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# **PRELICENSING:**

## **CASUALTY**

## **INSURANCE**

**This course is valid only for the individual in whose name it is registered. It must be completed within three years from date of purchase to be valid. This course may not be sold, transferred or given to any other individual.**

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**IT IS RECOMMENDED THAT YOU READ  
SECTIONS II AND III FIRST  
AND THEN REVIEW SECTION I (POLICY TYPES).**

# READ THIS PAGE FIRST

**Read through** all materials pertaining to the license you wish to obtain (life, accident & health, property, casualty or personal lines).

**Complete the "NONSUPERVISED" exam in an open book fashion. THIS EXAM WILL BE GRADED BY DOHRN INSURANCE TRAINING.** The "NONSUPERVISED" exam is the first exam in the EXAM SECTION located in the read of your text (immediately following the gold sheet in this manual). You must score 70% or better on any life, accident & health, property or casualty NONSUPERVISED exam in order to pass your prelicensing course! If you fail this exam you will be sent a make-up exam. If you fail the make-up exam you must take a prelicensing course from a different provider and attempt to pass their course. **THIS IS AN OPEN BOOK EXAM! LOOK UP THE ANSWER IF UNCERTAIN – DO NOT GUESS!**

**YOU MUST PASS YOUR PRELICENSING COURSE before your license can be issued.** Upon passing this prelicensing course, Dohrn Insurance Training will report your course completion date via the Internet to the Illinois Department of Insurance. **We report course completions to the Division of Insurance every weekday.** Upon successful course completion we will send you a confirmation letter showing your completion date plus a list of incorrectly answered questions. **Once the Department of Insurance receives our report IT WILL TAKE THEM ONE OR TWO DAYS TO DOWNLOAD THE REPORT AND KNOW THAT YOU HAVE PASSED A PRELICENSING COURSE.**

**ALL NONSUPERVISED EXAM ANSWER SHEETS must contain your name AND signature or your request for course completion cannot be honored.** You also need to complete the reverse side of the exam answer sheet so that DOHRN knows how to contact you with NONSUPERVISED exam results in a timely fashion.

If you provide us with the proper information we will grade your exam, contact you and provide you with a list of all incorrectly answered NONSUPERVISED exam questions. Please review all missed questions, since these will probably indicate any weakness you may have.

## **AFTER COURSE COMPLETION, BUT BEFORE TAKING THE STATE EXAM:**

1) AFTER YOU RECEIVE YOUR NONSUPERVISED EXAM RESULTS FROM DOHRN, REVIEW ALL STUDY MATERIALS AND NOTES AGAIN.

2) **The final practice tests for you to complete are the ones marked "SIMULATED".** The answers are provided and these exams should be completed and scored by you about one or two days before you sit for the state exam. Take this exam in "closed book" fashion. By reviewing all missed questions and analyzing the reason you selected an incorrect answer, you will learn from mistakes before they actually count.

## **SUGGESTED FOR CASUALTY INSURANCE:**

**IT IS RECOMMENDED THAT YOU READ SECTIONS II AND III FIRST AND THEN REVIEW SECTION I (POLICY TYPES).**

**ABOUT SCHEDULING FOR THE STATE EXAM:**

\*\*\* YOU SHOULD PASS THIS PRELICENSING COURSE BEFORE YOU TAKE THE STATE TEST.

\*\*\* DON'T FORGET: IF YOU SCHEDULE YOURSELF AND DO NOT SHOW FOR THE PROMISSOR EXAM, YOU WILL PAY THE FEE ANYWAY UNLESS YOU CANCEL OR RESCHEDULE AT LEAST 4 BUSINESS DAYS IN ADVANCE.

**PROMISSOR** test centers are located throughout the state (as well as in Schererville, IN and St. Louis, Mo) but the main locations are

•Downtown Chicago • Schaumburg, • Oakbrook • Springfield.

**TO REGISTER FOR YOUR STATE EXAM WITH PROMISSOR CALL**

**800-274-0402**

FOR OTHER INFORMATION CALL 800-274-1257.

You can access all test information, including online registration information by going to the PROMISSOR website at:

**<http://www.promissor.com/>**

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Remember....Don't say "Darnit!"

...GO TO DOHRNIT!

## STRUCTURE OF THE PROMISSOR INSURANCE EXAMINATIONS

This page illustrates how the testing company THE STATE OF ILLIOIS has contracted with, PROMISSOR, formats insurance exams. Use the handy reference chart, below, to identify the actual number of questions for which you will be held responsible for each exam and part.

**Each of the five insurance exams** (Life, Accident & Health, Property, Casualty or Personal Lines) **are divided into two parts** called PART I and PART II. **PART I is referred to as the “multi-state”** section of the course and the questions pertain to generic insurance concepts relating to the particular testing subject (i.e. Life, Accident & Health, Property or Casualty). The material upon which the questions are based would be similar from state to state. **PART II, however, is state specific law** and question here pertain only to the insurance law of your particular testing state (i.e. Illinois).

**YOU MUST PASS BOTH PART I AND PART II OF A PARTICULAR INSURANCE EXAM IN ORDER TO BE ENTITLED TO APPLY FOR THE LICENSE.** Should you fail one part but pass another, you may return within 90 days and retake only the part you failed without being required to retake the part you originally passed. However, a full test fee will be charged for any exam retake.

**NUMBER OF TEST QUESTIONS, PER PART AND PER EXAM ARE AS FOLLOWS:**

<b>PART I (MULTISTATE)</b>	<b>LIFE</b>	<b>ACC&amp;Health</b>	<b>PROPERTY</b>	<b>CASUALTY</b>	<b>PERSLN</b>
Total Number of Questions that <b>COUNT</b> in your score	50	50	50	50	75
Total <b>“PRETEST”</b> Questions (Do not count in your score)	10	10	10	10	11
<b>PART II (STATE LAW)</b>					
<b>QUESTION WHICH COUNT</b>	31	39	30	37	36
<b>PRETEST QUESTIONS</b>	8	8	7	7	

**Of the law questions** cited above as “questions that count,” **22 are common to all lines of insurance** while **the remainder are specific to the line of insurance.**

**PROMISSOR uses a method called “scaled scoring”** to determine whether or not a candidate has passed an exam. These means tests are statistically analyzed based on the weight given individual questions in the scoring process. Therefore, **straight percentage scoring is not used** (i.e. 70%, 75%, etc.)

**“PRETEST” questions**, although they do not count in your score, **will not be identified as such** and the test candidate is advised to approach answering all questions with equal intensity.

# CASUALTY INSURANCE

## Introduction

Prior to the modern insurance forms first introduced in general usage in 1986, casualty insurance products tended to be confusing and geared toward specified uses. This often led to simultaneous gaps in coverage and frequent duplications. **Casualty products of today broadly cover** and tend to fit neatly into the Commercial Package Policy concept for business customers. The **Commercial Package Policy concept is designed to serve the diversified needs of business entities**. The key to CPP is the fact that coverage can be Monoline or part of a package policy. The CPP, when part of a package is sometimes referred to as the “portfolio” program. Regardless of actual purchase, the same forms are used and all policies have a standard declarations page and common policy conditions.

Casualty contracts available for business, which can be purchased on either a Monoline or CPP basis include:

- + **Commercial General Liability (A CASUALTY POLICY CONCEPT)**
- + **Commercial Bonding and Crime (A CASUALTY POLICY CONCEPT)**
- + **Commercial Auto (A CASUALTY POLICY CONCEPT)**
- + **Workers Compensation Insurance**

The above coverages offer various types of mandatory and optional coverages which can be molded to the specifications of the individual business owner. Prior to the introduction of the CPP, the standard business contract issued was the SMP or Special Multi-Peril policy which combined property and casualty coverages through four sections ( I) Property, II) Liability, III Crime and VI) Boiler & Machinery).The advantage of the CPP policy is its clear organization and broader eligibility to the commercial community.

**Each Commercial Package Policy (CPP) consists of three elements:**

- \* Common Policy Declarations
- \* Common Policy Conditions
- \* One or more parts of coverage
- \* Interline endorsements (as needed) \*

\* **Interline endorsements** are those that could apply, or do apply, to more than one coverage part of a CPP. Their purpose is to minimize the number of endorsements used and to reduce coverage redundancy.

**CPP Common Policy Declarations:**

- + names the insured and lists mailing address
- + describes the business involved
- + shows the period of coverage (time & date it begins & ends)
- + all coverage purchased and the premium cost of each
- + lists all forms which apply to all parts of coverage
- + countersignature and date of signature
- + policy number
- + identifies the insurer and producer

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## CPP Common Policy Conditions:

- **CANCELLATION**- a named insured has this right (short rate) as does the company. The company must give 10 days notice if cancellation is for nonpayment of premium and 30 days notice for all other reasons (pro rate basis). State law may vary these requirements. Five days notice is allowed under special conditions such as 60 or more days of vacancy or unoccupancy.
- **CHANGES** - *only the first named insured can make changes* in accordance with the policy terms and company acceptance. Terms can be waived or changed only by insurer endorsement attached to the policy.
- **PREMIUMS** - must be paid on time by the insured and any premiums refunded are paid to the first named insured.
- **EXAMINATION OF YOUR BOOKS AND RECORDS** - company may examine and audit insured's books any time during the policy coverage and up to three years after.
- **INSPECTIONS AND SURVEYS** (not safety related) company can inspect to determine premium cost and insurability eligibility.
- **TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY** - must have written consent of the company to make an assignment, except in the case of the death of the insured.

This course will focus on the Personal Auto Policy and to a lesser extent upon the corresponding commercial auto concepts pertinent to the insurance exam. **The central differences between the personal and commercial auto policy exist mainly in specified policy coverages** (i.e., garage coverage for business) and not in the generic concepts common to both types of coverages (i.e., the main areas such as liability, medical payments, uninsured motorist, etc.). Miscellaneous coverages such as Professional Liability and Umbrella or Excess Liability will also be defined.

This **first section** which **explains all the policy types is worth 46%** of all state exam questions (23 questions of 50 total). The **concluding two sections, Insurance Terms and Policy Provisions**, contain the material necessary to answer **the remaining 30% (15 questions) and 24% (12 questions), respectively**. Since Sections II and III combined account for 54% of all state exam questions and the amount of material is considerably less than that comprising Section I, the student is advised to take advantage and to understand the brief Sections II and III very, very well. *The student who is also studying for the state Property exam will find that Sections II and III are substantially the same in Casualty.* To put it into the simplest possible terms: **Section I makes up most of the book** but accounts for slightly less than half of the exam test question content area while the materials from **Sections II and III account for slightly more than half of the exam** test question content area but make up far less of the material in this book!

As you study the material in all sections, be sure to **pay particular attention when the handy hand ☞ symbol is present**. The ☞ is your highlight to a key or important point that you do not want to miss. The hand indicates information that either **aids in the fundamental understanding** of a basic concept **or is a likely state exam testing concept**.

## What is Negligence?

The insurance line of Casualty is fundamentally designed to protect the individual or business from liability due to negligence which results in harming another person's body or property. ☞ **Negligence is considered an unreasonable or imprudent act.** It is not an intentional act and can be the result of ignorance, thoughtlessness, carelessness or inaction. In order to prove damages, **a claimant establishes four things (ALL FOUR).**

- 1) **Demonstrate** that a **duty** was owed the injured party.
- 2) **Show a breach of that duty** by the defendant (insured)
- 3) **Show an actual injury** to a person or property has occurred; and
- 4) **Establish** that the breach of duty involved is the **proximate cause** of the injury (an uninterrupted chain of events, linked to the negligent party, was responsible for loss.)

**All four elements must be present for an injured party to win a law suit.**

Many successful liability lawsuits (also called "Torts" or arising from a "Civil Action") stem from real property ownership, usually this is referred to a "premises" exposure. The owner of a building and land owes a duty to keep that property safe, depending upon who the potentially injured party might be:

- **Trespasser** is someone who enters the close or area of another without the owners permission. The owner owes a duty not to be grossly negligent (i.e. not keep wild animals about) or guilty of intentionally harmful activities (set up a trap designed to injure, maim or kill intruders).
- **Invitee** is someone who has been asked by the owner to come onto the property, usually for the owner's benefit. A very high standard of care is required to keep the invitee safe from harm including pointing out all possible hazards.
- **Licensee** can come onto the premises at the invitation of the owner. This invitation can be either expressed or implied (an example of implied invitation is the mailman or a meter reader). A high standard is owed, but not as high as to an invitee.
- **Children -- Attractive Nuisance Doctrine** is a situation which draws the attention and possible injury of a child. This creates a "strict" or what is known as an "absolute" liability situation. Under the idea of strict liability, the injured party does not need to prove negligence. They simply have to qualify as a specially protected class under law (i.e. a child; an employee who is injured on the job).

### Collecting Damages for Proven Negligence

Once a claim of negligence has been proved or acknowledged, damages must be established. Damages are what make the injured party "whole" again. The basic types of damages are

- 1) **Special Damages** - these are actual **out-of-pocket expenses** suffered by the injured party and include such items as medical expenses incurred and lost wages. These are easily established and are sometimes referred to as "objective," meaning everyone can determine them by looking at the facts of the situation.
- 2) **General Damages** - these are "**subjective**" or very personal and are compensation for the injured party's "pain and suffering." They are usually determined as a percentage of special damages (usually 200% to 300%) or are determined by a jury if a prior settlement cannot be reached.
- 3) **Punitive Damages** - are a **punishment** to the offending party (whose is called a "tortfeasor" in a civil or tort action). They are set by either a judge or a jury and are designed to be financially painful to the tortfeasor as well as to others who might also engage in behavior similar to the party to whom punitive damages were assessed.

