, or snow, as well as abrupt changes in flooring, poor lighting, or a hidden hazard, such as a gap caused by a crack in the driveway. Several categories of persons to whom a property owner or tenant may be liable exist, and the duties of protection owed to each group are specific. Examples include invitees, licensees and trespassers.

Invitees: A person who has an express or implied invitation to enter or use another's premises. A business visitor is considered an invitee.

Licensees: A person who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit. An example of a licensee is a social guest.

Trespassers: A person who enters the premises intentionally and without consent or privilege.

The Personal Liability Insurance Policy pays up to the limit of liability for "bodily injury" and/or "property damage" for which an "insured" is legally liable. Coverage protects an "insured" in the event anyone suffers injury or damage while on the insured property. Certain actions of an "insured", which occur away from the insured property, are also covered.

EXAMPLE

The insured is riding his bike and hits a woman crossing the street, causing the woman to break her arm. This event is covered by the Personal Liability Policy, as it is the result of the activities of the insured away from the insured's premises.

EXAMPLE

The insured hits a baseball while playing in a game, and the ball hits a person walking across the field. This event is covered by the Personal Liability Policy, as it is the result of the activities of the insured.

The insurance company is obligated to provide a defense in the event of a suit even if the suit is groundless, false or fraudulent. So long as coverage applies, the insurance company is obligated to provide a defense until the policy limit is paid for judgment or settlement.

Coverage M - Medical Payments To Others

Medical Payments to Others pays the necessary medical expenses of a person or persons injured on the "insured location" or off the "insured location" if the "bodily injury":

- a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
- b. Is caused by the activities of an "insured";

- c. Is caused by a “residence employee” in the course of the “residence employee’s” employment by an “insured”; or
- d. Is caused by an animal owned by or in the care of an “insured”.

Medical Payments to Others is goodwill coverage, and payment of claims is not based on a legal obligation of an “insured” to an injured person.

The coverage pays the necessary medical expenses that are incurred within three years of the accident. It also pays for funeral expenses. An “insured” or anyone who is a regular resident of the household is not eligible to receive payments for medical expenses regardless of the circumstances of the injury. An exception from the regular resident requirement applies to a “residence employee” who is otherwise eligible to collect under this coverage.

EXAMPLE

An “insured” invites his son’s two friends to their house for a cookout. The young boys are wrestling, and the insured’s son sustains a broken arm and his friend breaks a tooth. The claim for the friend’s broken tooth is covered under Medical Payments to Others. The injury to the insured’s son is not covered as he is a resident of the household.

In the above example, the injury of the friend resulting from the accident is covered under Personal Liability if a claim is presented. Payment for the necessary medical expenses is made, regardless of liability, under the Medical Payments to Others limit. The friend with the broken tooth can have the dental bills paid and still make a separate claim for pain and suffering. While Medical Payments to Others coverage makes the negotiation of a claim for medical expenses unnecessary, it is also an attempt to avoid liability claims and the expense of litigation.

The amount payable for Medical Payments to Others is shown in the Declarations on a per person basis for any one accident.

EXAMPLE

The insured has a \$5,000 Medical Payments To Others limit. The deck attached to his house falls and eight guests are injured. Each guest is entitled to collect up to the limit of \$5,000 for medical expenses incurred within three years of the accident. If each guest receives the maximum limit of \$5,000, the total paid under the Medical Payments To Others is \$40,000.

Medical Payments to Others applies only to a person who is on the “insured location” with permission of an “insured”; therefore, trespassers are excluded from coverage.

Medical Payments To Others applies to a person off an “insured location” if the “bodily injury” arises out of a condition on the “insured location” or the ways immediately adjoining it. It also applies if the injury is caused by the activities of an “insured” or is caused by an animal owned by or in the care of an “insured”.

EXAMPLE

The “insured” has a crack in his sidewalk which causes a friend to trip and fall.

The “insured’s” grill burns the arm of a guest while the insured is cooking.

The “insured’s” gardener leaves a rake on the sidewalk, and a neighbor child, who is playing on the sidewalk, steps on it, cutting her foot.

EXAMPLE

An insured’s neighbor is helping the insured clear snow from the driveway when he slips and falls.

The insured’s dog bites a neighbor.

A person is injured when falling over a chair at a hall rented by the insured for his daughter’s wedding reception.

In each example, Medical Payments Coverage applies. In addition, Personal Liability Coverage is provided for the protection and the defense of the insured should a claim for other than medical expenses be made, or should the medical expenses exceed the per person limit shown in the Declarations.

Exclusions

The exclusions under the Personal Liability Policy are separated and apply to all or part of the Personal Liability Policy. First there are exclusions that apply in general to the entire policy. These are “motor vehicle liability”, “watercraft liability”, “aircraft liability” and “hovercraft liability”. Next, there are exclusions that apply to both personal liability and medical payments to others. There are exclusions that apply only to personal liability, and exclusions that apply only to medical payments to others.

The exclusions “Motor Vehicle Liability”, “Watercraft Liability”, “Aircraft Liability”, and “Hovercraft Liability” do not apply to “bodily injury” to a “residence employee” arising out of and in the course of the “residence employee’s” employment by an “insured”. The exclusion shown as E.4. “Insured’s Premises Not An “Insured Location” also does not apply in the same situation.

Exclusions Applicable to Entire Policy

“Motor Vehicle Liability”

Coverage for personal liability and medical payments does not apply to any “motor vehicle liability” if at the time of an “occurrence”:

- The involved “motor vehicle” is registered for use on public roads or property or isn’t registered, but registration is required by a government agency for it to be used at the place of occurrence;
- It is being operated in or practicing for an organized race or competition, rented to others, used to carry persons or cargo for a charge,;
- The insured is using it for any “business” purpose (except for a motorized golf cart) while on a golfing facility.

If the prior exclusion does not apply, there is still no coverage unless the “motor vehicle” is:

- In dead storage on an “insured location”;
- Used solely to service a residence;
- Designed to assist the handicapped, and, at the time of the “occurrence”, it is being used to assist a handicapped person or is parked on an “insured location”.

EXAMPLE

There is “motor vehicle liability” for the following types of vehicles:

The “insured’s” 1958 Corvette that is on blocks, with the engine removed, as the “insured” rebuilds the car in the garage at the “insured’s” residence.

A lawn tractor that is used only to service a residence.

A motorized wheelchair that is being used by the “insured’s” handicapped mother at his home.

There is coverage for “Motor Vehicles” designed for recreational use off public roads and not owned by an “insured” or if it is owned by an “insured”, the occurrence takes place on an “insured location”.

Therefore, there is “motor vehicle liability” for the following types of vehicles:

- A four-wheel ATV that an “insured” rents.
- A four-wheel ATV that an “insured” owns, while it is on the “insured’s” “residence premises”.

A motorized golf cart that is owned by an “insured” is covered if it is designed to carry no more than 4 persons and is not built or modified to exceed a speed of 25 miles per hour on level ground and it is being used in the legal boundaries of a golfing facility or is parked or stored there. The insured is covered if he is using the cart to play golf or for any other recreational or leisure activity allowed by the facility. The insured is also covered for travel to or from where golf carts are stored or parked or while crossing public roads at designated points, to access other parts of the golfing facility.

Coverage is also provided for the insured's use of the cart in a private residential community, including its public roads which a motorized golf cart can legally travel, which is subject to the authority of a property owners' association and contains an "insured's" residence.

EXAMPLE

The "insured" owns a golf cart and lives in a private residential community that allows the use of golf carts on public roads. After a game of golf, the "insured" and his friends drive the golf cart through the residential community, then across the roadway outside the community to a local tavern located in a shopping center.

The Personal Liability Policy provides personal liability and medical payments to others coverage while the "insured" is driving to and from the golf course, driving on the golf course grounds and on the roads of the private residential community.

At the point where the "insured" leaves the private residential community, coverage is no longer provided.

Watercraft Liability

Watercraft coverage is very limited on the Personal Liability Policy. The Personal Liability Policy exclusion narrows the particular types of watercraft that are covered. These types of watercraft are identified below. Specifically, the Policy excludes any coverage for a watercraft that is:

- operated in or practicing for an organized race;
- rented to others;
- used to carry persons or cargo for a fee; or
- used for a "business" purpose.

However, liability coverage is provided if the watercraft is stored at the time of the occurrence. Liability coverage may also be provided based on the type of watercraft, ownership, size, and horsepower.

Reference to the following chart helps in understanding what is and is not covered.

WATERCRAFT EXCLUSIONS			
Outboards	Owned are covered if 25 total hp or less	Borrowed are covered	Rented are covered
Inboards or Inboards/ Outdrives	Owned are not covered	Borrowed are covered	Rented are covered if 50 hp or less
Sailing Vessels	Owned are covered if less than 26 feet	Borrowed are covered	Rented are covered if less than 26 feet

EXAMPLE

The insured is the owner of a 30 foot sailboat which is in storage and is not covered by a watercraft or yacht policy. On a nice day, he takes it out on the lake and hits a person on a jet ski. The Personal Liability Policy does not provide any coverage because the length of the boat exceeds the limit for the watercraft exception. If the sailboat is 24 ft. in length, the loss is covered due to the exception to the watercraft exclusion.

EXAMPLE

The insured has a Personal Liability Policy and owns a boat with a 20-hp outboard engine. The Policy affords personal liability and medical payments coverage as it is a watercraft with less than 25 horsepower.

“Aircraft Liability” and “Hovercraft Liability”

The Personal Liability Policy offers no coverage for liability arising out of these types of crafts.

Exclusions Applicable to Coverage L – Personal Liability and Coverage M – Medical Payments to Others***Expected or Intended by the Insured***

The Personal Liability Policy does not pay for intentional “bodily injury” or “property damage” caused by an “insured”.

Business or Professional Services

The Personal Liability Policy is designed to cover personal risks. This Policy is not intended to cover business risks. Neither the coverage nor the premium charged is adequate for a “business” activity exposure. For proper coverage, “business” activity exposures need Commercial Liability Policies. Most claims for damage arising out of or in connection with a “business” or professional services related to the “business” engaged in by the “insured” are excluded.

2. “Business”

- a. “Bodily injury” or “property damage” arising out of or in connection with a “business” conducted from an “insured location” or engaged in by an “insured”, whether or not the “business” is owned or operated by an “insured” or employs an “insured”.

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the “business”.

- b. This Exclusion E.2. does not apply to:

- (1) The rental or holding for rental of an “insured location”;
- (2) On an occasional basis if used only as a residence;
- (3) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (4) In part, as an office, school, studio or private garage; and
- (5) An “insured” under the age of 21 years involved in a part-time or occasional, self-employed “business” with no employees;

3. Professional Services

“Bodily injury” or “property damage” arising out of the rendering of or failure to render professional services;

© Insurance Services Office, Inc.

The following situations are covered:

- An “insured” rents his residence for two weeks during the summer, while he takes a vacation.
- An “insured” rents a bedroom and bathroom to a college student.
- An “insured” rents a converted bedroom to a neighbor for use as an insurance agency office.
- An “insured” under the age of 21 is involved in a part-time or occasional “business” with no employees (e.g., a teenager’s newspaper route).

Insured’s Premises Not an Insured Location

This exclusion prevents coverage for any “bodily injury” or “property damage” claims arising out of premises that are owned by or rented to an “insured” or rented to others by an “insured” if it is not an “insured location”. Basically, if premium is not collected for the premises, coverage is not provided.

Communicable Disease

Any claim for damages as a result of a communicable disease transmitted by an “insured” is excluded. If an “insured” transmits hepatitis to another person, there is no coverage under this Policy.

Sexual Molestation, Corporal Punishment, or Physical or Mental Abuse

This exclusion bars any claims for damages arising out of sexual molestation, corporal punishment, or physical or mental abuse.

Controlled Substance

Any claims for damage arising out of the use, sale, manufacture, delivery, transfer, or possession by any person of a controlled substance(s) as defined by the Federal Food and Drug Law, including, but not limited to, cocaine, LSD, marijuana, and all narcotic drugs, are excluded. Exclusion does not apply to the legitimate use of prescription drugs by a person following the lawful orders of a licensed healthcare professional.

Exclusions Applicable To Coverage L – Personal Liability

There are six exclusions that apply only to Coverage L – Personal Liability.

1. *Loss Assessment/Liability Assumed Under Contract*

Personal Liability coverage does not apply for loss assessment charged against a “you” as a member of an association, corporation or community of property owners except as provided in the Additional Coverages – Loss Assessment.

It also excludes any Personal Liability assumed by an “insured” under contract, unless it is written and directly relates to the ownership, maintenance, or use of an “insured location”, or where a “you” assumes the liability of others prior to an “occurrence”. This exception to the exclusion does not apply if coverage is excluded elsewhere in the policy.

2. *Property Damage to Owned Property*

Personal Liability for “property damage” to property owned by an “insured” is excluded. The insured cannot be legally liable to him/herself.

3. *Property Damage to Property Rented, Occupied, Used or In the Care*

Coverage does not apply to “property damage” to property rented to, occupied or used by, or in the care of the “insured”. This rather common “property damage” exclusion is found in most insurance policies that provide liability coverage. Frequently, this is referred to as the care, custody, or control exclusion. There is an exception to this exclusion for “property damage” caused by fire, smoke, or explosion.

EXAMPLE

An “insured” accidentally left an iron plugged into the outlet at a hotel. While the “insured” is out of the room visiting friends, the iron starts a fire in the hotel room, and there is damage from smoke and fire. This damage is covered under the Liability Section of the Policy. However, if the insured leaves the water running in the bathtub and the tub overflows, causing damage to the bathroom floor, there is no coverage provided by the Personal Liability Policy.

4. *Work-Related Injury or Disease*

Personal Liability for “bodily injury” to anyone who is eligible to receive any benefits under a Workers Compensation or similar law is excluded if such benefits are voluntarily provided or required to be provided by an “insured”.

