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UNDERSTANDING WATERCRAFT & UMBRELLA INSURANCE

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PUBLISHER'S NOTE

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CHAPTER I: WATERCRAFT INSURANCE OVERVIEW

Whenever the insurance industry deals with a product that depends a great deal on the economy, the pricing of that product will certainly have peaks and valleys.

Recreational "toys" fall into that category. Pleasure boats and personal watercraft are not on most people's buy list when the economy is not very predictable.

Additionally, some states do not allow personal watercraft (PWC) units on public waterways due to pollution/chemical issues and noise issues. For an individual to invest \$10,000 and up for a luxury item that may need to be transported some distance, and whose operational costs rise on a continuous basis, makes this type of purchase a luxury for most consumers.

The market for watercraft has been decreasing overall due to fewer carriers, declining capacity and losses. Carriers are now charging for coverage that was waived during the prior market pricing. The increase in insurance fraud regarding the boating industry is a major factor for underwriters to accurately and properly price and evaluate risks.

A recent Insurance Research Council and Insurance Office survey taken among 343 insurance carriers showed that 40% of the insurance carriers are spending more on the battle against insurance fraud today than ever before.

"Soft fraud" (the exaggeration of otherwise legitimate claims) is far more frequent than "hard fraud" (the deliberate attempt to stage losses often committed by organized crime). The prevalence of 'soft fraud' adds more to the overall claims cost than 'hard fraud.'

Watercraft theft is on the rise nationwide. Boat thefts cost the boating community between \$85 million and \$125 million each year, according to the Wisconsin Department of Natural Resources (DNR). Approximately 27,000 boats are reported stolen each year and of those, 90% are less than 20 feet in length.

One of the major factors regarding fraud and theft claims is that there is no uniformity in watercraft registration documentation. Currently, 19 states have no requirements that a title must be presented in order to register a watercraft; 13 states require no proof of ownership; and 10 states require neither a title nor a proof of ownership.

Unless states mandate boat licensing and registration, the boating community needs to address establishing both minimum operator ages and mandatory boating education standards in order to curtail fraud. A uniform system of state watercraft registration which is uniform countrywide, that requires proof of ownership and proof of insurance, would help the insurance industry fight against fraud, boat theft, and a serious increase in frequency of uninsured boaters claims.

Know your product and have fun. That's the attitude taken by Andrew Anderson, executive vice president of Anderson Insurance Agency of Long Beach Island, New Jersey. This independent insurance agency writes more than 500 boats, yacht, and other policies and has its own in-house marine department. The Anderson Agency also places coverage on commercial fishing boats, marina and boat dealer risks and difficult-to-place boats.

Boat insurance is usually purchased because the client sees value in the coverage. Adding the watercraft policy to the client's umbrella policy if the client has one often makes good common sense. A client purchasing a large vessel is now a 'higher profile' member of the community; and it is possible that more will be demanded from them if they injure someone. Pleasure craft with good loss experience are seeing modest rate increases (in the area of 10% to 15%) while those with adverse loss experience are finding coverage difficult to impossible to secure.

Some underwriters skillfully underwrite a tougher risk by excluding certain types of equipment from coverage or imposing other restrictive conditions on the policy as a way of making the risk acceptable. A skilled marine underwriter can make the difference in this unique field of underwriting.

Some underwriters have expertise in a particular geographical region or with a particular type of boat.

Underwriters want a complete picture the first time they look at the risk. IMVRs for all operators and hardcopy loss runs for the difficult risk should be included in the submission to the underwriter. Agents need to know what the insurers are willing to write.

An agent should become familiar with boating terminology if they are interested in pursuing the boat insurance business. Attending a boat shows, reading boat magazines or visiting a boat dealership can learn a lot.

If someone owns a boat or other watercraft, when spring arrives their thoughts probably turn to water, skimming across the waves or spending long afternoons drifting on a tranquil lake. Insurance is probably the furthest thing from their mind. But boat ownership requires a special need for insurance.

Boat ownership exposes them to many of the same risks as automobile and home ownership, including the risk of causing bodily injury to other people, damage to others' property, or damage to their own property. State law may require them to carry a minimum amount of insurance on their boat. And if they have an outstanding boat loan, their lender probably requires them to carry full insurance on the boat.

Additionally, many marinas and yacht clubs won't allow them to dock their boat unless they're insured. Whether required or not, it's a good idea to have insurance on their vessel.

HOMEOWNERS INSURANCE AND BOATS

Homeowners insurance usually includes limited coverage for small watercraft. A typical homeowners policy provides \$1,000 worth of coverage for physical damage that occurs while their boat is stored at their home.

Homeowners insurance may also provide some personal liability coverage to protect against claims resulting from negligent operation of their boat, but the amount of this coverage is not substantial. Jet skis and other similar watercraft are often excluded from homeowner's insurance coverage.

Additional coverage can be obtained by purchasing a boat policy, a yacht policy, or a personal watercraft policy. But in order to know what type of insurance an individual needs, they have to know what type of vessel they own.

In the insurance world, watercraft are typically divided into three categories:

- Boats. Generally includes watercraft between 16' and 25' 11" in length,
- Yachts. Generally includes only watercraft which are 26' or longer,
- Personal watercraft. Includes only jet skis, wave runners, and other similar craft.

This discussion deals with recreational watercraft only and separate policies are available for water taxis and other commercial watercraft.

Boat policies

A boat policy is a package contract, similar in many ways to automobile insurance. While there may be some variation in boat policies, the main types of coverage are physical damage and liability coverage.

Many boat policies also include legal defense protection, medical payments coverage, and uninsured boater coverage.

Physical damage coverage typically pays to repair or replace the boat if it is damaged or destroyed by fire, lightning, hail, windstorm, hurricane, tornado, explosion, collision, capsizing, sinking, vandalism, or theft.

Covered perils may vary from policy to policy. In addition to the boat itself, outboard motors, trailers, and personal property kept aboard the boat are covered by most boat policies.

The insurer typically will also pay to protect the vessel from further damage in the event of a mishap, or to recover the boat if it sinks or becomes stranded.

Physical damage, which results from any of the following, is typically excluded from coverage:

- Wear and tear, latent defect, mechanical breakdown, faulty manufacturing, war, and nuclear hazard,
- Repair or restoration,
- Carrying people or property for a fee,
- Using property in a official race,
- Using fishing gear and portable electronic, photographic, and water sports equipment.

Claim Payment

In the event of damage or theft, the amount of the claim payment will be determined using one of the following methods:

- Replacement cost- Payment is sufficient to replace the property,
- Agreed value- Payment is limited to a specific amount stated in the policy,
- Actual cash value- Payment is limited to the depreciated value of the property.

The policy will state which of the above methods will be used to settle the claim.

Some insurance companies automatically use an agreed value for boats under 15 years of age, and actual cash value standard for boats older than that.

Certain items (such as sails and outboard motors) are almost always covered on an actual cash value basis. Given a choice, replacement cost coverage is generally most advantageous to the insured, and may be required by the lender (if applicable).

Liability coverage is the most critical component of any watercraft insurance. Liability claims against the insured for bodily injury and property damage can easily reach \$100,000 or more, depending on the severity of the accident. If an individual has inadequate liability coverage (or none at all), a sizable claim against them can put their home, savings, and other assets in jeopardy.

Liability Coverage

Liability coverage provides protection for legal claims if the insured is found liable for a boating accident. It typically covers the legal and financial consequences of accidental bodily injury or death, as well as damage to other boats, docks, and personal property.

Coverage is usually extended to the insured, family members, and others who operate the boat with the insured's permission.

In today's litigious society, huge personal liability judgments are not unusual. Consequently, the coverage in this area should be as high as needed to shield their assets and future earnings. Liability coverage is typically available in amounts ranging from \$100,000 to \$1,000,000. For additional protection, the insured should consider purchasing a personal umbrella liability policy.

Exclusions

Liability coverage under a boat policy generally contains a number of exclusions. The following is a list of common exclusions; however, different policies may differ:

- ✓ Bodily injury or property damage that is expected or intended by the insured,
- ✓ Liability of any person using the insured watercraft without permission,
- ✓ Damage to property owned by or in the care, custody, and control of the insured Injury to persons eligible for workers' compensation benefits,
- ✓ Liability of a person engaged in the business of selling, repairing, storing, or moving watercraft,
- ✓ Legal defense protection.

Legal defense coverage is typically optional under a boat policy. It usually covers legal defense costs for lawsuits brought against the insured for damage caused by an unauthorized person operating their boat. Court costs; attorney's fees, and investigation expenses are normally covered.

Medical payments coverage

Boat policies may also include medical payments coverage, which pays for medical expenses resulting from at-fault boating accidents when someone is injured upon getting into or out of the insured watercraft.

The broadest policies may also include medical payments coverage for water skiing injuries. Medical payments coverage may or may not be necessary, depending on the scope of the proposed insured's health insurance coverage.

Uninsured boaters coverage

Uninsured boaters coverage is available under a boat policy as an option.

It provides payment up to a specified limit--generally \$10,000 per accident--when the insured or a member of their family suffers bodily injury caused by an uninsured boater.

If the uninsured boater also has insufficient assets to compensate the insured for their losses, the financial consequences could be disastrous. With this possibility in mind, it's probably wise for a consumer to purchase this coverage with a relatively high limit.

Limitations

Boat policies may limit usage of the insured vessel to a specified territory. The broadest policies cover the vessel while being operated on any inland body of water (rivers, lakes, etc.) within the continental United States and Canada, and coastal waters of the same areas, up to a certain limit.

The most restrictive policies provide coverage only on a specified body of water and within a narrow perimeter around that area.

The coverage provided by other policies falls somewhere between the following examples:

- Coverage only to inland lakes or to certain states;
- No coverage for offshore waters, such as the Gulf of Mexico.

Yacht policies

A yacht policy is very similar to a boat policy, in that it provides coverage for physical damage to the vessel and for personal liability claims against the insured.

However, in a yacht insurance policy, this coverage's are called "hull insurance" and "property and indemnity coverage."

Yacht owners can also purchase several optional coverage's.

Hull insurance

This coverage pays to repair or replace the vessel if it is damaged or destroyed. Typical covered perils include fire, lightning, hail, windstorm, hurricane, tornado, explosion, collision, capsizing, sinking, vandalism, and theft. However, policies vary from one insurer to another.

In addition to the yacht itself, the sails, furniture, outboard motor, and machinery are also covered.

Dinghies and trailers may be covered under a separate policy endorsement.

Protection and indemnity coverage

This section provides marine liability coverage in the event that a liability claim is filed against the insured for bodily injury and property damage resulting from an at-fault accident. This coverage may be subject to certain exclusions.

Optional Coverage's

Like boat insurance, yacht insurance policies typically provide optional coverage for legal defense, medical payments and uninsured boaters. Yacht owners can also buy a hurricane protection endorsement, which will pay to haul the yacht out of the water if a hurricane is approaching and put it back in the water after the hurricane has passed.

Limitations

Most yacht policies include several limitations, called "warranties." A navigational warranty limits the operation of the insured vessel to a specified area. Depending on the policy, the size of the covered region could vary dramatically. Many yacht policies also include a lay-up warranty, which requires that the yacht be taken out of operation for certain periods during the year.

For example, a yacht policy for a vessel harbored in New England might require that vessel be out of commission during the winter months.

Personal watercraft insurance

If an individual has a personal watercraft, they might actually have a difficult time insuring it. Many insurers refuse to insure these craft, because they pose a much greater risk than other types of watercraft. According to some statistics, 45 percent of all boating accidents involve personal watercraft. However, certain insurance companies now specialize in insuring personal watercraft because of their popularity.

Cost

The cost depends on a number of considerations, including the age, size, type, and power of the vessel. Smaller boats are usually less expensive to insure than larger boats, and, in general, speedboats will be more expensive to insure than sailboats.

Where and when the vessel will be used affect the cost of the insurance.

It is more expensive to insure a boat in coastal waters than in inland lakes and rivers, especially in areas at risk for hurricanes.

Other factors that influence price include the security of the location where the vessel is normally kept, the liability limits and deductibles selected, the level of experience as a boater/sailor the insured might have, and whether the boat is used year-round.

Safety is of utmost importance to insurance companies, so it might be found that the insurer offers a discount when the boat/yacht policy is renewed after a year with no claims. Taking an approved boating safety course can also earn a discount on the premiums.

Discounts are also available for protective devices such as depth finders, burglar alarms, and ship-to-shore radio systems. If the boat is insured with the same company

That issued the auto, life, or homeowners insurance; the insured may be eligible for a multi-policy discount as well.

Boat Safety Considerations

Whether the insured is a first time boat owner or an experienced veteran, knowledge of boat safety is a paramount issue in helping to maintain the cost of insuring watercraft. There are many ways to make sure that boating is a safe experience while protecting the environment and being considerate of other boaters. Accidents and emergencies can be diminished with the help of the following safety considerations.

Alcohol and drugs don't mix well with boat operation. They reduce the ability to make quick decisions and to handle the craft in all situations. A study in four states showed that 51% of those killed in boating accidents had been drinking.

Personal flotation devices (PFD) are required for each person on board.

Wearing a U.S. Coast Guard approved PFD, with at least a 50 mph impact rating, can meet this requirement

Keeping a sharp lookout for other vessels, swimmers and others objects. Help avoid hazardous situations. It is important to know where other boats are before making a turn or crossing a wake.

Boaters should not exceed the maximum load limit, and check fuel levels before starting out. They should practice the "One Third Rule" by using one third of the fuel going out, one third coming in and keeping a third in reserve.

Boaters should share their "Float Plan" with a friend, so they know where the boater is going and when they plan to return.

Boaters should not try to go out alone and never operate the boat in the dark without proper lighting.

Boaters should always follow markers and signs, and stay clear of vegetation. Vegetation can damage the boat and lead to erosion to shorelines.

Boaters should take a boating safety course to better learn the rules, regulations and safe practices.

Checking the weather forecast before starting out. Watching for changes in waves, wind or clouds that signal the approach of bad weather. All are helpful safety guides.

Boaters should be prepared for cold weather. Cold water-cools the body 25 times faster than air of the same temperature.

Focus Points

- "Soft fraud" is the exaggeration of otherwise legitimate claims.
- "Hard fraud" is the deliberate attempt to stage losses then make claim against the loss.
- Boat thefts cost the boating community between \$85 and \$125 million each year.
- Non-uniformity in watercraft registration documentation contributes to fraud and theft claims.
- 19 states do not require a title to be presented to register a watercraft.
- Boat ownership carries many of the same risks as automobile and home ownership.
- Many marinas and yacht clubs will not allow un-insured boats to dock.
- Homeowners insurance usually includes limited coverage for small watercraft.
- Homeowners policies provide \$1,000 of coverage for damage to a boat stored at the insureds home.
- Jet skis are often excluded from homeowner's insurance coverage.
- Watercraft are typically divided into three categories.
- Boats include watercraft between 16' and 25' 11" in length.
- Yachts include watercraft which are 26' or longer.
- Personal watercraft includes jet skis, wave runners, and other similar craft.
- Boat policies are similar to automobile insurance.
- The main types of coverage in boat policies are physical damage and liability coverage.
- Boat policies can include legal defense protection, medical payments coverage, and uninsured boater coverage.
- Physical damage coverage pays to repair or replace the boat.
- Covered perils differ from policy to policy.
- Boat policies cover the boat, outboard motors, trailers, and personal property kept aboard.
- Liability coverage is the most critical component of any watercraft insurance.
- Liability coverage provides protection against legal claims if the insured is found liable.
- Uninsured boaters coverage is available under a boat policy as an option.
- Yacht insurance is referred to as hull insurance.
- Yacht policies provide coverage to the boat and personal liability claims against the insured.
- Hull insurance pays to repair or replace the vessel if it is damaged or destroyed.
- Yacht policies include limitations called warranties.
- A navigational warranty limits the operation of the insured vessel to a specified area.
- The cost to insure boats in costal waters is greater than in inland lakes and rivers.

CHAPTER 2: BASIC WATERCRAFT POLICY STIPULATIONS

Watercraft can range in size as follows:

- Rowboats
- Canoes
- Outboard motorboats
- Inboard motorboats
- Dinghies
- Sailboats
- Speedboats
- Houseboats
- Yachts

HULL AND TRAILER LOSS EXPOSURES

Watercraft as well as their equipment, trailers and furnishings may be exposed to a wide variety of theft and physical damage loss.

Examples of a few are:

- ✓ Two speedboats collide,
- ✓ A sailboat is overturned in heavy winds,
- ✓ A boat sinks in a severe storm,
- ✓ A sandbar strands a houseboat,
- ✓ An outboard motor falls into a lake,
- ✓ A boat trailer is stolen,
- ✓ An explosion seriously damages a boat.

HOMEOWNER'S POLICY - PHYSICAL DAMAGE COVERAGE

Watercraft and trailers are covered under Section One of a homeowner's policy for physical damage and theft. However this coverage is very limited.

The major limitations on coverage are as follows:

Direct loss to:

- Watercraft,
- Trailers,
- Furnishings,
- Equipment,
- Outboard motors,

... from windstorm or hail is covered ONLY if the property is inside a fully enclosed building.

Theft of:

- Watercraft,
- Trailers,
- Furnishings,
- Equipment,
- Outboard motors,

...away from the resident premises is specifically excluded.

Watercraft and other boating property are covered only for a limited number of named perils.

Coverage on:

- Watercraft,
- Trailers,
- Furnishings,
- Equipment,
- Furnishings,

.... is limited to a maximum of \$1,000.00.

PERSONAL AUTO POLICY - PERSONAL DAMAGE COVERAGE

An automobile policy is not designed nor does it cover any physical damage to boats. The boat trailer however can be insured for physical damage loss under a personal auto policy. The trailer must be described fully in the declarations of the auto policy.

LIABILITY LOSS EXPOSURES

When a consumer owns or operates a watercraft they can be exposed to a wide variety of liability loss exposures such as:

- ✓ A water-skier is injured because of excessive speed,
- ✓ Speedboat swamps another boat causing it to turn,
- ✓ A boat runs into swimmers and seriously injures them,
- ✓ A boat collides with a dock causing property damage,
- ✓ Two boats collide injuring the occupants,
- ✓ A child falls overboard and drowns and was not provided with a life preserver by the boat operator.