The amount of money actually collected by an injured party in a legal action is also determined by a particular state's **"comparative" negligence standard**. While **Illinois** is one of 17 states embracing the **"Pure" standard**, the others follow either the **49% Rule or 50% Rule**. Comparative negligence means that the injured party can only collect a percentage of a court award based on the total responsibility of the tortfeasor in the injury. Responsibility can be assessed anywhere from 1% to 100% at fault. *In a pure standard state, the injured party collects as a percentage of the offending party's responsibility, no matter how low or high.*

However **in a 49% Rule** jurisdiction, the *injured party cannot collect any amount unless the defendant was at least 51% at fault*. This indicates the injured party must be at least some degree less responsible than the person being sued. Half at fault or more will not enable the injured party to collect in a 49% Rule state. *In a 50% rule state, the injured party can be no more than half at fault for their own injuries to be allowed to collect.*

Prior to the adoption of comparative negligence standards, some states used the now extinct **"contributory negligence"** doctrine. Under contributory negligence, the person who is pursuing a claim could not hold liable the other party if it was ruled that the claimant, through a failure omission, or negligence of their own, had partly contributed to their own injury, in any degree—no matter how small!

### **Some other casualty ideas and definitions:**

**Common Law** - is law which is interpreted by judges through which legal precedents are followed.

**Statutory law** - is law which is written by legislative bodies either on a federal, state or local basis.

**Personal Liability** - **An individual is liable for injury to another**, or to their property, from both intentional acts and negligence. Sometimes negligence is a matter of law (called strict or absolute liability). In order to collect, an injured party sues an offending party for what is known as a **civil action, or "tort"**.

**Assumption of risk** means a party knew of an existing risk and understood injury was possible, yet went ahead and subjected himself to the risk anyhow. Subsequently, when such a party did get hurt, it was sometimes ruled the party had assumed the risk and could not collect damages.

**Res Ipsa Loquitur** is a legal term taken from Latin and literally means **"the thing speaks for itself"**. In other words, the thing that happened could not have happened unless negligence was involved. Therefore the thing speaks for itself and negligence was involved (i.e. a piano drops from the sky onto your head as you walk your dog in the morning. Such an occurrence could not happen but for someone's negligence).

**Respondeat Superior** means that an employer can be held liable for any negligent acts committed by his employees or agents if some other party or third party suffers an injury. We say that **negligence is imputed to the employer or principal**. Literally translated from the Latin, this term means "the master is responsible" (for the acts of his servants). This area of English common law embodies the **Master-Servant** principles that the servant can bind the master for his actions taken on behalf, and within the scope of the authority granted from the master. This is the prelude to current **Agency Law principles**, namely, the agent who acts on behalf of the principal binds the principal for actions taken within the scope of permission granted. It is the basis for the **modern concept of Workers Compensation** as well as establishing legal liability to a commercial concern when an employee or a faulty product causes injury or damage to a third party.

## Section I) Types of Policies, Bonds and Related Terms

(46% or 23 Questions On State Exam)

### A) Commercial General Liability

The millions of **business** in the world **need to be protected against the many perils that can create legal liability** that could possibly threaten the actual existence of the firm. **The Commercial General Liability (CGL) policy** essentially offers businesses coverage involving injuries to persons who are **1) ☞ not employees of an insured ☞ and 2) who were not injured due to the use of an automobile**. Although there are millions of individual firms involved in thousands of different types of activity, their actual casualty insurance needs stem from one or more of the following exposures or **“BASIC HAZARDS”**:

- **Premises** (Building or real property ownership related)
- **Operations** (related to the conduct or activity of the business or employees)
- **Products** (those made or designed improperly)
- **Completed Operations** (work already performed which later creates liability)
- **Independent Contractors** (IC is usually accountable BUT for exceptions; also called contingent liability )
- **Contractual Liability** (liability arising out of an agreement)
- **Miscellaneous** (usually relating to the “care, custody and control” of the property of others)

**1) Premises** - exposure **results when a business is conducted from one or more locations**. When considering the business premises as a risk, we need look only to all the possibilities arising from people coming and going into a building. Can you think of one or two dozen scenarios for which liability could arise? *Lawsuits from injury arising out of the ownership and maintenance of land and buildings are quite common.*

**2) Operations** of a business is important relative to the *actions of the owner and/or employees while on or away from the premises*. Liability arising from conduct of either the owner or employees is covered under the CGL whether on or away from the premises.

**3) Products** - assume the maker and seller of a product has placed the product into the hands of the customer. Potential liability does not end at this point if the product was faulty. *The manufacturer and the distributor of an improperly made product which injures someone are both exposed to legal liability*. In addition to assertions of negligence, the **law also allows a claim for breach of warranty** ( a product was supposed to perform in a certain manner as promised, but does not) **and strict liability** (facts presented don't require proof of negligence to establish liability. Poor manufacture, design flaws and failure to provide adequate warnings (who can forget the McDonalds Grandma who sued because the company didn't warn her that the coffee that burned her legs was really, really hot?) are all loss exposure for a company.

**4) Completed Operations** - very similar to the product exposure since **it involves loss potential from work of the firm that has already been preformed**. Any completed work is a product of a company and as such, any resulting defects can result in liability to the firm. Under the CGL, coverage exists under the form called *products and completed operations coverage*.

**5) Independent Contractors** - this area is also called **“Contingent Liability”** and refers to the situation in which an **individual or business can be held liable relating to a job done by independent contractors**. Since an independent contractor (**IC**) **is not an employee**, the principal (owner of a business hiring the IC) does not control the actions of the IC. Logically the negligence of the IC will not make the principal liable but there are some exceptions to this idea. **The principal may be held liable if:**

- 1) the principal provided any supervision of the IC or
- 2) the work involved was inherently dangerous or
- 3) the actual work being performed is illegal. Furthermore, some duties cannot be delegated by a principal to an IC and those duties will still be the responsibility of the principal. For these reasons, coverage is provided either written separate or it is included in the premises and operations coverage.

**6) Contractual Liability** - it is common for business firms to enter into oral and written agreements with one another. These legal relationships can also create liability to one firm based on the actions of the other firm. This is also ☞ **part of the products and completed operations coverage**. Many business to business agreements have a clause that indicates one party will assume any potential liability (this party is called the “indemnator” on behalf of the work of the other firm (called the “indemnitee”) . This is called the “hold harmless” clause.

**7) Miscellaneous Exposures.** Some firms have exposure because they are working on the property of their customers. However, the typical CGL policy does not include such liabilities under the “care, custody and control” exclusion. Some special endorsements or specialized coverage may be available to overcome this exclusion for firms with the need to have temporary possession of the property of customers.

## Commercial General Liability Coverage Forms

**(Insuring agreements include Coverage A, B and C as described below)**

### **a) Coverage A: Bodily Injury and Property Damage Liability**

"Coverage A" is for **bodily injury and property damage liability**. This includes premises and operations liability, products and completed operation liability, contractual liability, etc as described in the previous section.

In general, **bodily injury and property damage liability** pays sums that the insured becomes legally obligated to pay due for both bodily injury and/or property damage, for covered instances. **The sum** that the insurer becomes legally obligated to pay on behalf of the insured **is governed by limits of liability** for the particular coverage involved. This means a policy will never pay more than the limit, **as it is defined in the insuring agreement**.

An insured's liability is restricted to what they are legally obligated to pay. Obviously no insurance company will pay a greater sum than it is legally obligated to pay as defined in the insurance contract.

**Bodily injury includes** sickness or disease sustained by any person that occurs during a policy period, including death which results any time during the policy period. The nature and severity of the injury involved, the degree of liability and the amount of special damages are considered when formulating damages.

### ☞☞☞ **CGL Coverage Forms - Two available today: 1) “Claims Made” and 2) "Occurrence"**

**The “Problem”**-- In the past, liability coverage was written only on an occurrence basis. Unknown dangers in one time period that do not become evident until a future time period became a special problem to insurers. **Insurance companies found themselves being held liable in the present for liabilities created out of the distant past**. The most famous example for this stems from asbestos use in the 1940's and 1950's. Losses started to become evident in the 1970's and 1980's. Insurers who covered asbestos manufactures in the 40's and 50's under an occurrence contract were put in the expensive position of paying for claims being filed in the 70's and 80's.

Today, **either an "occurrence" form or a "claims made" form is available**. The actual **coverages** between the two forms **are identical** except for the concept of the time element which activates whether or not coverage exists.

1) **Occurrence Form** - protects the insured against “latent” injuries, those that are not discovered for long periods of time from the point they actually begin (refer to asbestos example, above). The initial cause of the claim is referred to as the “trigger” or activity that sets the liability in motion until it is actually discovered at a later time. **Occurrence form is more expensive than its claims made counterpart but is still purchased much more frequently**, much to the disappointment of the insurance industry. The exact language of the insuring agreement of the occurrence form follows:

*“We 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. The bodily injury or property damage must be caused by an occurrence. The occurrence must take place in the coverage territory. We will have the right and duty to defend any suit seeking those damages.”*

2) **Claims Made Form**- all claims must be made during the coverage period itself. The actual language of the insuring agreement for the claims made form is:

*“The insurance applies to bodily injury or property damage only if a claim for damages because of bodily injury or property damage is first made against any insured during the policy period.”*

The “trigger” of the claims made form is the date when a claim is reported and recorded by either the insurance company or by the insured relating to the damage or injury that took place after the policy

☞ **“retroactive date.”**

a) **Retroactive Date** - this restricts coverage in a claim made form by limiting it to any claims arising from events that occur ☞ **after the stated retroactive date.** ☞☞ The **very first** retroactive date of a claim made policy **is the date** when a **claim made** form actually **replaces** an **occurrence form**.

By using this method, there can be **no duplication of coverage between the two forms** when a firm makes such a form switch. Any **subsequent purchases of a claims made form** from another insurance company, for instance, **will result in the newly issued policy to bear this same original retroactive date.** This means there is ☞ **uninterrupted coverage from** the most recent occurrence form to the most recent claims made form. **Losses will be covered by the claims made form then in effect** when the claim is discovered **unless** the *first trigger occurred when the preceding occurrence form was in effect.*

It is **possible to have a gap in coverage** when purchasing a claims made form if the retroactive date is after the date the last occurrence form expired. *If a loss arises out of this gap period, there would be no coverage.* The normal method for insuring this gap period is to buy an ☞ **“extended reporting date endorsement.”**

2) **Extended Reporting Date Endorsement** - this endorsement eliminates the coverage gap in a claim made form with its language that allows any claim reported in the gap period to have been reporting during the time coverage was actually in effect. **There are three types of extended reporting date endorsements**

a) **Basic** - **two** of the three extensions **are built into the basic coverage.** The **basic extended reporting period coverage** starts at the conclusion of a policy period but is activated upon an interruption of claims made coverage (i.e. a failure to renew, a cancellation, a policy is renewed but with an advanced retroactive date or a policy is replaced with an occurrence form). There are two parts of the basic period and they include

- a claim arising after the retroactive date, but before the policy expiration date IF reported within 60 days of the expiration date.
- a claim arising within five years of the date of expiration (also referred to as the “five year tail” of a policy that is reported to the insured or company during the policy period or within 60 days of policy expiration.

b) **Supplemental** - this is **the third type** of extension for the claims made form. The **supplemental extended reporting period coverage** is available for an additional premium and must be elected within 60 days of the expiration of a policy. Supplemental is different from basic in that supplemental coverage will apply even if the loss is covered by other insurance. Another advantage in purchasing supplemental is the reinstatement of the original policy limits, something not available under the basic coverage.

## b) Coverage B: Personal Injury and Advertising Injury

. "Coverage B" provides **personal and advertising injury liability protection** as a standard part of the CGL. **Personal injury** includes all of the following:

- **malicious prosecution** is unfounded legal action taken to cause another party cost and inconvenience
- **libel & slander** -written or oral publication of untrue and harmful statements towards a firm's products, services or goods
- **false arrest** or detainment or imprisonment of any person.
- **unlawful eviction or entry** of a person from a dwelling, premises or room that person occupies.
- **violation of the right to privacy** including oral or written publication of material violating this right.

**Advertising injury** means:

Injury arising out of written or oral publishing of material that libels or slanders a person or firm or their products services or the violation of a person's right to privacy. It also includes stealing the advertising ideas or style of another and copyright, title or slogan infringement.

**Exclusions are limited** and include liability assumed under contract, and personal or advertising injury that is willful and violates a criminal statute. Knowingly defaming with false statements is also excluded.

## c) Coverage C: Medical Payments Coverage

**Medical Payments** - This is "Coverage C" of the commercial general liability policy and it **agrees to pay medical expenses which are incurred within three years of an accident during a policy period when bodily injury occurs on the premises owned or rented by an insured, or for bodily injury which results from the insured's operations.** However, the **insured must report all medical payment expenses to the insurance company ☞☞ within ONE year of the accident.**

**Under Coverage C terminology, negligence does not have to be established** in order to make a policy pay a claim. It is "no fault" coverage. There is reimbursement for medical payments for necessary hospital, ambulance and funeral expenses and professional nursing care, first aid which is given when an accident occurs, any necessary medical, surgical, prosthetic devices, x-ray and dental services.

**Typical exclusions under Coverage C (medical payments for bodily injury) include**

- bodily injury to all insureds, not just the named insured
- tenants coverage only applies in non-occupied areas.
- people who are covered under workers compensation
- event's unrelated to the insured's business which take place on the insured's property

## d) SUPPLEMENTAL PAYMENTS

**Under Coverage A and B, above**, the insurance company will also pay the following:

- \_ **all reasonable expenses** and up to **\$200 per day of lost wages** when the insured is incurring expenses at the insurer's request to help in an investigation or defense of a claim or lawsuit ( i.e. attending court at the request of the insurer and missing work).
- \_ **bail bonds costs** up to \$250
- \_ **cost of bonds** to release attachments
- \_ any **expenses incurred by the insurance company**
- \_ **all cost levied against an insured in a lawsuit**
- \_ **reasonable expenses to the insured in ☞ defense of a claim**
- \_ **interests payments**, both prejudgment and post-judgment

**KEY POINT> These supplemental payments do not reduce the CGL liability limits ☞ THEY ARE PAID IN ADDITION TO the applicable limits of liability.** Therefore this coverage provides unlimited coverage for defense cost **PLUS** the limits of liability under coverages A & B. Coverage for defense costs only applies when: 1) A specific assumption of the defense costs has been contractually agreed to, 2) the obligation to defend applies only when the insured and indemnitee (a party to whom indemnification is owed via the insurance contract, including a third party) are both being sued in the same action, 3) there must be no obvious conflict of interest between the insured, 4) the indemnitee and the insured must agree to the use of the same legal counsel to represent both parties, 5) the indemnitee must agree to cooperate with the insurance company in defending the lawsuit and 6) the indemnitee must agree to notify any other insurer whose coverage is available to the indemnitee and to cooperate with any such coordination of other coverage.