EXAMPLE

If a “residence employee” is or should be covered under a Workers Compensation and Employers Liability Insurance Policy, there is no work-related injury or disease coverage.

5. Nuclear

The exclusion found in the Personal Liability Policy is the same nuclear exclusion found in the majority of all standard insurance policies.

6. Other “Insureds”

There is no coverage for “bodily injury” to any insured (named insured or any other “insured”). Nor is there coverage for claims or suits brought against any insured to share or repay anyone else because of “bodily injury” to an “insured”.

Exclusions Applicable to Coverage M – Medical Payments To Others

There are four exclusions that apply to the Medical Payments to Others Coverage only. All are clearly stated and should present no surprises.

Coverage M does not apply to “bodily injury”:

1. To a “residence employee” if the “bodily injury”:
 - a. Occurs off the “insured location”; and
 - b. Does not arise out of or in the course of the “residence employee’s” employment by an “insured”;
2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:
 - a. Workers’ compensation law;
 - b. Non-occupational disability law; or
 - c. Occupational disease law;
3. From any:
 - a. Nuclear reaction;
 - b. Nuclear radiation; or
 - c. Radioactive contamination;

all whether controlled or uncontrolled or however caused; or

 - d. Any consequence of any of these; or
4. To any person, other than a “residence employee” of an “insured”, regularly residing on any part of the “insured location”.

© Insurance Services Office, Inc.

Additional Coverages

The Policy contains several coverages that provide additional benefits and are found under the heading of Additional Coverages. These Additional Coverages are paid, as the name implies, in addition to the limits of liability for Personal Liability and Medical Payments To Others.

Claim Expenses

The insurance company pays:

- Expenses for defense of an “insured” in any suit the insurance company defends;
- Premiums on bonds required in a suit the insurance company defends;
- Reasonable expenses incurred by an “insured” at the insurance company’s request;
- Interest on the entire judgment which accrues after entry of the judgment and before the insurance company pays or tenders or deposits in court that part of the judgment which does not exceed the limit of liability that applies.

First Aid Expenses

The insurance company pays expenses for first aid to others for “bodily injury” covered under the Policy but does not pay for first aid to an “insured”.

Damage To Property Of Others

The insurance company pays, at replacement cost, up to \$1,000 per “occurrence” for “property damage” to property of others caused by an “insured” regardless of liability.

The insurance company does not pay for “property damage”:

- Caused intentionally by an “insured” who is 13 years of age or older;
- To property that is owned by an “insured”;
- To property that is owned by or rented to a tenant of an “insured” or a resident in your household; or
- Arising out of:
 - A “business” engaged in by an “insured”; or
 - Any act or omission in connection with a premises owned, rented or controlled by an “insured”, other than the “insured location”; or
 - The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or “motor vehicles”.

This part of the exclusion (applicable to a “motor vehicle”) does not apply to a “motor vehicle” that:

- Is designed for recreational use off public roads;
- Is not owned by an “insured”; and
- At the time of the “occurrence”, is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

Conditions

Insurance companies and policyholders have rights and obligations specified in the Policy that both parties must comply with to resolve a claim. These duties are known as policy conditions. For example, the Policy typically requires an insured to give prompt notice of any loss, including all known details. In the case of liability claims, an additional requirement exists so that all copies of notices or legal papers are received by the insurance company.

The conditions found in the Personal Liability Policy are not unusual and, in fact, are very similar to those found in the Homeowners Policy and are reviewed in that chapter.

CONCLUSION

The Personal Liability Policy definitely fulfills a need for insurance. However, with liability coverage provided as part of a Homeowners Policy and many insurance companies offering their own option to add liability coverage to their company specific fire policy, the Personal Liability Policy is limited in use.

The Personal Liability Policy coverages, as described in this chapter, are available as a separate policy for those who need only the Personal Liability and Medical Payments To Others Coverages, and as an endorsement to be used with the ISO Dwelling Policy to extend Personal Liability and Medical Payments To Others Coverage to the property coverages provided by the Dwelling Policy.

EQUIPMENT BREAKDOWN – RESIDENTIAL

INTRODUCTION

Home equipment has evolved. Years ago, few homes had central air-conditioning. Now it is commonplace. Home generators and computers have also become standard in homes and are among the equipment prone to damage due to power outages.

Homes have more infrastructure equipment than in the past. Some require multiple heating or air-conditioning units. Many are being constructed with more built-in equipment, security systems, and communication systems. “Smart homes” have lighting, heating/air conditioning, door locks and access, sensors and security cameras, and appliances all run via technology. However, equipment breakdown losses are explicitly excluded under standard Homeowners Policies (HO 00 03 05 11 ISO). This leaves policyholders with the possibility of a substantial gap in coverage. The luxury homes create an even greater exposure to loss with an even larger gap in coverage.

A. Coverage A – Dwelling And Coverage B – Other Structures

2. We do not insure, however, for loss:

c. Caused by:

(6) Any of the following:

- (a)** Wear and tear, marring, deterioration;
- (b)** Mechanical breakdown, latent defect, inherent vice or any quality in property that causes it to damage or destroy itself;

....

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage **A** or **B** resulting from an accidental discharge or overflow of water or steam from within a:

- (i) Storm drain, or water, steam or sewer pipe, off the “residence premises”; or
- (ii) Plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the “residence premises”. This includes the cost to tear out and replace any part of a building, or other structure, on the “residence premises”, but only when necessary to repair the system or appliance. However, tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building on the “residence premises”.

We do not cover loss to the system or appliance from which this water or steam escaped.

© Insurance Services Office, Inc.

PROPERTY COVERAGES

Most homeowners policies do not cover equipment breakdown. If the equipment breakdown is not covered, neither is Coverage D – Loss of Use. For example, the mechanical breakdown of the furnace in DJ and Karen’s house leaves them with no heat in the middle of winter. With outside temperatures of 10 degrees, they and their two small children have to stay in a hotel until the furnace is repaired. In this situation, neither the furnace breakdown nor the loss of use expenses are covered by the homeowners policy.

Equipment Breakdown Coverage adds important protection, including Coverage D – Loss of Use, subject to a per day/maximum limit. It is more extensive than warranties and service contracts, which usually cover only one piece of equipment and do not cover loss of use.

Insurance protection examined in this section is provided by either Equipment Breakdown Coverage (AAIS Form HO 2702 12 06) or Equipment Breakdown Coverage Includes Permanently Installed Appliances (AAIS Form HO 2703 12 06). Both endorsements are attached to the Homeowners Policy.

Under the Equipment Breakdown Coverage, the limit for direct physical damage to “covered equipment” under the AAIS Endorsements is \$50,000 for any “one accident”. Higher limits are available. The coverage applies only to “covered equipment” with the exception of the Refrigerated Property Coverage.

Under both endorsements, insurance protection is automatically provided for Additional Living Costs and Loss of Rent. However, this coverage does not increase the standard \$50,000 limit for Equipment Breakdown Coverage and is subject to a sub-limit of \$200 per day and \$1,000 maximum paid, unless a higher limit is selected. This coverage supersedes any coverage for these exposures that is part of the Homeowners Policy. Insurance protection is also provided for Refrigerated Property Coverage at an automatic sub-limit of \$500 unless a higher limit is selected. Again, this Refrigerated Property Coverage does not increase the \$50,000 limit for Equipment Breakdown.

The following coverages are added:

1. **Equipment Breakdown Coverage** -- Subject to all the “terms” of this endorsement, “we” will pay for direct physical damage to “covered equipment” that is the result of an “accident”. The most “we” will pay for any “one accident” is \$50,000 unless a higher “limit” for Equipment Breakdown Coverage is shown in the Schedule above.

The coverage provided by this endorsement does not apply to any property that is not “covered equipment”, except as provided under the Refrigerated Property “terms” of this endorsement.

This coverage does not increase the “limits” that apply to the property covered.

2. **Additional Living Costs And Loss Of Rent** -- Coverage for Additional Living Costs And Loss Of Rent, as described under Coverage D, is extended to the coverage provided by this endorsement.

With respect to the coverage provided by this endorsement, the most “we” will pay under Coverage D is \$200 per day for no more than five consecutive days, subject to a maximum “limit” of \$1,000 for any “one accident”, unless a higher “limit” for Additional Living Costs And Loss Of Rent Coverage is shown in the Schedule above. However, this coverage does not increase the Equipment Breakdown “limit” for any “one accident”.

3. **Refrigerated Property Coverage** - “We” pay for direct loss to covered property stored in a freezer or refrigerated unit on the “described location” caused by electrical breakdown unless otherwise excluded by this endorsement. All other “terms” of the Incidental Property Coverage for Refrigerated Property apply, except as amended by this endorsement.

With respect to the coverage provided by this endorsement, the most “we” pay under Refrigerated Property Coverage is shown in the Schedule above. However, this coverage does not increase the Equipment Breakdown “limit” for any “one accident”.

The policy “limit” for Refrigerated Property does not apply to the coverage provided by this endorsement.

© American Association of Insurance Services, Inc.

The endorsements share the coverages endorsed, definitions, exclusions, deductible, and loss settlement terms. The difference is in the definition of “covered equipment”. HO 2703 provides a broader definition that includes permanently installed appliances such as refrigerators, dishwashers, ovens, stoves, etc.

The term used to identify covered property in an Equipment Breakdown Coverage Endorsement is “covered equipment”.

HO 2703

2. “Covered equipment”

- a. “Covered equipment” means property covered under Coverage A - Residence or Coverage B - Related Private Structures that:
 - 1) generates, transmits, or utilizes energy; or
 - 2) during normal usage, operates under vacuum or pressure, other than the weight of its contents.
- b. However, “covered equipment” does not include:
 - 1) supporting structures, cabinets, or compartments;
 - 2) insulating material associated with “covered equipment”;
 - 3) sewer piping, buried vessels or piping, or piping forming a part of a fire protective sprinkler system;
 - 4) water piping other than boiler feedwater piping, boiler condensate return piping, or water piping forming a part of a refrigerating or air conditioning system;
 - 5) kitchen or laundry appliances, other than those permanently installed, including, but not limited to, refrigerators, dishwashers, ovens, stoves, clothes washers, and clothes dryers; or
 - 6) electronic entertainment or computer equipment including, but not limited to, television and stereo equipment or any electronic component used with such electronic entertainment or computer equipment.

© American Association of Insurance Services, Inc.

EXAMPLE

The insured has an electrical breakdown to his refrigeration unit and the breakdown results in a total loss to the refrigerator. The replacement cost of the refrigerator is \$2,700. The loss to the food in the refrigeration unit is \$700. The Homeowners Policy deductible is \$1,000, and there is no deductible listed on the equipment breakdown endorsement HO 2703 12 06.

The insurance company agrees that the cost to replace the refrigerator is \$2,700. The loss of refrigerated food is limited to \$500. But, the total loss to covered property is \$3,400. After applying the \$1,000 deductible to the loss, the insurance company pays \$2,400.

EXAMPLE

The insured owns and lives in one unit of a two family residence. The boiler cracks and has to be replaced. The insured must stay in a motel during repairs for 5 days; the tenant must also vacate the premises for this same period and the insured does not receive rent. The Equipment Breakdown Coverage pays to replace the boiler subject to the deductible stated on the endorsement. In addition, the insured receives \$200 per day for five days, subject to a maximum of \$1,000 for Additional Living Costs And Loss of Rent (unless a higher limit has been specified in the endorsement schedule).

In addition to “covered equipment”, there are other terms used in the Equipment Breakdown Coverage endorsement that have special meanings in order to clarify the coverage provided.

Definitions

“Accident” means sudden and accidental:

- a. mechanical or electrical breakdown; or
- b. tearing apart, cracking, burning, or bulging of a steam or hot water heating system or an air conditioning system;

that results in direct physical damage to “covered equipment”.

© American Association of Insurance Services, Inc.

There must be direct physical injury. For example, if a small piece of solder breaks loose and gets caught in the spring, keeping the thermostat from operating properly, there has been no physical damage. But if the spring breaks, there has been physical damage.

“One accident” means:

If an initial “accident” causes other “accidents”, all “accidents will be considered “one accident”.

All “accidents” that are the result of the same event will be considered “one accident”.

© American Association of Insurance Services, Inc.

Exclusions

The endorsements provide coverage subject to the Homeowners Policy exclusions under Exclusions That Apply To Property Coverages. However, no reference to mechanical breakdown under exclusions in the Homeowners Policy to which the endorsements are attached apply to the coverage provided by the endorsement. In addition, specific exclusions are listed in the endorsements. These include:

- Loss, damage or expense caused by or resulting from electrical power surge or brown out; and
- Loss, damage or expense caused by wear and tear, deterioration, rust or other corrosion except for ensuing loss to “covered equipment” that is caused by an “accident” and covered by the endorsement.

Deductible

The deductible provision under the Homeowners Policy property coverage is deleted and replaced for coverages relating to the Equipment Breakdown Coverage endorsement. The Equipment Breakdown deductible applies to all coverages relating to the Equipment Breakdown Coverage endorsement, except Refrigerated Property Coverage.

The deductible applies per “one accident” and only one deductible applies at each location. Unless a different deductible is shown on the Equipment Breakdown endorsement, the Homeowners Policy deductible for fire applies to any covered Equipment Breakdown Coverage loss.

EXAMPLE

The insured has a loss under his Equipment Breakdown Coverage endorsement. His Homeowners Policy deductible is \$1,000, and the equipment breakdown deductible is \$2,500. The deductible that applies to the loss is \$2,500 as shown on the Equipment Breakdown Coverage endorsement. If no deductible is listed on the Equipment Breakdown Coverage endorsement, the policy’s deductible of \$1,000 applies.

Loss Settlement Terms

Under the Equipment Breakdown Coverage endorsements, payment for damage to covered property is the smallest of the following:

- the “limit” that applies to this endorsement;
- the cost to repair the damaged property;
- the cost to replace the damaged property on the same premises; or
- the necessary amount actually spent to repair or replace the damaged property.