HOMEOWNER'S POLICY LIABILITY COVERAGE

Section II of a homeowner's policy provides personal liability insurance and it covers certain watercraft loss exposures providing the boat is under a specified size and length. Personal liability provides the insured with protection against bodily injury or property liability that arises out of the use or operation of certain owned watercraft.

The liability protection can also apply on an excess basis for certain covered non-owned watercraft. There is however several important categories of watercraft liability that the homeowner's policy excludes from coverage. They are:

- ✓ Owned watercraft regardless of size with inboard or inboard/outboard motor power.
- ✓ Rented watercraft with an inboard or inboard/outboard motor power with more than 50 horsepower.
- ✓ An owned or rented sailing vessel that is more than 26 feet in length
- ✓ Watercraft powered by one or more outboard motors with more than 25 horsepower if the motors were owned by the insured at the inception of the policy and not declared or reported. However watercraft powered by outboard motors with more than 25 horsepower are covered if the motors were acquired prior to the policy period and providing the insured declared them at the time of policy inception or declared them within forty-five days of acquisition.

The above exclusions do not apply when the craft is in storage.

OUTBOARD MOTOR AND BOAT INSURANCE

This type of insurance is designed for those who own motorboats and for those who have adequate personal liability coverage under their homeowner's policy or under a comprehensive personal liability policy but desire broader physical damage insurance on their boat. Inland Marine Floater can provide this protection. Although floaters are not standard they do contain some common features.

The insured selects the property to be insured.

The floater can be written to cover the following:

- Hull,
- Motor or Motors,
- Boat Equipment,
- Boat Accessories,
- Boat Carrier,
- Boat Trailer.

Covered property is written on an actual cash value basis and may contain a deductible of:

- ✓ \$25.00.
- ✓ \$50.00.
- ✓ \$100.00.
- ✓ Or more.

COVERED PERILS

The floater can be written on a named peril of risks of direct loss basis. Most floaters currently are written on the risks of direct loss basis. The coverage does not include the liability for:

- Bodily injury,

- Loss of life,
- Illness of individuals.

It is assumed that the insured has proper liability insurance under a homeowner's or liability policy to cover any third party bodily injury claims. The floater, however, may provide collision damage liability insurance that protects the insured from a claim for property damage from the owner of another boat if the insured's boat happens to collide with another boat while it is afloat.

EXCLUSIONS

Outboard motor and boat insurance contracts do have exclusions. Some common exclusions are:

- ✓ Business pursuits. No coverage will be afforded if the boat is used as a public conveyance for carrying passengers for compensation,
- ✓ No coverage will be provided if the boat is rented to others,
- ✓ Coverage is excluded for race boats or speed contests,
- ✓ Repair or service. Loss or damage from refinishing, renovating, repair is not covered.

The person who is repairing the boat would be responsible for any damage.

General risks of direct loss exclusion

Coverage will not be provided for loss or damage from

- Wear and tear,
- Gradual deterioration,
- Vermin,
- Marine life,
- Rust,
- Corrosion,
- Inherent vices,
- Latent defect,
- Mechanical breakdown,
- Freezing,
- Extremes of temperature.

WATERCRAFT PACKAGE POLICIES

Many insurance companies have developed a special boat owner's policy that combines the following:

- Liability,
- Physical Damage,
- Medical Payments.

Physical Damage Coverage

Currently most boat owner policies are written on a direct and accidental loss basis. The insurance company agrees to pay for direct or accidental loss due to covered property under the physical damage insuring agreement. All losses are covered except those specifically excluded.

The physical damage covers:

- The Boat,
- Equipment,
- Accessories,
- Motor,
- Trailer.

If the boat collides with another boat, gets damage from heavy winds, or is stolen, the loss is covered.

Liability Coverage.

Liability insurance that covers the insured for bodily injury and property damage, liability from a neglect ownership or operation of the boat, is included in a boat owner's policy. Should the insured accidentally damage another boat or injure swimmers for example, protection is provided under the liability coverage.

Medical Payments Coverage

This is similar to the medical payments found in an automobile insurance contract. Medical payments will be made for all medical expenses incurred within three years from the date of a watercraft accident that causes bodily injury to a covered person. Under medical payments coverage, a covered person is defined as:

- The insured,
- A family member,
- Any person while occupying the covered watercraft.

Medical expenses will be paid for reasonable charges for the following:

- ✓ Medical,
- ✓ Surgical,
- ✓ X-ray,
- ✓ Dental,
- ✓ Ambulance,
- ✓ Hospital,
- ✓ Professional Nursing,
- ✓ Prosthetic Devices,
- ✓ Funeral Services.

OTHER COVERAGES

The following may also be found in a boat owner's policy:

- ✓ Cost of removing a wrecked vessel,
- ✓ Cost of removing a sunken vessel,
- ✓ Life salvage.

EXCLUSIONS

The following are commonly excluded in a boat owner's policy under physical damage coverage:

- ✓ Wear and Tear,
- ✓ Inherent Vice,
- ✓ Latent Defect,
- ✓ Mechanical Breakdown,
- ✓ War,
- ✓ Nuclear Hazard,
- ✓ Damage Caused by Repair (except fire),
- ✓ Damage Caused by Restoration Process (except fire),
- ✓ Carrying Persons for a Fee,
- ✓ Carrying Property for a Fee,
- ✓ Renting Covered Property,
- ✓ Racing Covered Property (except sailboats),
- ✓ Speed testing Covered Property (except sailboats),
- ✓ Infidelity of Persons to Whom Covered Property is Entrusted,
- ✓ Portable Electronic Equipment,
- ✓ Photographic Equipment,
- ✓ Water sport Equipment,
- ✓ Fishing Gear,
- ✓ Cameras,
- ✓ Fuel,
- ✓ Portable Radios,
- ✓ Fishing Equipment.

The following are commonly excluded from a boat owner's policy under medical expense coverage:

- ✓ Intentional Injury,

- ✓ Intentional Damage,
 - ✓ Renting the Watercraft to Others,
 - ✓ Carrying Persons for a Fee,
 - ✓ Carrying Property for a Fee,
 - ✓ Using Watercraft in a Race (except sailboats),
 - ✓ Using Watercraft in a Speed Test (except sailboats),
 - ✓ Loss Covered under Worker's Compensation,
 - ✓ Losses by a Nuclear Energy Liability Policy,
 - ✓ Contractual Liability,
 - ✓ Injury to an Employee if the Employee's Work involves Operation or Maintenance of the Watercraft.
-

PERSONAL YACHT INSURANCE

This type of policy is for larger boats such as inboard motorboats and cabin cruisers. Personal Yacht insurance provides the following coverage:

- ✓ Hull Insurance,
 - ✓ Protection and Indemnity Insurance,
 - ✓ Optional Coverage,
 - ✓ Warranties.
-

HULL INSURANCE

This protection refers to physical damage on the boat. This coverage also applies to:

- Sails,
- Tackle,
- Machinery,
- Furniture,
- The Boat.

This insurance provides "all-risks" protection. For example if the boat is damaged by:

- ✓ High winds,
- ✓ Heavy seas,
- ✓ Collision,
- ✓ Flood,
- ✓ Sinking because of an insured peril the loss is covered.

A deductible of varying amounts will apply to all physical damage and losses.

PROTECTION AND INDEMNITY INSURANCE

This coverage provides the boat owner with coverage for bodily injury and property injury on an indemnity basis. If for example the boat were to smash into a marina and injures several persons the loss to the dock as well as any bodily injury would be covered under P&I.

OPTIONAL COVERAGES

You may add several options to your personal yacht policy, such as:

- ✓ Medical payments,
 - ✓ Liability of the insured to maritime workers injured in the course of employment,
 - ✓ Boat trailer insurance,
 - ✓ Land transportation insurance,
 - ✓ Water-skiing clause.
-

WARRANTIES

Several warranties and promises are provided with yacht insurance. Should a warranty be violated higher premiums may be required. The major warranties on yacht insurance are as follows:

Seaworthiness Warranty

The insured warrants that the vehicle is in seaworthy condition

Lay-up Warranty

The insured warrants the vehicle will not be in operation during certain periods, such as winter months

Navigational Limits

The vessel will be used only in territorial waters described in declarations

Private Pleasure Warranty

The insured warrants the vessel will not be hired or chartered

UNINSURED BOATERS COVERAGE

As is the case with automobile insurance where you can purchase uninsured motorist protection, boat packages also include an option for uninsured boat coverage. The company agrees to pay damages that a covered person is legally entitled to recover from an insured boat owner or operator due to bodily injury sustained by a covered person in a boating accident.

The uninsured boater's coverage has several exclusions. Bodily injury from the following are excluded:

- While occupying or struck by any watercraft owned by the insured or family member that is not insured under the policy.
- If the bodily injury claim is settled without the insurance company's consent.
- While operating a covered watercraft which is carrying persons or property for a fee.
- While occupying a covered watercraft being rented to others.
- Using a watercraft without a reasonable belief that the person is entitled to do so.
- Occupying a watercraft without the reasonable belief that the person is entitled to do so.

In the event there should be a disagreement as to whether a covered person is legally entitled to recover damages from the uninsured boat owner or operator, or on the amount of damages, the coverage has an arbitration provision which states: Each party selects an arbitrator. The two arbitrators then select a third arbitrator. They have thirty days to agree. If they go beyond thirty days a judge in a court of law appoints the arbitrator.

Focus Points

- Coverage of theft and damage to watercraft and trailers is under Section One of a homeowners policy.
- An automobile policy is not designed nor does it cover any physical damage to boats.
- Boat trailers can be insured for physical damage loss under a personal auto policy.
- Section II of a homeowner's policy provides personal liability coverage and covers certain watercraft loss exposures.
- Personal liability covers insured against bodily injury or property liability.
- Insurance companies have developed boat owner's policies combining Liability, and Medical Payments.
- Boat owner policies are written on a direct and accidental loss basis.
- Medical payments coverage pays for all medical expenses incurred within three years of the injury.
- Hull insurance protects physical damage on the boat.
- Hull insurance provides "all-risks" protection.
- Protection and indemnity insurance covers boat owners for bodily injury and property injury on an indemnity basis.
- Uninsured boaters insurance is similar to uninsured motorist insurance.

CHAPTER 4: SPECIALTY COVERAGE MARKETS

Insurance on yachts and pleasure boats, personal watercraft, houseboats and marinas is a special class of business not usually written by retail agents in their standard companies. For this reason, a number of specialty managing general agents have been established to handle yacht and pleasure boats as a specialty line.

Most underwriters are boaters themselves and have had years of experience in handling yacht and pleasure boat accounts. Many of these offices provide facilities for yachts only and boats or personal watercraft. Others are exclusive managers of insurance for marinas and water sports rental. Some facilities handle all classes, while other managing general agents, which offer a general line of property and casualty insurance products, include yachts and pleasure craft in their offerings to agents and brokers.

The following is a description of the classes of business for personal marine coverage's, as well as a list of markets that offer coverage's for yachts, pleasure boats, personal watercraft and marinas.

Antique and Classic Boats

Antique and classic boats are defined as vessels other than the ordinary manufactured pleasure boat. Standard insurers writing pleasure boats and yachts are not interested in most wooden-hull boats, custom-builds or those of a highly unusual nature. Antique and classic boats are those built 25 or more years ago.

Most wooden boats and some older classic fiberglass boats would qualify for this category. The boat must be seaworthy to qualify for coverage on an all-risk, full marine basis. Coverage is written for agreed value on the hull. The policy also includes liability coverage, uninsured boaters, medical payments, personal effects and trailers. Business is often produced on an association basis--for example, all owners of Chris Craft antique boats, etc.

High Performance Boats

This is a type of pleasure boat designed to provide high performance for cruising, water-skiing, etc. Insurance is a broad form marine policy covering personal and business-owned vessels capable of speeds up to 100 miles per hour. Hull and liability coverage, including medical payments, personal effects, and uninsured boaters, is usually sold as part of a package. Limits generally extend up to \$500,000 for hulls and \$1 million for liability.

Policies are issued at agreed value with named operator warranty. Extended land transit coverage, transit and storage only, and machinery damage coverage are available as options. Extended navigation areas are available. Single- or multi-hulls are eligible.

Houseboats

Insurance underwriters consider houseboats to be in the same category as yachts and pleasure craft. Rates, insuring conditions and coverage's are similar. Hull and liability coverage's are written on the yacht form. The main difference between yachts and houseboats is that because of the construction of a houseboat, the craft is not as easily navigated, is less seaworthy in rough water, and is more unwieldy than the sleeker yacht. An inboard/outboard drive with single or twin engines up to 400 h.p usually power houseboats. Values, including luxury fittings, may range up to \$50,000 or more.

The policy is underwritten on the:

- Basis of the experience of the owner or pilot,
- Use of the boat,
- Length of time in the water,
- The rate area in which the boat is navigated.

Policy includes hull, boat equipment, personal effects, liability, medical payments, and uninsured boaters coverage. Policy is subject to a minimum deductible.

Personal Watercraft (jet skis)

This class of watercraft encompasses a wide range of single engine inboard powered vessels no greater than 16 feet in length and using a water-jet pump as the primary source of propulsion. Operators/passengers may stand up, sit upon (motorcycle style), or sit in the unit depending on the manufacturer. Included in this class are Jet Ski, Wave runner, Tiger shark, Wet Bike and Sea Dog "cycle" style models, as well as Jazz and Rage "mini boats."

Exposures include high performance and handling characteristics coupled with minimum operator and passenger protection.

Water-skiing and other towing activities have become additional exposures as power of these units increase.

Coverage includes hull, liability and medical payments. Units are valued on an actual cash value basis. Trailers and water-skiing liability can be added. Liability limits are available generally to \$300,000.

Marinas

These businesses are important to yacht and pleasure boat owners. Marinas provide mooring facilities, repair, alteration, maintenance, storage, fueling, and many other services for the pleasure boat owner.

Coverage under a marina package policy includes property, general liability, and marina operator's legal liability, protection and indemnity insurance, boat dealers inventory, workboat hull, and piers, wharves and docks coverage.

The marina operator's legal liability policy covers the legal liability of the marina operator for loss of or damage to private pleasure boats while in the operator's care, custody or control.

The policy closes the gap left by the "care, custody and control" exclusion of the general liability policy. Premium is based on gross receipts. Water sports rental insurance is available for marinas that rent out personal watercraft, pleasure boats, kayaks, water skis and wind surfers. Insuring operations such as parasailing and chartered boats can be arranged.

Water sport rentals

Rental of all types of watercraft from personal watercraft to houseboats has become an increasingly popular alternative to ownership of a boat. Coverage is afforded to the owner of the rented watercraft, not the renter.

Liability, hull damage and water sports liability coverage's are available. Underwriters require use of a written rental agreement containing appropriate "hold harmless" language. Hull coverage is generally written on an actual cash value basis. Premium is based on gross receipts.

Yachts and pleasure boats

Package policies are available for most types of power or sailing vessels. The policy is usually written on an all-risk basis covering both physical damage (hull) and liability risks of the owner.

Optional coverage is available for passenger liability, equipment, trailers and water-skiing liability. For small boats and yachts up to 60 feet, hull coverage may be arranged with limits up to \$1 million.

For larger "mega" yachts up to 200 feet, values may extend to \$20 million. Liability limits generally are between \$300,000 and \$2 million, but some large yachts may be written for as high as \$50 million. Boat trailers, personal effects, medical payments and uninsured boaters insurance are important options offered. Premium is based on size of boat, horsepower, navigational range, and experience of operator. Boats older than 25 years are generally written under separate antique and classic boat programs.

Bass Boat Insurance

Low Cost, Broad Coverage Boat Insurance Especially for Bass Boat Owners!

Most anglers with bass boats probably have invested a lot of money in their boat, to outfit it with the latest technology, keep the engine tuned and your fishing gear in top shape. What if something happens while they're out there, like hitting a submerged log or their best rod is stolen right off their boat?

A special boat insurance program just for bass boats is available that in addition to broad basic coverage includes coverage's designed to meet the unique needs of the fishermen.

Program Highlights

- Broadest coverage-for the boat, motor and trailer, as well as liability, medical and uninsured boater coverage (subject to policy exclusions).
- Agreed hull value policy - in the event of a total loss.
- Broad cruising area - the U.S., Canada, Mexican coastal and inland waters without having to call for a cruising extension.
- Automatic tournament coverage - for participation in officially sanctioned bass fishing tournaments.

Mexican Liability Coverage

Boating in Mexico requires three types of insurance:

- Hull Coverage,
- Liability Coverage - issued by a Mexican Insurance provider,
- Automobile Liability Coverage - issued by a Mexican Insurance provider tailoring a boat on land.

In the event of an auto or boating accident, Mexican law requires proof of financial responsibility, which is typically done by showing authorities an insurance policy. Without proof of coverage, the boat and vehicle can be impounded until the individual proves that they are not at fault.

The Mexican government will only recognize a Mexican insurer.

Focus Points

- Antique and classic boats are defined as vessels are built 25 or more years ago.
- Boats must be seaworthy to qualify for coverage on an all-risk, full marine basis.
- Coverage is written for agreed value on the hull.
- Policies cover liability, uninsured boaters, medical payments, personal effects and trailers.
- Houseboats are categorized as yachts and pleasure craft.
- Personal Watercraft are no greater than 16 ft. long using a water-jet pump for propulsion.
- Water sport rentals Coverage is afforded to the owner of the watercraft, not the renter.
- Package policies are available for most types of power or sailing vessels.

- Policies are usually written on an all-risk basis covering physical damage and liability risks.
- Low Cost, Broad Coverage Boat Insurance Especially for Bass Boat Owners!
- A special boat insurance program just for bass boats is available.
- Boating in Mexico requires three types of insurance.

CHAPTER 5: THE JONES ACT

UNDERSTANDING THE JONES ACT

The Jones Act is an Act of Congress, which governs the liability of vessel operators & marine employers for the work-related injury or death of an employee. It is a federal cause of action, meaning that the United States Congress intended for all seamen's injuries throughout the nation to be guided by the same liability standards.