**e) Who is an Insured?** Any person or firm specifically named in the declarations section of the contract meets the definition of an insured. The **definition expands** to include any party for whom the coverage would pay in the event of loss **according to any of the terms of the policy**, whether those parties are specifically named or not.

## **f) Limits of Liability**

- ★ **Combined Single Limits** - applies to bodily injury **and** property damage on a per-occurrence basis.
- ★ **Aggregate Limit** - applies to the products and completed operations with a separate aggregate limit applying to ALL OTHER COVERAGES COMBINED.
- ★ **Sublimits** (or split limits) apply on a **per person basis** for personal & advertising injury liability (Coverage B) and on a per person basis for medical payments (Coverage C).

**Exclusions to the CGL Policy** > There are ☞ **fifteen exclusions** to the CGL policy and many of the excluded exposures are easily insured against through other policy coverage forms while some are not. They are as follows

- 1) **Expected or Intended Injury** - there is coverage however if reasonable force is used to protect persons or property.
- 2) **Contractual Assumptions** - liability assumed under agreements is excluded but coverage does apply to “insured contracts” (leases, sidetrack agreements, easements and those related to the insured’s business if tort liability has been assumed.
- 3) **Liquor Liability** - a business contributing to the intoxication of a patron can be held liable for the torts created by the drunken customer. This exclusion applies to companies that make, sell or distribute alcohol and a Liquor Liability endorsement is available for additional premium for firms serving alcohol. The exclusion would not apply, however, to a church group selling drinks as part of a nonprofit fund raising activity.
- 4) **Workers Compensation** - liability excluded to employees under the CGL form.
- 5) **Employers Liability** - also relates to employee injuries that should be covered under the Workers Compensation form.
- 6) **Pollution Exclusion** - excludes bodily injury and property damage as well as liability for cleanup costs.
- 7) **Aircraft, Autos and Watercraft.**
- 8) **Mobile Equipment**
- 9) **War Exclusion**
- 10) **Care Custody and Control**
- 11) **Damage to the Insured’s Product**
- 12) **Damage to the Insured’s Work**
- 13) **Property Damage to Impaired Property**
- 14) **Product Recall** - recalls are very expensive and coverage is available for this specialty on a limited basis.
- 15) **Employment Related Practices.**

## B) Automotive: Personal Auto and Business (commercial) Auto

The focus of this section will be placed upon the Personal Auto Policy (PAP) but all the sections explained below will also pertain to Business Auto Commercial policies. The last section in Automotive will discuss the Garage Coverage Form which is applicable only to commercial insurance and not to personal lines coverages.

**The PAP is one of the most complicated insurance contracts in existence**, but it is complicated out of necessity. Owning and operating an auto can expose the individual to **three basic types of loss** including damage or loss to the automobile, injury to the insured and/or member of the family of the insured and legal liability. Legal liability can be imposed in more than one way due to the ownership and operation of the auto. **The PAP is a package policy because all three types of loss exposure are covered under this one contract form.** There are also various endorsements which can be added to the PAP including uninsured motorist coverage, medical payments and physical damage insurance. ☞ **The PAP is a Multiline Policy.**

To qualify for a personal auto policy, only certain types of vehicles may be included in the coverage. The first cardinal rule of qualifying for the PAP is that the **automobile must be owned either by an individual or by a husband and wife who reside in the same household.** Therefore automobiles which are owned by corporations, partnerships or by two or more individuals who do not live in the same household are not eligible. The one exception to this rule would be a motor vehicle owned by a family farm partnership or family corporation would be eligible as long as it meets all the existing

The automobile which is to be covered **must be a private passenger automobile which bears the definition of "a four wheel motor vehicle** (not a truck type) which is owned or leased under contract for a continuing period of at least six months". ☞ **No private passenger automobile can be used as a public or livery conveyance vehicle** and it cannot be leased to some other party. The pickup truck or van may be qualified for PAP coverage if it is owned by a qualifying individual or husband and wife residing in the same household while meeting the size requirements. ☞ **A van or pickup cannot have a gross weight of 10,000 pounds or more** and use restrictions include delivering or transporting goods and materials. The exception to the use limitation will allow delivery or transportation of goods or materials that are just incidental to the business of installing or repairing equipment for use on a farm or in ranching. The personal auto policy can be used for covering motors homes, motorcycles, golf carts and snowmobiles.

There are **six parts of coverage to the PAP** including

- 1) Part A: Liability Coverage
- 2) Part B: Medical Payments Coverage Part
- 3) Part C: Uninsured Motorist Coverage
- 4) Part D: Coverage For Damage To Your Auto
- 5) Part E: Duties After An Accident Or Loss
- 6) Part F General Provisions.

**Parts A, B, C and D are four separate coverages that are included in the policy and each part has its own insuring agreement and bears individual exclusions.** Parts E and F will apply to all sections of the policy, whereas Parts A through D, since they are separate can all be added, or can be added by section as required by state law.

### 1) Liability Coverage - PART A

The insuring agreement under liability means the insurance company must pay for all damages for which the insured becomes legally liable because of an accident up, to the stated policy limit.

☞☞ **Bodily injury and property damage are both provided for in this agreement and can be subject to either split limits or a single limit.**

Depending on state law, the minimal amount of coverage can vary from \$25,000 per accident and this amount can be increased in multiples of \$50,000 and \$100,000 and can reach much as \$1,000,000 of coverage. The insurance **company must defend the insured in a legal action** but can make a settlement at any time without the insured's permission. The insuring agreement also makes the point clearly that *the insurer does not have to defend the insured once the policy limits have been met and exhausted.*

This is probably the **most important area of automobile coverage**. Liability coverage **protects the insured against the liability they may create because of the automobile they own, maintain or use**. Since the law expects people to act responsibly when operating a motor vehicle, the potential for liability is enormous. Any damages that result from an insured's failure to act responsibly (the breach of duty concept) will shift liability from the victim to the negligent party.

**Remember, Liability insurance consists of a) Bodily injury liability and b) Property damage liability.**

**Since the Auto policy provides coverage for both property and casualty (liability) damage, it is a "MULTILINE" policy.** It is a necessary purchase because liability and damages incurred from the operation of a car are specifically excluded under homeowners policies.

Most auto insurance purchased (80%) is personal insurance. Historically, negligence or fault had to be established before a recovery could be made. No-fault Auto insurance came on the scene with the concept that each party collects from their own insurer for loss. However, a pure no-fault system would conflict with our tort legal system and therefore only "modified no-fault" programs have been adopted in some states. Modified no-fault enables an injured party to sue in specified circumstances or when damages exceed some threshold amount. Personal Injury Protection (PIP) are the benefits payable under a no fault system.

In the 1950's the family auto policy was introduced and was replaced in 1977 with the Personal Auto Policy. The PAP used simpler language and made the auto policy more concise and personalized. **The PAP insures individuals and entire families as opposed to commercial risks.**

**The Personal Auto Policy (PAP)** - Insures cars, pickup and delivery trucks, and vans (if not used in business). The PAP is available to private individuals and husbands and wives living in the same residence and household. **The PAP is not available to corporations, partnerships or other organizations that can be incidentally responsible for the use of insured vehicles. The inception date of a PAP (the day at which coverage begins) is at 12:01 a.m. on the date listed in the policy.**

**The definition of insured is quite broad and includes not only family, but also extends to anyone you give permission to drive your vehicle.** The liability coverage under a PAP policy is for any insured who becomes legally responsible for the bodily injury or property damage to someone else because of an auto accident. An insurance company will pay sums up to limits stated in the declarations portion of the PAP.

**Damages paid for bodily injury** include not just the payments of actual medical costs which can be documented, but also for a person's pain and suffering due to the injury.

**Property damage extends to** any kind of property which is damaged due to the negligent operation of the auto. Property can include vehicles, buildings, street lights or any other stationary object.

**Eligible vehicles for PAP coverage include** any private passenger auto and any pickup or van with a gross weight of less than 10,000 pounds which is not used in a freight or delivery business.

**Limit of Liability** - the PAP can be written as a ☞ "single" limit applying to **combined** bodily injury (BI) and property damage (PD) resulting from any one accident. **Available by endorsement, or where required by law, are ☞ "split" limits** (split limits are required in the State of Illinois) in which the **BI and PD are shown separately** and BI is further split into amounts for each person and each accident.

For example: a split limit is **stated as three numbers** separated by slash (/) marks (i.e. 20/30/20). The **first two** numbers are **related to BODILY injury**: the first number (20) is the limit per person in one occurrence and the second (30) is the limit of the policy for all persons per one occurrence. The **last number (20)** refers to **PROPERTY damage** and is the limit for all property damage caused in one occurrence. This method is also referred to as "**split limits**".

***IN ADDITION TO THE LIMIT OF LIABILITY, THE POLICY ALSO PAYS "SUPPLEMENTARY PAYMENTS", AS LISTED BELOW:***

**SUPPLEMENTARY PAYMENTS** are paid **in addition to** the limits of liability:

- + up to \$200 per day for lost wages when the insured is required to attend a legal hearing or trial
- + bail bonds costs up to \$250
- + cost of bonds to release attachments
- + any expenses incurred by the insurance company
- + reasonable expenses incurred at the insurer's request
- + interests payments (post judgment)

**Exclusions to PAP Liability include** liability for

- ⊗ bodily injury to an **employee during the course of employment** (does not apply to bodily injury to a domestic employee unless covered by worker's compensation benefits),
- ⊗ people engaged in the business of selling, repairing, serving, storing or parking automobiles
- ⊗ any **vehicle** which is being **used for regular business purposes**
- ⊗ any liability arising out of the ownership or **operation of a vehicle while it is being used** to carry people or property for money or a fee (called a **livery service**)
- ⊗ any **intentional injury** or damage
- ⊗ damage to **property owned or being transported** by the insured
- ⊗ coverage is excluded for bodily injury or property **damage due to nuclear causes**.
- ⊗ use of a vehicle without a reasonable belief that one has permission to do so (**theft**)
- ⊗ **vehicles with fewer than four wheels**

## **Medical Payments- PART B**

Medical payments coverage provides for the reimbursement of medical expenses incurred by those who fit the definition of insured in automobile related accidents. The **normal** liability for medical payments **coverage is 1,000 per person** and that would apply separately to all people who would be injured in any given accident. This \$1,000 limit can be raised for a nominal amount of money to \$5,000 or \$10,000 per person. The reason the amount seems so low is because this coverage is not intended to substitute for hospital (health) insurance.

Again there is no limit on the number of people who can collect in an accident. **The personal auto policy insuring agreement for medical payments coverage is as follows:**

*"We will pay reasonable expenses incurred for necessary medical and funeral services because of bodily injury:*

- 1) Caused by accident.*
- 2) Sustained by an insured.*

*We will pay only those expenses incurred within three years from the date of the accident."*

**Bodily injury is defined quite broadly** in this insuring agreement and includes not only injury but also sickness and/or disease and even death if it is a result of an automobile related accident. Medical payments coverage applies to both the named insured and to any family member who sustains bodily injury caused by an accident while occupying a covered auto. ☞ **"Occupying"** has a very broad definition including **being in a car, upon it, getting in, on, out or off of the car**. Accordingly any little accidents relating to getting in or out of cars, such as a car door slamming on a child's fingers would be covered under the medical payments coverage of the personal auto policy.

The coverage also extends to the named insured and all family members while they are pedestrians if they are struck by any other motor vehicles which are designed for use on public roads. If the pedestrian goes beyond merely walking, also included are such activities as riding a bicycle and, perhaps, roller skating.

Medical payments has its **own exclusions** (⊗) and most of them are **similar to those found under the previous section under liability coverage** (see liability exclusions). A **couple of additional exclusions** found under medical payments coverage include: exclusions for injuries caused by discharge of nuclear weapons, civil war, war, insurrection, rebellion, or revolution and any injuries caused by nuclear reaction, radiation or radio active contamination.

The **medical payments coverage is also subject to a limit of liability in relation to duplicate payments**. Additional payments will not be made for similar losses under the medical payments coverage and the uninsured or underinsured motorist coverage. Regardless of fault, the insured, his family and passengers are covered for necessary medical and funeral expenses **sustained within 3 years from the date of an accident**. The insured and family members are also covered if they are struck by an auto when they are a pedestrian.

## Uninsured Motorists OR PART C

**Uninsured motorist protection was created to provide the insured and his family with coverage in the event they suffer injuries at the hands of an uninsured driver**. Coverage extends to a hit and run driver and a driver whose insurance company is no longer solvent. The insuring agreement of the uninsured motorist **coverage promises to pay the amount of damages that the insured would have collected from the insurance company of the uninsured driver if that driver had owned the proper amount of auto liability insurance**. The standard limit for the coverage is dictated by the state financial responsibility law and higher limits are available for an extra premium. **When the insured is hurt by an uninsured motor vehicle, the definition of coverage includes:**

- 1) *A motor vehicle that is not covered for bodily injury liability insurance or for which the bodily injury limits are less than the limits that are required by state law.*
- 2) *Hit and run vehicle.*
- 3) *A vehicle that was insured at the time of the accident but the insurance company subsequently becomes insolvent.*

An uninsured motorist is someone that may strike you, but who does not carry insurance (also includes hit-and-run drivers). Coverage to the insured is for **BODILY INJURY ONLY**. However, the laws in some states make it mandatory to also include, by endorsement, coverage for property damage as well. **Uninsured motorist coverage is mandatory according to Illinois law** and must be purchased by every motorist. Illinois requires coverage for both bodily injury and property damage.