If the named insured does not repair or replace the damaged property within 24 months after the date of the “accident”, then the insurer pays only the smaller of:

- the cost to repair or replace the damage at the time of the “accident”; or
- the “actual cash value” of the damaged property at the time of the “accident”.

The Loss Settlement Terms states that except as described under the Environmental, Safety, And Efficiency Improvements condition set forth by this endorsement, the named insured is responsible for the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.

Policy Conditions

Under Policy Conditions, the following condition is added with respect to the coverage provided by this endorsement.

Environmental, Safety, And Efficiency Improvements - If “covered equipment” must be replaced due to an “accident”, “we” pay the additional cost to replace such “covered equipment” with equipment that is better for the environment, safer, or more efficient than the equipment being replaced.

However, the amount “we” pay to replace “covered equipment” as described above is limited to 125% of the amount “we” would have paid to replace “covered equipment” with property that is equivalent to the equipment being replaced.

This condition does not increase the “limits” that apply to the property covered. This condition does not apply to any property that is covered on an “actual cash value” basis.

© American Association of Insurance Services, Inc.

Warranties

Product warranties and service contracts offer only limited coverage. Product warranties and service contracts typically cover only one piece of equipment for defects in its design or assembly. Most do not cover breakdowns arising from human error in the installation, operation, or maintenance of equipment. In addition, the terms and conditions of warranties vary, making it complicated to settle losses. And, virtually, no product warranties or service contracts provide coverage for loss of use of a home in the event of an equipment failure that makes it uninhabitable.

When Equipment Breakdown Coverage is endorsed to a Homeowners Policy, it provides a greater benefit to the insured when compared to a warranty. In comparison to a warranty, Homeowners Equipment Breakdown Coverage can simplify the adjustment of both equipment and standard property losses.

The total cost of warranties will, in most cases, exceed the cost of the Equipment Breakdown Coverage. As a coverage extension, it is anticipated that Equipment Breakdown Coverage costs only a small fraction of the overall homeowners policy premium. The cost is anticipated to be less than 5% of the homeowners policy premium.

CONCLUSION

Homeowners commonly find themselves completely unprotected from loss due to failures of key household equipment. Equipment Breakdown Coverage is an emerging coverage for residences that provides a low-cost means to provide needed protection.

Many of the items that are damaged from perils not covered by the unendorsed Homeowners Policy are very expensive to replace. The estimated cost to replace a heating and air conditioning system in an average size home is \$7,500 or more. Equipment Breakdown Coverage that provides insurance protection for this type of expense is definitely a product that brings value to the policyholder.

Insurance companies are looking for ways to add value to their policies. Residential Equipment Breakdown Coverage is a newer and unique coverage that is a way of differentiating a homeowners Policy from the competition.

FLOATER POLICIES

INTRODUCTION

An unendorsed Homeowners Policy provides coverage for personal property owned or used by an insured anywhere in the world. Coverage for personal property is usually provided on a named perils basis. Certain property is subject to Special Limits of Liability; other items are not covered or have limitations applicable. Therefore, there is a need for a better method of providing insurance coverage for certain types of property, especially personal property that is confined to a specific location. This is the primary purpose of policies commonly known as floaters.

HOMEOWNERS POLICY PROVISIONS

The Homeowners Special Form (HO-3) is the most popular of the Homeowners Policies used to insure an owner-occupied residence. It provides coverage for the residence and other structures on an open perils basis and coverage for personal property on a broad named perils basis. The Homeowners Contents Broad Form (HO-4) is designed for someone who rents or leases an apartment or single or multi-family residence. This Coverage Form is frequently called the “tenant’s form”. It provides coverage similar to that found in the Homeowners Special Form (HO-3) on a broad named perils basis for personal property. These Policies do not meet the insurance needs for some of the personal property that is owned by many individuals. For example, if a diamond falls from the setting of a ring, this is not a named peril under these Homeowners Forms. Another example is where a camera is dropped and damaged. Again, this is not a named peril under either Policy.

The Homeowners Policy has special limits of liability for 11 types of property. For example, jewelry is only covered up to \$1,500 for loss by theft. This may be insufficient for many clients.

Coverage C Special Limits of Liability – Homeowners Policies

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.

- a. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.
- b. \$1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. The special limit for each category shown below is the total limit for each loss for all records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material.
- c. \$1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.
- d. \$1,500 on trailers or semitrailers not used with watercraft of all types.
- e. \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
- f. \$2,500 for loss by theft of firearms and related equipment.
- g. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
- h. \$2,500 on property, on the “residence premises”, used primarily for “business” purposes.
- i. \$1,500 on property, away from the “residence premises”, used primarily for “business” purposes. However, this limit does not apply to antennas, tapes, wires, records, disks or other media that are:
 - (1) used with electronic equipment that reproduces, receives or transmits audio, visual or data signals; and
 - (2) in or upon a “motor vehicle”.
- j. \$1,500 on portable electronic equipment that:
 - (1) reproduces, receives or transmits audio, visual or data signals;
 - (2) is designed to be operated by more than one power source, one of which is a “motor vehicle’s electrical system; and
 - (3) is in or upon a “motor vehicle”.
- k. \$250 for antennas, tapes, wires, records, disks or other media that are:
 - (1) used with electronic equipment that reproduces, receives or transmits audio, visual or data signals; and
 - (2) in or upon a “motor vehicle”.

© Insurance Services Office, Inc.

CHARACTERISTICS

Most Floater Policies share the following four characteristics:

- The coverage is tailored in order to insure a specific type of property for the insured;
- The insured selects the appropriate limit for the property;
- Coverage is written on a risks of direct physical loss basis, which means all direct physical losses to property are covered, except for specifically excluded or limited losses; and
- The coverage applies to the property anywhere in the world.

Other Characteristics

Floater coverage can be written as a stand-alone policy or as an endorsement attached to a Homeowners Policy. It insures the value of items on a scheduled or blanket basis. If breakage is excluded, the option of purchasing this coverage is usually available. Valuation varies from policy to policy.

OPTIONS

There are several different classes of personal property that can be covered under a specific policy form. (The specific policy form must be read to determine, property covered, property not covered, perils excluded, deductible, valuation and other options.) These include, but are not limited to:

Specific Property Forms

These forms address the usual exposures for specific types of property other than motorized vehicles.

Jewelry And Furs Form PM 00 11 12 02

This Form covers scheduled articles of jewelry and furs (including newly acquired jewelry and furs) for an amount equal to 25% of the limit on the Policy or \$10,000, whichever is less. The rate for jewelry is decreased if the insured agrees to keep the jewelry articles in a vault of a bank or a security institution; an option is activated on the Declarations, but this option excludes coverage if removed without prior notification to the insurer and requires the payment of additional premium. The insured may also pay extra for a broad pair and set coverage option; the insurer pays the full amount of the set as shown in the schedule when there has been a covered loss to only one item; the insured surrenders the remaining article or articles to the insurer. Otherwise, the valuation at time of loss is a Standard Loss Settlement (examined later in this chapter) for unscheduled items and either a Standard Loss Settlement or an Agreed Value Loss Settlement (also later examined) for scheduled items.

Stamp & Coin Collections Form PM 00 12 12 02

This Form covers unscheduled property with a single limit of insurance; specific, individual items can be scheduled. The amount of insurance for unscheduled property is limited by the Standard Loss Settlement and either a Standard Loss Settlement or an Agreed Value Loss Settlement for scheduled items. The insured may choose an option for safe or vault credit, where at least 75% (by value) of the scheduled property is kept in a fireproof safe or vault with a combination lock when not in use or on exhibition; this option obviously reduces the premium.

Cameras Form PM 00 13 12 02

This Form covers scheduled and unscheduled cameras for the amount of insurance shown on the Declarations. Many different types of paraphernalia used with the cameras may be included as covered property. It also covers newly acquired cameras (and paraphernalia) for an amount equal to 25% of the amount of insurance or \$10,000, whichever is less. As with the Forms above, valuation can vary.

Musical Instruments Form PM 00 14 12 02

This Form covers scheduled and unscheduled musical instruments as well as sheet music, accessories and equipment used for or with such instruments. Musical instruments used by any person in a performance for pay are excluded unless the Performance for Pay coverage option is selected in the Declarations. Performance for Pay does include teaching. The Form also covers newly acquired musical instruments for an amount equal to 25% of the amount of insurance or \$10,000, whichever is less. There is also an option for the insured to select limited named perils coverage. As with the Forms above, valuation can vary.

Silverware Form PM 00 15 12 02

This Form covers scheduled and unscheduled silverware owned by an insured while anywhere in the world. Silverware includes silver-plated ware, goldware, gold-plated ware, pewterware, platinumware, platinum-plated ware and flatware, hollowware, tea sets, trays and trophies made of or including silver, gold, platinum or pewter. As with the Forms above, valuation can vary.

Golfer's Equipment Form PM 00 16 12 02

This Form covers scheduled and unscheduled golfer's equipment while anywhere in the world. Golfer's equipment includes golf clubs and golf clothing, other clothing contained in a locker while the insured is playing golf, golf balls (only for the perils of fire or burglary where there are visible signs of forcible entry) and other accessories and equipment. As with the Forms above, valuation can vary.

Fine Arts Form PM 00 17 12 02

This Form covers scheduled and unscheduled articles of fine art at specifically identified locations. The insured agrees that if they are transported from the identified location the items will be packed and unpacked by competent packers. Private collections of drawings, etchings, lithographs, paintings, art glass windows, valuable rugs, statuary, marbles, bronzes, antique furniture, silver, manuscripts, rare books, porcelains, rare glass, bric-a-brac and other bona fide works are included as fine art. Coverage is extended for newly acquired fine art at 25% of the total amount of insurance for scheduled fine art. There is an exclusion for breakage and an option for the insured to buy Breakage Of Fragile Articles coverage. However, the option does not cover breakage caused directly by windstorm, hurricane or tornado. As with the Forms above, valuation can vary.

Bicycles Form PM 00 18 12 02

This Form covers scheduled bicycles while anywhere in the world. A bicycle does not include motorized bicycles, scooters or vehicles, mopeds or any other kind of motorized conveyance. Damage to tires is not covered unless another part of the bicycle is first damaged by a covered peril. Valuation cannot be on an Agreed Value Loss Settlement.

Personal Property Form PM 00 19 12 02

This Form covers a variety of unscheduled personal property owned or used by an insured with limitations. The classes of property include silverware, clothing, draperies and rugs, electronic equipment and musical instruments, objects of art, china and glassware, cameras, sports equipment and supplies, major appliances, bedding and linen, furniture, professional personal property, and a class for all other personal property. The coverage may be extended to property owned by others for a guest or residence employee. The expectation is that the property is normally kept at the named insured's residence but may be temporarily away from the residence. The Form limits coverage on certain types of personal property such as money, bullion/gold/silver, and numismatic property to \$100. Jewelry, watches, furs, securities, stamps, philatelic property and other documents such as passports, tickets and manuscripts are limited to \$500 per item. Newly acquired property is covered up to 10% of the total amount of insurance for all covered classes or \$2,500, whichever is less. Options are available for Premises Alarm or Fire Protection System Premium Credit, Additional Living Expense (insured selects limit), Property Owned by Others Exclusion, and Windstorm or Hail Exclusion. There is no provision for Agreed Value Loss Settlement to apply.

Personal Effects Form PM 00 20 12 02

This form covers personal effects usually carried by tourists and travelers. No coverage is provided for personal effects at the named insured's permanent residence, in storage, or in the custody of students at school or in living quarters associated with school. Jewelry, watches and articles consisting in whole or in part of silver, gold or platinum and furs or articles trimmed with or consisting principally of furs are limited to a maximum of \$100 for any one item. There is very limited breakage coverage for fragile articles. Options include Theft Exclusion, Property at the Named Insured's Residence, Students' Property, Property in Trailer Home, and Additional Person Insured. There is no provision for Agreed Value Loss Settlement.

Motorized Vehicle Forms

Motorized vehicles, boats and snowmobiles can also be insured on a floater policy for both physical damage coverage and property damage coverage.

Motorized Vehicles for Handicapped Person Form PM 00 31 12 02

This Form covers scheduled motorized vehicles, scheduled trailers, scheduled equipment (for detached and detachable accessories, equipment or parts, each with a cost new value of more than \$250), and unscheduled equipment with a single limit of insurance for detached and detachable accessories, equipment and parts owned by an insured that are used for or with any of the scheduled property that is designed to assist a handicapped person. Coverage is provided for newly acquired property for up to a maximum limit of \$3,500 for the vehicle, \$1,000 for the trailer and \$500 per item for the equipment. Replacement property is covered up to the amount of insurance of the disposed property or the invoice cost of the replacement property, whichever is less. Coverage up to the lowest amount of insurance shown in the schedule is extended for a similar vehicle the insured borrows and operates with permission or rents for less than 30 consecutive days. An option is available for Emergency Repairs (\$50 deductible with a maximum payment of \$250 any one event and an annual aggregate of \$500). There is an unusual provision for Reinstatement Of Amount Of Insurance that requires the insured to pay an additional premium after a loss to have limits reinstated. There is also liability coverage for property damage up to \$1000 with an additional \$1000 available for costs the insured incurs in any claim the insurer defends. The insured may increase these limits.

Motorized Ground Maintenance Vehicles Form PM 00 32 12 02

This Form covers scheduled motorized vehicles, scheduled trailers, scheduled equipment (for detached and detachable accessories, equipment or parts, each with a cost new value of more than \$250), and unscheduled equipment with a single limit of insurance for detached and detachable accessories, equipment and parts owned by an insured that are used for or with any of the scheduled property that is designed for ground maintenance tasks. Coverage is provided for newly acquired property for up to a maximum limit of \$3,500 for the vehicle, \$1,000 for the trailer and \$500 per item for the equipment. Replacement property is covered up to the amount of insurance of the disposed property or the invoice cost of the replacement property, whichever is less. Coverage up to the lowest amount of insurance shown in the schedule is extended for a similar vehicle the insured borrows and operates with permission or rents for less than 30 consecutive days. An option is available for Limited Business Use. There is an unusual provision for Reinstatement Of Amount Of Insurance that requires the insured to pay an additional premium after a loss to have limits reinstated. There is also liability coverage for property damage up to \$1,000 with an additional \$1,000 available for costs the insured incurs in any claim the insurer defends. The insured may increase these limits.