Although the Jones Act protects seamen, it is not the same as workers' compensation. It does not require payment regardless of fault. In order for a worker to recover under the Jones Act, a worker must prove some negligence or fault on the part of the vessel's owners, operators, officers, and/or fellow employees or by reason of any defect in the vessel, its gear, tackle, or equipment.

The Jones Act provides an injured seaman a remedy against his or her employers for injuries arising from negligent acts of the employer or co-workers during the course of employment on a vessel.

This means that the employer must do something unreasonable or fail to perform a reasonable act that would have prevented injury in order for the seaman to win his claim. Claims brought under the Jones Act can also raise claims against a vessel's owner that a vessel was un-seaworthy.

WHO IS A SEAMAN?

One of the central questions in any maritime injury case is whether the injured party is a seaman, since only a seaman can recover under the Jones Act. A seaman is a member of the crew of a vessel or someone who is assigned to a vessel or a fleet of vessels.

For example, those who work on tankers, freighters, jack-up rigs, semi-submersibles, towboats / tugs, supply boats, crew boats, barges, lay barges, and fishing vessels are members of the crew and are considered seamen. Those who are crewmembers on movable or jack-up drilling rigs are seamen. Officers and crew are all considered seamen.

Longshoremen, pilots, and those who work on fixed platforms are not seamen, but have other maritime remedies available for injuries. Often there is a dispute as to seaman status and whether the seaman was working on a vessel when he was injured.

The essential requirements for seaman status are:

An employee's duties must contribute to the function of the vessel or to the accomplishment of its mission;

A seaman must have a connection with a vessel in navigation (or to an identifiable group of such vessels), that is substantial in terms of both its duration and its nature;

The duration of a worker's connection to a vessel and the nature of the worker's activities, taken together, determine whether a maritime worker is a seaman because the ultimate inquiry is whether the worker in question is a member of the vessel's crew or simply a land-based employee who happens to be working on a vessel at a given time.

A distinction must be made between sea-based workers and land-based workers who have only a transitory or sporadic connection to a vessel in navigation.

Land-based maritime workers do not become seamen because they happen to be working aboard a vessel when they are injured, and seamen do not lose Jones Act protection where the course of their service to a vessel takes them ashore. In evaluating the employment-related connection of a maritime worker to a vessel in navigation, courts should not employ a "snapshot" test for seaman status, inspecting only the situation as it exists at the instant of injury; but rather, the total circumstances of an individual's employment must be weighed to determine whether he has a sufficient relation to the Vessel.

Jones Act coverage (seaman status) depends not on the place where the injury is inflicted, but on the nature of the seaman's service, his status as a member of the vessel, and his relationship as such to the vessel & its operation in navigable waters.

MAINTENANCE AND CURE

If a seaman becomes injured on a vessel, regardless of the fault of the vessel or its operators, his or her legal remedy is called maintenance and cure.

"Maintenance" is a small daily compensation designed to provide the food and shelter that would have been provided to the seaman while aboard the vessel.

Today, maintenance rates range from US \$7 to US \$35 per day. "Cure" is the obligation of the seaman's employer to provide medical treatment, prescription drugs, nursing services, hospitalization, rehab & therapy, until the seaman reaches maximum medical improvement.

Maximum medical improvement means that the seaman's condition will not improve any further or he is permanently disabled. When a seaman reaches maximum medical improvement, the vessel owner's obligation to pay maintenance and cure ceases, regardless of whether the seaman can return to work or not. The seaman has a right to his choice of physicians and does not have to accept treatment

by his employer's choice of physician. If an employer refuses to pay maintenance and cure, the employer can be held liable for damages and attorneys' fees.

UN-SEAWORTHINESS

The vessel owner owes the seaman a strict and absolute duty to provide a seaworthy vessel. A seaworthy vessel is one that is reasonably fit for its intended use, it should be a safe place to work and live. A seaworthy vessel should be equipped with appropriate safety gear and equipment, safe recreation facilities, and a competent crew. The duty owed to a seaman is more rigorous than the seaworthiness promised in a contract for the carriage of marine cargo.

In addition to holding a seaman's employer responsible for the negligent acts of its employees and officers, a seaman can recover if he can prove that the vessel was un-seaworthy and that he was injured as a result. A vessel that is un-seaworthy does not mean that it is in danger of sinking.

A vessel is un-seaworthy if a piece of equipment breaks or is inoperable, the vessel's crew is too small or incomplete, not adequately trained, or a condition such as oil, grease or rust exists where it is not intended to exist and the un-seaworthy condition is a direct cause of injury to the seaman.

In other words, negligence focuses on acts of the seaman's employer, and un-seaworthiness focuses on the condition or inadequacy of the vessel itself. Unlike the Jones Act claims, which are against the seaman's employer, an un-seaworthiness claim is made against the vessel's owner. In many cases those actions will be against the same party.

An un-seaworthiness claim will bring the owner into a lawsuit as an additional source of recovery for the seaman. As with the Jones Act, an un-seaworthiness claim must be filed within three years of the injury, and must be combined with a Jones Act claim.

Jones Act - Statute of Limitations

The Statute of Limitations in a Jones Act case is generally three (3) years from the date of the injury. There are exceptions to this general rule, however such as seaman assigned to vessel owned, operated, or contracted by the United States government.

Actions against the vessel owner for un-seaworthiness must also be brought within three (3) years from the date of the seaman's injury.

LEGAL DAMAGES UNDER THE JONES ACT?

An injured worker under the Jones Act can recover the following legal damages:

- ✓ Wages lost from the time of the injury to the time of trial,
- ✓ Wage loss in the future,
- ✓ Medical expenses in the past and in the future and,
- ✓ Pain, suffering and mental anguish in the past and in the future.

Legal Remedies for surviving family

If an injury causes the death of a seaman, the surviving widow or husband and children of the employee become the beneficiaries under the Jones Act. If the worker does not have a spouse or children, then the beneficiaries include the employee's parents. A personal representative such as an executor is entitled to bring an action that the worker (had he lived) would have possessed against his employer.

The worker's cause of action against the employer does not die with the worker. In a death cases, damages go to the seaman's survivors.

Steps to Recovery

If injured, there are a few very important steps that must be taken in order to protect rights to recover under the Jones Act in the future.

If injured, report the injury to the appropriate person immediately

Make sure the accident report is COMPLETE.

If there was a dangerous condition or problem that caused or contributed to the injury, then state it should be stated in the accident report.

Written statements from co-workers as to what the conditions were at the time of the accident.

Obtain statements from witnesses to the accident.

Names and addresses and phone numbers of all of the co-workers that may become witnesses.

Medical attention should be immediately obtained.

JONES ACT CASE STUDIES

Morales vs. King Ocean Service de Venezuela, S.A. | \$175,000.00

Dade County Case No. 92-16715 Judge Greenbaum

SEAMAN'S ACTION: Plaintiff was a seaman on the vessel Rio Pacquare when he fell while descending a metal vertical ladder. Plaintiff claimed that the ladder was oily and wet.

Also plaintiff claimed that the ladder was not installed to industry standards since it did not have seven inches clearance from the wall where it was attached.

Defendant denied these claims.

Plaintiff, 44, male, from Costa Rica claimed that he suffered a lower back herniated disc in the fall along with neck, hand and head injuries.

DR. GARY LUSTGARTEN, Neurosurgeon, testified for plaintiff that plaintiff suffered a herniated disc from the accident for which he needed surgery. He gave plaintiff a 10% disability.

DR. STEVEN TICKTIN, Orthopedist, testified for plaintiff that he saw plaintiff about two months after the accident and that he had lower back complaints.

DR. LLOYD ORIBER, Orthopedist, testified for plaintiff that when he saw him he needed a cast for an injury to his tendon in his hand, which would also need therapy.

DR. JORGE HERRERA, Neuro-psychologist, testified for plaintiff that plaintiff suffered a head injury in the accident, which caused headaches.

DR. ROWLAND PRITCHARD, Orthopedist, testified for defendant, that plaintiff did not complain about an injury to his back the entire time that he treated him. He gave plaintiff a disability rating of 5-6% for a neck injury.

DR. JOSEPH KALBAC, Orthopedist testified for defendant that plaintiff did not have a herniated disc requiring surgery when he saw the plaintiff.

DR. LESSOR, Neuropsychologist, testified for defendant that plaintiff did not have a head injury and that his test results indicated that he was malingering.

Plaintiff had about \$35,000.00 in unpaid medical bills. Defendant took the position that the surgery was unnecessary.

CAPTAIN ROBERT F. BARBER, U.S. Coast Guard retired, testified for the plaintiff that he was not given a safe place to work and the vessel was unfit.

JAMES BEST, Engineer, testified that the ladder was not installed correctly. Defendant was found to have willfully and arbitrarily failed to pay plaintiff's maintenance and cure and awarded \$0 punitive damages.

Plaintiff will be entitled to an award of attorneys fees based on the verdict with the amount to be determined by the Court.

Verdict for Plaintiff: Negligence and un-seaworthiness, \$120,000.00 for which plaintiff was found to be 25% comparatively negligent. Maintenance and cure, \$55,000.00.

Andersen vs. Sky Cruises | \$6,100,000.00

Leif Andersen as Personal Representative of the Estate of Kim Andersen vs. Sky Cruises. Ltd.

Duval County Case No.: 87-8892

The plaintiff claimed that the defendant Sky Cruises (also known as Sea Escape) improperly operated its sewage treatment system on board the passenger ship Scandinavian Sky in violation of Coast Guard regulations, so that it produced poisonous gases, hydrogen sulfide, and methane. When the decedent crewmember was ordered to do repair work on the system it resulted in a leak of raw sewage that filled the work area knee high. In addition poison gas caused the crewmember to become unconscious within 10 to 15 seconds and then die. The incident resulted in the death of four crewmembers and injury to three other workers.

The cases of the other three crewmembers deaths had been previously settled. This case was the first one to go to a jury.

Based on the foregoing, the plaintiff also claimed that the defendant was reckless with regard to safety in so far as the operation of the sewage system and requested punitive damages. In light of the fact that the seaman was not married and had no children, the Judge limited the available damages to pre-death pain and suffering and punitive damages.

The defendant claimed that the accident was unavoidable. The defendant also claimed that the seaman had disobeyed his orders and that the sewage system was in compliance with Coast Guard regulations.

James Best, Marine Engineer and Architect, testified that the sewage, as a result, produced poison gas.

Harry Baxley, Marine Surveyor, a Coast Guard investigator for the accident, testified that it violated the applicable Coast Guard regulation.

Bonifacio Flores, M.D., medical examiner, testified that the crewmember was conscious for 10 to 15 seconds before death. He also stated that hydrogen sulfide was more deadly than cyanide.

Alfred Isaacson, engineer, testified that the sewage system was in compliance with Coast Guard regulations.

Vessel Staff Captain, Tommy Isakson, testified that the defendant was very concerned about safety.

Vessel First Engineer, Raol Skoqlund, testified that a coast guard inspector had previously informed him that the operation of the sewage system was proper.

Verdict for plaintiff: \$6,100,000.00

Sosa vs. M/V Lago Izaba

\$25,843,903 was awarded to a 27-year-old Mexican seaman earning \$8,224 annually after he received serious burns aboard the defendant's freighter when the engine exploded

Defendant, Tracey Navigation, a shipping company based in the Cayman Islands, and worked in the position of Oiler aboard the defendant's vessel, monitoring the engine room machines for proper functioning, employed the plaintiff.

Three months after plaintiff was hired to work, the vessel's engine exploded as the ship attempted to dock in Texas. Diesel fuel spilled over plaintiff and ignited. He sustained second and third degree burns over 80% of his body, resulting in severe scarring, loss of use of the hands, which are frozen in a claw-like position, vision and hearing impairment, sexual dysfunction, and totally disabling psychiatric injuries.

The defendant paid \$190,000 for plaintiff's medical expenses prior to trial.

The plaintiff brought suit against the vessel and shipping company under general maritime law alleging that the vessel was rendered unseaworthy by the unsafe condition of the engine.

Evidence revealed that on the vessel's last voyage the engine had broken down and caught fire twice. The captain had ordered the ship to sail before requested replacement parts for the engine were procured.

The plaintiff contended that the defendant shipping company knew that the ship's engine was not functioning properly and needed repairs and that periodic maintenance of the vessel's machinery had not been performed.

The defendant challenged the court's jurisdiction on the grounds that the Suit involved a Mexican national suing a Grand Cayman corporation whose vessel used Mexico as its homeport.

The federal district court rules that U.S. jurisdiction over plaintiff's action is proper. Despite the vessel's registration and the shipping company's claims that it was based in a foreign nation, the court finds that defendant's real base of operations for the management of the vessel was in Houston, Texas: the vessel regularly loaded cargo in Houston; employees salaries were paid through a Houston bank; and 90% of the shareholders of the shipping company were U.S. residents.

Verdict for Plaintiff: \$25,843,903.00

Langmead vs. Admiral Cruises | \$3,500,965.00

Dade County Circuit Court Case No. 89-8830 Judge Gerald Wetherington

Plaintiff, a 38-year-old Canadian singer on the vessel Star Dancer, suffered an eye injury while exercising in the ship's gym, where an elastic exercise band struck her.

At the second trial of the case (an appellate court reversed a directed verdict for the defendant in the first trial), the plaintiff claimed \$700 in lost wages and \$235 in medical bills. Plaintiff further asserted that the defendant should have reinstated her maintenance and cure after the doctor recommended three-month follow-up treatments to watch for increased eye pressure, and after plaintiff developed stabbing eye pains several times a week as well as problems 3fl entering dark rooms.

An ophthalmologist testified that plaintiff had not reached maximum medical improvement at the time of trial. At the second, punitive damages phase of trial, plaintiff introduced evidence that defendant had net earnings of \$106 million in 1993, owned nine ships and employed 6,000 crew members. The jury awarded the plaintiff \$3,500,000 in punitive damages.

VERDICT FOR PLAINTIFF: \$3,500,965.00

Centeno vs. Gulf Fleet | \$776,000.00

United States District Court Case No. 81-4210 Judge Lansing Mitchell

ADMIRALTY-JONES ACT, FAILURE TO ADEQUATELY TREAT: Plaintiff's husband, a forty-four year old seaman from Honduras became ill while working on defendant's vessel. Defendant sent him to a doctor who diagnosed flu. The decedent was then sent home without any further care. When he reached Honduras he was almost in a diabetic coma.

About one month later he died.

Defendant claims the seaman was sent home in good condition and he died of a problem unrelated to his original illness.

DR. CHEVARRIA, who treated the seaman in Honduras, testified he would have lived had the original doctor detected and treated the diabetic condition in time.

The widow and three minor children survived the seaman. He earned \$1,500.00 monthly as a cook.

Verdict for plaintiff: \$776,000.00

Igac vs. Norwegian Cruise Lines | \$662,165.00

Dade County Case No. 96-07571 Judge Alan Postman

The plaintiff, a 29-year-old male waiter from Turkey, was injured during a lifeboat drill on the vessel Starward.

The plaintiff was trying to hook a cable to the lifeboat when another crewmember stepped into his position forcing the plaintiff to step backwards to make room.

The plaintiff slipped on a slick substance on the lifeboat, causing him to fall backwards out of the lifeboat 7 stories to the water below.

The plaintiff claimed that the defendant should have provided the crew in the lifeboat with safety belts. The defendant claimed that the accident was the plaintiff's fault because he was a passenger in the lifeboat and not supposed to be doing any work and also that the plaintiff stood on the seats, which was prohibited.

The plaintiff sustained two fractured vertebrae and several bulging discs as a result of the accident. The defendant claimed that the plaintiff had ongoing back problems for years and that the fractures were not from the accident. The plaintiff also claimed injuries to his elbow and knee.

Dr. Lloyd Moriber, orthopedic surgeon, testified for the plaintiff that he had a 7% disability to the elbow and a 10% disability to the knee of which 50% was preexisting. Dr.

Aldo Berti, neurosurgeon, testified that the plaintiff needed to have back surgery to stabilize his back, which would cost approximately \$40,000. He also assigned a 20% disability to the back with respect to the fractures.

Dr. Gary Lustgarten, neurosurgeon, testified that the plaintiff needed back surgery with respect to his herniated disc and that the surgery should be done in conjunction with

Dr. Berti's proposed surgery and that the cost would be around \$75,000. The ship's doctor testified for the defendant, that the plaintiff did not have any bruising to his back after the accident although he did not muscle spasm.

He testified that the plaintiff suffered a back sprain and that x-rays taken soon after the accident did not show any fractures.

Dr. Alan Drexler, radiologist, testified that the bone scan taken 3 to 4 weeks after the accident was negative for fractures which indicated that the fractures were old and predated the accident on board the ship. Dr. Ken Fisher, neurologist, examined the plaintiff on behalf of the defendant but was not called as a witness at the trial.

The plaintiff claimed he could not work on board a vessel as a waiter anymore, where he was earning \$3000 monthly including tips. In the future, he thought he could work as a hotel receptionist in Turkey for about \$250 monthly.

The jury found the plaintiff to be 15% comparatively negligent, which did not apply to the maintenance and cure award.

Verdict for the plaintiff: \$662,165.00

Nunez vs. Carnival Cruise Lines | \$575,000.00

Case No. 91-08593 Judge Roger Silver

The plaintiff, 39 years old, was from the Dominican Republic. He earned \$528 monthly as a pantry or buffet worker making appetizers and salads on the vessel. The plaintiff was injured while working on board the defendant's vessel, Mardi Gras, when a stack of plastic boxes called lexans was being pushed and suddenly caught in a crack in the floor resulting in the plaintiff and the stack falling. The plaintiff cut his leg on a cracked or chipped lexan when he fell.

The plaintiff claimed that he should have been provided with a cart or more assistance to move the boxes. The defendant claimed that plaintiff chose an unsafe method of moving the boxes, and that he only scraped his leg.

The plaintiff also claimed that he got improper and inadequate medical care since the cut became infected resulting in an aggravation of a preexisting varicose vein problem.

The defendant claimed that plaintiff's aggravation lasted nine months at best and that plaintiff's remaining problems was due to the normal progression of venous insufficiency from the varicose veins.

Orthopedist Stephen Ticktin, M.D. testified for the plaintiff that the scrape which became infected aggravated the varicose vein problem and that the infection did not heal as fast due to the underlying varicose vein problem.