## SETTLEMENT AGREEMENTS

The question may arise as to whether the injured party can collect from the uninsured motorist as well as from the injured party's insurance company under uninsured motor vehicle protection. This issue is settled according to the written agreement between the insured party and the insurance company. However, if the injured party who was covered and the company aren't able to reach agreement on this point, it may be settled by arbitration. In arbitration **the insured and the insurance company would choose an arbitrator while each of the arbitrators would select an independent third party who's called an umpire**. It is up to the three arbitrators to decide the issues involved in the case between the insured and the company. If the two arbitrators cannot agree then the third independent party who will be the umpire within thirty days, an umpire would be appointed by the court which has jurisdiction of the parties. In such a case, both the insured and the insurance company would pay the cost of their own arbitrator while sharing the cost of the umpire.

**EXCLUSIONS**-There are seven important exclusions under uninsured motorist (Part C) coverage including:

- 1) Any injury sustained while occupying an owned vehicle that is not insured for uninsured motorist coverage under the policy.
- 2) Bodily injury sustained by any family member while occupying or if struck by a vehicle owned by the insured and covered on a primary basis under another policy.
- 3) If the injured person settles with the negligent party without the insurer's consent.
- 4) The standard exclusion of an auto which is used for public hire or as a livery conveyance.
- 5) The exclusion of any vehicle used without a reason to believe that the person is entitled to be using it.
- 6) The coverage shall not apply directly or indirectly to benefit any insurer or self insurer under any workers compensation disability benefits or similar laws of the state.
- 7) Also excluded is coverage for punitive damages under uninsured motorist coverage. (This exclusion was added after the others because, courts were ruling that unless it was specifically excluded in the contract, then it could possibly be included).

**Underinsured Motorists Coverage** (note the “Under”)

This is a corollary concept to uninsured motorist. Coverage can be purchased by *adding an endorsement when the limit of uninsured motorist coverage is above the limit required by any financial responsibility laws* (state statute). Here, the "other guy" has insurance, but not enough to pay your damages. Coverage is for all autos under a policy.

**Underinsured motorist coverage** pays bodily injury coverage caused by the operation of motor vehicles which are underinsured. The underinsured motorist coverage **allows a covered person to be paid the difference between what actual damages for bodily injury were and what the limit of the other drivers insurance was when it was not sufficient to pay the entire claim of the injured party.** This enables you, the injured party, to collect under your own policy for any deficiencies or inadequacies that exist from other motorists who do not have enough insurance. The amounts otherwise payable are reduced by any amounts paid by the driver who was legally responsible for the loss (i.e. the under/un insured motorist).

This is sometimes referred to as ☞“non-stacked” coverage:

*(i.e.: A is at fault and has 20/40 coverage and hits Z who has 100/300 underinsured limits and the total loss amount is \$120,000.. Z's insurance company will only pay \$80,000 of the loss (thus the non-stacked idea). If Z's coverage had been stacked, then they would have paid the full \$100,000 and, with A's \$20,000 of insurance, the entire loss would have been covered for Z).*

**Physical Damage (PART D)**

Collision and Comprehensive -( comprehensive is known today as “other than collision” coverage)

1) **Insuring Agreement:** This is ☞*open perils (all risk) coverage* and the insuring agreement will offer loss by collision only if the declaration section indicates that such loss would be covered. **The following is the exact language used in the PAP contract:**

*"We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including their equipment, minus any applicable deductible in the Declarations. If loss to more than one of "your covered auto" or "non-owned auto" results from the same collision, only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:*

A) *Other than "collision" only if the Declarations indicated that Other Than Collision Coverage is provided for that auto.*

B) *"Collision" only if the Declarations indicate "Collision" coverage is provided for that auto.*

*If there is a loss to a "non-owned auto", we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations."*

The exact definition of ☞ "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*

The definition of a ☞ "non-owned auto"

A) *"Any passenger auto, pickup, van or "trailer" not owned 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"; or*

B) *"Any auto of "trailer" you do not own while used as a temporary substitute while your "covered auto" which is out of normal use because of its breakdown, repair, servicing, loss or destruction."*

**Hired Auto.** Another useful benefit of collision coverage and non-owned auto is in the rental of an automobile from various car rental companies. These car rental companies provide the lessee with automobile insurance for liability medical payments and uninsured motorist coverage but there is no provision for coverage to the lessee for physical damage coverage. Such coverage is usually offered at a quite high cost of from \$7.00 to \$15.00 per day. However, *if you carry comprehensive and collision on your own car, this coverage is automatically applied to the non-owned auto which is being rented from the car rental agency.* The policy deductible of the renter's PAP will apply to any claims made while driving the rented vehicle.

## **EXCLUSIONS TO PHYSICAL DAMAGE COVERAGE**

The exclusions to the physical damage coverage are numerous. **Nine of the exclusions apply to the vehicle** and their equipment under specified circumstances **while five of the exclusions apply to the types of property that are excluded from coverage.** The fourteen total exclusions follow. **The ☞ nine exclusions applying to specific loss situations include:**

- 1) When the auto is being **used for livery conveyance.**
- 2) Coverage for **damage due to wear and tear**, freezing, mechanical, electrical breakdown or failure, and road damage.
- 3) Loss **caused by radio active contamination** and nuclear weapons.

- 4) When the vehicle is destroyed or **confiscated by civil authorities** or local government.
- 5) When the non-owned auto is **being used** and there is **no reason to believe that the user has permission** to use the vehicle.
- 6) Any non-owned auto damage where the **auto is being used by an insured while they are employed in the automobile business.**
- 7) Non-owned auto damage when the auto is being used by a person who is employed in any business other than the garage business.
- 8) Any owned or non-owned auto that is damaged while **located inside a racing facility.**
- 9) Rental vehicle loss when the rental company cannot recover for the loss due to either provisions in the rental agreement or because of the application of state law.

**The five exclusions that pertain to property itself include:**

1. **Sound and communications systems** that are **later installed** into an automobile.
- 2) A camper or trailer which the **named insured owns but has failed to include in the declaration** section of the policy (this does not apply to a newly acquired camper, which would automatically be covered within the 30 day period as shown in the previous insuring agreement).
- 3) **Awnings and equipment** which have been designed specifically to create additional living space.
- 4) Any **equipment used in the detection or location of various radar and laser devices** by law enforcement officials.
- 5) Any custom furnishings or equipment in pickups or vans including carpeting, furniture, bars, cooking apparatus, sleeping materials and any custom murals, decals or graphics placed on the body of the van.

**Part D has its own insuring agreement, special conditions and exclusions as follows:**

**OTHER THAN BY COLLISION LOSS**

This is also an open peril property coverage form which will apply to all losses except any that are specifically excluded from coverage. The policy **definition of the perils not considered collision include** *breakage of glass, loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or contact with a bird or animal.* The above losses are not considered collisions losses and **are instead covered as comprehensive** ("other than collision") losses.

**2) Collision Loss** - Collision means impacting your auto with another object and such collision loss will be paid regardless of the fault of the party involved doing the damage. Such coverage is valid whether or not the insured is at fault. When the other driver is the cause of an accident and they do not have insurance, the insured driver may collect on their own policy while leaving it to the insurance company to exercise its rights under subrogation to go after the uninsured motorist for reimbursement.

**3) Loss To The Non-Owned Auto** - Physical damage coverage of the personal auto policy will cover the insured's covered auto and the non-owned auto as well. Such loss coverage will be the broadest coverage applicable to any covered auto as shown in the Declarations section.

## LIMITATIONS TO BENEFIT RECOVERY

The insurance company must pay for physical damage. The contract stipulates such payment is the lesser of either

- 1) the actual cash value of the stolen or damaged property or
- 2) the amount required to repair or replace the property with other property which is of a like kind or quality.

A new provision added to the 1994 edition of the personal auto policy states that adjustments for depreciation and physical condition can be made in determining what the actual cash value is when there is a total loss. This allows the insurance company more options on settlement of a claim and they reserve the right to repair the damage, replace the auto or pay for the loss in cash. Therefore, the insurance company does not have to pay to make the insured better off than they were before the loss occurred.

## TOWING COVERAGE

Towing and labor cost coverage must be added to the personal auto policy by endorsement and the options of coverage here include \$25, \$50 or \$75.00 amounts. This would apply to both covered autos and non-owned autos.

## TRANSPORTATION EXPENSE

When the insured cannot use their covered or non-owned auto due to loss, then this coverage will provide money for purposes of renting a car or using public transportation. The **personal auto policy's standard amount of coverage is \$20.00 per day up to a maximum of \$600.00.**

## POLICY CONDITIONS

The personal auto policy has a **list of duties** that any person who seeks coverage under a policy must satisfy before recovery is possible. **Once a loss has happened, the insurance company requires the following** of the person seeking recovery:

- 1) They **must help the insurance company with investigations**, settlement procedures and defending any claim.
- 2) They **must send the insurance company any legal papers** that are received due to an accident.
- 3) They **must agree to submit to a physical examination** by any doctor selected by the insurance company as often as the insurance company can reasonably require and the insurance company must pay for the cost of such examinations.
- 4) The **right to obtain medical reports** must be authorized.
- 5) A **proof of loss must be submitted** as required by the insurance company.

**Additional requirements include the following:**

- 1) Under the **uninsured motorist coverage** the party **seeking recovery must notify the police** when a **hit and run driver is involved in a loss.**
- 2) Under physical damage coverage, the **insured has to take reasonable steps subsequent to a loss in order to protect the auto and its equipment from additional or further loss.** The insurance company will pay any expenses incurred to provide such protection.

- 3) Also under physical damage coverage the injured **must notify the police when a covered automobile is stolen.**
- 4) The insured **must allow the insurance company to inspect and appraise the damaged property.**

## GENERAL PROVISIONS

The following are **general clauses found in a personal auto policy**. *There are nine* :

**1) Fraud** - Any insured who has perpetrated a fraudulent statement or engaged in any fraudulent conduct with an accident or a loss will find that the insurance company has the right to deny coverage.

**2) Coverage Period and Territory** - The policy will only cover accidental losses which happened during the policy period as stated in the Declaration section and all loss must occur with the policy territory. The policy territory includes the United States, its possessions and Canada. There is **no coverage under a PAP in Mexico**. If you want to drive to Mexico, you must get coverage from an insurance company licensed to write insurance in Mexico.

**NOTE: Beware:** *If you do not purchase Mexican insurance when driving in that country, you will find that the jurisdiction for both criminal and civil law rests in only one court. **They will impound the vehicle, put the driver in jail until they complete an investigation** and subsequently have a court hearing on the matter. If the driver has insurance with a Mexican licensed insurance company, the arresting officer has the authority to waive putting the driver in jail or impounding the auto.]*

**3) Subrogation** - The insurance **company is automatically assigned this right of recovering against an at fault third**

**party to the extent any payment was made by the insurer to the insured.** The insurance company is entitled to the cooperation of the insured in their ability to exercise this right of recovery. The insured can do nothing to block this right of subrogation by the insurance company on these matters.

**4) Legal Action Versus The Insurer** - The insured cannot bring any legal action against the insurance company until the insured has satisfied all the terms of the policy. Also the person making a claim cannot bring the insurance company into a court action to determine liability of the insured as well.

**5) Bankruptcy** - *When an insured declares bankruptcy, it does not mean that the insurance company is relieved under its obligations according to the policy.* If the insured bankrupt party is sued, the insurance company is still obligated to pay any part of a judgment that was covered by insurance at the time of a loss.

**6) Covered Changes** - The policy cannot be changed or waived in any manner unless there is an endorsement. If any change requires a premium adjustment, the premium is adjusted according to the date that the new coverage change became effective. This policy also allows for **liberalization**. If insurance company revises its policy to provide broader coverage without additional premium for new policy owners, it must also extend the same rights to existing policy owners automatically.

**7) Cancellation** - The **named insured can cancel the policy anytime** they want by simply notifying the insurance company. On the hand, the **insurance company's right to cancel is contingent upon the length of time the policy has been in force**. When policies have been in force **for less than 60 days, the insurer must give 10 days written notice**. During periods where the policy **in force time has been for more than 60 days, the insurance company can only cancel for specified reasons**. These reasons include non-payment of premium, if the insured has lost their driver license or obtained the policy through fraud or material misstatements.

**Cancellations for non-payment require 10 days notice while cancellation due to revocation of drivers license requires 20 days notice.** Besides cancellation, the company also has the right to terminate a contract by electing not to renew a policy upon the normal expiration date. In such cases, the personal auto policy requires at least 20 days written notice of the intent not to renew to be provided by the insurance company. All time frames listed in the personal auto policy however, are subject to state laws which may also mandate notification times and dates accordingly. If the law of a certain state specifies more or less days of notification than does the PAP, then policy takes a backseat and the state law would instead apply.

**8) Assignment** - As with all other property and casualty contracts, the personal auto policy cannot be assigned without the written consent of the insurance company.

**9) Other Simultaneous Insurance** - If an insured has **more than one policy which applies to the same accident, then maximum payable under all policies held cannot be more than the highest applicable limit of any one of the policies that was issued.**

## THE USE OF PERSONAL AUTO POLICY ENDORSEMENTS

### EXTENDED LIABILITY COVERAGE

**The personal auto policy has available dozens of endorsements** to provide the broadest possible coverage available to the consumer. Of the dozens of endorsement available, our review will concern itself with the most common of these endorsements.

**The extended liability coverage endorsement is designed to protect the insured driver when utilizing non-owned autos that would otherwise be excluded in the PAP.** This coverage is sometimes referred to as "drive other car coverage" and it applies to various non-owned auto situations including; autos furnished for the regular use of the named insured such as in a business environment, an auto furnished for the regular use of resident relatives (which was otherwise excluded in the PAP), a non-owned auto that is not a private passenger auto but is used by the named insured or resident relatives in the course of business. Also available is coverage for non-owned autos used by an insured if engaged in the business of garaging automobiles.