Motorized Golf Carts Form PM 00 33 12 02

This Form covers scheduled motorized vehicles, scheduled trailers, scheduled equipment (for detached and detachable accessories, equipment or parts, each with a cost new value of more than \$250), and unscheduled equipment with a single limit of insurance for detached and detachable accessories, equipment and parts owned by an insured that are used for or with any of the scheduled property that is designed to carry up to four people on a golf course for the purpose of playing golf or used for other personal pleasure activities. Coverage is limited to a vehicle that cannot exceed a speed of 25 miles per hour on level ground. Coverage is provided for newly acquired property for up to a maximum limit of \$5,000 for the vehicle, \$1,000 for the trailer and \$500 per item for the equipment. Replacement property is covered up to the amount of insurance of the disposed property or the invoice cost of the replacement property, whichever is less. Coverage up to the lowest amount of insurance shown in the schedule is extended for a similar vehicle the insured borrows and operates with permission or rents for less than 30 consecutive days. There is an unusual provision for Reinstatement Of Amount Of Insurance that requires the insured to pay an additional premium after a loss to have limits reinstated. There is also liability coverage for property damage up to \$1000 with an additional \$1000 available for costs the insured incurs in any claim the insurer defends. The insured may increase these limits.

Motorized Snowmobiles Form PM 00 34 12 02

This Form covers scheduled motorized vehicles, scheduled trailers, scheduled equipment (for detached and detachable accessories, equipment or parts, each with a cost new value of more than \$250), and unscheduled equipment with a single limit of insurance for detached and detachable accessories, equipment and parts owned by an insured that are used for or with any of the scheduled property that is designed to transport one or two people on snow-covered ground. Coverage is limited to a vehicle that cannot exceed a speed of 50 miles per hour on level ground. Coverage is provided for newly acquired property for up to a maximum limit of \$5,000 for the vehicle, \$1,000 for the trailer and \$500 per item for the equipment. Replacement property is covered up to the amount of insurance of the disposed property or the invoice cost of the replacement property, whichever is less. Coverage up to the lowest amount of insurance shown in the schedule is extended for a similar vehicle the insured borrows and operates with permission or rents for less than 30 consecutive days. There is an unusual provision for Reinstatement Of

Amount Of Insurance that requires the insured to pay an additional premium after a loss to have limits reinstated. There is also liability coverage for property damage up to \$1,000, with an additional \$1,000 available for costs the insured incurs in any claim the insurer defends. The insured may increase these limits.

All of the above reviewed Motorized Vehicle Floater Policies include collision coverage if the collision peril is indicated on the Declarations. Collision means the physical contact of the covered motorized vehicle with another object or the upset of the motorized vehicle or trailer without contact with another object.

Outboard Motor And Boat Form PM 00 35 01 04

This Form covers scheduled outboard motor boats, scheduled outboard motors, scheduled boat trailers and unscheduled equipment with a single limit of insurance for detached and detachable accessories, equipment or parts from the scheduled boats or scheduled motors. Examples include anchors, batteries, covers, flares, fuel containers, life preservers, etc. Coverage is provided for newly acquired property for up to a maximum limit of \$5,000 for the boat and \$1,000 for the motor or trailer. Replacement property is covered up to the amount of insurance of the disposed property or the invoice cost of the replacement property, whichever is less. There is an unusual provision for Reinstatement Of Amount Of Insurance that requires the insured to pay an additional premium after a loss to have limits reinstated. There is also liability coverage for property damage up to \$1,000, with an additional \$1,000 available for costs the insured incurs in any claim the insurer defends. The insured may increase these limits.

COMMON POLICY PROVISIONS

When Floater Policies are written, in addition to the specific coverage form, a Declarations, a Common Policy Provisions, and any state specific endorsements apply.

Causes of Loss

As previously stated, the Floater Policy insures against risk of direct physical loss to covered property except as excluded or limited. Each of the coverage forms has exclusions or limitations applicable to the specific type of property being covered. Some exclusions are found in the Common Policy Provisions and apply to all coverage forms. These exclusions are:

- War
- Nuclear Hazard
- Government Action
- Intentional Loss
- Neglect

Valuation

The Loss Conditions in the Common Policy Provisions specify the loss settlement unless modified by the specific coverage form. Valuation is limited to either a Standard Loss Settlement or an Agreed Value Loss Settlement.

The Standard Loss Settlement pays for a loss based on the least of the following:

- The actual cash value of the article or item at the time of the loss;
- The cost to repair it to its condition immediately prior to the loss;
- The replacement cost; or
- The amount of insurance.

With many of the specific floater policies, the insurer covers the item or items at an amount that is scheduled in the policy. But, the policyholder receives payment for the item's value subject to this loss condition less any applicable deductible.

For example, if the insurance company is able to replace an item for less than the scheduled limit and still provide the insured with like kind and quality, then that is the amount payable regardless of the limit of insurance. This is considered a Standard Loss Settlement.

D. Loss Conditions

1. Loss Settlement

a. Standard Loss Settlement

(1) Scheduled Property

The value of each scheduled article or item without a double asterisk (**) designation noted in the Schedule is not agreed upon but will be determined at the time of loss.

We will not pay more than the least of the following amounts:

- (a)** The actual cash value of the article or item at the time of loss;
- (b)** The amount for which the article or item could reasonably be expected to be repaired to its condition immediately prior to loss;
- (c)** The amount for which the article or item could reasonably be expected to be replaced with one substantially identical to it; or
- (d)** The amount of insurance.

Excerpt from Pages 1 & 2 of 5 PM 00 01 12 02

© Insurance Services Office, Inc.

An Agreed Value Loss Settlement can provide broader coverage. In the event of a loss, payment is for the full amount of insurance shown in the schedule for each article. The Standard Loss Settlement does not apply. However, an Agreed Value Loss Settlement is not available for all coverage forms for all types of property.

b. Agreed Value Loss Settlement – Scheduled Property Only

- (1) We will pay the full amount shown in the Schedule for each article or item designated with a double asterisk (**). That amount is agreed to be the value of the article or item.

At our request you will surrender the article or item to us if not lost or stolen.

- (2) If the article or item is a pair or set, or consists of several parts when complete:

(a) We will pay the full amount shown in the Schedule for that pair, set or complete article or item; and

(b) At our request, you will surrender it to us if it is not lost or stolen.

- (3) In the event a lost or stolen article or item is recovered, you will surrender it to us.

- (4) We will, at your request, sell back to you, at a price you and we agree upon, any article or item you surrender to us to comply with the above terms.

Excerpt from Page 2 of 5 PM 00 01 12 02

© Insurance Services Office, Inc.

As previously stated, there are some coverage forms where items are unscheduled with a single limit of insurance that applies to all of the unscheduled items in a category. Under this type of coverage, the insurance company pays the amount that the blanket insurance limit bears to the actual cash value, subject to any additional limitations. For example, one postage stamp or coin is limited to \$250 under that particular Form.

EXAMPLE**Unscheduled Property – Blanket Insurance**

- (1) Postage Stamp Or Rare And Current Coin Collections

We will pay only that proportion of any loss on an unscheduled stamp or coin collection that the amount of blanket insurance bears to the actual cash value of such property at the time of loss, but not more than:

(a) \$1,000 on any unscheduled coin collection; or

(b) \$250 for any one stamp, coin or individual article or any one pair, strip, block, series sheet, cover, frame or card.

Excerpt from Page 1 of 5 PM 00 01 12 02

© Insurance Services Office, Inc.

For the loss of unscheduled cameras, fine arts, golfer's equipment, musical instruments and silverware, the insurance company pays no more than \$500 for any one item.

EXAMPLE

(1) Cameras, Fine Arts, Golfer's Equipment, Musical Instruments And Silverware

We will pay only that proportion of any loss on unscheduled cameras, fine arts, golfer's equipment, musical instruments or silverware that the amount of blanket insurance bears to the actual cash value of such property at the time of loss but not more than \$500 for any one item.

Excerpt from Page 2 of 5 PM 00 01 12 02

© Insurance Services Offices, Inc.

CONCLUSION

The Floater Policy is an integral part of a personal insurance program for most insureds. Whether the property is at different locations, in transit, or at a fixed location, the coverage provided by a Floater Policy is generally broader, particularly as respects the causes of loss, than available under a homeowners policy. In addition, a homeowners policy usually has limitations as to values of specific types of property. But, each insurer may have its own coverage form that varies in some aspect from another insurer's; always read the Policy!

IN-HOME BUSINESS

INTRODUCTION

The in-home or home-based business is an exploding market, with up to one-third of the American workforce currently spending some time working from home. It is estimated that upwards of forty-three million people now work in their homes, with fourteen million of these earning most of their income from home-based businesses. An additional two million people start a home-based business every year, and the industry has grown steadily since 1989. In-home businesses are formed for many reasons, including reduced business expenses, supplemental income, and lifestyle flexibility. Many people also telecommute or work remotely from their homes for their employers.

CHARACTERISTICS

Based upon estimates from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau, it is obvious that the number of home-based businesses is substantial.

According to the Small Business Administration's Office of Advocacy, the number of U.S. households operating a full-time or part-time business exceeds 12% of the businesses operating in the United States.

It is estimated that 70% of home-based businesses succeed for at least 3 years, as compared to 29% of businesses operating outside the home. Home-based businesses generate annual revenues of \$427 billion, with the average home-based business owner earning \$63,000. Home-based businesses create 8,500 new jobs per day.

Sixty percent of in-home businesses are not properly insured. Almost seventy percent of home-based business operators are age 55 or older. Many incorrectly think they are adequately and automatically covered by their Homeowners Policy when, in fact, home-based businesses need to have an endorsement added to the Homeowners Policy for coverage to apply. If a business is eligible for the Home Business Insurance Coverage Endorsement, the cost is reasonable and necessary, as it offers protection needed by a home-based business owner.

Eligibility

Eligibility for in-home business coverage under the Homeowners Policy Program is limited to three employees and gross annual receipts of \$250,000 or less. Operations cannot involve the manufacture, sale or distribution of food, the manufacture of personal care products or the sale or distribution of personal care products that are manufactured by the insured. The primary business classifications are office, service, sales, and crafts.

Types of in-home businesses include seamstresses, computer repair services, artists, crafters, interior decorators, bookkeepers, independent sales representatives, travel agents, and tutors, to name a few. The list of the types of businesses conducted from homes is quite extensive.

Definitions

While the courts have historically interpreted business to be anything a person does “with the hope or expectation of profit” and with some degree of continuity, the Homeowners Policy has a specific definition of business.

Business is defined in the HO 00 03 05 11 as follows:

- 3. “Business” means:**
- a.** A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
 - b.** Any other activity engaged in for money or other compensation, except the following:
 - (1)** One or more activities, not described in (2) through (4) below, for which no “insured” receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2)** Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3)** Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (4)** The rendering of home day care services to a relative of an “insured.”

HO 00 03 05 11

© Insurance Services Office, Inc.

Exposures

In-home businesses are subject to exposures not covered by an unendorsed Homeowners Policy. The Home Business Insurance Coverage endorsement provides coverage for certain exposures; separate policies are necessary for professional liability, employment practices liability, business auto, workers compensation, etc.

The Homeowners Policy limits coverage for loss to property used primarily for business purposes at the residence premises to \$2,500 and \$1,500 for business property away from the premises.

Loss of business income and extra expense are not provided by the Homeowners Policy. Without business income and extra expense coverage, a home business owner risks losing income and incurs additional expenses if a loss forces a move to a rented location.

Premises & operations, products & completed operations, personal and advertising injuries are exposures that are not covered in the Homeowners Policy for a business. Liability exposures from customers and clients coming on the premises and from a products or completed operation loss can be severe.

EXAMPLE

An interior decorator operates her business out of her home. She has \$10,000 worth of fabrics and wallpapers inventoried in preparation for decorating a customer's home. Additionally, she has more accumulated inventory of samples, decorating books, accessories and business records.

A severe storm uproots a tree, and the tree falls on the part of the home where the decorator operates her business. There is damage to the majority of her inventory, including the \$10,000 investment in materials for the customer's project. The work to complete the customer's order is delayed, and she loses the order as it will take an extensive period of time to rebuild the part of the home damaged, to reorder materials, and to complete the job. The Homeowners Policy provides a business personal property limit of \$2,500 but does not provide any coverage for loss of earnings.

EXAMPLE

A barber operates from his home. A customer files a claim against him because a hair product used by the barber causes burns to his scalp, requiring medical attention and treatment. The Homeowners Policy does not provide any coverage.

ISO HOME BUSINESS INSURANCE COVERAGE ENDORSEMENT

The Homeowners Policies are the basis of coverage. The Home Business Insurance Coverage Forms add, delete, or amend the underlying Homeowners Policies' provisions.

The Home Business Insurance Coverage (HO 07 01) is a complex and often confusing fourteen page endorsement to the regular Homeowners Policy. It was introduced by ISO in 1997 to address the need created by the significant increase in home-based businesses. A number of areas exist in this endorsement where coverage is either limited or questionable.

The Schedule or Supplemental Declarations for the Home Business Insurance Coverage endorsement includes a number of areas that are critical to coverage. It is important to properly show the business name and to include on the endorsement all names under which the business operates. If there are multiple business entities, all must be specifically named because any unnamed business is not covered under the Endorsement.