Dr. Ticktin further testified that plaintiff had a 20% disability and could not work on vessels anymore, but could work on land at a sedentary job.

Vascular surgeon, Dr. Sendischew testified by deposition for the plaintiff and the defendant that an aggravation occurred but that it did not permanently affect the preexisting varicose vein problem.

Further Dr. Sendischew testified that after one month, of the leg not healing, the plaintiff should have been sent to a vascular specialist. As a result, the plaintiff had a delay in healing of about eight months.

Dr. Stewart McIntyre, infectious disease specialist testified for defendant that plaintiff's infection, which resulted in a hospitalization, was not related to the incident and was the result of a virus that causes mono.

The defendant served an offer of judgment in the amount of \$20,000.

The jury found the defendant to be liable for Jones Act negligence, un-seaworthiness and failure to provide prompt, proper, and adequate medical care. The plaintiff was found to be 10% comparatively negligent.

VERDICT FOR PLAINTIFF: \$575,000

Rodriguez vs. Carnival Cruise Lines | \$525,000.00

Dade County Case No. 83-5216 Judge Hickey

COADMIRALTY-JONES ACT-UNSEAWORTHINESS-FAILURE TO PROVIDE PROMPT TREATMENT: \$700,000 jury verdict for impaired vision suffered by a 23-year old Costa Rican seaman.

Plaintiff worked in the laundry room of the TSS Festivale. He claimed that he was provided undercooked meat, which caused him to be infected by a parasite resulting in light perception only vision in one eye.

Defendant claimed the meat was well cooked and that plaintiff was infected with the parasite from birth or prior to working for defendant.

Plaintiff also claimed defendant did not provide prompt ophthalmologic medical care for him, resulting in further loss of vision.

Defendant claimed that prompt care would have not helped save any of plaintiff's vision, and claimed plaintiff was negligent for eating the food.

Plaintiff was a white male, twenty-three years of age from Costa Rica.

Drs. H. SAWELSON, S. NAGASWAMI, M. BLIJMEKRANTZ and H. COHEN all testified and agreed that the parasite could be from parasite poorly cooked or raw meat, milk, cats or congenital.

Verdict for plaintiff: Jones Act and Unseaworthiness-\$500,000.00.

Failure to promptly treat-\$200,000.00.

Plaintiff was found to be 25% comparatively negligent.

Total Verdict after reduction: \$525,000.00

Olivares vs. Sky Cruises | \$276,948.29+

Charles Emory Olivares vs. Sky Cruises Ltd, and Imperial Ocean Services

Dade County Case No. 88-19660 Judge Jack Turner

ADMIRALTY ACTION: Slip and fall.

Plaintiff, mess men on the defendant's vessel, slipped in vomit and fell down a flight of stairs.

Plaintiff claimed the elevator did not work and that he had to use the stairs.

Defendant claimed that the accident was unreported and that the plaintiff should have seen the vomit if it was there.

In addition, defendant's claimed that the plaintiff could have used another elevator.

Plaintiff, 30, male, injured his low back with pain and numbness radiating into his legs.

DR. STEPHEN TICKTIN testified plaintiff has a 15-20% disability.

Defense doctors, DR. JOSEPH KALBAC (Orthopedic Surgeon),

DR. WAYNE TOBIN (Neurologist), and DR. IAN MISSONSON (Neurologist) all testified plaintiff has no disability.

CAPTAIN ROBERT F. BARBER, Expert Witness for the plaintiff, testified that the vessel was unsafe and unfit.

Verdict for Plaintiff: \$261,250.00 plus penalty of \$15,698.29 plus attorney's fees.

Rivera vs. International Ships Services | \$200,000.00

Rivera vs. International Ships Services, Ltd. and Compania de Vapores Realma, S.A.

Dade County Case No. 83-32876 Judge Goldman

JONES ACT and UNSEAWORTHINESS:

The plaintiff was employed as an assistant pantry man on the M.S. Dolphin. At the time of this accident, he was thirty-four years old and earning \$250.00 per month. The plaintiff was a citizen of Honduras.

The plaintiff claimed he was injured when he slipped and fell on soup, which had been spilled on a ship's stairway.

The plaintiff claimed he was carrying a tray with glass shrimp cocktail cups, which broke and cut two tendons and nerves on his dominant hand.

DR. LEVIN at Coral Reef General Hospital performed surgery.

The plaintiff claimed he was rushed, that the ship's elevator did not work, and that he had no safe alternative route.

The defendants denied the existence of any spilled soup, and claimed the accident was caused solely by the plaintiff's negligence.

The defendants also claimed that even if there was spilled soup on the stairs, the plaintiff had a safe alternative route and that the plaintiff was not rushed.

DR. GLATZER testified at trial that from an orthopedic point of view, he found no objective evidence of a permanent disability.

DR. S. TICKTIN testified that the plaintiff suffered a 25% permanent disability of his dominant hand.

The surgeon DR. LEVIN, not having examined the plaintiff for about three years could not give his opinion as to the plaintiff's current condition.

Verdict for plaintiff: \$200,000.00.

The defendant International Ships Services, found 65% at fault.

The defendant Compania de Vapores Realma, S.A. found to be 35% at fault.

The plaintiff was found not to be comparatively negligent.

JONES ACT-DETERMINING CLAIMS

In determining when claims accrue for the purpose of statute of limitations of Jones Act, the court applies either the "time of event" rule, under which a cause of action accrues when harmful event occurs, or "discovery rule," under which cause of action accrues when plaintiff discovers or should have discovered both injury and its cause. *Armstrong v. Trico Marine, Inc.* 923 F.2d 55 (1991).

The Jones Act is comprised of the following sub-sections (summarized and paraphrased):

46 U.S.C.S. App. d 688(a): A seaman is entitled to recover damages at law (i.e. money) if he is personally injured during employment and he can elect to have a trial by jury.

All statutes modifying or extending the common-law rights and remedies in cases of personal injury to railway employees will apply. (see F.E.L.A. at 45 U.S.C.S. d 51-6 (1939).

(b): Limitation for certain aliens; applicability in lieu of other remedy:

(b)(1): Jones Act cause of action will not be maintained unless the Seaman is a U.S. citizen or a permanent resident alien at the time the incident occurred.

(b)(1)(A): Jones Act cause of action will not be maintained if the Plaintiff was an employee of a business, which explores, develops, produces offshore mineral or energy resources including: drilling, mapping, surveying, diving, pipe-laying, maintaining, repairing, constructing, transporting supplies, equipment, or personnel.

A cause of action can be maintained for those seamen injured transporting those resources or by a vessel constructed primarily to carry oil in bulk in the cargo spaces.

b)(1)(B): A cause of action will not be maintained for incidents which occur in waters overlaying the continental shelf of a nation other than the U.S., or in its territories, or possessions.

(b)(2): A plaintiff may still bring a cause of action although he was prohibited under (b)(1) if he can establish that no remedy was available to him--

(b)(2)(A): --under the laws of the nation, which has jurisdiction over the area of the incident.

(b)(2)(B): --under the laws of the nation which during the time of the incident, the Plaintiff maintained citizenship or residency.

Focus Points

- The Jones Act governs the liability of vessel operators & marine employers for the work-related injury of an employee.
- A Jones Act claim must be filed within of the injury.
- A seaman is a member of the crew who is assigned to a vessel or a fleet of vessels.
- A seaman's legal remedy to an injury is called maintenance and cure.
- Maintenance is a small daily compensation designed to provide the food and shelter.
- Cure is the employer's obligation to provide medical treatment until the seaman reaches maximum medical improvement.
- Maximum medical improvement means the seaman's condition will not improve any further or he is permanently disabled.
- When a seaman reaches maximum medical improvement, the vessel owner's obligation to pay maintenance and cure ceases.
- The vessel owner must provide the seaman with a seaworthy vessel.
- A seaworthy vessel is one that is reasonably fit for its intended use.
- Negligence focuses on acts of the seaman's employer.
- Un-seaworthiness focuses on the condition or inadequacy of the vessel.
- An un-seaworthiness claim must be filed within three years of the injury, and must be combined with a Jones Act claim.

CHAPTER 6: UNDERWRITERS

The American Institute of Marine Underwriters (AIMU) has over 100 years of service as the trade association representing the marine insurance industry as an advocate, educator and information center.

AIMU provides an active program of support services to assist the U.S. marine insurance industry in providing its global customers with a level of performance unsurpassed in the world.

Its worldwide network of surveyors (Correspondents) aids its members in handling claims with speed and efficiency. AIMU publishes a Weekly Bulletin, which provides its members with current information on maritime matters, media reports, legislation and court decisions.

Through its educational programs, AIMU fosters the highest standards of professionalism, stimulates creativity and innovation and enhances the industry's traditional commitment to service.

AIMU ensures that lawmakers, regulators and international bodies hear U.S. marine insurers. It testifies before congressional committees and works closely with organizations and participates in coalitions focused on improving safety and preventing cargo-related crime. AIMU is the forum for action on the significant issues that affect U.S. marine insurers, re-insurers and the international trade community.

AIMU Member Services

Through committee work, AIMU provides a forum for discussion and dissemination of specific matters of mutual interest. It also monitors, reports and acts upon Federal, State and International legislation and regulation impacting marine insurance. The AIMU organizes conferences where AIMU members can discuss current maritime developments and issues.

In addition, AIMU provides and distributes publications, including Weekly Bulletin, maintains and monitors worldwide network of cargo surveyors, who sometimes act as claims settling agents, contributes to public relations through articles, speeches, interviews and press releases, and responds publicly to marine insurance related issues.

In the area of education AIMU presents Seminars, lecture series, technical papers and guest instructors, as well as its involvement in the Harold Jackson Scholarship.

The AIMU prepares forms and clauses, which may be used by marine insurers, as well as generates an annual report on operating results by line of business. AIMU also prepares legal opinions, which provides opinions on issues impacting the marine insurance industry.

Regional committees provide a forum for AIMU members to meet on matters of mutual interest in four regional cities.

AIMU CARGO INSURANCE RESTRICTIONS

RESTRICTIVE LAWS / REGULATIONS (IN UNITED STATES AND IN FOREIGN COUNTRIES)

U.S. RESTRICTIONS

The U.S. Government, through the Office of Foreign Assets Control (OFAC), has determined that American citizens (companies or individuals) may not generally do business with governments / companies / individuals in certain foreign nations. These prohibitions apply to marine insurance as well as other types of business. Please understand that OFAC regulations are complicated and that they vary from country to country.

In some cases, certain items may be insured (i.e. humanitarian aid) notwithstanding the general prohibition. In general, however, it is likely that you are prohibited from writing the marine insurance on risks associated with these countries. For much greater detail, click onto OFAC's website www.treas.gov/ofac

OFAC REGULATORY COMPLIANCE

AIMU recommends the software products and services of Attus Technologies to review your OFAC sanctions exposures. The links provides information about their OFAC products: www.attustech.com

FOREIGN RESTRICTIONS

Freedom of Insurance - 2002)

Algeria

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Currency restriction

REMARKS:

"Any importer who wants to insure the goods or the capital goods transported by sea should sign an assurance with an insurance company approved in Algeria. However, the goods or the imported capital goods that benefit from a specific financing are not subjected to this obligation of assurance. The conditions and the modalities of application of the present article are clarified by statutory way."

Art. 194 of the Code of Insurance

WTO Membership: Observer

DOMESTIC INSURANCE LAW:

- ✓ Ordinance N° 95-07 of January 25, 1995.
- ✓ Executive decree 95-412 of 9 December 1995 specifies exceptions from the prohibition on non-marine insurance of goods imported by sea and air.

Bangladesh

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure import abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Goods imported for any Government or semi-government sectors have to be insured with Sadharan Birma Corporation (SBC). Any other private company may cover other goods.

WTO MEMBER: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

- ✓ Insurance Corporation Act of June 23, 1973
- ✓ Substitution of Section 23, Act VII of 1973, in Ordinance n° LI, 11.08.1984.
- ✓ Insurance Corporation Act of June 23, 1973.
- ✓ Substitution of Section 23, Act VII of 1973, in Ordinance n° LI, 11.08.1984.

Barbados

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure import abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

In practice, many importers buy goods on a CIF basis, as suppliers can provide more favorable terms than those available locally.

DOMESTIC INSURANCE LAW:

Law of March 23, 1978.

Benin

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure import abroad
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

- ✓ Decree N° 83.406 of November 16, 1983
- ✓ Code CIMA, Art.278.

Bolivia

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Regulations are not strictly enforced by customs as far as exports are concerned and small importers have a tendency to ignore the law.

Goods are frequently smuggled from Chile into Bolivia.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unbound.

DOMESTIC LAW:

Law N° 15.516 of June 2, 1978.

Brazil

RESTRICTIONS:

Forbidden for the buyer to insure imports abroad

- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Direct insurance contracts with foreign insurers are allowed when domestic insurers cannot cover risks or are against national interest. Approval by the Superintendencia de Seguros privados (SUSEP) is requested before the contract is signed.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No commitments for cross-border and consumption abroad in MAT insurance, except for freight and vessels.

DOMESTIC INSURANCE LAW:

Resolution N° 3-71 of January 27, 1971

Burkina Faso

RESTRICTIONS

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods exceeding 500 000 F CFA in value must be insured with insurers authorized to operate in Burkina Faso. Several organizations such as governmental and international organizations, oil companies, are released from this obligation.

WTO MEMBER: YES

DOMESTIC INSURANCE LAW:

Ordinance N° 83-022 of November 17, 1983.

Decree N° 84 of December 30, 1983.

Code CIMA, Art.278.

Burundi

RESTRICTIONS:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: No schedule of specific commitments.

DOMESTIC INSURANCE ORDINANCE:

Ordinance N° 540.141 of June 9, 1983.

Cambodia

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Despite a new regulation introduced in February 2001 that encourages clients and insurance agents to place their business in Cambodia, most export trade is conducted on a FOB basis and imports are purchased CIF. Only 10% of all export/import trade are insured in Cambodia.

WTO MEMBER: Observer

DOMESTIC INSURANCE LAW:

Section 1 General Regulation of the Ministry of Finance

Circular N° 2 of April 6, 1993

Regulation 2001.

Cameroon

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

It is forbidden to insure imported goods abroad when their value exceed 500 000 F CFA. Exemptions are possible subject to previous agreement with the Ministry of Finance.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Law N° 7514 of December 8, 1975.

Decree N° 76/334 of August 6, 1976.

Decree N° 30-78 of April 22, 1978.

Code CIMA, Art.278.

Cape Verde

RESTRICTIONS

Forbidden for the seller to insure exports abroad
Forbidden for the buyer to insure imports abroad
Forbidden for the seller to export on a FOB basis

REMARKS:

Exemptions possible subject to previous agreement by the Ministry of Finance in Cape Verde.

WTO MEMBER: Observer

DOMESTIC INSURANCE LAW:

Decree 30/78 of 22 April 1978.

Central African Republic

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods with a value equal or exceeding 500 000 F CFA must be insured locally. Goods are cleared only after production of the certificate of insurance.

WTO MEMBER: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Ordinance N° 83.052 of August 2, 1983.

Decree N° 84.128 of April 27, 1984.

Code CIMA, Art. 278.

Chad

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods with a FOB value equal or exceeding F CFA 10 000 000 must be insured locally.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Decree N° 736 of November 19, 1985.

Decree N° 0019 of April 2, 1986.

Code CIMA, Art. 278.

Congo (Brazzaville)

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

All properties and goods imported into Congo must be insured with the ARC (Société d'assurances et de réassurances du Congo). An insurance certificate is required for Customs clearance.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Decree N° 8-562 of October 31, 1977.

Congo Democratic Republic (Kinshasa)

RESTRICTIONS:

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

In practice, a number of imported goods are bought on a CIF basis, as domestic capacity is not sufficient enough to settle claims. For currency saving purpose, exports are frequently sold on a FOB basis, freight and insurance being borne by the buyer.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Law N° 73-009 of January 5, 1973.

Law November 1973.

Cuba

RESTRICTIONS

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Local insurance of imports and exports encouraged by article 36 of decree N° 177 of 02.09.97.

Djibouti

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Local insurance of imported goods is obligatory. Under the terms of the new law on insurance 2000, imported goods can be taken out either with Djibouti-based insurance companies or with natural person or legal entities authorized to operate in the country. Accordingly, insurance of imports abroad seems to be forbidden.

DOMESTIC INSURANCE LAW:

Article 193 of the insurance law 2000.

Dominican Republic

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Authorization may be given when cover is not available locally.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unbound

DOMESTIC INSURANCE LAW:

Law N° 28 of December 23, 1975, amending Law N° 26 of May 10, 1971.

Ecuador

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Authorization of the Superintendence may be granted when insurance is not available locally.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unbound.

DOMESTIC INSURANCE LAW:

Decree N° 02-70 of February 25, 1970.

Law on Insurance (Official Register n° 290 of 03.04.98) Art. 66 c) and d).

Ethiopia

RESTRICTION

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

All imports into Ethiopia must be carried out only through letters of credit and, when applying, insurance certificates are required.

DOMESTIC INSURANCE LAW:

Observer Notice N° 1/1977 of January 5, 1977.

Gabon

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods of a FOB value exceeding 300 000 F CFA must be insured locally.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Ordinance N° 6/79 of February 22, 1979

Decree N° 0215/PR/MINECOFIN of February 22, 1979.

Code CIMA, Art. 278.

Ghana

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

"Except in case of personal effects, every insurance in respect of any goods imported into Ghana shall be placed with an insurer registered in Ghana". Even so, some imports are still being placed directly offshore or insured on an illegal CIF basis.

WTO Member: YES

DOMESTIC INSURANCE LAW:

Decree of 1st January 1973 Ghana Shippers' Council (Cargo Sharing).

Regulations, 1987 (legislative instrument NO 1347).

Insurance Law of 1989.

Guinea

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Currency restriction

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Decree N° 234/PRG/84 of September 24, 1984.

Ordinance N° 080-PRG/87 of 22.12.87.

Indonesia

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Consumption abroad is allowed only if there is no insurance company, which could handle the insurance risks of the object in question. Restriction will not be eliminated before 2020. In addition, legal requirement is often circumvented and most imports continue to be bought on a CIF basis.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
Unbound except as stated in the remark section

DOMESTIC INSURANCE LAW

Articles 5 & 6 of Decree N° 40 of October 26, 1988.