The extended liability coverage endorsement extends coverage to the above concerns a driver may have. It will cover all of the previously mentioned exclusions except when the car is used in a garage business. ***The endorsement will apply only to the named insured and a separate premium would be necessary for each and every other person who would also enjoy coverage under this endorsement.***

### NAMED NON-OWNER POLICY

This endorsement **is coverage for a person who borrows an automobile from another and who does not own an automobile.** It is a "borrower's" policy. It is an excess coverage and does not include any coverage to the automobile owner, only to the borrower. However, in the event the borrower decides to purchase a private automobile, they will have the automatic 30 days coverage granted in a PAP to switch to regular coverage.

### MISCELLANEOUS TYPE VEHICLE

There has been an increased popularity in the ownership of miscellaneous **vehicles such as all terrain, go-carts and snowmobiles, etc.** This endorsement provides protection for those individuals who own motor vehicles which are recreational in nature. The vehicle types which can command coverage under a miscellaneous type vehicle endorsement includes:

**antique and classical cars, golf carts, snowmobiles, all terrain vehicles, dune buggies, motor homes, trailers used with private passenger autos, motor scooters, motor bikes, go carts, motorcycles and mopeds.**

This endorsement can be used to provide the normal PAP coverages relating to the miscellaneous type vehicles owned while offering coverage for liability, medical payments, uninsured motorists and physical damage.

Because of this broadened coverage, **the definition of "your covered auto" is also expanded. Coverage is now included to newly acquired miscellaneous vehicles of the same type which is shown in the Declarations.** This coverage is subject to the reporting requirements that apply to all additional and replacement autos under a PAP. An example of this broader definition could be: the owner of a motorcycle insured under a personal auto policy who acquires an eligible automobile, would automatically be covered for 30 days. Applying this new covered definition to the temporary substitute auto demonstrates similar definition expansion. It also includes the notion that **there is no restriction at all on the type of vehicle that would qualify as a temporary substitute.**

**The definition of covered persons is also altered with the miscellaneous type vehicles endorsement.** Coverage will apply, of course, to the named insured as listed in the Declaration as well as family members and any other person (if they had the reasonable belief that they were entitled to use the auto with the permission of the owner).

**The endorsement will provide coverage for vicarious liability** as long as the other person was insured. However, **there is no coverage for the non-owned vehicle** and this applies to everyone including the named insured. The only possible **exception to this non-owned vehicle exclusion is a non-owned vehicle which is used as a temporary substitute for the vehicle listed in the endorsement for use when the regular vehicle has suffered a mechanical breakdown.**

The liability exclusions under miscellaneous type vehicle endorsements are also different than the PAP. **While the PAP excludes any vehicle with less than four wheels, the MTV endorsement provides coverage for any vehicle named in the endorsement.**

Another exclusion, which is optional, is liability to passengers. If the policyholder is willing to exclude liability coverage to any passengers, they can enjoy 20-40% discount. However, this is probably not a wise choice if owner ever wishes to have a passenger in the insured miscellaneous type vehicle.

When applying physical damage coverage to this endorsement, there should be an awareness that the physical damage coverage on the miscellaneous type vehicle will not apply to a non-owned auto unless it is specifically used as temporary substitute vehicle.

If a **motorhome endorsement** is sought it must be attached to the miscellaneous type vehicle amendment for a motorhome. This endorsement will cover the owner of the motorhome but will exclude liability, medical payments and physical damage coverage to the motorhome if the insured owner rents or leases the motorhome to someone else. All dishonest or fraudulent activities engaged in by the person to whom the motorhome had been rented or loaned would be excluded without possibility of removal of the exclusion. Medical payments coverage for bodily injury to any person, while occupying a motorhome while it is rented or leased, is also excluded.

**Many individuals own antique and classic automobiles.** Insurance for these vehicles also have differences compared to newer automobiles. Although the PAP does not provide a specific dollar limit for physical damage coverage, antique or classic autos can vary in value on a significant basis and therefore a different evaluation process is required. **A classic automobile** is defined as a private passenger automobile that **is ten years old or older**, while the **antique auto** is a private passenger type which **is 25 years old or older** and is maintained for use in parades, various antique auto exhibitions or other areas of public interest.

When a personal auto policy covers an antique or classic automobile there is **an endorsement of the "Coverage for Damage to Your Auto"**. There is a specified maximum dollar limit for the classic or antique vehicle and it clearly states in the limit of liability provision that the liability for loss is

- 1) the lesser of the stated amount shown in the Declarations,
- 2) actual cash value of a stolen or damaged property or
- 3) the amount necessary to repair or replace the automobile.

The limit of liability which will be shown for physical damage merely illustrates the maximum limit of the recovery possible. (However, bear in mind the actual cash value of the vehicle is comprised of determining the value of the vehicle according to its depreciation and condition).

## **COST FACTORS AND PAP OWNERSHIP**

### **LIABILITY**

**How much liability coverage is enough?** While it is up to the individual consumers to answer that question for them self, it is quite clear that it is a poor choice to select the minimum limit of coverage that is required by the financial responsibility law of a particular state. Since financial responsibility laws require modest amounts of liability coverage of any where from \$20,000 to \$60,000, not much coverage is provided. This is especially true when considering that the cost to increase the limit substantially is not a very expensive alternative. For instance, **to increase the liability limit from \$50,000 of coverage to a million, does not require a premium 20 times greater, but one only 1.5 times greater.** Because of the inexpensive nature of the coverage, it seems foolhardy to select low limit amounts of coverage when it comes to liability.

### **MEDICAL PAYMENTS**

The cost of medical payments coverage is also quite low. However, one issue regarding its purchase is that the auto medical coverage duplicates coverage held under an individual health insurance contract. However, the purchaser should bear in mind that medical payment coverage extends not only to the insured and their family members, but to anyone who is considered a guest in the automobile as well. Therefore, its primary use can be to stave off a liability suit brought on by a guest who was injured in an automobile accident that is the fault of the insured. The typical amounts of coverage under this form is from \$1,000 to \$5,000.

### **PHYSICAL DAMAGE**

Whether or not an individual purchases physical damage insurance depends upon whether or not they can afford to suffer the loss involved. If an individual purchases a new and expensive car, it will likely be too great a loss for the owner of the auto not to have physical damage coverage. On the other hand, if the automobile which is owned is quite old and has very little market value, then the decision would be an easy one because the physical damage coverage should not be purchased.

The individual who leases a car rather than purchases it, would be required by the auto dealership to have specific amounts of have physical damage coverage. The only consumer choice available would be how high a deductible the person is comfortable with.

On the subject of deductibles, another choice presents itself when selecting comprehensive and collision coverage. The lower the deductible, the higher the premium is of course the rule, the same as any other type of insurance. ☞ **It is solely up to the discretion of the insurance purchaser as to what is the individual comfort level when selecting a deductible**. The general consensus is to purchase physical damage coverage with as high a possible deductible as can reasonably be afforded in the event of a loss.

## IDENTIFYING THE INSURED

The personal auto policy has **four basic definitions of an insured** and they include:

- 1) **You or any family member** for the ownership maintenance or use of any auto or trailer.
- 2) **Any person using your covered auto** (with permission, of course).
- 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 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 applies only if the person or organization does not own or hire the auto or trailer.

The **"you"** referred to **in the first insuring agreement** means the **named party** who is listed in the declaration section as well as a **spouse if they are both residents of the same household**. The term **"family member"** means **any person related to a named insured** either by blood, marriage, adoption, including a ward or foster child, who is a resident of the named insured's household.

The named insured and resident relatives have coverage which **applies to any auto and that means both covered autos** (this will be defined in the next section) **and borrowed and rented nonowned autos**. Even a bus or truck can be included in this definition of auto since no restriction of what may be borrowed and used is listed under the definition.

Inherent in the definition of insured is the requirement of getting permission to use a vehicle. As the exclusions show, coverage is eliminated for anyone who uses a vehicle without a reasonable belief that they may use that vehicle. **Another part of the insuring agreement, extends coverage on a vicarious basis for the operation of an auto.**

Situations may also arise where two policies will cover the same loss. In such a case **where two policies cover the same loss, the policy held on the auto being driven is considered the primary coverage** while the policy of the user who has permission is considered an excess coverage. It is also very **important to examine the “Definitions”** of any insurance contract. It **is possible for a definition to create an insured** to a policy when that party is not a named insured in the declarations section.

## BUSINESS AUTO COVERAGE (BAC)

**The Business, or commercial, Auto Coverage (BAC)** is for owners of commercial vehicles such as sole proprietors, partners, corporations etc. BAC mirrors the PAP in that it provides liability coverage and physical damage coverage and all of the terms and exclusions described in the previous sections regarding PAP apply. Insured parties under a BAC include the named insured person or organization for the covered auto and anyone using the auto within the scope of permission (business use) given. **A newly acquired vehicle is covered as long as it is reported to a company within 30 days**. Once again, refer to discussions under the PAP and apply them to the BAC.

**There is a special "Garage Coverage Form (GCF)"** for automobile type businesses such as gas stations, parking garages, repair shops and auto dealers who cannot get a BAC. It is a unique form and is written by itself without existing as a part of some other coverage. It provides both liability and physical damage coverage. The GCF is designed to offer comprehensive liability coverage for the above listed types of businesses. The three types of hazards covered for liability exposures: 1) premises and operations, 2) products and completed operations and 3) automobile liability.

The need for the **“Garagekeeper’s Form (GF), which is a part of the BAC,** stems from the fact that a **garage takes “care, custody and control” of cars owned by their customers**. This creates a situation under law known as a “bailment.” While a car owned by a customer is in their care, the **garage owes a duty to that customer to protect the car from damage** due to garage negligence. The perils insured against with the GF can include Collision, Comprehensive (open perils) or “specified” (named) perils which includes fire, explosion, theft and vandalism (malicious mischief). Any damage to the car owned by the customer must match the definitions of the coverage selected by the business in order to be covered.

## C) Workers Compensation and Employers Liability Policy

*People who are :* ● injured ● become disabled or ● die

☞ from injuries or illness arising out of and occurring in their course of employment have a right to hold employers liable for economic or financial damages under workers compensation laws.

### 1) PART ONE: Standard Workers Compensation (WC) Policy Concepts

The ☞☞ employee does not have to prove fault, an employer **cannot defend against the action because the laws of the state must be adhered to in these matters**. The only possibility of defense in some states is if the employee was intoxicated by drugs or alcohol (willful and wanton conduct) at the time the injury occurred. Laws can vary from state to state, but requirements fall into one of two categories: **compulsory or elective**.

**Under ☞ compulsory laws** all eligible employees have to be covered and amounts for coverage are stipulated by law. **Neither the employee nor the employer may reject coverage.** Under ☞ **elective workers compensation law (Illinois)** employer or employee may elect not to be covered under certain conditions as prescribed by state statutes.

**An employer may meet the workers compensation requirements as set forth by law in one of three ways**

- 1) through private insurance
- 2) by established state funds which are in competition with private insurers
- 3) through a monopolistic state fund (private insurance is not allowed).

There is no limit to the exposure covered under a Workers Compensation Insurance Policy. **An insurance company is required to indemnify an employer for the employer's ☞ entire legal obligation (no dollar limit!)** This coverage would apply only to obligations which are imposed to the employer by the law of the state or states which are listed in the declarations section of the contract.

**The workers compensation and employees liability policy provides coverage for payments which are required under state workers compensation law as well as the liability risk for injuries and diseases which are occupationally related.** WC policies incorporate the workers compensation laws into the contract as if they had been fully written into the contract.

**There are NO EXCLUSIONS** under WC coverage and the insurance company is directly liable to the worker even though the worker is not a named insured under the policy. All that must be determined is whether or not the employer is liable to the employee.

In addition to an employer's obligation to employees under the law, suits can be brought outside of this law for which the employer may also be liable. For this reason, "Employers Liability is a standard part of the WC policy.

## 2) PART TWO: Employers Liability (EL)

The insurance company assumes all legally enforceable obligations which the insured employer may incur due to an employee's bodily injury by accident or disease, including death under common law theories of liability.. While there is no dollar limit under Part One, **Part Two has a standard minimum limit of \$100,000 per accident**, which may be increased by paying additional premium. **There is also a per employee limit for disease (\$100,000) plus an overall limit for any additional claims (\$500,000 aggregate).**

While **Part One (WC) is mandatory, Part Two (EL) is optionally selected** in cases where a worker who is not covered by Coverage A benefits sues the employer for damages resulting from job related accidents. The purchase of this is designed to take the burden of legal costs off the employer when the employer is sued outside of a Part One claim. Since many states have begun to allow employers to be sued by third parties (i.e. the spouse of a covered worker) the purchase of Part Two is becoming increasingly important to a business.

**Part Two provides defensive suit and Supplementary benefit provisions** in its liability policies and pays for the defense cost against law suits, payment of premiums on appeal bonds, and the payment of any and all cost incurred by the insured employer at the request of the insurer, with the exception of loss wages.

## 3) PART THREE - Other States Coverage

**This is an optional coverage** which automatically provides coverage to the insured in other state as long as these states are specified and the insured informs the company about such additional states as soon as work begins. **Blanket coverage for all states is available except for the six states utilizing monopolistic state funds**, or in some cases where the insurance company is not licensed to transact business. There is a growing trend for lawsuits against out of state companies based on some legal presence within a state. Coverage exists in these other states even if there are no employees there and even though the firm does not expect to ever have any employees there.

## 4) WORK-RELATED VS. NON WORK RELATED

Bear in mind there is a **legal doctrine referred to as “dual capacity”** which means **sometimes an employee is allowed to bring suit against an employer even though the employee was acting in a different capacity than as an employee at the time of the injury.** For example, a truck driver is hurt when one of his tires explodes. Coincidentally his employer was the manufacturer of the tire that had a blowout. The driver was allowed to bring a tort action for injury even though the tire manufacturer happened to be his employer (Ohio case called Mercer v. Uniroyal).

The insuring agreement of **Employers Liability does provide coverage for instances when dual capacity is involved.** Exclusion to EL include punitive damages, bodily injured aggravated intentionally by the insured and damages stemming from firings or coercions that violate employee labor laws.