The Schedule requires the "insured" to select a business location, which could be the dwelling or another structure on the residence premises. The Schedule gives the "insured" the option to increase Property Away From the "Residence Premises" to a limit of \$10,000. The Schedule also designates the Form of Business. The types of business to select from are:

- Individual
- Joint Venture
- Partnership
- Organization (Other)

The Limits of Liability are listed on the Schedule with Aggregate Limits for Products-Completed Operations (Coverage E Limit) and All Other “Business” Liability (twice the combined limits of Coverage E and F). A Sublimit is listed which is the Medical Payments to Others limit per person/per accident.

Definitions

The definition of “business” and “employee” in the Homeowners Policy is deleted by the Endorsement and replaced by the following:

Definition 3., which defines “business”, is replaced by the following:

3. “Business” means the trade, profession, occupation or activity described in the Schedule of this endorsement that is conducted at or from the “residence premises” and is owned by:
 - a. You; or
 - b. A partnership, joint venture or other organization of which you and your resident relatives are the only partners, members or stockholders.

Definition 4., which defines “employee”, is replaced by the following:

4. “Employee” includes a “leased worker” “Employee” does not include a “temporary worker”.

© Insurance Services Office, Inc.

Additional Definitions

- “Business income” means the net income that would have been earned if a loss did not occur and continuing normal operating expenses incurred including payroll.
- “Extra expense” means expense incurred to avoid or minimize loss and to continue operations.
- “Operations” means your “business” activities occurring at the “residence premises”.
- “Your product” means goods or products you manufacture, sell, handle or distribute, or dispose of.
- “Your work” means work or operations performed by you or on your behalf, or materials, parts, or equipment furnished in connection with such work.

Other Structures

There is no provision to add any other locations for coverage.

If the insured has any “other structures” on the premises and conducts business in these “other structures”, it is necessary to schedule them in the endorsement for coverage to apply. Otherwise, coverage on the Homeowners Policy, with few exceptions, excludes coverage for other structures when they are used for business. The Home Business Insurance Coverage endorsement can buy back the coverage for other structures that would otherwise be excluded in the Homeowners Policy.

EXAMPLE

The “insured” makes kites in his attached garage, which is part of his residence. He sells them to children in the neighborhood. Business is very good, so he starts going to the parks on weekends to sell his kites. His business gets even better so he rents space in a local hobby shop to have a second location. Since the park and the hobby shop are not on the residence premises and there is no provision to add an off premises location, the Policy does not provide coverage. There is no property coverage restriction for using the attached garage since it is a part of the dwelling and not an other structure. If the garage was not attached, it would be an other structure requiring it to be listed on the Home Business Insurance Coverage endorsement for coverage to apply.

Coverage C – Personal Property

The Schedule does not indicate a limit for business personal property coverage, since the endorsement makes the full limit of Coverage C on the Homeowners Policy available for business personal property at the residence premises. When Coverage C limits are not enough to replace the insured’s personal property as well as the business personal property, the insured has the option to increase the Coverage C limit.

The Home Business Insurance Coverage Endorsement provides coverage for loss of business income from direct loss to property at the insured’s premises from a covered peril. Business Income is payable for up to twelve months from the date of the loss. Ordinary payroll expenses are included for sixty days following the date of the loss.

EXAMPLE

John operates a business from his home and has one employee. His home is struck by lightning and severely damaged by fire. John has the Home Business Insurance Coverage Endorsement on his Homeowners Policy and is able to pay his employee for 60 days, and he can claim his Loss of Earnings for up to twelve months. John can also collect his business personal property loss under Coverage C – Personal Property up to the policy limit.

Liability Limits

The Home Business Insurance Coverage Endorsement provides two separate Limits of Liability.

The Limit for Products and Completed Operations is the same as the Coverage E - Personal Liability limit.

The Limit for Other Business Liability (Premises and Operations) is twice the limit of Coverage E. However, both liability limits are aggregate limits, meaning that not more than the designated limit is paid out for claims in any one policy year.

Who Is An Insured

Who qualifies as an insured is an important concept under any insurance coverage. This definition is found earlier in this chapter.

The definition limits the property and liability coverage to the named insured(s) and other residents of the household if they are owners of the business. Insured also provides liability coverage for an insured partnership, LLC or corporation that the insured has formed and named in the endorsement, with one important condition. The entity can only be owned by the named insured and other residents of the household. However, an unnamed partnership or corporation may be afforded liability coverage with respect to conduct of the insured business, if it is solely owned by the policyholder and other household residents. Employees of the business and real estate managers are also provided liability coverage, with some limitations applying.

CONDITIONS – SECTION I

Loss Payment

Property of Others:

The insurance company determines the value of property of others in the insured's care at actual cash value.

Valuable Papers & Records:

Limited to the cost of blank materials and the labor to reproduce.

Accounts Receivable:

Provides a formula for determining the loss payment if the "insured" cannot accurately establish the amount.

No Benefit to Bailee:

No person, other than you, that has custody of covered property will benefit from this insurance.

Policy Period and "Coverage Territory":

Only losses occurring during the policy period and in the "coverage territory" are covered.

Resumption of Operation:

Reduces "business income" and "extra expense" payments to the extent that business can be resumed in whole or in part.

Limitation - Electronic Media & Records:

"Business income" is limited to sixty days from the date of loss for electronic media & records.

LIABILITY EXCLUSIONS

Many of the exclusions here are similar or identical to the CGL Policy exclusions. Refer to the chapter on the Commercial General Liability Policy for an in-depth analysis.

Business: "Bodily injury," "personal and advertising injury" and "property damage" arising out of business activities that are not specifically provided coverage.

Professional Services: “Bodily injury” and “property damage” for rendering or failure to render professional services.

Damage To Impaired Property or Property Not Physically Injured: “Property damage” to “impaired property” or property that has not been physically injured.

Damage To Particular Property: “Property damage” to premises the named insured sells, gives away, or abandons.

Damage To Your Product: “Property damage” to “your product” arising out of it or any part of it.

Damage To Your Work: “Property damage” to “your work” arising out of it or any part of it and included in the products-completed operations hazard.

Employer’s Liability: “Bodily injury” to an “employee” arising out of or in the course of employment.

Personal And Advertising Injury: There are a number of specific types of “personal and advertising injury” excluded.

Pollution: “Bodily injury” or “property damage” at or from a premises controlled by the insured at any time. Follows the CGL Policy provisions.

Recall of Products, Work Or Impaired Property: Does not pay for the recall of “your product”, “your work”, or “impaired property”.

Employment-Related Practices: “Bodily injury” or “personal and advertising injury” related to employment.

Medical Payments to Others

Medical payments exclude coverage for the “insured”, “employees”, athletic participants, and “bodily injury” included within the “products-completed operations hazard” or Personal Liability exclusions.

CONDITIONS – SECTION II

Aggregate Limits: The most payable regardless of the number of occurrences.

Severability of Insurance: Coverage applies separately to each “insured” but this condition does not increase the Limit of Liability.

OTHER OPTIONS

There are other endorsements to consider when insuring the home-based business. The following endorsements can be used, based on the exposures to loss:

- Structures Rented To Others – Residence Premises HO 04 40:

This endorsement covers another structure rented to others for use as a residence. It is necessary to identify the structure and insure it for a specific amount. Liability coverage is also provided.

- Permitted Incidental Occupancies – Residence Premises HO 04 42:

This endorsement can be used to provide three coverages for an eligible occupancy (school, studio, or office):

- To provide coverage for another structure on the residence premises that is used in the business described in the Schedule. The structure is identified and insured for a specific amount in the Schedule.
- To remove the Coverage C \$2,500 Special Limit for “business” property on the “residence premises” for furnishings, supplies, and equipment of the “business” described in the Schedule.
- To provide Section II Liability coverage for the use of the “residence premises” to conduct the described “business”

- Increased Limits On Business Property HO 04 12:

This endorsement is used to increase the special limits for business property up to \$10,000 on premises and \$6,000 off premises. This coverage does not extend to property in storage, retail property held for sale, and property used in any business that is conducted on the residence premises.

- Scheduled Personal Property Endorsement HO 04 60/61:

This endorsement is used to specifically insure eligible personal property. Musical instruments are, however, not covered for business use.

- Additional Residence Rented To Others (1, 2, 3, or 4 Families) HO 24 70:

This endorsement extends liability coverage to dwellings rented to others by making them an insured location. Personal injury liability coverage is not provided by this endorsement.

- Business Pursuits HO 24 71

This endorsement provides on and off premises liability coverage for an insured that does not own the business conducted on the “residence premises”.

CONCLUSION

Not all home-based businesses qualify for the Home Business Insurance Coverage Endorsement. The alternate choice for those that do not qualify is the Businessowners Policy or Commercial Package Policy.

The Home Business Insurance Coverage Endorsement is also not adequate coverage for many in-home businesses; and the available endorsements do not, in many cases, expand coverage to meet the insured’s needs. Again, it is often necessary to provide coverage using the Businessowners Policy or the Commercial Package Policy to structure an insurance program to address all of the possible exposures.

SECTION FOUR

FLOOD INSURANCE

CHAPTER 22: FLOOD INSURANCE

INTRODUCTION

Flood is catastrophic and difficult to insure because of the large number of people affected in a short period of time. Most residential and commercial property policies do not provide insurance protection for the peril of flood. Adverse selection is also a problem because those who tend to buy flood insurance are those who are most likely affected in the event of a flood. Individuals with little or no exposure to flood are less likely to buy coverage.

FLOOD CONCEPTS

Definition of Flood

The National Flood Insurance Program (NFIP) defines flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is the named insured's property) from the overflow of inland or tidal waters or from unusual and rapid accumulation or runoff of surface waters from any one source or from mudflow or collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood (as defined above). Mudflow is defined as a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water.

The NFIP definition of flood shown another way:

- A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is the named insured's property) from:
 - Overflow of inland or tidal waters;
 - Unusual and rapid accumulation or runoff of surface waters from any one source; or
 - Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood (as defined above).

Alternate definitions of flood may apply, but for this chapter, the NFIP definition is used.

Causes of Flooding

Flash floods are the number one weather-related killer in the United States. The intensity of a flash flood is powerful enough to roll boulders, tear out trees, and destroy buildings and bridges. A flash flood is a rapid flooding of low-lying areas, which is caused by intense rainfall from a thunderstorm

or several thunderstorms in less than six hours. Flash floods can also occur from the collapse of an ice dam or from a man-made structure such as a dam or a levee.

Many areas in the western states are at an increased flood risk because of the extensive wildfires that have occurred. After a wildfire, the charred ground where vegetation has burned away cannot easily absorb rainwater, which increases the risk of flooding and mudflows over a number of years. Large wildfires affect the landscape and ground conditions, and experts say that stabilization of the land is a problem that takes years to correct.

Several areas of the country are at heightened risk for flooding due to heavy rains. This excessive amount of rainfall happens throughout the year, putting property at risk. Storms over the Pacific Ocean bring heavy rains to the Western United States between the months of November and April. Cresting rivers, backed-up storm drains or saturated ground cause significant floods across the region during this time.

Long cold spells can cause the surface of rivers to freeze, which leads to ice jams. When a rise in the water level or a thaw breaks the ice into large chunks, the ice can become jammed at man-made and natural obstructions, and severe flooding results.

Levees are designed to protect against a certain level of flooding. However, levees deteriorate, making maintenance a serious challenge. Levees can also be overtopped, or even fail, during floods. Because of the escalating flood risks in areas near levees, the Federal Emergency Management Agency (FEMA) strongly recommends flood insurance for all homeowners in these areas.

Mudflows are a flooding condition where a river of liquid mud moves on the surface of normally dry land areas. Other earth movements, such as a landslide, slope failure, or a saturated soil mass (mudslide) moving by liquidity down a slope, are not a mudflow. Mudflows are covered by flood insurance; damage due to other earth movements are not.

During the spring, frozen land prevents melting snow or rainfall from seeping into the ground. Each cubic foot of compacted snow contains gallons of water. Once the snow melts, the result is the overflow of streams, rivers, and lakes. Add spring waters, and the result is often serious spring flooding.

Hurricanes pack a triple punch of high winds, soaking rain, and flying debris. They cause storm surges to coastal areas, as well as creating heavy rainfall, which in turn causes flooding hundreds of miles inland. While all coastal areas are at risk, certain cities are particularly vulnerable and could have losses similar to or even greater than those caused in 2005 by Hurricane Katrina in New Orleans and Mississippi.

Construction and development change the natural drainage in an area and create new flood risks. Adding new buildings, parking lots, and roads leaves less available land to absorb excess precipitation from heavy rains, hurricanes, and tropical storms.

Development of Flood Insurance

The National Flood Insurance Program (NFIP) is a federal program administered directly by the Federal Emergency Management Agency (FEMA). This program enables eligible property owners

to purchase flood insurance as an alternative to federal disaster assistance. Because of the NFIP, property owners in over 20,000 participating communities are able to obtain flood insurance.

The National Flood Insurance Act encourages state and local governments to use land wisely by giving consideration to the hazard of flood when rendering decisions on the future use of land. The goal is to minimize the potential damage caused by flooding.

The Federal Emergency Management Agency (FEMA), established in 1979, is a single point of contact within the Federal Government for emergency management activities. The Federal Insurance and Mitigation Administration (FIMA) directly administers the NFIP and is a part of FEMA.

Eligible versus Ineligible Communities

The NFIP is a program in which communities formally agree, by their adoption of codes and ordinances, to regulate the use of their flood-prone lands. In return, the FIMA makes flood insurance coverage available on buildings and their contents in these communities. FIMA identifies these flood hazard areas on maps and provides them to communities for carrying out their responsibilities. The maps are also used by insurance producers to determine rates and by lenders to determine purchase requirements. The NFIP provides flood insurance based on a community meeting specific requirements.