Article 6 (Chap. V) of the Insurance Business Law N° 2/1992 of February 2.1992.

Article (Chap. II) of Government Regulations N° 73 of October 30, 1992 on the insurance business implementation

Iran

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Iranian imported goods for which Iranian banks have accepted to open a letter of credit must be insured locally.

Letters of credit are accepted only when a local Cargo policy provides a minimum of Clause C cover. Exceptions possible depending on the contract/agreement concerned.

DOMESTIC INSURANCE LAW:

Article 70 of the Establishment Act of the Central Insurance Authority of Iran (CIAI)

Law of 29 June 1971.

Iraq

REMARKS:

Laws governing transport insurance in Iraq no longer apply due to particular commercial conditions after war. All shipments imported to Iraq with United Nations approval are insured abroad.

DOMESTIC INSURANCE LAW:

Central Bank Regulations of Iraq.

Ivory Coast

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Special taxes and extra charges

REMARKS:

A minimum level of cover on imported goods must be placed in Ivory Coast and a certificate of local insurance must be produced to clear goods through customs.

DOMESTIC INSURANCE LAW:

Decree-law of 1 January 1987

Ordinance of 7 March 1997.

Recommendation N° 0012/CMA/CE/CIMA, 17.04.97.

Jordan

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

In practice, customs authorities do not check whether consumption is made abroad.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unknown

DOMESTIC INSURANCE LAW:

Insurance Business Code N° 30, 1984, as modified in 1995.

Kenya

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Currency restriction

REMARKS:

In practice, a large volume of imported cargo enters Kenya on a CIF basis.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

Unbound except for aviation, marine and engineering.

DOMESTIC INSURANCE LAW:
Decree of 1st July 1978.
Insurance Act of 1984 and Insurance Regulations of 1986.

Liberia

RESTRICTIONS:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the seller to export on a FOB basis

REMARKS:

Rumors circulate that local exports insurance is now compulsory. Confirmation is waited for.

WTO MEMBER: Intention of application

Libya

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Currency restriction

REMARKS:

Only public entities, co-operatives and self-managing firms are granted import licenses. Libyan imports are contracted on a FOB or C&F basis. Under the legislation available, it is not clear whether local insurance is compulsory or not.

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:
Ordinance N° 75-002 of June 16, 1975.

Madagascar

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

DOMESTIC INSURANCE LAW:
Ordinance N° 75-002 of 16 June 1975.

Malaysia

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Approval for consumption abroad granted if insurance is not available from direct insurance companies in Malaysia.

Most exports are sold FOB and many imports are purchased CIF despite tax incentives for importers if they insure cargo locally.

WTO Member: YES

DOMESTIC INSURANCE LAW:
Recommendation of the National economic recovery plan.

Mali

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Dispensations possible for food aid and equipment intended to develop domestic industry and economy.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC

Law N° 81-78 of August 15, 1981.
Decree N° 314 of December 5, 1983.
Decree N° 3664 of July 14, 1984.
Law N° 85-37 of June 21, 1988.
Code CIMA, Art. 278.

NSURANCELAW:

Mauritania

RESTRICTIONS: Forbidden for the buyer to insure imports abroad
Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Ordinance N° 80-020 of January 25, 1980.
Decree N° 80-120 of June 9, 1980.

MOROCCO

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis
- ✓ Currency restriction

REMARKS:

Under certain circumstances, CIF purchases are allowed. For instance, when they are financed outside Morocco subject cross-border consumption.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Ordinance N° 80-020 of January 25, 1980.
Decree N° 80-120 of June 9, 1980.

Niger

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS

Imported goods of a FOB value equal to or exceeding USD 2000 must be insured locally when carried by air and USD 10 000 when carried by sea or by land. Production of a certificate of insurance required for customs clearance.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Ordinance N° 85-15 of May 23, 1985.
Decree N° 85-52 of May 23, 1985.
Code CIMA, Art. 278.

Nigeria

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Some imports are insured locally on "C" clauses or even total loss only, and then insured abroad on "A" clauses to gain hard currency cover. Although reducing, the use of counterfeit or forged insurance certificates is still reported.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unbound.

DOMESTIC INSURANCE LAW:

Insurance Decree of 7 December 1976.

Confirmed by new legislation of 1997.

Oman

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Despite legal requirements, imports are occasionally purchased CIF.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

The Omani government has indicated it will open its market by 2005 following its membership to the WTO.

DOMESTIC INSURANCE LAW:

Law of October 1, 1979.

Pakistan

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods must be insured locally in national currency. Despite such legal requirement, some importers limit local insurance to total loss and arrange for all risks cover to be placed by the shipper and included in the invoice cost. In the event of loss or damage, claim is then paid overseas in foreign currency, which facilitates replacement. Government and semi-governmental risks, imports of machinery and heavy goods must be insured with the National Insurance Corporation, which insures all public sector business.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS: Unbound

DOMESTIC INSURANCE LAW:

Pakistan Insurance Corporation Act N° 37 of May 8, 1952.

Export Credit Guarantee Insurance Scheme Rules of 1962.

National Insurance Company Act of 1976.

Rwanda

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:
Law of July 14, 1964.

Senegal

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

All goods and merchandises directly imported for trade or industrial purpose must be insured either through representatives approved by Minister in charge of finance or through brokers established in Senegal.

WTO Member: YES

DOMESTIC INSURANCE LAW:
Law 83-47 of February 18, 1983.
Decree 83-1201 of November 24, 1983.
Code CIMA, Art.278.

Seychelles

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

DOMESTIC INSURANCE LAW:
Observer Insurance Act of November 1, 1982.

Sierra Leone

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:
Section 76 of Insurance Act 1971.
Law of April 15, 1974.

Solomon Islands

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:
No schedule of specific commitments.

DOMESTIC INSURANCE LAW:
Public notice pursuant to Section 10 (3) of the Insurance Act 1985.

Somalia

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

DOMESTIC INSURANCE LAW:

Law N° 69 of September 30, 1972.

Sudan

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

A local marine cargo policy covering transit must be presented to Customs for clearance. The Minister of Finance in special circumstances may grant authorization for non-admitted insurance.

WTO MEMBER: Observer

DOMESTIC INSURANCE LAW:

Ministerial Order of March 13, 1970.

Control and Supervision of Insurance Business Act 1992.

Syria

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported materials and goods are subject to insurance with SIC (Syrian Insurance Company) at least for Clause C cover. Exported goods may be insured abroad.

DOMESTIC INSURANCE LAW:

Order N° 337, 28 May 1979.

Tanzania

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Local importers tend to import goods on a CIF basis despite the legal requirements.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE ACT:

Insurance Act 1996 gazetted on 13 March 1998.

Togo

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported goods of a FOB value equal to or exceeding USD 1000 must be insured locally. Goods are often imported on a CIF basis despite the legal requirements.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Law N° 87-07 and Decree N° 87-104 of June 3, 1987 (Cat. N° 2) Tax Code, Chapter 2, Article 865, Paragraph 4.
Insurance Act of 1996 gazetted on 13 March 1998.
Code CIMA, Art.278.

Tunisia

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imported marine cargo of a value equal to or exceeding TND 3,000 (USD 2,12) must be insured locally. Exports are usually sold either C&F or FOB.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

The air, sea and land transport of goods for imports must be insured in Tunisia.

DOMESTIC INSURANCE LAW:

Law N° 80/88 of December 12, 1980.
Decree N° 81-1596 of November 24, 1981.

Uganda

RESTRICTION:

- ✓ Forbidden for the seller to insure exports abroad
- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the seller to export on a FOB basis
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Offshore coverage seems to be continuing.

WTO Member: YES

MAT Cross-border and Consumption commitments under GATS:

No schedule of specific commitments.

DOMESTIC INSURANCE LAW:

Insurance Act 1996.

Yemen

RESTRICTIONS:

- ✓ Forbidden for the buyer to insure imports abroad
- ✓ Forbidden for the buyer to import on a CIF basis

REMARKS:

Imports into Yemen are supposed to be insured with Yemeni Insurers, but in practice this is often ignored and imported goods enter the country on a CIF basis.

WTO MEMBER: Observer

DOMESTIC INSURANCE LAW:

Memo by the Ministry of Commerce & Industry dated December 16, 1980. Ref. 5060/9.

WTO Trade Agreements

The Link below provides country-by-country commitments to eliminate market access restrictions in the insurance business, including the cross-border supply of cargo insurance.

These commitments were made under the General Agreement on Trade in Services (GATS) as a result of a December 1997 agreement on financial services, which entered into force in March 1999. The GATS negotiations are continuing in an effort to expand upon the existing commitments.

Please note that this information has been provided by the European Union based on materials obtained from the World Trade Organization (WTO) and neither AIMU nor AHI has verified its accuracy. Additional information can be obtained at <http://gats-info.eu.int>.

Focus Points

- AIMU represents the marine insurance industry as an advocate, educator and information center.
- AIMU ensures that lawmakers, regulators and international bodies address U.S. marine insurers issues.
- AIMU is the forum for action on the significant issues that affect U.S. marine insurers, re-insurers and the international trade community.
- AIMU monitors, reports and acts upon Federal, State and International legislation effecting marine insurance.
- American citizens may not do business with governments, companies/ individuals in certain foreign nations.
- OFAC sets regulations as to which countries American citizens may not do business with.
- OFAC regulations are complicated and vary from country to country.

CHAPTER 7: PREMIUM SAVING SAFETY & THEFT DEVICES

MARINE THEFT

Marine theft is a global problem. The organized theft of small boats, personal watercraft (Jet Skis, Wave Riders, and similar craft), and marine equipment is rising. Regardless of the size of the craft, if a boat or equipment is stolen, the owner is not likely to get it back.

Consumers are not helpless and they can act to prevent theft and safeguard their property. Practicing some of the common sense crime prevention measures outlined in this chapter, will decrease the occurrence of thefts and help maintain premium levels and perhaps qualify for safety items premium discounts.

It is important to keep in mind three factors that can influence to discourage theft. Any technique that requires thieves to spend more time, make more noise, or that makes the thief more visible during the commission of a crime will help discourage them.

BOATS AND EQUIPMENT

Marking the property discourages theft and enables authorities to trace lost or stolen items, giving them a better chance of recovering the stolen items. Engrave the owners driver's license number on all of the valuable boating gear is an excellent safety measure. Before the number the abbreviation for the state issuing the license ("OR" for Oregon or "IL" for Illinois, etc) and after the number placing the letters "DL" to indicate that the number is for a driver's license. Placing the letters before and after the license number prevents alteration of the number.

By engraving boats in several places; locating the identifiable number becomes easy. At least one should be easily visible in case the property is simply lost while several should be hidden from view.

The location of the engraved numbers should be written down on the same list that has the information relating to the inventory of items.

After marking the goods, Marine Watch decals should be placed on the boat and other property. Marine Watch decals can be obtained from the State Marine Board or county sheriff.

Social security numbers should not be used to mark goods, as federal law prevents the Social Security Administration from disclosing the name of individuals, even to law enforcement agencies.

PHOTOGRAPH

Photographs of the property can help identify the goods and aid in their recovery. They also serve as documentation for the insurance company. An individual should photograph, or videotape, the interior and exterior of the vessel showing all equipment and gear carried on the vessel.

Any unique features, equipment, or identifying marks (such as scratches or dents) that can make identification easier should be photographed or videotaped. Drawers and lockers should be opened and their contents should be photographed. The photographs or videotape cassette should be signed and dated.

Notes should be prepared identifying all items in the pictures, and notes should be placed with the photos or tape. All photographic negatives or slides should be kept so that additional prints can be made, if necessary. The photos and notes should not be stored on or with the boat where they might be stolen.

If there are significant changes in gear or the appearance of the items or when new equipment is installed, the vessel and items should be re-photographed.

The insured should prepare a written inventory of the boat, trailer, personal watercraft, and all other marine equipment and gear.

All electronic equipment, outboard engines, and other gear should be listed. All available information, including the brand name, model and year, and serial number, registration number, and hull identification number should be included in the list.

The inventory should be cross-referenced to the to the photographic record and stored together in a safe place away from the boat. A copy of both documents should be provided to the insurance company, and copies of the photos should be included if required by the insurer.

The best way to keep thieves from stealing property from the boat is to not leave gear and equipment aboard the vessel. It is best to take gear home, including the television, radio, CB, outboard motor, and other loose equipment. If it is not practical to take gear with home, it should be stored aboard in a cabinet or locker that has a good lock.

Dinghies or outboard motors should be chained to the boat and locked securely. It is important to keep in mind that bolt cutters easily snip through most chains and padlocks. A secure boat cover can also help, keeping equipment out of sight.

If the boat, trailer, or gear is missing, it should be reported immediately to:

- ✓ Local law enforcement agencies,
- ✓ The insurance company,
- ✓ The dock or harbormaster,
- ✓ To neighboring boaters,
- ✓ The local boating newspapers,
- ✓ The local State Marine Board.

The written and photographic records should be used to provide complete information on all missing property.

If the property is recovered, it is important to notify both local law enforcement agencies and the Marine Board. The recovery must be entered into the computer records. Otherwise, the insured may have trouble selling the property or law enforcement personnel may stop them for "stolen" property.

BOATS AND TRAILERS

Small boats and personal watercraft sitting on trailers are the most frequent targets of marine theft - all criminals have to do is drive up, hitch the trailer to their vehicle, and drive away.

Avoid making it easy for thieves, trailers and boats or personal watercraft should be kept in a locked garage or shed.

The use of a high quality trailer hitch lock, even if the trailer is parked indoors helps prevent theft.

If the trailer and boat is stored outdoors, it out should be kept out of sight and perhaps behind the insured's house or to the side of the house.

The use of a wheel lock or by removing one or both wheels when the trailer is stored serves as a deterrent to thieves. The spare tire should be kept separately or secured with a chain and lock.

If the boat is on a vehicle roof rack, it should be chained and padlocked to the rack.

If the boat is stored in an open driveway, carport, or yard park another vehicle or other large object should be stored in front of the trailer.

If left outside, the trailer and boat or personal watercraft should be secured to a tree or pole with a high quality chain and lock.

If a boat must be left along the shoreline during an extended outing, the outboard motor should be removed or secured t with a transom lock.

If an individual must leave their personal watercraft, they should chain and lock it to a dock, post, or large tree.

VESSEL SECURITY

Boats are seldom built with security in mind. However, one can take steps to reduce the risk of a break-in.

Placing heavy duty hinges on all outside hatches and doors, and securing the hatches with heavy-duty safety hasps, and a high quality padlock, create additional safety.

To ensure that hasps and hinges cannot be pried off, it is best to place match plates on the inside of doors and hatches and, if possible, run bolts through the outside hardware and the match plates. Securing forward hatches is particularly important. For safety, hatches should be unlocked while underway.

Window locks and dowels will help secure sliding windows. However, dowels cannot be relied on as the only means of security.

Placing draperies on windows prevents thieves from seeing the property. If

installing an alarm system, one designed for marine use gives greater security than traditional security systems. An alarm system used in marine situations must be resistant to water, salt, and humidity, and should have a reset function.

DOCK SECURITY & MARINE WATCH

Thieves often succeed because they look as if they belong in an area. Together with dock neighbors and the harbor master, many are starting a Marine Watch program at the marina or berthing area.

PREVENTING FRAUD IN BUYING A BOAT

It is important to be careful when buying a boat there is always a possibility that it may have been stolen.

Making sure the boat's description on the title matches the boat being purchased is always a good safety procedure to follow. Checking the year, make, length, and hull identification number are the key elements in verifying the authenticity of the boat's ownership.

It is important to verify the hull, engine, and component part identification (ID) numbers to be sure that they have not been tampered with in any way.

It is important to make sure that the numbers on the boat match the numbers on the original bill of sale and any out-of-state registration and title documents.

In some states, the Hull Identification Number (HIN) can be checked with the State Marine Board.

In insuring a boat, be sure that the model and serial numbers on an outboard motor have not been removed or tampered with.

Be suspicious of a fresh paint job on a late model vessel. When insuring a used vessel, find out if the purchase was from a reputable marine dealer or broker. Ask for the original bill of sale or other documentation showing proof of ownership.

LIFE JACKETS & SAFETY

Recent Facts From the US Coast Guard About Life Jackets & Risk of Dying in an Accident showed that 85% of the boaters that drowned that could have been saved had they been wearing a life jacket. Approximately eight out of every ten victims in fatal boating accidents were not wearing life jackets. Boaters continue to be at greater risk of dying when involved in an accident during the fall and winter months than in summer.

Besides colder weather and colder water, there are fewer boaters and patrol officers in the area to rescue boaters in distress. When waters are below 60 degrees Fahrenheit, hypothermia can set in quickly. Those who hunt and fish from boats, especially in colder weather, need to dress for possible immersion and wear their life jackets.

Boaters in larger bodies of water should also take advantage of using available distress alerting and position indicating technologies to improve their chances of survival if a mishap occurs.

Who Needs PFD's?

Anytime anyone goes boating, there's a chance to fall overboard. A PFD (Personal Floatation Device) is designed to keep an individual's head above water and to help them remain in a position, which permits proper breathing.

An average adult only needs artificial buoyancy of 7 to 12 pounds to remain afloat, and virtually all approved PFD's provide this amount of floatation.

When buying a PFD, it is necessary to check the labels to make sure the U.S. Coast Guard approves it. It must be well designed, fit well, and it must be in good condition to meet Coast Guard requirements.

For a PFD to work, it has to be kept in good condition. It is important to always air-dry it thoroughly before stowing it in an accessible place on board. It must be checked twice a year for mildew, leaks, insecure straps, or hardened stuffing.

The PFD must not be crushed with heavy weight and must avoid contact with oil or grease—these cause some PFD materials to deteriorate and lose buoyancy.

PFD Requirements...

To meet Coast Guard boating requirements, boats must have proper type and number of PFD's aboard.

All boats regardless of length must have:

One of Types I, II, III or V for each person aboard;

Boats 16 feet and over must have one Type IV (throw able device) in addition to the requirement above.

More than 90% of deaths in boating are from drowning. And 80% of those drowning victims were not wearing a personal floatation device. It's important to wear a PFD!