## MISCELLANEOUS WORKERS COMPENSATION CONCEPTS

**Duties if injury occurs - the insured is under an obligation to inform the insurer** at once and to give all details concerning any injuries. Premium computation is based upon the concept that the insured keeps all necessary records for computation. The **insurer reserves the right to inspect the workplace** at anytime. The insured can cancel at any time while the insurer must supply 10 days notice of cancellation.

● **An important distinction must be made between an employee and an independent contractor.** Employees come under the provision of worker's compensation laws while **independent contractors** (those responsible for work being completed in a manner they choose as opposed to how the employer chooses) **are not covered.**

- **One important point cannot be EMPHASIZED enough: worker's compensation benefits are payable regardless of fault.** WC is a strict (absolute) liability concept.

- **Basic rates are based upon a system of job classifications** and manual rates. Each job is coded and classified with rates effective for each classification. **The premium basis itself is the payroll** and basic premiums are determined by multiplying the manual rate for each code by every \$100 of payroll for that classification.

- While **smaller employers usually pay "manual rates"**, very **large employers enjoy "experience rating"** which incorporates premium adjustments based upon actual loss experience.

- **Benefits payable are generally restricted to the following four categories:**

D **Medical benefits** are provided to an injured worker in limited amounts as to medical, surgical, nursing care, and hospital. Payment is included for medical specialist, x-rays, drugs and artificial limbs.

D **Disability Income benefits** are stipulated by state law and benefits are normally based on earned wages and the duration and severity of the injury which has occurred. The rate of wages provided under workers compensation laws differ from state to state but **the benefit is usually set at some percentage of the employees weekly wage.**

D **Survivor (Death) benefits** made are generally lump sum payments which are payable to an employee's dependents.

D **Rehabilitation Benefit** the costs associated with physical therapy to regain the use of damaged part areas.

- **Second Injury Fund** helps to pay increased compensation which is required because an employee has one injury and then is later injured again AND because of the initial injury is hurt to a greater extent the second time than would have been the case had the first injury never occurred.

- **Part One A typical exclusion of worker types vary from state to state but can include :**

- △ Certain farm and agricultural workers

- △ Newspaper vendors

- △ Charitable organization workers

- △ Domestic employees and casual labor

## D) Commercial Crime Coverage and Fidelity Bonds

**Crime insurance is designed to protect business firms and individuals who become the victim of theft.** This loss of property to business forms is covered under crime insurance and bonding. There are **two specific areas of crime coverage:** ☞ **Fidelity Bonds and Crime Insurance.** *Fidelity bonds* exist to protect business against ☞☞ *theft from employees* while *crime insurance* protects the business against the criminal acts of all persons who are ☞☞ *not employed by the firm.* Fidelity bonds exclude the dishonest acts of non-employees **and crime insurance** excludes the dishonest acts of employees, they **are mutually exclusive** in this sense. ☞ *The central idea of crime and bonding is coverage to commercial entities from the dishonesty of people whether they work for the business or not.*

### Some basic definitions include

- **Burglary** - is the **forcible entry** or exit into or out of an insured's lock premises and the subsequent removal away of property belonging to the insured. Forcible entry can include the use of tools, explosives or electricity and chemical or physical damage to the property. Visible signs of forcible entry must be present in order for an insured party to recover a loss under burglary coverage. The business usually does not see the burglar since he prefers to ply his trade secretly and with anonymity.

- **Robbery** is the ☞ **forcible removal** of an insured's property ☞ **due to fear from the threat of violence.** **The robber uses** this threat of violence as a method to steal property from a firm and this threat can be against any party employed by the firm but usually includes a messenger or custodian. The messenger or custodian feels fear of injury or death due to the actions of a robber. The career robber is usually armed and prefers to be up close and personal (in the face of) his victims.

- ☞ **Theft is any act of stealing** and it is a term both broad enough to **include both burglary and robbery.** Theft includes stealing property without evidence of actual holdup, forcible entry or exits or physical violence.

- **Mysterious Disappearance or mysterious loss of an insured's property.** MD is not theft loss. Property vanishes without an apparent explanation. There is loss only if there is enough evidence that a theft has actually occurred. might have.

☞ **Commercial Crime coverage may be written as a Monoline (stand alone) policy or as part of a Commercial Package Policy.**

**There are many crime forms but only a few will be subject matter for the state insurance exam.** The major crime coverage forms to be examined in some detail because they are likely to be the subject of examination questions include Forms A, C, D and E. Each form is titled with a letter of the alphabet followed by a specified name. Those forms which are available to a firm but will not be the subject matter of exam questions are listed as follows:

- ◆ FORM B - Forgery or Alteration
- ◆ FORM F - Computer Fraud
- ◆ FORM G - Extortion
- ◆ FORM H - Premises Theft and Robbery Outside the Premises
- ◆ FORM I - Lessees of Safe Deposit Boxes
- ◆ FORM J - Securities Deposited With Others
- ◆ FORM K - Liability for Guests Property- Safe Deposit Box
- ◆ FORM L - Liability for Guests Property-Premises
- ◆ FORM M - Safe Depository Legal Liability
- ◆ FORM N - Safe Depository - Direct Loss
- ◆ FORM R - Money Orders and Counterfeit Paper Currency

## IMPORTANT CRIME FORMS - A, C, D AND E

### FORM A- Employee Dishonesty (Fidelity Bond)

Form A gives a commercial concern the protection they require from the dishonest acts of employees. This form covers the loss of money, securities and other property from the acts of fraud, forgery embezzlement and theft. **Coverage amounts are called the “penalty”** amount or the maximum dollar figure for which the employee is “bonded.” The two available classes of fidelity bonds covers these actions broadly and they include:

**1) Schedule bond** - this offers for a **specifically designated employee (called a name schedule bond) or employment position (called a position schedule bond - i.e. all tellers in a bank) at a business.** All people employed in a specific capacity must be covered. Usually a specific number of individuals are listed under coverage and when that number increases, the coverage amount (penalty) decreases accordingly. *For example, if three tellers were bonded for a penalty of \$20,000 each but four tellers were actually employed the penalty amount would decrease to \$15,000 each automatically. The coverage is per person or position*

**2) Blanket Bond-** this is the broadest fidelity coverage available to commercial entities. They cover all employees including new hires automatically. The penalty amount is on a per loss basis which means it does not matter how many employees may actually be involved in the theft, subject to a one year “**discovery” period.** A discovery period is a period of **time for which indemnity still exists for loss after the bond itself has expired (usually one year, but some bonds extend this period to two years).** Although coverage may have existed when a theft actually occurred, discovering the occurrence of the theft may take the firm some time and not be actually discovered until a bond has expired. The coverage is per loss.

**Other Provisions of Fidelity Bonds** -Dishonest acts occurring after the employer was aware of prior dishonest acts are excluded. Losses which can only be proved by inventory shrinkage are not covered. The salvage clause states that if a loss occurs above the coverage limit any recoveries beyond the limit up to the actual loss go to the employer while any excess recovery goes to the insurance company.

### FORM C - Theft, Disappearance and Destruction

Provides **coverage for loss of money and securities both INSIDE AND OUTSIDE** the insured premises which are excluded under Premises Burglary and Robbery and Safe Burglary Bonds. Covers vault, cash register, locked safe, cashbox and cash drawers. Money and securities are broadly defined. This coverage extends beyond just theft and includes the disappearance and destruction of money and securities as well. **It is open perils coverage.**

**Money** = currency, coin, bank notes, register and traveler checks and money orders kept for sale.

**Securities** = Drafts, checks, acceptances, stamps tokens, certificates of deposit, tickets, stocks, bonds, credit card receipts.

This policy is defined by what it does not cover. Since this is crime coverage, losses which are caused other than by crime are excluded and should be covered through some other appropriate form.

## FORM D - Robbery and Safe Burglary (property other than money and securities)

Robbery (see definition above under initial discussion) and safe burglary is covered. The **three major coverages** are shown below and one, two or all three may be purchased.

- **Safe burglary** - is the **felonious removal** from within a safe or a vault **items which are not money or securities**. Robbery is covered both inside and outside the insured premises.

In order for safe or vault coverage to apply there **must be evidence of robbery or violence** with tools or explosives. Even if the entire safe is removed from the physical location, coverage will apply. Items such as cash registers or key lock safes are not considered to be safes but the coverage can be added for them by endorsement.

- **Robbery of a Custodian** - Coverage to those who qualify as insured's including officers or partners of a company, or any other person who is regularly employed by a company and duly authorized by that company to have custody of insured property **within a premises**. Excluded from coverage would be watchman, janitors, or porters.

- **Robbery outside the Premises** - property loss (other than money or securities) is covered while the property is in the custody of the insured, an employee or is with an armored car company (includes a messenger).

**FORM E - Premises Burglary** - covers property other than money or securities, including merchandise, furniture fixtures and equipment. (Refer to definition of burglary in previous section, above). Physical damage to the premises as demonstrated by forcible entry due to tools, electricity, explosive, and chemicals must be shown. Evidence of visible signs of the forced entry must be present prior to recovery for the loss. **Robbery of a watchman is also covered.**

## What is a Bond?

The major forms of casualty coverage available have been detailed above. A few bond and policy concepts remain and they are described below:

**BOND:** ☞ **is a guarantee.** The bonds discussed in the previous section dealing with commercial concerns and things like employee dishonesty are just two types of bond categories available. A **bond guarantees** that an individual or company will **"faithfully" perform some duty** or that an individual or a company will make some payment which has been agreed to. There is no "pooling or risks" when calculating bond premiums since losses are not expected in the surety field. Each surety bond applicant is reviewed annually. Bond charges should be viewed more like a service fee and less like a premium.

- **Surety Bonds** - In a sense all bonds are of a surety nature. Technically however, a **surety (insurance company)** is held directly responsible for the performance of a directly stated obligation of a **principal (individual or business buying the bond.)** A surety bond guarantees the performance of the principal and it is a contractual relationship which guarantees the principal's performance to some **third party (obligee)** where there is a fiduciary (position of trust) involved.

The primary responsibility is owed from the principal (obligor) to the obligee. However, if the principal, for whatever reason, **fails to make good** on this primary obligation, **the surety will make good on behalf of the principal.**

☞ **Surety bonds remain in effect until an obligation is discharged.**

A surety bond is a ☞ **Three-party contract** –

- 1) **Principal** (obligor) is the person engaging in some transaction with an
- 2) **Obligee** is the person to whom a bond is designed to benefit and
- 3) **Surety** (also called a guarantor- i.e. the insurance company) is the party that guarantees the principal's performance to the obligee in the event the principal fails to discharge that responsibility to the obligee.

Bonds, other than fidelity and crime, include some of the following:

Δ**Performance Bonds** - guarantees a job will be finished by a contractor according to the terms of a contract.

Δ**Bid Bonds** - if a contractor's bid is accepted he will provide the obligee with a performance bond.

Δ**Payment Bonds** - the contractor will pay his bills as they become due.

Δ**Supply Bonds** - a supplier will provide supplies, equipment or products required.

Δ**Court Bonds** - includes fiduciary bonds and litigation/ lawsuit bonds (including bail bonds).

Δ**Public Official Bonds** - guarantees public officials won't steal the citizenry blind.

Δ**Securities (Lost Instruments)**- if original securities are lost and duplicates are issued there will not be two payments.

## **OTHER CASUALTY POLICIES:**

- **Mortgage Guarantee Insurance** - if the borrower defaults or misses payments, the insurer makes good.
- **Rain Insurance** - losses caused by rain, sleet snow or hail resulting in lost income are covered.
- **Title Insurance** - any defects in a real estate title which would hurt the buyer's value are covered. It guarantees clear title to a new buyer. However, in the event some one with a better claim to title comes along in the future, the insured must relinquish the real property involved and the insurance will compensate for this loss. Since all real property is unique, the law protects it with specific performance as a remedy and this guarantees the property to the party with the superior title claim.

## **E) Professional Liability Insurance**

Professional liability concerns itself with the liability that arises when people of a particular profession fail to exercise due care of the skill expected by members of that profession. There are two broad categories within professional liability and they include malpractice and errors and omissions coverage. With the errors omissions category there is also a form designed to protect directors and officers of companies.

**1) Malpractice** - **Covers the physician, surgeon dentist and hospital category of professionals.** Within these groups are specified forms for specialty practitioners such as anesthetists, psychiatrist, chiropractors, etc. **Other forms are available to such diverse occupations as beauticians, morticians, veterinarians, etc.** The central risk of liability in malpractice is created from harm done to the person, rather than property for the most part, although there are some exceptions (i.e. the veterinarian). In addition to **coverage for bodily injury, other personal injury losses are covered such as mental anguish** ☞ **Intentional harm is not excluded** since the act of a professional inflicting damage on purpose is not the exercise of due care of the skill expected of the members of a professional group.

**Past malpractice policies were written on an occurrence basis** but this proved very costly for insurers and a **switch has been made to the claims made form**. Another fundamental change has been to eliminate the requirement that the insurer had to get **the permission of the insured to settle a legal act**. This was designed to protect a professional's reputation but resulted in losses that grew out of control in some cases. **Today most malpractice policies are written without a clause requiring permission from an insured** to settle a lawsuit.

**2) Errors and Omissions** - this coverage protects the professional from the failure to render professional services which result in property damage (including intangible property such as insurance, real estate and other legal contracts) to customers. **Occupations typically purchasing "E&O" insurance** include accountants, architects, engineers, insurance agents, real estate brokers and agents, stockbrokers and travel agents. ***Most policies offered today are of the claims made variety and no longer require the permission of the insured in order for the carrier to settle a lawsuit.***

## F) Umbrella/Excess Liability

An **umbrella liability policy is a broad form of liability insurance coverage for both general liability and automobile liability**. It is purchased separately from and in addition to the separate basic liability contracts of general liability and automobile liability coverage. Before a party can qualify for an umbrella liability policy, ***they must first purchase specified amounts of liability insurance to cover their personal liability and automobile liability***. These coverages are usually obtained from your automobile liability insurance policy where the liability **coverage amount is normally at least \$300,000.00**. The same would hold true for the liability coverage amount found in the homeowner's Section II form. The coverage for an umbrella can range from a usual minimum of a million dollars of coverage up to five million dollars of coverage.