- **Participating (Eligible) Community** – Flood insurance may be written only in those communities that have been designated as participating in the NFIP by FEMA. These include, but are not limited to cities, towns, villages, parishes and counties.
- **Emergency Program** – This is the initial phase of a community's participation in the NFIP, used when a community applies for entry into the NFIP while the flood risk is being studied. Only a limited amount of coverage is available.
- **Regular Program** – This is the final phase of a community's participation in the NFIP. Flood Insurance Rate Maps (FIRMs) are in full effect and full limits of coverage are available.
- **Probation** – This is a temporary status, imposed by FEMA, which begins with formal notification to the community that its floodplain management does not meet NFIP floodplain management criteria. In these cases, a surcharge applies to all NFIP policies, excluding the Group Flood Insurance Policy (GFIP) issued or renewed on or after the date probation is effective. The surcharge applies for one year (may be extended) following the date probation commences and continues if the community remains on probation. Probation is terminated if deficiencies are corrected. But, if a community does not take remedial or corrective measures, the community can be suspended.
- **Suspension** – Action taken by FEMA when a community fails to comply with acceptable standards. Coverage remains in effect until expiration when a community is suspended. If a community is suspended, no policies may be issued or renewed.
- **Non-Participation (Ineligible) Communities** – When the FIMA notifies a community that it is in a flood prone area, the community has one year to join the program. Flood insurance is not available if the community chooses not to participate in the NFIP.

STANDARD FLOOD INSURANCE POLICIES (SFIP)

There are five (5) insurance products available under the SFIP Program.

1. **The Preferred Risk Policy (PRP)** is a low cost policy available for minimal-risk flood zones and moderate-risk flood zones. Minimal-risk flood zones consist of C Zones and unshaded X Zones. Moderate-risk zones are B Zones and shaded X Zones. Additional information on a PRP is discussed later in this chapter.
2. **The Newly-Mapped Rated Policy** applies to properties previously in Zones B, C, X, or D that have been newly mapped into a Special Flood Hazard Area (SFHA). It also applies to policies previously issued under the PRP Eligibility Extension that renew on or after April 1, 2015. SFHA are flood zones that have the greatest risk of flooding.
3. **Mortgage Portfolio Protection Program (MPPP)** provides for a force-placed policy to be available through a Write Your Own (WYO) Company. A WYO Company can be described as a private insurance carrier that issues and services NFIP Policies. This program was introduced in 1991 and designed so that lending and servicing institutions could comply with the Flood Disaster Protection Act of 1973.
4. A **Scheduled Building Policy** can be used to provide coverage for 2 to 10 buildings and to qualify these buildings must have the same ownership. The buildings must also be at the same location and be contiguous. A specific amount of insurance is required for each building and its contents.
5. **Group Flood Insurance** is issued at a modest premium and is available under the NFIP Direct Program for disaster assistance applicants. Coverage is provided for a minimum amount for buildings and/or contents on a 3-year policy and cannot be canceled. If an applicant purchases a Standard Flood Insurance Policy, the Group Flood Insurance is voided, however, the premium will not be refunded.

Policy Effective Dates and Waiting Periods

There is a standard 30-day waiting period for new applications. A new Standard Flood Insurance Policy is effective at 12:01 A.M. local time on the 30th calendar day after the application date and payment of premium. There are exceptions to the standard 30-day waiting period.

One of the more common exceptions is the no waiting period for loan closings. A new Standard Flood Insurance Policy is effective at the time the title to the property is transferred to the purchaser (loan closing) if the insured is making, increasing, extending, or renewing a loan, provided the Policy is applied for and the premium is paid at or prior to transfer.

Binders

Binders are not recognized by the NFIP. However, on renewal policies, NFIP will recognize certificates or evidence of flood insurance, and similar forms, but only for informational purposes only.

Limits of Insurance

The amount of insurance that may be purchased is subject to the limits available according to the program in which the community participates. Duplicate coverage on the same building is prohibited.

Amount of Insurance Coverage Available 1, 2

BUILDING COVERAGE	EMERGENCY PROGRAM	REGULAR PROGRAM		
		Basic Insurance Limits	Additional Insurance Limits	Total Insurance Limits
Single-Family Dwelling	\$ 35,000 ³	\$ 60,000	\$190,000	\$250,000
2–4 Family Dwelling	\$ 35,000 ³	\$ 60,000	\$190,000	\$250,000
Other Residential	\$100,000 ⁵	\$175,000	\$325,000	\$500,000
Non-Residential Building (including Business Buildings and Other Non-Residential Buildings ⁴)	\$100,000 ⁵	\$175,000	\$325,000	\$500,000
CONTENTS COVERAGE				
Residential ⁵	\$ 10,000	\$ 25,000	\$ 75,000	\$100,000
Non-Residential, Other Non-Residential Property ⁴	\$100,000	\$150,000	\$350,000	\$500,000

1. This Table provides the maximum coverage amounts available under the Emergency Program coverage and the Regular Program, and the columns cannot be aggregated to exceed the limits in the Regular Program, which are established by statute. The aggregate limits for building coverage are the maximum coverage amounts allowed by statute for each building included in the relevant Occupancy Category.
2. These limits apply to all single condominium units and all other buildings not in a condominium form of ownership, including cooperatives and timeshares. Refer to the Condominiums section of the manual for basic insurance limits and maximum amount of insurance available under RCBAP.
3. In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$50,000.
4. For further guidance on Non-Residential Business and Other Non-Residential occupancies, refer to the General Rules section of the manual.
5. In Alaska, Guam, Hawaii, and U.S. Virgin Islands, the amount available is \$150,000.
6. The Residential Occupancy Category includes the Single Family, 2–4 Family, Other Residential, and Residential Condominium Occupancies.

© NFIP Flood Insurance Manual, November 1, 2015

Flood Zones

Flood zones are geographical land areas identified by FEMA that are used to indicate the risk of severity or type of flooding in a particular area.

Pre-Firm versus Post-Firm

Pre-Firm – For the purpose of determining rates, pre-firm buildings are those for which the start of construction or substantial improvement (50% or greater of market value) was on or before December 31, 1974, or before the effective date of the initial FIRM (Flood Insurance Rate Map) set for the community, whichever is later.

Post-Firm – Buildings for which construction or substantial improvement was after December 31, 1974, or on or after the effective date of the initial FIRM (Flood Insurance Rate Map) set for the community, whichever is later.

Note that the start of construction or substantial improvement means the date the building permit is issued, provided the construction begins within 180 days.

SFIP FORMS

There are three (3) standard policy forms used in the Standard Flood Insurance Policy Program. The type of insurable property determines which form should be selected.

Dwelling Form

This form issued to a homeowner, residential renter, or owner of residential building containing 1 to 4 units. In the NFIP Regular Program community or Emergency Program community, it provides building and/or contents coverage for:

- Single-family, non-condominium residence with incidental occupancy limited to less than 50% of the total floor area;
- 2–4 family, non-condominium building with incidental occupancy limited to less than 25% of the total floor area;
- Dwelling unit in residential condominium building;
- Residential townhouse/row house;
- Personal contents in a non-residential building.

General Property Form

This form is issued to owners of residential building with 5 or more units. In the NFIP Regular Program community or Emergency Program community, it provides building and/or contents coverage for these and similar other residential risks:

- Apartment building;
- Residential cooperative building;
- Dormitory;
- Assisted-living facility;
- Hotels, motels, tourist homes, and rooming houses that have more than 4 units where the normal guest occupancy is 6 months or more.

The General Property Form is also issued to an owner or lessee of a non-residential business or other non-residential building or unit. In the NFIP Regular Program community or Emergency Program community, it provides building coverage and/or contents coverage for these and similar non-residential risks:

- Hotel or motel with normal guest occupancy of less than 6 months;
- Licensed bed-and-breakfast inn;

- Retail shop, restaurant, or other business;
- Mercantile building;
- Grain bin, silo, or other farm building;
- Agricultural or industrial processing facility;
- Factory;
- Warehouse;
- Pool house, clubhouse, or other recreational building;
- House of worship;
- School;
- Nursing home;
- Non-residential condominium;
- Condominium building with less than 75% of its total floor area in residential use;
- Detached garage;
- Tool shed;
- Stock, inventory, or other commercial contents.

Residential Condominium Building Association Policy (RCBAP)

This form is issued to a residential condominium association on behalf of the association and unit owners. In the NFIP Regular Program community only, this Form provides building coverage and, if desired, coverage of commonly owned contents for residential condominium building with 75% or more of its total floor area in residential use. Additional information on a RCBAP is discussed later in this chapter.

DWELLING FORM AND GENERAL PROPERTY FORM

Many of the terms and conditions are identical in the Dwelling Form and the General Property Form. The primary difference is eligibility. A non-condominium residential building designed for one to four family residence is written on the Dwelling Form. The Dwelling Form can also be used for a single family dwelling unit in a condominium building. If over four units, the coverage is written on the General Property Form. The General Property Form is most frequently used for commercial exposures, but can also be used for structures such as detached garages or tool sheds.

Insuring Agreement

Coverage is provided for direct physical loss by or from flood to the insured property; no other perils are covered.

Selected Definitions

Actual Cash Value: Replacement cost at time of loss less physical depreciation, not market value.

Application: Statement made and signed by the named insured or the agent in applying for the Policy. It becomes part of the Policy and makes the Policy voidable in the event of material misrepresentation.

Base Flood: A flood having a one percent chance of being equaled or exceeded in any given year, also known as 100-year flood.

Basement: Any area of the building, including any sunken room or sunken portion of a room, having its floor below ground level (subgrade) on all sides.

Building: A structure with two or more outside rigid walls and a fully secure roof that is affixed to a permanent site; a manufactured home (also known as a mobile home and is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or a travel trailer without wheels, built on a permanent chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws. Building does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle except the travel trailer described above.

Elevated Building: A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Valued Policy: A Policy in which the insured and the insurer agree on the value of the property insured, that value being payable in the event of a total loss. The Standard Flood Insurance Policy is not a valued policy.

Policy Provisions

Coverage A –Building Property

A dwelling at the described location in the Policy, including additions and extensions attached to and in contact with the dwelling/building, is building property.

Under the Dwelling Form, a detached garage at the described location is covered for a maximum of up to 10% of Coverage A. This is not an additional coverage and reduces the Coverage A limit. The detached garage is not covered if used as a dwelling or for business or farming purposes. There is no coverage for other outbuildings unless specifically purchased.

Under both forms, construction materials used for the construction, alteration, or repair of the dwelling or a detached garage are covered if the materials are stored in a fully enclosed building at the described location or on an adjacent property.

Under both forms, a building under construction at the described location is considered Building Property but is subject to certain limitations.

Under both forms, manufactured homes or travel trailers that are built on a chassis and affixed to a permanent foundation are required to be anchored, if located in a special flood hazard area.

Under both forms, specific fixtures and equipment are considered Building Property - e.g. awnings, built-in appliances, carpeting installed over unfinished floors and light fixtures.

Coverage is limited in basements regardless of zone or date of construction. It is also limited in areas below the lowest elevated floor, depending on the flood zone and date of construction. These areas include basements, crawlspaces under an elevated building, enclosed areas beneath buildings elevated on full-story foundation walls (sometimes referred to as walkout basements), and enclosed areas under other types of elevated buildings.

Coverage is limited to any of the following items if installed in their functioning locations and if necessary for operation, connected to a power source.

- Central air conditioners;
- Cisterns and the water in them;
- Drywall for walls and ceilings in a basement and the cost of labor to nail it, unfinished and unfloated and not taped, to the framing;
- Electrical junction and circuit breaker boxes;
- Electrical outlets and switches;
- Elevators, dumbwaiters, and related equipment except for equipment installed below the base flood elevation after 1987;
- Fuel tanks and the fuel in them;
- Furnaces and hot water heaters;
- Heat pumps;
- Nonflammable insulation in a basement;
- Pumps and tanks used in a solar energy system;
- Stairways and staircases attached to the building, not separated from it by elevated walkways;
- Sump pumps;
- Water softeners and the chemicals in them, water filters and faucets installed as an integral part of the plumbing system;
- Well water tanks and pumps;
- Required utility connections for any item in this list;
- Footings, foundations, posts, pilings, piers or other foundation walls and anchorage systems required to support a building;
- Clean-up.

EXAMPLE

A new furnace is stored in the maintenance building before it is to be installed in one of the residential buildings of the association. It is destroyed by the flood, but is not covered by the Policy because it is not installed in a functioning location and connected to a power source.

EXAMPLE

The furnaces and hot water heaters on the first floor of a residential building are working perfectly until floodwater ruins them. These items, along with electrical junction and circuit breaker boxes, electrical outlets and switches are covered because they are installed in a functioning location and connected to a power source.

The examples illustrate that it is necessary for the items on the list to be installed in their functioning location and connected to a power source, if necessary for operation. The limited list of items represents the structural and mechanical equipment necessary for operations. Certain items, e.g. drywall and insulation, are structural and mechanical equipment but are necessary components of the structure.

Coverage B – Personal Property

Coverage is provided only for personal property that is located inside a building at the described location and is subject to limitations. Coverage is extended for a period of 45 days at another location if it is considered Property Removed to Safety.

Certain types of property are considered personal property. These are:

- Air conditioning units, portable or window type;
- Carpets, not permanently installed, over unfinished flooring;
- Carpets over finished flooring;
- Clothes washers and dryers;
- “Cook-out” grills;
- Food freezers, other than walk-in, and food in any freezer; and
- Portable microwave ovens and portable dishwashers.

There is no coverage for almost all personal property located in a basement. However, the following items are covered if installed in their functioning locations and, if necessary for operation, connected to a power source:

- Air conditioning units, portable or window type;
- Clothes washers and dryers; and
- Food freezers, other than walk-in, and food in any freezer.

Special Limits of Liability restrict the maximum payment to \$2,500 payable for loss to artwork; photographs; and any collectibles or memorabilia; rare books or autographed items; jewelry,

watches, precious and semi-precious stones; articles of gold, silver or platinum; furs; and (under the Dwelling Form), personal property used in business.