PFD's protect against drowning and can help protect against hypothermia - because exposure to cold water is another major killer in boating accidents.

Buoyancy Means You'll Float. If You Wear One!

Most adults need an extra 7 to 12 pounds of buoyancy to keep their head above water. Below is a list of minimum buoyancies for each type of PFD:

- Type I -----22 lbs.
- Type II -----15.5 lbs.
- Type III -----15.5 lbs.
- Ring Buoy -----16.5 lbs.
- Boat Cushion -----18 lbs.
- Hybrid inflatable -----22 / 7.5 lbs.
- Special use device -----15.5 to 22 lbs.

Here's the Most Important Fact About Lifejackets! Life...Life-Vest...PFD..or Personal Floatation Devise. No matter what you call it -It won't work if you don't wear it!

The five types of Lifejackets are:

TYPE I - Offshore Lifejacket

This PFD is designed for extended survival in rough, open water. It usually will turn an unconscious person face-up and has 22 pounds of buoyancy. This is the best PFD to keep an individual afloat in remote regions where rescue may be slow coming.

TYPE II - Near Shore Life Vest

This "classic" PFD comes in several sizes for adults and children and is for calm inland water where there is chance of fast rescue. It is less bulky and less expensive than a Type I, and many turn an unconscious person face-up in the water.

TYPE III - Floatation Aid

These lifejackets are generally considered the most comfortable, with styles for different boating activities and sports. They are for use in calm water where there is good chance of fast rescue since they will generally not turn an unconscious person face-up. Floatation aids come in many sizes and styles

TYPE IV – Throw able Device

These are designed to be thrown to a person in the water. Throw able devices include boat cushions, ring buoys, and horseshoe buoys. They are not designed to be worn and must be supplemented by a wearable PFD. It is important to keep these devices immediately available for emergencies, and they should not be used for small children, non-swimmers, or unconscious people.

TYPE V - Special Use Devise

Special use PFD's include work vests, deck suits, and hybrids for restricted use. Hybrid vests contain some internal buoyancy and are inflatable to provide additional flotation.

What Is a Life Vest?

A life vest or a life jacket is a Coast Guard approved personal flotation device (PFD) that helps adults and children float and stay warm in the water.

Why Should A Child Wear a Life Vest?

Drowning is often silent, takes as little as five minutes and usually happens when an adult is nearby. No one can watch a child every second.

Guidelines for Wearing PFD's:

Children between birth and five years: on beaches, docks and in boats.
Children between the ages of 6-11: on docks, boats, inner tubes and riverbanks.
Teens and adults: on boats or inner tubes.

Types of Life Vests

Type I is for boating in severe conditions where rescue may be delayed. Type LV is a boat cushion or rescue ring. It does not replace a wearable PFD and should not be used by children.

Type II—good for calm, inland water where there is a good chance of fast rescue. Smaller sizes often have high collars to help keep a child's face out of the water. These types are most helpful for near-shore recreational boating.

Type III — provides similar flotation to Type II and offers the most comfort and freedom of movement. It comes in a variety of styles and sizes, from small child through adult.

It is also best used in calm water where there's a good chance of fast rescue.

When Buying a Life Vest Check for:

- ✓ Coast Guard approved label,
- ✓ A snug fit. Check weight and size on the label,
- ✓ Head support for younger children. A well-designed PFD will support the child's head when the child is in the water,
- ✓ A strap between the legs for younger children. This is a good feature because it helps prevent the vest from coming off,
- ✓ Comfort and appearance. This is especially important for teens, who are less likely to wear a PFD.

How a PDF Used

Every spring, the life vest should be checked for fit as well as wear and tear. It should be thrown away if there is air leakage, mildew, rot or rust.

If a child panics in the water and thrashes about, he may turn onto his face, even though a PFD with a collar is designed to keep him on his back with face out of the water.

A PFD should never be altered. It could lose its effectiveness.

Adults should wear their own life vest to set an example, and to help the child if an emergency occurs.

Toys like plastic rings or water wings should never be used in place of a PFD.

Remember PFD's only work when they are worn, and they do not take the place of supervision!

History of life jackets

Life jackets have been saving lives for nearly 150 years, but even though no one has ever given them an award for heroism, tens of thousands of people have been given the credit and provided all the proof necessary that they do the job for which they are designed.

They are personal flotation devices—"life preservers" or "life jackets" (with emphasis on the word "life")- and they've been in the forefront of lifesaving since 1852, the year Congress passed the first requirement those passenger steamboats on the nation's rivers carry a float or life preserver for every passenger.

A lot of water has swept over life jackets in the years since that first act of Congress. Life jackets have been there when it has counted, aboard sinking passenger liners, through several wars, on countless pleasure cruises, and amid storms on the oceans and great lakes. And everywhere they've been worn, they've brought people back alive.

Today's life jacket is the product of a considerable amount of research and development. Life jackets are now models of ingenuity in comparison to the original ones.

In earliest years of development, the "life preserver" was nothing more than a wood plank used by Norwegian seamen, an empty barrel or even a vest of cork blocks. But when Congress got involved, a gradual life preserver development process began.

Legislation passed in 1852 set the first carriage requirement for life preservers and also created a Board of Supervising Inspectors. The Board quickly set requirements for life preservers on board commercial carriers and mandated that the devices be "furnished with ready and suitable means for secure attachment to the body of the person, or to enable persons to hold themselves securely hereto."

Translated: A life preserver had to be wearable and designed to either be secured to the body or have hand-holds (typically rope) so that a person could hold onto it securely while in the water.

The following year, the legislation was amended to require "shoulder straps to all life preservers be recommended or other means attached, so as to prevent the same from getting in an improper position to the hazard of life."

Through the following years, the Board determined that inflated life preservers developed in the 19th century were not as dependable as un-inflated types. They also voted to ban tin or metal components from use in life preservers because those pieces might be damaged through carelessness or oxidation. The cork-block type became something of the standard against which all other life preservers were measured.

Research and development of new designs continued based on the experiences of seamen and passengers involved in maritime disasters. At times, such research found materials that were being used for life preservers were unsuitable for such use.

For example, the use of loose granulated cork was banned in 1857. Each new development added to the knowledge about life jackets and changed the requirements for such things as material, buoyancy, form and even the shape of the life jacket.

The use of kapok life preservers became the norm, particularly on warships, because crewmembers were expected to wear their life jackets even while sleeping. But the introduction of kapok was not without problems. First distributed in 1902, kapok was then prohibited in 1904 because it was found to be flammable and tended to lose buoyancy rapidly under the compression that typically occurred while being stored.

However, developers did not turn their backs on the material, and it was once again approved in 1918. Two years later, balsa wood was approved for use in life preservers because of its lightweight, excellent buoyancy and life span.

Meanwhile, cork was still in wide use because of its high buoyancy retention and the fact that it did not readily burn or deteriorate.

In 1920, a regulation was passed that mandated that 5% of all shipboard kapok life preservers must be able to support a "downward gravitational pull of 20 pounds for two hours." The vests that did not pass the buoyancy test were condemned.

In 1928, the sinking of the Vestris, a British passenger steamer, influenced life preserver development. Many lives were lost, which led to the convening of an International Convention for Safety of Life at Sea in London in the following year. Rescuers who responded to the Vestris sinking testified that they found many bodies floating face down, even though they were wearing cork life vests.

As a result, a US Navy captain urged that kapok life jackets be required for the merchant marines because they kept an unconscious individual's face and head above the water.

With the passage of the Motorboat Act of 1940, the US Coast Guard began to address the problems of recreational boaters- in addition to commercial boaters- in its consideration of life preserver carriage.

The Coast Guard recommended that life preservers designed for use on recreational vessels be able to support a person for shorter periods of time than required for ocean-going vessels and not be so bulky that people would not wear them.

The Coast Guard developed a life jacket with lower buoyancy requirements and lesser performance that was intended for emergency use on recreational vessels.

World War II gave rise to extensive life jacket development, including inflatable, for use by submariners and sailors. The arrival of the "modern" inflatable opened the door for continued research and development in the post-war years.

Boating safety specialists and the business community worked to adapt military advances in life preservers to the civilian market.

By 1964, the Coast Guard determined that recreational boaters' needs still were not being met by life jackets, so the agency developed a standard for "special purpose" devices to offer minimum restriction while still accommodating boaters' specific needs.

For example, this included specific models for water skiers and kayakers. Such life jackets, made from new materials such as closed-cell foam, are not as bulky as older styles and are more attractive and colorful.

Participants in specific recreational activities can often be identified at a glance by the style of life jacket they wear, and these lifesavers have even become something of a status symbol.

In 1979, the Coast Guard published a notice in the Federal Register proposing to amend its rules for the use of inflatable life jackets. But it was not until 1985 that the Coast Guard actually proposed and adopted extensive requirements for approving inflatable life jackets and additional requirements concerning their carriage on recreational boats.

Continuing advances in technology are making the inflatable more reliable, as well as lighter and easier to maintain.

FIRE EXTINGUISHER REQUIREMENTS

If a marine vehicle has an inboard engine, a permanently installed fuel tank, or a closed compartment for portable fuel tanks, federal law requires a fire extinguisher of the type and size listed below. Any boat with a motor should carry an extinguisher as a safety precaution.

The federal requirements listed below are bare minimums.

Boat fire extinguishers must be Coast Guard approved.

The Coast Guard classifies boat fire extinguishers according to the type of fire for which they can be used, and the amount of the extinguishing agent.

Coast Guard regulations require that extinguishers carried on recreational boats must at a minimum be rated for Class B fires. (Some extinguishers are rated for two or more classes.)

For our discussion we will talk in terms of the 'B' type.

Coast Guard Classification of Fire Extinguishers Classification (type size) B-IB-II

- Foam (minimum gallons) 1.252
- Carbon Dioxide (minimum lbs.) 415
- Dry Chemical (minimum lbs.) 210
- Halon (minimum lbs.) 2.510

The number of B-I extinguishers required depends on the size of the boat. If the boat has a fixed fire extinguishing system in machinery spaces, one less type B-I extinguisher is required. If the larger B-II extinguisher is used, a B-II for two B-I extinguishers can be substituted.

Find the length of the boat on the chart below, and read across to find out how many type B-I extinguishers are needed.

Minimum Number of B-1 Hand Portable Fire Extinguishers Required Aboard Recreational Boats

Boat Length W/O fixed extinguishing system in machinery space

- Less than 26 feet 10 extinguishers
- 26' to less than 40 feet 21 extinguisher
- 40' to 65 feet 32 extinguishers

Extinguishing agents

Extinguishing agents inside the canister can be liquid, powder or gas. Each extinguisher is classified for use on a certain type fire (Class A, B, C or D fires) and is rated for its effectiveness.

Carbon Dioxide- most effective in closed spaces. Effective on Class B and C fires. Not recommended for outdoor use under windy conditions.

Dry Chemical- the most common type found on recreational boats for B and C fires is sodium bicarbonate (baking soda). For A, B and C fire, multipurpose ammonium phosphate is the best performer under windy conditions. Residue should be cleaned up immediately to prevent corrosion.

Foam- good in open or closed areas. Smothers and cools fire; less chance of flashbacks. Excellent for oil (Class B) fires. Do not use on electrical fires; foam conducts electricity.

Halon- effective on Class B and C fires. Good in open or closed areas. CAUTION: Shut off your engine before using a Halon extinguisher.

Some extinguishers are rated for two or more classes of fires. Class A and B units also have numerical ratings assigned by independent testing laboratories to indicate their relative effectiveness.

What do these letters and numbers mean? Look at the examples of typical fire extinguisher markings below.

10-B: C . . . good only on B and C fires

2-A: 20-B: C . . . good on A, B and C fires

The extinguisher marked "20-B" is twice as effective on Class B fires as the one marked "10-B".

Three classes of fire common aboard recreational boats:

Ordinary Combustibles Wood, paper, cushions, canvas, fiberglass, rubber, many plastics and other common materials that burn easily. Only Class A fires can be doused safely with water.

Flammable Liquids Gasoline, propane, diesel fuel, oils, grease, tars, oil-based paints, lacquers and flammable gases.

Energized Electrical Equipment Wiring, fuse boxes, circuit breakers, machinery and appliances. Turn off the power (de-energize) and the fire becomes either Class A or B.

Portable fire extinguisher maintenance

Monthly

Full charge. Pressure gauges within prescribed limits. Those without gauges should be weighed to make sure their weight is within the limits printed on canister.

Check tamper seal. No corrosion or mechanical damage. Dry chemical: Invert, shake or tap to prevent contents from settling.

Annually

Large-capacity extinguishers, have a full maintenance check by a qualified fire extinguishing service facility (see your Yellow Pages). A tag showing date of maintenance check should be attached.

Many extinguishers are inexpensive and can be replaced for about the same cost as a full maintenance check and recharge.

After Each Use

Even if only a small amount of contents was discharged, recharge or replace the unit with an extinguisher of comparable size and rating.

If There Is A Fire Aboard the Boat

It is best to have one person deploy an extinguisher and another radio for help or put out a distress signal.

If the motor or a propane or alcohol stove catches fire, the fuel supply should be shut off immediately. The boat should be slowed or stopped and turned to keep the fire downwind.

All sources of electrical power should be disconnected.

The fire should be fought only if:

- ✓ It is caught early enough that the fire is small and confined to the immediate area where it started.
- ✓ The individual has a way out and can fight the fire with their back to the exit.
- ✓ The extinguisher is rated for the class of fire at hand.
- ✓ If there is the doubt about the ability to contain the fire, one should not even try.
- ✓ The first concern should be the safety of the individual and the crew.
- ✓ Burning fiberglass is extremely hot and gives off noxious fumes. If fiberglass is burning, one should get off the boat immediately.
- ✓ Fire extinguishers should not be placed where an individual must reach through fire or flame to get them. They should be located at the steering position, in the passenger cockpit, and galley.
- ✓ An individual should not have to travel more than half the length of the boat to reach an extinguisher.

When fueling, everyone should be removed from the boat except the person fueling the boat, all doors should be closed, as well as, hatches and ports. After refueling, any excess spilled fuel should be wiped down; all hatches and ports should be opened and the boat should be permitted to be aired out. The bilge blower should be operated for at least five minutes before starting an inboard engine.

If a fire is suspected in a closed compartment, one must be cautious about opening the hatch door. The influx of oxygen will only feed the fire.

PREVENTING PROPELLER & BOAT STRIKE ACCIDENTS

There are nearly 12 million registered boats in the United States, 95 percent of which are less than 26 feet in length. These same boats account for as many as 80 percent of the underwater impact injuries in which people in the water are struck by a boat or its propeller.

The majority of these accidents are the result of operator error, making them one of the most preventable of all types of boating accidents. While boat or propeller strike accidents are relatively few in number, as compared to other types of boating accidents, some of them are severe and have tragic consequences...

Operator inexperience, incompetence, negligence and intoxication are significant contributing factors in reported boat and propeller strikes, as well as in all other types of boating accidents. In almost all cases, the victim is in the water -- a swimmer, scuba diver, fallen water skier or the operator or a passenger.

Passengers moving about a boat, or who are improperly seated on the bow, a gunwale or a seatback, are ejected from the boat or fall overboard when boat operators are wake jumping, are in sharp turns, or are performing other maneuvers at speeds, which are dangerously fast for prevailing conditions.

Some victims are ejected from boats by collisions with another boat or a submerged or fixed object.

Ejections from a boat are also caused by sudden acceleration or deceleration. While the propeller has struck some victims when a boat was airborne, such as when one vessel collides with and passes over another, such incidents are rare.

Law prohibits Negligent or Grossly Negligent Operation of a Vessel, which endanger lives and/or property. The Coast Guard may impose a civil penalty for negligent operation; violations involving boating while intoxicated could result in criminal penalties. State and Federal marine law enforcement officers are trained to define negligent operation as failure to exercise that degree of care which a reasonable person under like circumstances would demonstrate in order to prevent the endangering of life, limb or property of any person.

Grossly negligent operation involves situations in which the boat operator knows a certain act can create an unreasonable risk of harm.

Some examples of actions that may constitute negligent or grossly negligent boat operation are:

- ✓ Operating a boat in a swimming area,
- ✓ Operating a boat while under the influence of alcohol or drugs,
- ✓ Excessive speed in the vicinity of other boats or in dangerous waters,
- ✓ Hazardous water skiing practices,
- ✓ Bow riding or riding on the seatback, gunwale or transom.

Boat operators who follow basic safe boating practices can prevent most boat or propeller impact accidents:

Always maintaining a proper lookout. The greatest single cause of accidents in which people in the water are struck by a boat or its propeller is operator inattention or carelessness.

Making sure the engine is off so the propeller is not rotating when passengers are boarding or disembarking a boat.

Never starting a boat with the engine in gear.

Slowing down when approaching congested areas and anchorages. In congested areas, always be alert for swimmers and divers.

Becoming familiar with the warning buoys signifying swimming areas and other hazardous areas.

Keeping the boat well clear of marked swimming and diving areas.

Becoming familiar with the red and white or blue and white diagonally striped flags signaling that divers are down.

Before getting underway, making sure passengers are properly seated.

Some operators of larger boats with several passengers have been known to have started their boats and put the engine in gear while their friends were still swimming or diving from the boat.

One should never ride on a seatback, a gunwale, and the transom or on the bow.

When someone falls overboard:

- ✓ The bow of the boat should be turned towards the person in the water. For example, if a person falls overboard on the starboard (right) side, turn the boat to starboard so as to move the propeller away from the person in the water.
- ✓ Slow down.
- ✓ Circle around, keeping the individual in sight.
- ✓ The engine should be taken out of gear or turned off at least a boat length from the victim.
- ✓ The individual should be thrown a line or something, which floats with a line attached to it and the person should be pulled to the boat.
- ✓ When water skiing, a passenger should be designated who will keep the skier(s) in sight at all times.
- ✓ Communication should be maintained with a skier using standard water skiing hand signals.

The best approach to preventing boat and propeller strikes is to be sure that boaters, especially boat operators are educated in safety precautions. They must learn the abilities and limitations of their equipment.

They must learn and understand the hazards their boats can cause to people in the water.

Above all, they must understand the consequences of careless or negligent operation, and how they, as boat operators, can act to prevent accidents.