The needs for such vast amounts of liability protection deal more with individuals who need to avoid a financial catastrophe if liability were attached to their activities. **The target economic groups for an umbrella are the wealthy to middle and upper-middle class individuals with sizable assets in excess of \$300,000.00**. It can also include the self-employed business owner, someone with a sizable stock portfolio or real estate investments who find the umbrella to be a useful addition to their insurance portfolio.

Since people with assets could lose those assets in the event they are held liable in a court of law for various activities, a way to transfer that risk of loss is to own adequate amounts of liability coverage. Since the typical homeowner's contract and automobile policy provide a limited amount of liability coverage, these **excess amounts of coverage become necessary in order for the wealthier client to** protect financial reserves adequately. Obviously a people whose assets are far below the \$300,000.00 minimum level are not candidates for this coverage and need not worry about umbrella liability coverage.

This umbrella provides a secondary layer of coverage beyond the first layer attached to the aforementioned homeowner's and automobile liability coverages. It is considered **an excess coverage** in that **it will only pay when the basic policy limits are exceeded and more coverage is necessary**. If basic coverage under an auto policy is \$300,000.00 for liability and the policyholder was involved in an accident to which \$900,000.00 of liability is assessed, the basic policy would pay \$300,000.00 and the umbrella would pick up the excess \$600,000.00. The entire claim would be paid.

The **umbrella also provides much broader coverage than one would find under the basic contract**. Umbrella policy coverages will vary from company to company and there is no definitive policy, but most insuring agreements have less exclusion than the basic policies and many losses that are normally not covered under basic contracts are in fact covered under an umbrella. **One example** of this would be **automobile liability coverage that extends to worldwide coverage** without restrictions regarding the use of the automobile.

**If a liability claim is covered under an umbrella but not covered by the underlying contract, the umbrella will still pay subject to a self insured retention or deductible.** On most personal umbrellas the self insured retention was originally in the \$5,000 to \$10,000.00 range. Today many companies mark their policies with risk retention with a deductible as low as a standard \$250.00 deductible found on basic contracts. This deductible will only apply if the loss is not covered under a basic contract. If a loss is covered under a basic contract, the umbrella would respond from the first dollar once the basic policies are exhausted because the deductible would have paid under a basic policy if one were applied.

***individual contract.*** There is exclusion for owned or used watercraft and aircraft of the type that is also excluded under basic homeowner's policies. Also business pursuits and professional services would be excluded unless coverage for these exposures is also provided in the underlying insurance program. Workers compensation liabilities would be excluded except where employers' liability coverages are provided under CPL'S or homeowner's policies.

Any action by the responsible insured who wanted intentionally to cause personal injury or intentional property damage would be excluded. Also, except watercraft and aircraft, there is no exclusion for property rented to or under care, custody or control of the insured. However, damage to rented watercraft and aircraft is excluded, and property damage by the insured is also excluded.

With the broad coverage and the high coverage amounts associated with the liability umbrella, a prospective insured may think that the cost would be prohibitive. However, just the opposite is true. Premiums can vary with each company and other variables such as the number of automobiles in family and the number of people driving them is calculated in cost. The **annual cost** for the typical one million dollar coverage is **normally in \$200.00 to \$300.00 range.** Coverages for additional millions of dollars are correspondingly less as the coverage is increased. Due to its unique nature **those with sizable assets will find this perhaps the most valuable policy they will ever own.**

## II) Insurance Terms and Related Concepts (30% of ASI Property Exam-- 15 Questions)

**PLEASE NOTE: Both this Section and the next (Section III: Policy Provisions and Contract Law) are substantially similar for both the Property and the Casualty ASI, Inc examination outlines.**

? Take special care to thoroughly understand each term and definition that follows. Since *Sections II and III combined comprise the majority of the material from which exam questions will be posed in the casualty exam and half the question in the property exam*, they must be understood completely. Combine this with the fact that there is much less material here than in the previous section, I, and *the terms are fairly easy to understand when compared with all the coverages types*, exclusions and endorsements and you have a recipe to tilt the odds in your favor to pass the state exams more easily. *If you take section II and/or III too lightly, you will likely fail your exams.*

**The rule** ☞ the better you know/study/memorize sections II and III the easier it will be to pass your state exam on the first try. *Although Sections II and III have far less material than section I—DON'T BE FOOLED AND TAKE THESE SECTIONS TOO LIGHTLY!*

### II) Insurance Terms and Related Concepts (30% of exam):

**A) ☞ Risk** - Risk is strictly defined as ☞ **an uncertainty regarding financial loss**. Loss within this equation can be defined as an unintended and unforeseen destruction or reduction of financial or economic value. There are two basic types of risk:

**1) ☞ Pure risk** is solely the chance of loss without a possibility to gain a profit from that loss. There is no chance to gain in the event the risk occurs or, for that matter, in the event it does not occur. In other words, loss will only happen if the pure risk does occur.

**2) ☞ Speculative risk** involves the possibility or chance of loss **and gain**. Speculative risks are not insurable. A good example would be gambling.

**The ☞ only risks which are insurable are pure risks. Insurance seeks to eliminate or reduce the loss which can occur from pure risk.**

**B) Hazard** - A hazard is ☞ **a possibility which will give an increase to the chance that a peril will occur**. A hazard makes it more likely that a loss will occur due to a peril actually happening.

**The ☞ four types of hazards include:**

**1) Morale hazard** depends upon the subjective makeup of the insured and **can arise from the state of mind related to indifference of the insured to the loss that may occur**. (i.e. leaving your door unlocked when you leave your home.)

**2) Physical hazards** are conditions left in a manner making a loss more likely to occur. Example: leaving open cans of paint near your furnace in your basement. Since the paint is flammable the possibility for fire(the peril) is greater than if the physical hazard did not exist.

**3) Moral hazards** in which the subjective attitude and or resultant bad habits of the insured make the chance for loss greater. An example: smoking in bed, dishonesty, or alcoholism indicate having these character traits make a loss more likely than if you did not possess these traits.

**4) Legal hazards** arise from court actions which increase the likelihood or size of a loss.

**C) Indemnity** - All property insurance contracts are contracts of indemnity and **their purpose is to make the insured "whole" again.** Indemnity is designed to put the insured in substantially the same financial position that he or she was in prior to the occurrence of loss. The **principal of indemnity** also stands for the fact that **an insured shall not profit or gain by their loss.**

**D) Insurable Interest** - Insurable interest exists as to any individual when damage or destruction of property will result in a financial loss to that individual. Insurable interest extends beyond mere ownership and even tenants have insurable interest in their own belongings within a building owned by another person. **THE INSURANCE APPLICANT MUST:** face a personal risk of loss; or have a legitimate interest in preserving the property being insured or will not receive a potential for gain due to the insurance applied for. **In a property or casualty contract, insurable interest must exist at the time of loss.**

**E) Actual Cash Value** - Actual cash value (ACV) can be defined in the following terms:

**ACV equals replacement cost minus depreciation**

Replacement cost equals the exact number of dollars needed to replace damaged or destroyed property which occurred at the time of the loss itself. Therefore any time which has elapsed since the point of loss may reduce the actual cash value by the depreciable amount. This is another concept which seeks to enforce the principle of indemnification.

**F) Negligence** - Individuals can be held legally accountable for their negligent acts. This is a "tort", or civil law procedure, and it consists of **four elements** which must be present before negligence is created which results in an individual being held liable. The four elements include:

- ① **A duty to act or to refrain from acting in a manner which will lead to harming another's body or property and**
- ② **breaching that duty and**
- ③ **incurring an actual (demonstrative) injury and**
- ④ **proving that the first three elements were the proximate cause of the loss suffered by the injured party.**

*Individuals and corporations are liable (see definition G) Liability) for their negligent acts.*

A negligent act can create a tort which, under civil law, is an action recoverable for injuries done to an innocent party or victim as the result of a negligent act. **Types of negligence include:** simple negligence (the failing to act in a reasonable or prudent manner) and willful and wanton negligence (considered much more serious than simple negligence and borders almost on being an intentional act).

**The term contributory versus comparative negligence** is also important to understand. **Contributory negligence** occurs when two individuals are considered by a court of law to have both contributed to an action. Under contributory negligence, neither party can collect from the other. **Under comparative negligence,** fault is assessed according to a degree of negligence. Each party would be assessed a percentage of the negligence and would pay on the loss accordingly. If party X were 40% negligent and party Y were 60% negligent than each would pay according to the loss they helped incurred.

**G) Liability** - Through civil law, the commission of a tort (the violation of one person's natural right due to the action of an offending party) can lead to the assessment of liability which is recoverable under law. Torts will create a liability situation in which an injured party may hold the party causing the injuries responsible for damages to the defendant or property of the defendant (victim).

Liability and liability insurance provides **coverage only for acts which are not intentional** (negligent acts). When a person or company purchases liability insurance from an insurance carrier, the carrier must pay, up to the limits of the policy, all non-intentional injuries inflicted upon a victim. The person who causes a tort or tortuous act is called a "tortfeasor" and the victim is referred to as the injured party. Are willful and wanton acts covered by insurance? Generally, "yes" as long as they do not cross the line if being intention.

**H) ☞ Accident** - is an **unexpected, unintended and sudden** event which causes property damage or bodily injury. The accident always **occurs at some specific point in time** and witnesses can describe the actual event. **An accident is unforeseen. An accident is always an occurrence but not every occurrence is an accident.**

**I) ☞ Occurrence** - **Occurrence is a much broader term than accident** and occurrence does, in fact, include some of the characteristics of an accident. An occurrence can be **a continuous or repeated exposure** to conditions that results in injury or loss. **Occurrence is ☞ not as time specific as accident and can include a happening over a lengthy period of time whereas accidents happen all at once, not over time.**

**J) Burglary** -the ☞ **forcible entry** or exit into or out of an insured's lock premises and the carrying away of property belonging to the insured. Forcible entry includes by use of tools, explosives or electricity and chemical or physical damage to the property. **Visible signs of forcible entry must be present** in order for an insured party to recover a loss under burglary coverage.

**K) Robbery** is the **forcible removal** of an insured's property ☞ **due to fear or threat of violence** or means of injuring or murdering a messenger or custodian who is in possession of the property being removed; the party being robbed feels physically threatened by the robber and relinquishes control of the property in the hopes of avoiding physical injury.

**L) Theft** is ☞ **any act of stealing** and it is a term both broad enough to ☞ **include both burglary and robbery.** Theft includes stealing property without evidence of actual holdup, forcible entry or exits or physical violence.

**M) Mysterious Disappearance** or ☞ **mysterious loss of an insured's property.** MD is not theft loss. There is loss only if there is enough evidence that a theft has actually occurred.

**N) Binders** - Binders can be given by agents who have a binding authority from an insurance company for insuring against risk. A binder is an extremely strong legal document (it can be oral or written). **It is the ☞ acknowledgment that immediate coverage is in effect pending the future issuance of a policy.**

**Under a Binder, coverage is in the same full force and effect that it would be under a policy even if an application for coverage is later rejected.** Binders normally list the name of the insurance company, the amount of insurance, perils insured against, type of insurance and the time limit for which the binder is in effect. Not all agents have binding authority. **Binding authority is rarely given to agents outside of the property and casualty contract area.**

**O) Warranties** - a **Warranty** is a fact which is sworn to by a party as the absolute truth. Breaching of a warranty can lead to voiding a contract. A **warranty is a much stronger statement than a representation.** Breaching a warranty on **even a minor point** can be cause for setting aside an agreement. The ☞☞ **ONLY** modern day insurance agreement that holds an applicant to the warranty standard is **Ocean Marine Insurance.**

**P) Representations** are considered to be a statement of fact, **in the opinion** of the person making the statements. **In order ☞ to void a contract on a basis of misrepresentation a party must show that a material fact was misrepresented.** A ☞ **material fact** is one that **would have changed the underwriting basis of a policy**, had the company known of the material fact. Minor points which may be misrepresented will not enable the other party to void an agreement. **Representation is a much more generous standard to the consumer of insurance than is the warranty standard.**

**Q) Concealment** is the **failure to disclose a known fact.** It is hiding something that should not be hidden even when the particular fact was not specifically asked about. In order to void a contract the concealment must be intentional. The ☞ **insurance contract is one of "utmost good faith"** and the ☞ **applicant is under a duty to disclose any and all relevant information** in the application process.

**R) Bodily Injury Liability** - Provides **coverage to the insured** for which a carrier agrees to pay those amounts, up to policy liability limits, for which the insured becomes legally liable due to the insured's negligence in causing bodily injury or death to some other person or persons. ☞ **Bodily injury includes disease, sickness and death which result from negligent acts.** Liability through bodily injury settlements considers the nature and the degree of severity of the injury involved, the amount of special damages and the degree of liability.

**S) Property Damage Liability** - Gives coverage up to those amounts stated in the policy limits for which an insured is legally liable to pay due to his or her negligence ☞ **which causes physical injury or destruction to the tangible property of other people.**

**T) Personal Injury Liability** - Personal injury is a very broad term that includes many rights related to individuals, including the **right to privacy, the right of freedom from defamation or injury to reputation, the right to be free from mental distress, and the right of basic freedom from interference from others.** Coverage is available to protect against suits brought for these personal injuries under civil or tort law.

**U) Limits of Liability** - this is ☞ **the maximum amount the insurance company is obligated to pay** for any loss, as specified in the contract. Separate limits may be shown for coverage as itemized in the declarations section. The basic limits used by various contracts include:

- ☞ **Aggregate limits** – names the maximum overall limit for the policy period. The total, or aggregate, amount of coverage is ☞ decreased with each occurrence
- ☞ **Combined single limit** - applies on a per occurrence basis and offers a maximum of coverage which is less restrictive with regard to individual loss than would be the case under a split limit, for example.
- ☞ **Split limits** - pays losses with separate limits for bodily injury and property damage and also prescribes a limit per individual while offering a greater payment for all individuals in an occurrence.