Antiques are covered only for their functional value.

Coverage C – Other Coverages

Debris Removal

Coverage is provided for the expense of debris removal of non-owned debris on or in insured property, and of owned property anywhere, but it is not an additional coverage and reduces the Coverage A or Coverage B limit. Work performed by the insured or family member is paid at Federal minimum wage.

Loss Avoidance Measures

- **Sandbags, Supplies, and Labor**

Coverage is provided up to \$1,000 for the costs incurred to protect the insured building from a flood or imminent danger of flood for certain types of expenses. Again, labor by the named insured or member of the household is at federal minimum wage.

- **Property Removed to Safety**

Property removed to safety is covered for up to 45 consecutive days from the date the insured property is moved. The personal property must be placed in a fully enclosed building or otherwise reasonably protected from the elements. If property is removed to safety, the Policy pays up to \$1,000 for the reasonable expense incurred to protect it from flood or the imminent danger of flood. Labor performed by the named insured or member of the household is at federal minimum wage.

Condominium Loss Assessments (Dwelling Form)

Coverage applies, up to the Coverage A limit, for loss assessments charged against the named insured in accordance with the condominium's governing documents. However, this coverage does not increase the Coverage A limit.

Pollution Damage (General Property Form)

Coverage applies for damage caused by pollutants to covered property if the discharge, seepage, migration, release, or escape of pollutants is caused by or results from flood. Maximum coverage is \$10,000 and does not increase the Coverage A or Coverage B limits.

Coverage D – Increased Cost Of Compliance

This coverage pays for costs to comply with floodplain management laws or ordinances that affect the repair or reconstruction of a structure suffering flood damage. It pays for the cost of elevating, floodproofing, relocation, and demolition.

The limit of liability is \$30,000, and is additional coverage, although the total amount collected under Coverage A and Coverage D cannot exceed flood coverage maximums available under the Act. No separate deductible is applicable. Coverage is only available for a "repetitive loss structure" or a structure that sustains damage greater than 50% of the building's market value.

Certain limitations and exclusions apply. Note: A repetitive loss structure is defined by the policy. As the name implies, it is one that has suffered flood damage repeatedly.

Property Not Covered

The Policy contains a section specifically for identifying property that is not covered.

- Personal property when not inside a fully enclosed building;
- Buildings and contents located entirely in, on, or over water if built after September 30, 1982;
- Open structures and personal property located in, on or over water;
- Recreational vehicles other than eligible travel trailers;
- Self-propelled vehicles, except service and handicapped assistance vehicles (these must be inside a building);
- Land, land values, lawns, trees, shrubs, plants, growing crops, or animals;
- Accounts, bills, currency, deeds, evidences of debt, medals, money, scrip, stored value cards, postage stamps, securities, bullion, manuscripts, etc.;
- Underground structures and equipment, including wells, septic tanks and septic systems;
- Sidewalks, walkways, decks, driveways, patios, and other surfaces “outside” the building;
- Containers, including gas and fuel tanks;
- Buildings and contents if actual cash value of building is 49% or more below the ground;
- Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks;
- Aircraft or watercraft, or their furnishings and their equipment;
- Hot tubs and spas (that are not bathroom fixtures) and swimming pools;
- Property ineligible due to the Coastal Barrier Resources Act or the Coastal Barrier Improvement Act;
- Personal property owned in common with other unit owners part of membership of a condo association (Dwelling Form);
- Personal property owned by or in the care, custody or control of a unit owner; (General Property Form)
- Residential condominium building located in a Regular Program community (General Property Form).

Exclusions

Although the Dwelling and General Property Forms only cover the peril of flood, coverage is subject to exclusions. These exclusions further limit and define how the Standard Flood Insurance Policy responds in the event of loss.

Only direct physical loss is covered; there is no coverage for:

- Loss of revenue or profits;
- Loss of access to the insured property or described location;
- Loss of use of the insured property or described location;

EXAMPLE

The insured owns a four family dwelling and occupies one unit and rents three units. When a flood forced the insured and his tenants from the residence for five months, the loss of rent totaled \$7,500. The Standard Flood Insurance Policy does not respond to this loss, as it is specifically excluded.

- Loss from interruption of business or production;
- Additional living expenses while the building is being repaired or is unable to be occupied;

EXAMPLE

A flood forces the insured to leave his dwelling and move to a rented dwelling in an area not affected by the flood. He pays rent totaling \$1,800 before he moves back into his house. The Standard Flood Insurance Policy does not respond to this loss, as coverage for additional living expense is specifically excluded.

- Cost to comply with building ordinances or laws except as provided in Coverage D;
- Any other economic loss.

There is no coverage for a loss in progress at the time the policy begins or when coverage is added.

There is no coverage for earth movement, even if the earth movement is caused by flood. However, the Policy does pay for losses from mudflow and land subsidence as a result of erosion that are specifically covered under the definition of flood.

There is no coverage for direct physical loss caused directly or indirectly by any of the following:

- The pressure or weight of ice;
- Freezing or thawing;
- Rain, snow, sleet, hail, or water spray;
- Water, moisture, mildew or mold damage that results primarily from any condition confined to the dwelling/building or within the named insured's control;
- Water or waterborne material that backs up through sewers or drains; discharges or overflows from a sump, sump pump, related equipment; or seeps or leaks on or through insured property, unless there is a flood in the area and the flood is the proximate cause of the sewer or drain backup, sump pump discharge or overflow, or the seepage of water.

There is no coverage for the pressure or weight of water unless there is a flood in the area and the flood is the proximate cause of the damage from the pressure or weight of water.

There is no coverage for power, heating, or cooling failure unless the failure results from direct physical loss by or from flood to power, heating, or cooling equipment situated on the described location.

There is no coverage for theft, fire, explosion, wind, or windstorm.

There is no coverage for anything the named insured or the named insured's agent does or conspires to do to cause loss by flood deliberately.

There is no coverage for alteration of the insured property that significantly increases the risk of flooding.

There is no coverage for loss to any building or personal property located on land leased from the Federal Government, arising from or incident to the flooding of the land by the Federal Government, where the lease expressly holds the Federal Government harmless under flood insurance issued under any Federal Government program.

And, under the Dwelling Form, there is no coverage for the testing for or monitoring of pollutants unless required by law or ordinance.

EXAMPLE

After the floodwaters recede, the insured starts the cleanup process and has the dwelling tested for pollutants. The Standard Flood Insurance Policy does not provide coverage, as the cost to test for pollutants is specifically excluded.

Deductibles

The deductible applies to the building and separately to the contents. In other words, one loss has two deductibles if there are claims for building and contents. The NFIP minimum deductible varies (\$1,000, \$1,250, \$1,500, \$2,000) based on the program type (emergency or regular), policy rating (zones) and amount of coverage purchased (\$100,000 or less/over \$100,000).

EXAMPLE

The building deductible is \$1,000 and the contents deductible is \$1,000. The loss is \$5,000 to the building and \$5,000 to the contents. Each deductible is applied separately; the total deductible for this loss is \$2,000.

Condition - Loss Settlement

The Dwelling Form provides for three methods of loss settlement. They are:

- Replacement Cost
- Special Loss Settlement
- Actual Cash Value

Replacement Cost – replacement cost coverage applies only to a single-family dwelling, which is the insured's principal residence. To qualify the dwelling as a principal residence, the named insured or named insured's spouse must have lived at the dwelling more than 80% of the year preceding the loss or 80% of the period of ownership, if ownership is less than a year. In addition, the amount of insurance must be 80% or more of the full replacement cost immediately before the loss or is the maximum amount of insurance available under the NFIP. The amount payable is limited to replacement at the described premises, if the dwelling is rebuilt at another location. However, the insured may disregard the replacement cost provisions and make an ACV claim.

Special Loss Settlement – This settlement applies to a single-family dwelling that is a manufactured or mobile home or travel trailer and pays the lesser of the replacement cost, 1.5 times the actual cash value, or the applicable limit of insurance. If it is decided that repairs are economically feasible, the replacement cost provisions apply.

Actual Cash Value – ACV is defined as replacement cost less physical depreciation. This valuation applies if the single-family dwelling does not meet the requirements for replacement cost, the insured elects an ACV settlement, or to certain types of property such as a two-, three-, or four-family dwelling, a single-family dwelling not used exclusively for single-family dwelling purposes, detached garages, personal property, appliances, carpets, carpet pads, outdoor awnings, outdoor antennas, other outdoor equipment, or a dwelling that is not the named insured's principal residence.

The General Property Form will pay the lesser of the applicable amount of insurance; the actual cash value; or the amount it would cost to repair or replace the property with material of like kind and quality within a reasonable amount of time after the loss.

PREFERRED RISK POLICY

The Preferred Risk Policy (PRP) is a Standard Flood Insurance Policy (SFIP), written using the Dwelling Form or General Property Form, that offers low-cost coverage to owners and tenants of eligible buildings located in the low to moderate risk B, C, and X Zones in the NFIP Regular Program communities. For residential properties, the maximum coverage combination is \$250,000 building and \$100,000 contents. For other residential buildings, the maximum combination is \$500,000 building and \$100,000 contents. Up to \$100,000 contents-only coverage is available for all residential properties. For non-residential properties, the maximum coverage combination is \$500,000 building and \$500,000 contents. Up to \$500,000 contents-only coverage is available for non-residential properties. Only one (1) building can be insured per policy, and only one (1) policy can be written on each building.

If one of the following conditions exists within any 10-year period, regardless of any change(s) in ownership of the building, then the building is not eligible for the PRP:

- 2 flood insurance claim payments for separate losses, each more than \$1,000; or
- 3 or more flood insurance claim payments for separate losses, regardless of amount; or
- 2 Federal flood disaster relief payments (including loans and grants) for separate occurrences, each more than \$1,000; or
- 3 Federal flood disaster relief payments (including loans and grants) for separate occurrences, regardless of amount; or
- 1 flood insurance claim payment and 1 Federal flood disaster relief payment (including loans and grants), each for separate losses and each more than \$1,000.

In determining a building's flood loss history for PRP eligibility, Federal flood disaster relief payments (including loans and grants) are considered only if the building sustained flood damage.

Replacement cost coverage is provided only under the Dwelling Form when the building is the principal residence of the insured and the building coverage limits are at least 80 percent of the replacement cost of the building at the time of the loss, or the maximum limits available under the NFIP.

The deductible for PRPs is \$1,000 each for building and contents if the building coverage is equal to or less than \$100,000. The deductible is \$1,250 if the building coverage is over \$100,000. A contents only policy will have a \$1,000 deductible.

The Preferred Risk Rating Policy premiums are flat and fixed. Rating charts are used and no individual rates and multipliers are involved.

RESIDENTIAL CONDOMINIUM BUILDING ASSOCIATION POLICY

This Form is used to insure all of the condominium association's structures on one policy form. The maximum limit is replacement cost of the building or \$250,000 x number of units, whichever is less. Only commonly owned contents by the association are eligible for coverage at an actual cash value basis, to a maximum limit of \$100,000 per building. This is the only NFIP Form with a co-insurance clause and requires 80% of the replacement cost or maximum limit. Again, many of the terms and conditions are identical to the Dwelling Form and the General Property Form.

EXAMPLE

The maximum limit of insurance for a 10-unit condominium building is \$2,500,000, which is \$250,000 x the number of units.

Selected Definitions

Condominium is a form of ownership of real property in which each unit owner has an undivided interest in common elements.

Condominium Association is the entity made up of the unit owners responsible for the maintenance and operation of the common elements owned in undivided shares by unit owners and other real property in which unit owners have use rights. Membership in the association is a required condition.

Improvements are fixtures, alterations, installations, or additions comprising a part of the residential condominium building, including improvements in the units.

Unit is a single-family unit in a residential condominium building.

Property Covered

Coverage A – Building Property

The Standard Flood Insurance Policy protects against direct physical loss by or from flood to the residential condominium insured, including all units within the building and the improvements within the units. Building Property “mirrors” the coverage provided by the Dwelling and General Property Forms.

Coverage B - Personal Property

If personal property coverage is purchased, insurance is provided against direct physical loss by or from flood to personal property that is inside the fully enclosed insured building and is owned by the unit owners of the condominium association in common, meaning property in which each unit owner has an undivided ownership interest, or property which is owned solely by the condominium association and used exclusively in the conduct of the business affairs of the condominium association.

Again, the terms and conditions of coverage “mirror” the Dwelling and General Property Forms.

Coverage C - Other Coverages

Terms and conditions “mirror” the other two Coverage Forms.

Coverage D - Increased Cost Of Compliance

Terms and conditions “mirror” the other two coverage forms.

Property Not Covered

Many of the terms and conditions “mirror” the other two Coverage Forms. However, there are differences.

This Coverage Form does not contain the exclusion found in the Dwelling Form for personal property the named insured owns in common with other unit owners comprising the membership of a condominium association.

It also does not contain the exclusion found in the General Property Form for personal property owned by or in the care, custody, or control of a unit owner, except for property of the type and under the circumstances set forth under the General Property Form's Coverage B – Personal Property or the exclusion for a residential condominium building located in a Regular Program community.

However, it does exclude personal property used in connection with any incidental commercial occupancy or use of the building.

Exclusions

While most are identical to both of the other Forms, the RCBAP follows the Dwelling Form in excluding any payment for testing or monitoring of pollutants, unless required by law or ordinance.

Deductibles

Again, the provision is identical to the other two Coverage Forms.

Coinurance

This coinsurance section applies only to coverage on the building and is unique among the three Forms. It imposes a penalty on loss payment unless the amount of insurance applicable to the damaged building is at least 80 percent of its replacement cost or the maximum amount of insurance available for that building under the NFIP, whichever is less.