TRAILERING A BOAT WITH SAFETY IN MIND

It is important to choose the proper trailer for the boat. More damage can be done to a boat by the stress of road travel than by normal water operation.

A boat hull is designed to be supported evenly by water. When transported on a trailer, the boat should be supported structurally as evenly across the hull as possible.

This allows for even distribution of the weight of the hull, engine and equipment. It should be long enough to support the whole length of the hull but short enough to allow the lower unit of the boat's engine to extend freely.

Rollers and bolsters must be kept in good condition to prevent scratching and gouging of the hull.

Tie-downs and lower unit supports must be adjusted properly to prevent the boat from bouncing on the trailer. The bow eye on the boat should be secured with either rope, chain or turnbuckle in addition to the winch cable.

Additional straps may be required across the beam of the boat.

The capacity of the trailer should be greater than the combined weight of the boat, motor, and equipment.

The tow vehicle must be capable of handling the weight of the trailer, boat, equipment, as well as weight of the passengers and equipment, which will be carried inside. This may require that the tow vehicle may need to be specially equipped with an:

- Engine of adequate power
- Transmission designed for towing
- Larger cooling systems for the engine and transmission
- Heavy duty brakes
- Load bearing hitch attached to the frame, not the bumper

Before going out on the highway check that:

The tow ball and coupler are the same size and bolts with washers are tightly secured. (The vibration of road travel can loosen them.)

The coupler is completely over the ball and the latching mechanism is locked down.

The trailer is loaded evenly from front to rear as well as side-to-side. Too much weight on the hitch will cause the rear wheels of the tow vehicle to drag and may make steering more difficult.

The safety chains are attached crisscrossing under the coupler to the frame of the tow vehicle. If the ball were to break, the trailer would follow in a straight line and prevent the coupler from dragging on the road.

The lights on the trailer function properly.

Check the brakes. On a level parking area roll forward and apply the brakes several times at increasing speeds to determine a safe stopping distance.

The side view mirrors are large enough to provide an unobstructed rear view on both sides of the vehicle.

Check tires (including spare) and wheel bearings. Improper inflation may cause difficulty in steering. When trailer wheels are immersed in water, (especially salt water) the bearings should be inspected and greased after each use.

Make certain that water from rain or cleaning has been removed from the boat. Water weighs approximately eight pounds per gallon and can add weight that will shift with the movement of the trailer.

Towing Precautions

More time should be allowed to brake, accelerate, pass, and stop.

It is important to remember that the turning radius is a much greater, curb and roadside barriers must be given a wide berth when negotiating corners.

Prior to operating on the road, the driver should practice turning, backing up, etc. on a level, un-congested parking area.

Pre-Launching Preparations

For the courtesy of others and to prevent rushing, the boat should be prepared for launching away from the ramp.

The boat should be checked to ensure that no damage was caused by the trip. The lower unit should be raised (remove supports) to proper height for launching so that it will not hit bottom. Tie-downs should be removed and the winch is properly attached to the bow eye and locked in position. The drain plug should be put in securely. The trailer lights should be disconnected to prevent shorting of electrical system or burning out a bulb.

A line should be attached to the bow and the stern of the boat so that the boat cannot drift away after launching and it can be easily maneuvered to a docking area. Visual inspection should be made of the launch ramp for hazards such as a steep drop off, slippery area and sharp objects.

Everything should be double checked, and proceeding to the ramp should be done slowly, remembering that the boat is just resting on the trailer and attached only at the bow.

The ideal situation is to have one person in the boat and one observer at the water's edge to help guide the driver of the tow vehicle.

Launching

It is important to keep the rear wheels of the tow vehicle out of the water. This will generally keep the exhaust pipes out of the water. If the exhaust pipes become immersed in the water, the engine may stall.

The parking brake should be set and tire chocks placed behind the rear wheels.

Someone else on shore should be holding the lines attached to the boat.

The motor should be lowered and the engine started (after running blowers and checking for fuel leaks). After starting the boat motor and making sure that water is passing through the engine cooling system, the winch should be released and the winch line disconnected from the bow.

At this point, the boat should be able to be launched with a light shove or by backing off the trailer under power.

Retrieval

The steps for removing the boat from the water are basically the reverse of those taken to launch it. However, it must be kept in mind that certain conditions may exist during retrieval that did not exist during launching.

Special care should be taken to note such factors as:

- ✓ Change in wind direction and/or velocity;
- ✓ Change in current and/or tide;
- ✓ Increase in boating traffic;
- ✓ Visibility, etc.

First, the boat should be unloaded at a dock or mooring if possible. Next, the boat should be carefully maneuvered to the submerged trailer; the lower unit of the engine should be raised. Then, the boat should be winched onto the trailer and secured. Finally, the trailer with the boat aboard should be carefully driven out of the ramp to a designated parking area for cleanup, reloading, and an equipment safety check.

PERSONAL WATERCRAFT SAFETY PROJECT CODE OF ETHICS

- ✓ I will respect the rights of all users of recreational waterways, both on public waterways and adjacent private property.
- ✓ I will be considerate of other users at the launch ramps and docks.
- ✓ I will follow the navigation rules of the road around all other vessels, including regulations prohibiting wake jumping.
- ✓ I will give all anchored or drifting vessels plenty room.
- ✓ I will always operate at headway speed in "no wake" zones.
- ✓ When approaching shore, I will be especially aware of swimmers, divers and other craft.
- ✓ I will not disturb wildlife and will avoid areas posted for the protection of wildlife.
- ✓ I will not litter the shore, nor be careless with fuel or oil.
- ✓ I will volunteer assistance in case of emergency.

- ✓ I will determine my speed by my equipment, my ability, the weather, wave conditions and especially other vessel traffic.
- ✓ I will not interfere with others' boating pleasure.
- ✓ I will pay close attention to the noise level of my PWC and be aware of how others are reacting.

Legal PWC Requirements

The U.S. Coast Guard classifies personal watercraft (PWC) as Class A inboard boats. That means PWC are subject to most of the same rules and requirements as any other powerboat.

Registration

- Federal regulations require all personal watercraft to be registered and have an identification number. When a registration application is approved, the individual receives a certificate of number, title and validation sticker (applicable in some states).
- State and federal guidelines for displaying validation and registration numbers must be followed to maintain compliance.
- **Equipment**
- Personal Floatation Devices (PFD's) are required for each person on board.
- Choose a properly fitting, U.S. Coast Guard approved PFD and wear it.

Coast Guard and state rules also require boaters to have a fire extinguisher on board.

Many craft have a lanyard connected to the start/stop switch. If the craft is equipped with such a switch, it won't start unless the lanyard is attached to it.

No alcohol or drugs

Personal watercrafts should never be operated under the influence of anything but one's good judgment. Alcohol and drugs reduce the ability to make quick decisions and handle the craft in all situations. Many laws pertaining to driving under the influence are also enforced on the water.

Local ordinances

It's the responsibility of every boater to know and follow local laws and ordinances regarding use of their watercraft. Common restrictions that vary by state or municipality include age of the operator, no wake zones, assigned operating area, and speed limits.

- Think Safe - Ride Safe
- Sailboats, commercial vessels, and fishing vessels always have the right of way.
- Stay to the right when approaching an oncoming craft, so that it passes on to the left side.
- When overtaking another boat, pass on the right or left, but stay clear. If you're about to cross paths with another boat, the craft on the right has the right of way.
- Slow down to let the boat on your right continue its course, and then pass behind it.
- Constantly look about for traffic on the water, and especially near you. Know where other boats are and where they're heading before you make a turn or cross a wake.
- If your course takes you across the wake of another boat, make sure that boat does not obstruct your visibility.
- Stay far enough behind it so that you can see if other traffic is coming your way.
- Follow local regulations regarding speed limits, whether posted or not. In congested area, lower your speed.
- Never carry more than the maximum passenger load specified for your craft. If you loan your craft to a friend, make sure he is of legal operating age and that he knows how to operate your craft. Make sure he is fully aware of these safe boating rules.
- Check your craft internally and externally before you get on the water. Make sure the throttle and all switches are working properly, that fuel and battery lines are properly connected, that no fuel is leaking, and that cables and steering are functioning.

- Be considerate and efficient when launching your personal watercraft. Prepare your craft beforehand, and perform all safety checks before you get to the water.
- Launch quickly and quietly.
- Be considerate of waterfront property owners and others near and on the water.
- Excessive noise from poorly maintained or modified exhaust systems disturb others and is illegal in many areas.
- Respect ecologically sensitive areas. Don't spill fuel or oil and don't leave litter or other pollutants where they don't belong. Be sensitive to marine life; the water is their home.
- Personal watercraft riders must share the waterways with other boaters, fishermen, swimmers, surfers, and skiers, so respect their rights to safety, access, and use of the water.
- Remember to ride responsibly! It's up to you to use your good judgment and to obey all local ordinances that apply to you and your watercraft.
- Know.... Before You Go!
 - ✓ Know your craft and how it operates;
 - ✓ Know your local boating laws;
 - ✓ Know navigational marks and signs;
 - ✓ Know the rules of the road.

The Northwest Personal Watercraft Safety Project, a coalition of approx., provided 70 PWC dealers in Washington, Oregon, and Idaho the above Code of Ethics. The coalition has created a "Personal Watercraft Conflict Resolution"

Acting responsibly on the waterways contributes to safety, prevents loss of life and contributes to reduced insurance claims, resulting in lower premiums for watercraft owners.

Focus Points

- Organized theft of small boats, personal watercraft and marine equipment is rising.
- Marking property discourages theft and enables authorities to trace lost or stolen items.
- Photographs of the property can help identify the goods and help in their recovery.
- Photographs of the property serve as documentation for the insurance company.
- Written inventory of the boat, trailer, personal watercraft, and other equipment and gear should be made.
- Evidence of tampering with the serial or model numbers of outboard motors could indicate theft.

CHAPTER: 8 TRAVEL INSURANCE

THE BASICS OF TRAVEL INSURANCE

Travel insurance was formerly looked upon as a luxury, consumers concerned about their vacations plans being canceled by events outside their control, or worried about the quality of medical care they might receive in the area where they were visiting, would purchase travel insurance to protect themselves from these possible events.

Generally, a comprehensive travel insurance policy costs 5 to 7 percent of the price of the trip.

Before buying travel insurance, it is important to explore existing insurance that an individual might have to make sure that they don't already have coverage under their existing policies. A consumer might already be covered under their home insurance, health insurance, auto insurance or perhaps a perk on the credit card if they charged their trip.

Types of Coverage

A travel insurance policy usually offers two types of coverage:

- Trip cancellation/interruption;
- Emergency medical evacuation.

Reimbursements for lost baggage or trip delays are also purchasable coverages and are usually good to have if they come bundled with trip cancellation/interruption or emergency medical evacuation, but they're usually a costly add on coverage on their own.

If an individual has absolutely no health insurance, or if their health plan won't cover them at all while they're abroad, then they should look into medical or hospital coverage.

Trip Cancellation Coverage

Trip cancellation/interruption coverage will reimburse the insured for any nonrefundable deposits they put down on a trip or cruise if it turns out that they won't be able to go after all, or if the insured has to leave early. The policy will only pay out if the insured has to cancel or leave early because of a covered reason.

Some policies will only cover for medical reasons (say an individual is admitted to the hospital), and some will not cover pre-existing medical conditions (such as an old muscle or back injury flaring up).

Things that may not be covered could include:

- ✓ Changing resorts/cruises/departure dates after putting down a deposit;
- ✓ The touring company going out of business;
- ✓ Being un-able to go in case the insured is called for jury duty and can't go on the trip;
- ✓ Another member of the family suddenly takes ill in the middle of the cruise and the insured needs to go home;
- ✓ An airplane is delayed and the insured can't meet up with their tour group;
- ✓ Getting sick and needing to go to the hospital;
- ✓ Getting sick and needing to see a doctor.

Trip cancellation/interruption will pay the difference between what the insured can get refunded from the cruise line, Tour Company, or airline, and what they originally paid. That means that a refund must be applied for first with the tour company before a claim can be filed on the trip cancellation/interruption insurance. Trip cancellation/interruption policies may also cover "unforeseen emergencies," such as an accident on the way to the airport, a hijacking, a natural disaster, a fire or flood, etc.

Travel insurance in general also excludes self-inflicted injuries and problems arising from the use of illegal drugs.

If the cruise line or touring company goes out of business, trip cancellation/interruption policy may cover the loss depending on the terms of the policy. If the policy was bought from the tour company itself however, chances are the insured is going to suffer the loss.

How the policy is written also determines the coverage included. Some policies will only pay out if the company ceases all operations for 10 days or more, or if it files for bankruptcy.

Many touring companies never file for bankruptcy — they just go out of business and disappear causing havoc for the client.

Depending on the travel plans of the insured they should select a travel coverage to meet the perils that might be encountered on their trip.

If they are going mountain climbing and stand the potential of falling and breaking a leg or shoulder or if they are going on a safari in the depths of a jungle and there is the potential of getting a fever, emergency medical evacuation coverage would pay for the cost of transporting the insured to safety and, in some cases, all the way home.

Under these set of circumstances, a helicopter rescue, which can run as much as \$25,000, or the cost of the trip back to states, makes a good case for buying the coverage required for an adventures vacation.

If the insured has health insurance, it is important to find out if the health plan benefits apply when abroad. If the insured's regular policy doesn't cover them abroad, they'll probably get the best buy if health coverage is bundled with trip cancellation /interruption or emergency medical evacuation coverage. There are companies who specialize in health care and "general assistance" for travelers abroad.

Cost of Comprehensive Travel Insurance

Most comprehensive travel insurance policies, which include travel medical coverage, medical evacuation, and trip-cancellation or interruption insurance, cost between 5 and 7 percent of the price of the trip. Prices are based on the age of the insured and the cost of the trip. Where an individual is traveling, the amount of the medical coverage or the amount of baggage-replacement insurance generally doesn't factor into the price.

So, if an individual is taking a weeklong tour of Italy or Greece that costs you about \$1,000 per person, they should expect to pay between \$50 and \$70 each for a travel insurance policy. If, on the other hand, you're planning a two-week cruise to Alaska that costs from \$4,000 to \$6,000 for a stateroom, it could cost as little as \$200 to as much as \$420 to insure the vacation.

The Effects of September 11, 2001

Since Sept. 11, 2001, almost three times as many people who are traveling are insuring their trips with travel insurance. People are shifting away from looking at travel insurance as a luxury and seeing it as more of a necessity. Traditionally about 12 percent of travelers buy travel

insurance, but since Sept. 11 that figure has jumped to between 30 and 35 percent, says an insurer specializing in travel insurance and health insurance for Americans on extended stays overseas.

Consumers are also becoming more aware of the hefty fees that they are hit with when they cancel a trip and of the added benefits of air-flight accident insurance. They are becoming more aware of accidental death and dismemberment benefit that covers them while on an airplane, now that the threat of terrorism has brought those concerns to the forefront.

Sales of travel insurance are booming compared to previous years, however, the price and the coverage that an individual is protected against has is drastically different than on previous trips. Some travel insurance companies are reducing coverage to maintain the price, while some are maintaining the coverage and raising the price. The only way to know what is being covered is by reading the policy.

Because so many cruise lines and tour operators went bankrupt as a result of Sept 11, some travel insurers will no longer cover the insured, if the supplier of the vacation goes under.

It is also important to find out how the travel insurer treats acts of terrorism, both in foreign countries and in the United States. If the U.S. State Department issues a travel advisory recommending that Americans avoid a certain country, most travel insurance policies will pay for cancellation fees if the insured wants to cancel their vacation or buy the insured a ticket home if they need to cut your vacation short.

Domestic terrorism coverage, on the other hand, is usually not dealt with directly.

Some policies offer reimbursement if a trip is cut short or cancelled due to an act of terrorism at the insured's destination either while they are there or within 30 days of their scheduled arrival. Many travel insurers have also expanded the help services available while on a trip. As a result, many insurers have added or expanded 24-hour assistance phone centers so, if an insured finds themselves in a bind, they will know who to call to get help rescheduling flights, booking hotel rooms, or simply getting directions if you are lost.

One major travel insurance providers offers both health and security profiles of various cities around the world so that their customers can be aware of the risk of terrorism, crime, or kidnapping wherever they go and also contact information for a doctor or hospital, emergency phone numbers, and information on vaccination and local pharmacies.

All of these changes and added features make it very important to compare the policies as well as the prices when selecting travel insurance.

TYPES OF TRAVEL POLICIES

Package Policies

These policies are designed for travelers going on a single trip. They can be used for Cruises, Tours, Flights, House Rentals and a world of other trip types.

All offer Trip Cancellation, Baggage, Medical, Dental, Emergency Evacuation, 24 Hour Traveler Assistance, Baggage Delay, Travel Delay, and Accidental Death Coverage.

Some policies also have options for Collision/Damage coverage for rented cars, Flight Insurance (a form of Accidental Death Coverage while flying only) and added Emergency Evacuation insurance. Some package policies include coverage for children at no extra charge.

Travel Medical Policies

These policies provide Medical Coverage for travel up to a year in length. Some include coverage for evacuation, flight, accidental death, limited baggage, and trip interruption.

Multi-Trip Medical Policies

These policies provide annual Medical Coverage for multiple trips throughout the year. All policies have trip length restrictions of either 15, 30 or 70 days. Some include coverage for evacuation, flight, accidental death, limited baggage, and trip interruption.

Medical Evacuation Policies

These policies provide protection for travelers in the event they become seriously ill or injured while traveling. They provide emergency medical evacuation to the nearest appropriate care facility or on some plans, to your hospital of choice. They also include coverage for repatriation of mortal remains.

Flight Accident Policies Quote Compare

These policies are designed for travelers going on a single trip and provide coverage for Flight Accident Insurance (a form of Accidental Death Coverage while flying).

Focus Points

- A comprehensive travel insurance policy costs 5 to 7 percent of the price of the trip.

- Some homeowners, health or auto policies may cover individuals while they travel.
- Travel insurance policies usually cover trip cancellation/interruption and emergency medical evacuation.
- Cancellation/interruption covers insured for any nonrefundable deposits they put down on a trip and were unable to go.
- Trip cancellation/interruption policies may also cover unforeseen emergencies.
- Losses due to a cruise line or tour company going out of business may be covered under cancellation/interruption policies.
- Three times the number travelers are using travel insurance since Sept. 11 2001.