**V) Deductible** - When a deductible clause is written in a policy it means that the insured must pay some portion of the loss, usually a very small portion, while the insurance company pays the remaining amount. The deductible **requires the insured to pay the ☞ first dollars**, as specified in the contract, toward the settlement of the claim. If a loss occurs and it is no greater than the deductible amount stated in the policy, then the insured would bear the cost for the entire loss. **The ☞ insurance company will only pay amounts over and above the deductible stated in the policy.**

**W) Insured Contract** refers to an agreement between two parties which **is listed in the insuring agreement of Contractual Liability coverage under the Comprehensive General Liability Policy.** Any liability which arises from an insured contract is covered under the terms of the CGL.

**X) Deposit Premium/Audit** - ☞ **deposit premium refers to the initial premium paid** by an insured at the beginning (**inception date**) of certain policies which is estimated and subject to later adjustment based on audits which may be conducted later. **Audit premium refers to the additional premium** an insurance company is entitled to (or return to the insured of any excess charged at the policy inception date) ☞ **after an audit has taken place and any subsequent premium adjustments are made** to the deposit premium amount.

**Y) Certificate of Insurance** is evidence from the insurance company to the insured that insurance is in force. It is commonly required by law that an owner or driver of an automobile carry liability insurance and keep ☞ **a certificate of insurance available for inspection in the event a law enforcement officer requests proof of insurance.**

### III) Policy Provisions and Contract Law (24% of ASI Casualty Exam-- 12 Questions)

**A) Declarations** - this section *includes the statements made by the insured* to the company. It also contains: ♦ name and address the insured, ♦ name of the insurance company ♦ what the policy is insuring against ♦ length of time for which it is insuring ♦ premium ♦ face amount (limits of liability) and ♦ any applicable deductibles of the policy are also included. A declaration also includes either ♦ a property description or ♦ a schedule of coverage parts and ♦ a list of any endorsements.

**B) Insuring Clause** - this section *states the specific obligation which is being assumed* by the insurance company in relation to the insured party. In a package policy, each coverage form includes its own individual insuring agreement. Described in the insuring agreement are the perils covered, risks assumed or nature of coverage with reference to the parties to the contract. *The promises between the two parties are exchanged under the terms of this clause.* The insurance company promises to pay according to the terms of the coverage for all covered perils and the insured promises to pay all premiums due in a timely fashion. Whether the perils covered are “**named**” or “**open**,” will be stated.

**C) Conditions** - the conditions clause *describes the rights and duties* of both the insurance company and the insured in creating coverage. The duties and obligations of the parties to the contract are set forth and wording concerning the right of each party to cancel are included. This clause also protects the company from loss due to hazards that were within the means of the insured to control. *For detailed duties of each party, please refer to points F and G, below.*

**D) Exclusions** - *Exclusions limit the scope of coverage* in a contract by specifically listing any causes of loss for which coverage will not exist. Exclusions are sometimes set forth in a policy under a specific section or they can be found scattered throughout various sections of a contract including the wording of insuring agreements and in the definitions of perils. *Understanding those hazards and perils which are not covered can be just as important as knowing which hazards and perils are covered.*

**(A COMMONLY USED TECHNIQUE FOR REMEMBERING THE FOUR MAIN COMPONENTS OF AN INSURANCE CONTRACT, AS LISTED IMMEDIATELY ABOVE, IS TO TAKE THE FIRST LETTER OF EACH CATEGORY AND RECALL "DICE" (DECLARATIONS, INSURING CLAUSE, CONDITIONS, EXCLUSIONS))**

**E) Definition of the Insured** - *the insured is an individual (person) or entity (corporation) indicated in the declarations page of a property contract* whose interests are covered against perils named in the contract.

*A party not specifically named as an insured has no legal right to recover directly under a policy* even if that party has an insurable interest in the insured property at the time of loss (i.e. the tenant in your building should buy their own contract to cover personal property loss and cannot collect on your policy as a landlord).

However it is possible for a party not specifically named in the contract to still have recovery rights in the event of loss (i.e. a guest staying at your house is covered for specific types of loss under dwelling and homeowners forms if their personal property is lost or destroyed by a covered peril.)

☞ **F) Duties of the Insured** - are imposed in the event of loss according to the insurance contract. This includes "reasonable compliance" in ☞ **five** areas:

- 1) **Immediate Notice** - written notice is specified, but telephoning the agent is now deemed to meet this criterion under modern interpretation.
- 2) **Prevent Further Loss** - of property from damage under reasonable conditions. Further damage due to neglect by the insured is not covered.
- 3) **Damaged and Undamaged Property must be separated** to determine loss. There is no duty for the insurer to pay for or replace property that is not damaged or destroyed.
- 4) **Inventory the loss** - compile a complete list of destroyed, damaged and undamaged property.
- 5) **Claim Verification** through checking banks statements receipts and records of the insured must be made available to the company for inspection, if requested. For this reason, it is a sound idea to keep all such records and receipts in a safe environment away from the insured premises.

The insured **must submit a signed proof of loss form within 60 days** of a request from the insurance company to do so. Furthermore, **any theft loss must be reported to the police** and a **credit card company must be notified** for any payments to be made involving the credit card coverage offered under "Additional Coverages."

**G) Cancellation and Nonrenewal provisions** - both the insured and the insurance company may cancel coverage. **The insurance company must give some specified written notice (as required by state statute), but the insured can request immediate cancellation.** When the **insured is the party canceling** the policy, any **refund** of unearned premiums **is calculated on a ☞ short rate basis.** The short rate basis enables the insurance company to recoup some of the cost of underwriting and processing the policy. (Many states require that the company reimburse the insured fully even when the insured is the party requesting the cancellation).

On the other hand, when the **insurance company cancels**, unearned premiums (refunds amounts) are paid to the insured party on ☞ **pro rate basis.** This means **the insured gets back all of the money which has not been used or applied to premium cost.**

A **nonrenewal** is not cancellation since a policy will terminate at the time as specifically indicated in the contract rather than prior to that point in time. According to the nonrenewal provision, **notice is given by the company to the insured of the insurance company's intention not to renew the policy** upon the normal termination date. Nonrenewal notice affords an insured the opportunity to replace coverage and not have a gap in coverage when the existing policy terminates.

**H) Additional (supplementary) payments - supplementary payments** do not reduce the liability limits of a given policy coverage (i.e. found in both the CGL and Auto policies) ☞ **THEY ARE PAID IN ADDITION TO the applicable limits of liability.** This coverage varies according to the liability contract purchased and usually includes amounts incurred in a claim as a result of requests made by the insurance company as well as reimbursements to an insured for lost wages when the insured is required to appear in court on behalf of the company. In addition, costs to post some bonds up to specified amounts are included and expenses to defend legal actions may (as they are covered in a CGL) or may not (not covered in Auto) be included.

**I) Proof of Loss** - in writing, is required by an insurer prior to settlement of a claim. Depending upon the type of contract, this proof must be submitted according to that policy.

**J) Notice of Claim**, or notice of loss provision, means the insured must take certain steps in the event of loss or occurrence in order to lead to a filing a successful claim (receiving a loss payment) under the terms of the agreement. ☞ **The insured is bound to notify the insurance company of loss as soon as reasonably possible.** Furthermore, the insured may be required to notify the police if a violation of the law has occurred (i.e. burglary or theft).



**N) Compliance with provisions of the Fair Credit Reporting Act** - this is a federal law that helps insure that applicants for insurance are treated in a fair, accurate and confidential manner. The Act says that these reports *can only be furnished for certain purposes* and one of those purposes is for underwriting insurance. The Act prevents any party, including an insurance company from obtaining reports from outside agencies unless the applicant is aware that such reports may be obtained. *Permission must be granted in writing* before an insurance company can obtain a report from a credit reporting agency.

All applicants for insurance must sign disclosure statements in order to assure compliance with the Act. In the event information contained in a credit report results in an lesser offer (which is technically called and “**adverse action**”) from an insurance company to the insured, the insured **has the right to a free copy of the credit report and a description of the rights** afforded under the Act. This **free copy must be provided by the original credit reporting agency**, not by the insurance company.

The Act **also provides consumers with an opportunity to find out information that an investigative agency has used about them and to whom such reports have been made.** If consumers are dissatisfied or dispute any information within the reports, they may demand a reinvestigation with corrections sent to anyone who received the prior incorrect consumer report. This Act only applies to investigative reports that are made from outside (third party) sources.

**O) Claims Made Policy Form** is a liability insurance policy **through which coverage will only apply to a claim made during a policy (coverage) period.** For more details on the claims made form as compared with the occurrence form, please refer back to Section I and the introductory section on the CGL policy.

**P) Salvage** - **The insurance company owns this important right** when it settles a loss. The company may determine whether or not property will be repaired, replaced or cash will be provided. In situations where an insured property is not completely destroyed, the insurance company may, if it so chooses, take possession of the property and receive its salvage value when it has replaced or has made a cash settlement to the insured party. **By salvaging property, the insurance company can recoup substantial sums of money in situations were total loss would have otherwise occurred.** (i.e. if an insured’s auto was a total loss and the insurance company pays fully on the total loss basis, then the insurer has the right to the auto and can sell the remains of the car for scrap value and keep all proceeds).

**Q) Consent to Settle a Loss (Loss Settlement provisions)** - some forms of liability insurance require the written permission of the insured before an insurance company can make a settlement with a third party claimant. **This requirement serves to protect the insured’s reputation.** With consent to settle a loss provision, an insured can force an insurance company not to settle with a third party claimant without a lawsuit in the event the insured feels the claimant is unjustified. Recent malpractice coverage contracts do not contain this consent to loss agreement, thus allowing the insurer the right to settle under any conditions it sees fit to minimize further exposure to risk. There are policy, mainly older versions, that still contain a consent to settle a loss provision.

**R) Limitations** - the **declaration page of a policy shows the policy limits**, or the maximum extent to which an insurance company will indemnify or pay on losses. For example, in a personal automobile policy there are specific limits as to liability to both bodily injury and property damage resulting per accident no matter how many people are involved. Also medical payments and damages are specified and there are deductibles which apply to losses. Other types of coverage can be added by endorsements and they also specify some type of limitation (to maximum liability that will be reimbursed on the part of the insurance company).

***ALL THREE SECTIONS ARE NOW COMPLETE.  
BE CERTAIN TO MASTER SECTION II AND SECTION III.***

**If you are ready, proceed to the NONSUPERVISED, open book exam.**

## Casualty Exam Prep Power Points

- Clearly distinguish between “Claims Made” and “Occurrence” Forms of Liability coverage.
- **Coverages A, B and C of the CGL contract**
- The **four** elements of a successful liability legal action for negligence
- **Know CGL “Supplemental” Payments**
- Distinguish between “Premises” and “Operations” exposures to liability.
- **Be familiar with Incidental contracts.....know the word “contract” is the same as “agreement”.**
- Know Liquor Liability and Professional liability must be added to CGL when appropriate.
- **Realize “Umbrella” is excess form of coverage and is only paid when basic coverage is exhausted.**
- PAP is “Multiline” consisting of Liability, Medical, Under (and Un) Insured and Collision/Comp.
- **Understand “Split Limits” concept...i.e. which \$ coverage applies to whom or what.**
- Medical coverage applies to the insured in a PAP...it does not in other P&C contracts, generally.
- **Learn difference between “owned/nonowned/temporary substitute autos.**
- Know what “Covered” auto means.
- **PAP coverage only extends to USA, its possessions and Canada. (Not Mexico or other foreign lands).**
- RE Worker’s Compensation: Elective vs. compulsory (ILLINOIS is elective).
- **Distinguish between WC parts One, Two Three and Four and the four benefits categories.**
- Under WC law, the worker DOES NOT have to show employer negligence to get benefits.
- **Know definitions of Burglary/Robbery/Theft**
- Bond Form A: loss from employee theft > *name vs. position* schedule bonds
- **Blanket vs. Aggregate Penalty (penalty = bond coverage face amount). What is a discovery period?**
- Know how Bond Forms C, D and E differ from each other.
- Learn definition of “Bond” and understand “Surety (3 party) Bonds.” (obligee/obligor/surety)

### Sections II and III apply to Casualty as well as to Property, with only about 25% being different

- Casualty definitions: (Section II of your materials)

**YOU MUST BE FAMILIAR WITH ALL OF THEM!**

### OTHER KEYS TO PASSING:

- **Do your course exams in their proper sequence (Nonsupervised, Then Simulated)**
- Do not skip any exam. If you do not know the answer on a nonsupervised question...then,  
LOOK IT UP, NEVER GUESS!●

The state exams challenge those that are not unprepared. You have a time proven method to pass the first time.

- If you vary from this format, expect your chances to pass to diminish with each shortcut.  
It costs \$106 to take the Promissor exam....resolve to pay this fee only one time and prepare the right way.
- Use the **“know it or skip it” test method** available ONLINE @ [www.dohrnit.com](http://www.dohrnit.com)

**GOOD LUCK AND MUCH SUCCESS TO YOU!**

**STUDY LAW CAREFULLY....YOU MUST PASS IT OR NO LICENSE!!!**

Be sure to go through Law practice exam and look up any answer of which you are uncertain.

DO NOT GUESS!!!! Illinois insurance law must be learned properly.

**BE CERTAIN TO COMPLETE YOUR NONSUPERVISED EXAM IN AN OPEN BOOK FASHION.**

**DO NOT RUSH; INSTEAD TAKE YOUR TIME TO FIND THE CORRECT ANSWER IN THE MATERIALS AND TO LEARN THE CONCEPTS.**

**UPON COMPLETION OF YOUR NONSUPERVISED EXAM, BE CERTAIN TO RETURN THE “EXAM ANSWER SHEET” TO DOHRN INSURANCE TRAINING, INC FOR GRADING AND CERTIFICATION TO THE ILLINOIS DEPARTMENT OF INSURANCE.**

**YOUR INSURANCE LICENSE WILL NOT BE ISSUED UNLESS YOU HAVE SUCCESSFULLY COMPLETED A STATE CERTIFIED PRELICENSING PROGRAM.**