If the actual amount of insurance on the building is less than the required amount in accordance with the terms, then loss payment is determined as follows (subject to all other relevant conditions in the Policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

1. Divide the actual amount of insurance carried on the building by the required amount of insurance.
2. Multiply the amount of loss, before application of the deductible, by the figure determined above.
3. Subtract the deductible from this new figure

The payment is the amount determined or the amount of insurance carried, whichever is less. The amount of insurance carried, if in excess of the applicable maximum amount of insurance available under the NFIP, is reduced accordingly.

EXAMPLES:**Example #1 (Inadequate Insurance)**

Replacement value of the building	\$250,000
Required amount of insurance	\$200,000 (80% of replacement value of \$250,000)
Actual amount of insurance carried	\$180,000
Amount of the loss	\$150,000
Deductible	\$500

Step 1: $\$180,000 / \$200,000 = .90$ (90% of what should be carried)

(1) Step 2: $\$150,000 \times .90 = \$135,000$

(2) Step 3: $\$135,000 - \$500 = \$134,500$

The payment is no more than \$134,500. The remaining \$15,500 is not covered due to the coinsurance penalty and application of the deductible.

Example #2 (Adequate Insurance)

Replacement value of the building	\$500,000
Required amount of insurance	\$400,000 (80% of replacement value of \$500,000)
Actual amount of insurance carried	\$400,000
Amount of the loss	\$200,000
Deductible	\$500

In this example, there is no coinsurance penalty, because the actual amount of insurance carried meets the required amount. The payment is no more than \$199,500 (\$200,000 amount of loss minus the \$500 deductible).

In calculating the full replacement cost of a building, the replacement cost value of any covered building property is included; but the replacement cost value of any building property not covered under this Policy is not included; and only the replacement cost value of improvements installed by the condominium association is included.

General Conditions – Loss Settlement

This Policy provides three methods of settling losses, as does the Dwelling Form. Each method is used for a different type of property.

Replacement Cost loss settlement applies to buildings, other than residential condominium buildings, that are manufactured homes or travel trailers; as with the Dwelling Form, there is a requirement to replace in order to receive replacement costs, and replacement cost is limited to the costs that would be incurred at the described location, even if the building is rebuilt at another location.

Special Loss Settlement applies to a residential condominium building that is a travel trailer or a manufactured home; total losses are limited to the lesser of replacement cost, 1.5 times ACV, or the building limit applicable. If it is economically feasible to repair, replacement cost applies to the repairs.

Actual Cash Value loss settlement applies to all personal property covered under this Policy and is similar to the Dwelling Form, as well, in all aspects.

CONCLUSION

Flooding is the number one natural disaster. Almost everyone lives or works in a flood zone. The exposure to flood is much greater than most people realize. Residences and businesses located in higher elevations are not exempt from flood; a residence or business is four times more likely to suffer a flood loss than a fire loss. In fact, 25% of all floods occur in low risk zones. While the National Flood Insurance Program is not the only protection from flood, it is one of the most significant.

APPENDIX

GLOSSARY

-A-

Abandonment – the giving up of property by the insured to the insurance company in order to collect the value of the property rather than restoring or repairing the property.

Absolute Liability – responsibility without regard to fault or negligence.

Accounts Receivable – money owed to the insured by the insured's clients.

Act of God (Act of Nature) – an event produced by a physical cause of nature, and not within human control or intervention.

ACV – replacement cost minus depreciation.

Admitted Insurance Company – an insurance company that is authorized and licensed to do business in a state.

Agent – a person empowered to act on behalf of another.

Aleatory Contract – a contract in which there is an unequal exchange between parties because the element of chance is involved in performance under the contract.

Alien Insuror – an insurance company formed and domiciled in a country outside the United States.

Apparent Authority – authority an agent appears to have to a reasonable person.

Assumption of Risk – when one knowingly and voluntarily exposes themselves to a known danger.

Auto – a land motor vehicle, trailer, or semi-trailer designed for use on public roads, but does not include “mobile equipment.”

Automatic Insureds – persons who are granted insured status because they fit into a category or class of persons described in the policy provisions.

-B-

Bailee – someone who has rightful possession of the property of another.

Binding Authority – authority that is granted to the insurance agent as outlined in the company's agent contract.

Bodily Injury – bodily harm, sickness, or disease, including death that results from the harm, sickness, or disease.

Broker – an individual who acts or aids in the negotiation of insurance contracts, in placing risks, or in soliciting or effecting contracts, as the agent of the applicant/buyer and not as the agent of the insurance company.

Burglary – the taking of property from within a premises by a person unlawfully entering or breaking out of a premises as evidenced by marks of forcible entry or exit.

Business – includes trade, profession, or occupation.

-C-

Cancellation – the termination of the insurance policy by either party.

Coinsurance – a rating and underwriting concept that is designed to encourage an insured to purchase an amount of insurance nearly equal or equal to the full value of the property being insured.

Collapse – the caving in or giving way of a building or structure.

Combined Ratio – a ratio that combines the company's loss ratio and the company's expense ratio.

Comparative Negligence – a defense based on a statutory modification of contributory negligence in which both parties are negligent and damages are apportioned between them according to their comparative degrees of negligence.

Concealment – the intentional deceit of a person or organization by failing to disclose complete and correct information.

Consequential (Indirect) Loss – a loss or damage that results from an insured's inability to use his/her property because of direct loss to the property of others.

Conditional Contract – an insurance contract in which the insurer's promise is conditioned upon (dependent upon) certain things occurring or being done.

Contribution by Equal Shares – when a Liability Insurance policy says it and another company will pay a share of the loss equally until either the loss is paid or the Liability Insurance policy has paid its limits.

Contributory Negligence - when a person or organization adds in any way to his/her own injury and is barred from recovery.

-D-

Damages – a sum of money that compensates an injured party (an individual or organization).

Deductible – the amount of loss under an insurance policy which an insured must pay before the insurance company will pay its portion of the loss.

Direct Loss – a loss or damage as a direct result of a covered peril or cause of loss.

Direct Mail (Direct Response) System – the writing/selling of insurance by mail or phone.

Direct Writing System – a system where the direct writer producer is an employee of the insurer and not an independent contractor.

Disappearance – when an insured once had the money and/or "securities," and now does not know where they are.

Doctrine of Reasonable Expectations – during a dispute being decided by the courts, the courts ask what a reasonable person would expect in a particular situation.

Domestic Insuror – an insurance company that is incorporated in, domiciled in, and organized under the laws of a state.

-E-

Employee – a person in the service of another under a contract of hire, who acts under the direction and control of the person who hired him/her.

Employee of an Insurance Company – an agent of the company in a limited agency capacity.

Estoppel – the removal of a right or claimed position by acting in a manner that is inconsistent with that right or position.

Excess Reinsurance – a form of Treaty reinsurance, where no insurance is ceded, only the losses are ceded.

Exclusive Agency System – a system made up of agents who represent only one insurance company or a group of companies under common ownership or control.

Expense Ratio – a ratio that indicates the percentage of premiums used to pay the insurers' operating expenses.

Experience Rating – a rating that considers the individual loss experience of a particular insured. It applies loss experience to the present policy year.

Exposure – measure of vulnerability to loss, usually expressed in dollars or units.

Express (Actual) Authority – authority expressly given by the insurer, either orally or in writing.

-F-

Facultative (or Specific) Reinsurance – a form of reinsurance using offer and acceptance of individual risks, in which under a contract of reinsurance, the reinsurer retains the faculty to accept or reject each risk offered by the ceding company.

Family Member – a person related to the insured by blood, marriage, or adoption who is a resident of the insured's household.

Foreign Insurer – an insurance company organized and domiciled outside the borders of your state.

Fraud – an intentional manipulation of the truth, and the act of getting someone to rely on that manipulation of the truth, which results in the person's detriment.

-G-

General Damages – an award based on a measure of intangible damages inferred from the Special Damages and other facts and circumstances (e.g., pain and suffering).

-H-

Hazard – a condition within an exposure that may lead to an incident, "a peril about to happen."

-I-

Implied Authority – authority of the agent, which is not specifically expressed or communicated, but which is consistent with the agent fully exercising the express authority granted by the insurer.

Independent Agency System – involves self-employed parties who enter into contracts with usually more than one insurer to represent the insurers in dealings with the public.

Independent Contractor – one who undertakes an independent calling so as to provide work or service for another person.

Insurable Interest – a financial interest a person has in the object being insured.

Insurance – a technique or business of transferring the risk of an individual or organization to another by means of a contract.

Insurance Agent – a person authorized by an insurer to solicit applications, collect premiums, and write policies on behalf of the insurer.

-J-

Judgement Rate – a rate that is applied solely to individual insureds by the insurance company.

-K-**-L-**

Law of Large Numbers – a mathematical principle, which states the larger the number of exposures, the closer the actual results will come to equaling the expected outcome.

Lloyd's of London – an association of private underwriters, each of whom underwrites (backs) insurance contracts on a basis of personal liability.

Loss Ratio – a comparison of the amount of losses to the premium collected.

-M-

Managing General Agent (MGA) – a person or firm who has an independent business that performs for one or more insurers some or all of the functions typically attributable to a regional or branch office of the insurer.

Market Value – the value of property (either real or personal) as determined by the amount of money people would pay for the property, knowing all the relevant facts.

Mass Marketing – an attempt by insurance companies to provide some forms of insurance in a more economical fashion.

Misrepresentations – a misstatement of facts regarding the subject of insurance (the item being insured).

Mutual Company – an incorporated insurance company owned by its policyholders.

-N-

Negligence – a failure to exercise that amount of care an ordinarily prudent person would use to protect others from unreasonable risk of harm or injury.

Non-concurrence – a term used to describe a situation where there are two or more insurance policies not written with the same coverage, or effective dates.

Non-economic loss – pain, suffering, and other non-monetary losses.

Non-insurance Transfer – the transfer of risk through a contract other than an insurance contract.

Non-renewal – the action by the insurance company to terminate insurance coverage at the expiration date or anniversary date of the policy.

-O-

Occupying – in, upon, getting in, on, out, or off.

Occurrence – an accident, including continuous or repeated exposure to substantially the same conditions.

-P-

Peril – a cause of loss.

Policy Limits – the maximum dollar amount an insurance policy will pay for a covered loss.

Policy Period – the period of time for which the insurance policy provides coverage.

Policy Territory – the geographical area in which accidents, occurrences, or events must happen to have coverage under the insurance policy.

Property Damage – physical damage to, destruction of, or loss of use of property.

Pro-rata Reinsurance – a form of reinsurance where the treaty is set up on the understanding that a certain part of every exposure will be shared on an agreed amount.

Punitive Damages – the sum of money in excess of the amount required to compensate for loss, and which is imposed in order to punish such conduct now and deter similar conduct in the future.

-Q-**-R-**

Reciprocal – a group of individuals or organizations, called subscribers, who join together into an association for the purpose of insuring one another.

Reduction (Loss Control) – the use of any one method or a combination of methods to reduce loss frequency or loss severity.

Reinsurance – a process involving the transfer of risk from one insurer to another insurer.

Replacement Cost – the cost to replace damaged property with like kind and quality without taking into account depreciation.

Retention – acceptance or assumption of the risk of loss, which means any loss is paid out of pocket.

Risk – the chance of loss; the uncertainty of loss; the variation from the expected outcome over time; the difference between expected losses and actual losses.

Risk Management – the practice of protecting an organization from financial harm by identifying, analyzing, and controlling risk at the lowest possible cost.

Robbery – the unlawful taking of property from a person by actual violence or threat of violence.

-S-

Salvage – damaged or recovered stolen property taken over by the insurance company.

Serious Injury – an injury resulting in death, serious impairment of body function, or permanent serious disfigurement.

Sharing – a method of handling risk that involves the potential loss exposure being distributed among a number of persons.

Sinkhole Collapse – damage caused by the sudden sinking or collapsing of land into an underground empty space typically caused by water on limestone or dolomite.

Solicitor – a person who is hired and authorized by the insurance agent to solicit applications of insurance.

Special Damages – the measurable dollar amounts of an actual loss.

Stated Amount – a method of fixing the maximum amount payable in an insurance policy.

Statute of Limitations – any statute that prescribes the time limit in which a legal action must be brought.

Stock Company – an incorporated insurance company owned by its stockholders.

Strict Tort Liability – holds sellers, distributors, and manufacturers of products responsible for defective or unduly hazardous products.

Subrogation – the right of an insurance company to recover an amount of money paid to an insured for a loss when the loss is someone else's fault.

-T-

Theft – any act of stealing.

Tort – a civil wrong (as opposed to criminal) against another party.

Transfer – a technique involving one party transferring the uncertainty of loss to another party or parties.

Transportation Cause of Loss – includes loss or damage arising from collision, derailment, or overturn of a vehicle, stranding or sinking of vessel, or collapse of bridges, piers, or docks.

Treaty –a form of reinsurance in which a contract of reinsurance automatically establishes the terms for reinsuring a class or classes of business.

-U-

Underwriting – the process of selecting a risk and assigning a proper rating classification (to calculate the correct premium) in a manner that the insured obtains coverage and the insurance company obtains a profit.

Unoccupancy – a building that may contain furnishings and/or personal property, but it does not have people occupying it.

Utmost Good Faith – a contract is considered to be a contract of “utmost good faith” when the parties to the contract rely heavily on the honesty and integrity of each other.

-V-

Vacancy – not enough business personal property to conduct normal operations. In a rather broad sense, it means no contents.

Valued Policy – declares the amount that will be paid in the case of a total loss of the property.

-W-

Waiver – the voluntary giving up of a known right.

Warranty – a statement that promises or guarantees that something is absolutely true or will be true in the future.

-X-

-Y-

-Z-



THE NATIONAL ALLIANCE
RESEARCH ACADEMY
RISK AND INSURANCE STUDIES



P.O. Box 27027
Austin, TX 78755-2027
800-633-2165 • Fax 512-349-6194
www.TheNationalAlliance.com

ISBN: 978-1-878204-82-0



www.scic.com/publications

2576-0416