CHAPTER 9: BASIC QUESTIONS ON UMBRELLA INSURANCE

The need for an umbrella policy

There are many situations where a standard liability policy is simply not enough coverage. An umbrella policy allows an individual to protect themselves against major lawsuits in two ways.

First, the umbrella provides excess liability over underlying coverage. Second, the umbrella provides liability coverage that may be excluded by homeowners or auto policies.

What is a personal umbrella policy?

Often times referred to as a personal catastrophe policy, a personal umbrella policy, supplements the basic personal liability coverage provided under homeowners and auto policies. The umbrella was created to protect people from large losses.

Special protection is afforded by an umbrella policy?

Personal injury losses that may be limited or excluded under most homeowner's policies will receive broader coverage under an umbrella policy. As a rule, personal injury does not have a uniform definition; however, just about all umbrellas will refer to personal injury to include bodily injury. Most policies also include in their definition of personal injury:

Mental anguish, false arrests, wrongful eviction, wrongful detention, malicious prosecution, invasion of privacy, assault and battery, slander, libel and defamation of character.

Differences in personal umbrella policies

There is no standard personal umbrella policy. The insurance coverage, as well as the exclusions, will vary by company. It is important that individuals compare the costs against the coverage the policy provides. In some cases, it is more important to know what is excluded from coverage. Additionally, the insured needs to know what coverage and limits are required on the underlying homeowners and auto policies.

How does the policy work

Generally, an umbrella policy pays all of the covered loss that exceeds the limits of the base or underlying policy. If, for example, the basic policy paid \$200,000 on a slip and fall injury and the claim was for \$250,000, the umbrella would cover the \$50,000 over the basic policy's \$200,000 limit.

Deductibles

Usually umbrella liability policies have two types of deductibles. These are also referred to as retained limits. Depending on the loss, one of them pays first before the umbrella pays. If the loss is covered by the underlying policy, that policy pays first up to its maximum limit and then the umbrella policy kicks in. Another consideration is that a loss may occur and is covered by the personal umbrella but not by an underlying policy. In this case, the insured must meet a deductible that is referred as the SIR, which stands for Self-Insured Retention. For example, a \$1 million umbrella usually has a \$250 SIR that the insured must pay before the umbrella kicks in.

Other exclusions in an umbrella policy

Typically, the umbrella policy will exclude losses that are better covered under other policies. Although there are differences, most umbrellas will not cover the following: Obligations under workers' compensation or similar laws.

If a domestic employee is injured, coverage is afforded under workers' compensation and will not be duplicated under the umbrella policy.

Damage to property owned by the insured. This precludes any coverage for property damage best insured under some form of property (homeowners) or inland marine (jewelry floater) insurance.

Damage to property on which the insured have agreed to provide insurance. The intent is to prevent the insurance company from paying for a loss that should be insured under some form of property insurance, especially since the insured has agreed to provide coverage.

Liability arising out of a business pursuit - unless the homeowners cover it or auto insurance. If the homeowners' policy covers some business pursuits (i.e., an office at home), the umbrella will also extend coverage. Some policies also provide coverage to persons who are involved in civic activities, other than a person's regular employment, that may prompt lawsuits.

Liability arising from the insured rendering (or failing to render) professional services- this typically excludes malpractice, which is better covered by malpractice insurance.

Liability arising from the ownership, maintenance or use of any aircraft- such potentially catastrophic losses are excluded.

Liability arising from the ownership, maintenance or use of watercraft not covered under the homeowner's policy (subject to certain restrictions). The umbrella covers small boats that are typically afforded coverage under the homeowner's policy; however, large watercrafts are excluded because of the increased liability risk.

Liability covered by a nuclear energy policy. Nuclear energy policies contain a person's insured or "omnibus" clause that encompasses virtually everyone who may be responsible for a nuclear accident, barring only the U.S. government. If a person should become involved in a nuclear incident covered by a nuclear energy policy, such a person would be covered by that policy and would not need protection under the umbrella. Therefore, coverage is excluded under the personal umbrella policy.

Focus Points

- An umbrella policy allow individuals to protect themselves against major lawsuits.
- Umbrella policies provide excess liability coverage over underlying coverages.
- Umbrella policies provide coverage that may be excluded by homeowners or auto policies.
- Umbrella insurance is commonly referred to as catastrophe insurance.
- Personal injury losses receive broader coverage under an umbrella policy.
- There is no standard personal umbrella polices.
- Exclusions and coverages of Umbrella Insurance will very by insurer.
- Umbrella policies pay any covered loss exceeding the limits of the base or policy.

CHAPTER 10: RISK MANAGEMENT

THE PROCESS OF RISK MANAGEMENT

Unfortunately, an unavoidable part of everyday life is risk. Different people handle risk in different ways. Usually an individual's past experience or personal experiences determine how they will respond to uncertainty. Before anyone can determine the best way to handle a risk, they must be able to identify risk probability and severity. This is referred to as risk management. It is the process of:

- Determining what exposures to loss exist;
- Determining the seriousness of exposures;
- Developing a way of minimizing the effect of the loss exposure.

The goal of risk management is to make the best possible arrangements ahead of time so that one will not be seriously financially affected when a loss occurs. Risk management is intended to protect income and assets against unforeseen, unintended or accidental loss. A risk manager follows five basic steps in the risk management process:

- Identifying the loss;
- Evaluating the exposure and eliminating the severity and frequency;
- Selecting the most economical way of handling the risk;
- Formulating a risk management plan;
- Revising and monitoring the risk management plan.

Let us discuss these five steps in more detail.

IDENTIFYING LOSS EXPOSURES

Before a person can "manage" risk, he or she must first identify all the possibilities of loss or the loss exposures to which he or she is subject and that can be guarded against in some way. The term loss exposure is used to describe the property or person facing a condition in

which loss is possible and unpredictable. Potential property losses include direct and indirect losses; potential liability losses are those associated with torts or, to a much lesser extent, breach of contract.

Property Loss Exposures

The individual risk manager begins the risk management process by compiling an inventory of all real and personal property that indicates the amount of property owned and its present value. Real property consists of land and, generally, whatever is erected or growing upon or affixed to it. The definition of real property included the earth's surface, the air above and the ground below, as well as all appurtenances to the land, including buildings, structures, fixtures, fences and improvements erected upon the land.

Excluded are growing crops. The term also includes the interests, benefits and rights inherent in the ownership of real estate. Personal property consists of tangible, movable possessions and includes things such as furniture, jewelry, automobiles and recreational vehicles.

After the inventory is complete, the risk manager can identify the possible property loss exposures that should be addressed. The possible causes of property losses that should concern property owners are too numerous to list; however, two basic types of risk that may cause financial loss may classify these losses. These risks include:

Direct Physical Damage to property caused by perils such as fire, wind, water and other perils that may damage or destroy the property; and

Indirect loss that occurs following a direct loss to property by an insured peril and that included additional loss expenses for the extra cost of food, transportation and housing incurred by the insured.

Property may be damaged or destroyed by physical perils, such as fire, smoke, explosion, hail, etc. Deviations from expected individual conduct, such as theft, vandalism, or arson, may be termed social perils that cause property loss. Finally, certain economic perils, which occur less frequently, may result in property loss. For example, people protesting a factory layoff may cause damage to nearby property. Two or more perils, such as fire and vandalism, may be involved in a loss.

Liability Loss Exposures

The term liability may be used in a number of ways. Generally, the term is synonymous with moral or legal responsibility and involves the concept of facing a penalty when a particular responsibility is not met. In this text, we are primarily concerned with the term legal liability, which is defined as the condition of being bound in law to do (or not to do) something that may be enforced in the courts.

The law does not recognize moral responsibility alone as legally enforceable, but people who do not meet their moral responsibility may also become legally obligated to pay for another's injuries.

Under our legal system, a person may be held responsible for causing injury to another person or damage to another's property. People are faced with the possibility of having to defend themselves against a lawsuit, even if the suit is groundless. The risk of being held financially responsible for judgments and legal defense and court costs, as well as the indirect expenditures of time, energy and money, is the greatest risk that most people face. Therefore, in addition to property loss exposures, risk managers must identify two basic types of liability loss exposures:

Casualty Loss that results from perils such as robbery, burglary, vandalism or arson; and

Liability Risk where the law of negligence is used as the basis to determine whether an individual may be held responsible for the financial cost of other people's bodily injuries or for damage to their property.

People may incur liability loss exposures in a number of ways. A person may be held legally responsible for injuries or damages that result from his or her ownership of an auto, recreational vehicle, watercraft or residence premises; from personal or business activities; from obligations assumed under a contract; from the employment of domestic workers; from libel, slander and other personal injury offenses; and from a number of other events.

Individuals may be held criminally or civilly liable, depending on the nature and form of their actions. Criminal liability is clearly established by statute or administrative rules. In a criminal action, a district attorney or attorney general of either the state or federal government initiates the criminal action against the accused wrongdoer. For example, a district attorney will file charges against an accused murderer. If the accused is convicted, the state or federal government imposes penalties.

On the other hand, statutes, administrative rules and prior court decisions that outline the rights of the parties as opposed to each other establish civil liability. One party normally brings a civil liability action against another party for the wrongs alleged. The litigants at their own expense bring these legal actions (with the court costs usually imposed on the losing party). The sources of civil liability are classified as those arising from:

- ✓ Contractual or similar agreements;
- ✓ Torts, which are acts or omissions other than breach of contract;
- ✓ Equitable Actions such as fraud, errors or mistakes;
- ✓ Actions that do not fall into the first three categories.

Remedies based on contractual agreements and tort actions seek monetary damages; those based on equitable actions usually seek some other remedy, such as performance of a contract.

EVALUATING LOSS EXPOSURES

In the second step of the risk management process, the risk manager must evaluate the loss exposures and decide which risks are intolerable, which are difficult to tolerate and which are tolerable. Intolerable risks are those that are so large that a loss from one might cause a person's bankruptcy. These risks typically include liability risk and the risk of the destruction of a home because of a natural disaster. Difficult to tolerate risks is those that would cause the individual a significant financial loss but that would not lead to bankruptcy.

An example would be the destruction of an automobile. Finally, tolerable risks include loss or damage to personal property that might be large but are not intolerable in terms of the individual's finances. An example would be replacement of a broken windshield.

Having identified the risks, the risk manager then estimates both the maximum possible loss and the maximum probable loss the property owner faces. These two estimates are useful in determining the best way or ways to handle a loss exposure. The maximum possible loss is the worst loss that could possibly happen, while the maximum probable loss is the worst loss that is likely to happen.

For example, it is possible for a house located in Arizona to be completely destroyed by flood; however, it is unlikely that such a loss will occur. Therefore, if a house is not located in a flood area, it is usually unnecessary (and sometimes impossible) for the insured to purchase flood insurance.

After the risks have been classified in this way, the risk manager then evaluates the frequency and severity of each loss. Frequency is a measure of how often a particular event has occurred; severity is a measure of the damage caused by each incident. For example, counting the number of times a person's dog has bitten a neighbor is a frequency measurement, but calculating the medical and legal costs of those bites is a severity measurement. After this step has been completed, the risk manager can decide how to effectively deal with his or her property and liability loss exposures.

SELECTING THE BEST WAY TO HANDLE RISK

The risk manager may select one or more risk management techniques to handle the risks he or she has identified. These techniques include avoidance, retention, loss control, non-insurance transfer and insurance. When considering which of the risk management techniques to implement, the risk manager should remember three general, practical rules of risk management:

The size of the potential loss must relate favorably to the resources of the one who must bear the loss.

The possible benefits of taking a risk must be reasonably related to the possible costs.

The amount of potential loss can usually be reduced or prevented through effective loss control programs. The risk manager must determine whether it is best to reduce, eliminate or transfer the risk. Let us look at how these general rules of risk management apply when selecting a risk management technique.

First, selecting a technique begins by using information gathered in the second step of the risk management process. The risk manager has approximated the total loss from one event, or occurrence, and has estimated how often a particular loss is likely to occur (loss frequency) and how much could be lost if a certain event should occur (loss severity).

For example, if a homeowner is estimating the potential loss frequency and severity of a fire, the following losses are possible:

- ✓ Direct fire and smoke damage to the house and its contents;
- ✓ Indirect damage in the form of burns injuries to a visitor in the house;
- ✓ Damage to neighboring property if the fire spreads;
- ✓ Loss of use of the property because the fire damage makes it necessary for the homeowner to move to another location, at least temporarily.

The risk manager should determine the probability and possibility of each type of loss, as well as the loss frequency and severity of those losses.

Second, the risk manager must determine the amount of money that will be available to meet the potential loss. Obviously, this amount will vary widely by individual. To find out how much a person is worth in dollars and cents, he or she should complete a personal balance sheet. This is a financial inventory of all personal assets (that which is owned) and liabilities (that which is owed). The difference between assets and liabilities is a person's net worth.

The balance sheet provides people with a record of their financial progress and can help them with a future savings and investment program. By determining net worth on an annual or semiannual basis, people can see whether their net worth is increasing, decreasing or remaining the same, and if they are keeping pace with the rate of inflation. They can also determine what portion of their assets could easily be converted into cash if they experienced a property or liability loss and needed cash to pay for the loss.

Finally, the benefits and costs of any available alternative method of handling the risk in certain situations must be considered. In many cases, insurance is the answer; however, other risk management techniques, such as loss prevention or self-insurance, may also be viable options under various circumstances.

IMPLEMENTING A RISK MANAGEMENT PLAN

The fourth step of the risk management process is executing the plan that the risk manager has devised. Insurance coverage, which is the focal point of most individual plans, is usually purchased. The risk manager's objective is to purchase policies that will provide the most comprehensive coverage at the most reasonable cost. Insurance contracts will be one of three types:

Primary insurance required by law (e.g., automobile liability insurance) or by contract (e.g., homeowners insurance required under a mortgage contract);

Desirable insurance that provides protection against losses that could financially harm an individual but that would not completely destroy his or her savings (e.g., physical damage insurance protects against damage to the insured's auto); and

Catastrophic insurance that provides protection against losses that could financially destroy an individual (e.g., flood, earthquake and personal umbrella liability insurance provide protection against devastating losses).

The risk manager selects limits of liability that adequately cover the risk's probable maximum loss, as well as reasonable deductibles that help to reduce the annual premium for insurance coverage. Because some of the risks faced by the individual may not be insurable, these risks must be handled in some other way.

For example, war risk is not covered by insurance so individuals must retain that risk. In other words, if property is damaged or destroyed by an act of war, property owners must pay for the loss themselves.

MONITORING THE PLAN

The final step in the risk management process involves a well-planned program for monitoring and updating the original plan. This consists of regularly identifying any changes in the risk manager's loss exposures, net worth, ability to personally bear financial losses and so forth.

All of these are very important considerations for individuals. Risk management as a process grew out of businesses' insurance management, but insurance is hardly the sole method of treating risk.

As noted earlier, there are various alternative methods available. For example, as a person's net worth increases, he or she needs more insurance to protect the possible financial costs of losses to that property, the loss of use of that property and additional expenses that could arise from such losses.

Or, on the other hand, increased wealth might mean that a person would feel comfortable retaining more losses and may, therefore, take a larger deductible to reduce the cost of his or her insurance premiums.

When an insurance agent participates in the risk management process with a client, he or she assumes important responsibilities. The client looks to the agent as a professional who can provide sound advice and, when necessary, can work with other experts in applying the principles of risk management.

When insurance protection is necessary for transferring a risk, the agent will be expected to propose a practical and effective insurance plan that provides proper coverage in the correct amounts to offer adequate protection at the most reasonable cost.

PRIMARY INSURANCE POLICIES

The average person selects insurance, with some retention in the form of a deductible, as his or her primary risk management technique. Most people will purchase homeowners and/or a personal auto policy to cover their loss exposures. The policies are referred to as primary, basic or underlying insurance policies.

Although various homeowners and personal automobile forms are in use, most follow a format similar to the programs developed by the Insurance Services Office (ISO). When we refer to any personal insurance coverage in this text, we will be referring to the standard ISO forms.

Handling Liability Loss Exposures

We will primarily be concerned with liability losses in this text. Most people handle the risk of legal liability arising out of their personal acts with personal liability insurance. Because liability losses involve a third party, the insurance company or the courts must make a determination of fault.

In the event of a lawsuit involving bodily injury or property damage to another person, the insurance company will provide a legal defense and will pay those sums the insured is legally obligated to pay, up to the limits of the policy.

Bodily injury refers to bodily harm, sickness or disease, including injury that results in death. Coverage also applies for any required care or loss of services of anyone whose bodily injury is negligently caused by the insured. For example, at common law, a husband may be

entitled to monetary compensation if his wife is injured in an accident and unable to provide certain duties owed her husband under the marriage contract.

These duties are collectively call consortium and the spouse may be compensated for lack of consortium. Additional coverage called property damage coverage applies to damage to or destruction of tangible property, including the loss of such property.

Personal liability insurance may be purchased as a separate policy or, more commonly, it is provided as part of a package policy, either an auto or a homeowner's package. Because this liability coverage is quite similar, we will primarily discuss the homeowner's liability coverage. The liability section of the homeowner's policy protects the insured in at least two ways:

If a claim is made or a lawsuit is brought against an insured, the policy will pay for damages for which the insured is found legally liable, up to the policy's limit of liability, typically \$100,000 per occurrence. Higher limits may be obtained for an additional premium. Typically, coverage will apply for claims arising out of the ownership or use of the insured location; personal activities, such as sports or social activities on or away from the insured premises; and actions of a residence employee, such as a cook, maid, nanny or baby sitter, in the course of employment.

In addition to the limits of liability, the insurance company must defend any claim or lawsuit that is brought against the insured for bodily injury or property damage - even if the claim is false, baseless or groundless. In come cases, the policy specifies that the insurer's obligation to settle or defend claims ends when the amount the insurer pays for legal defense equals the policy's limits of liability. As a practical matter and to avoid expensive litigation, most personal liability lawsuits are settled out of court.

As mentioned earlier, individuals who own or operate automobiles may purchase liability protection in the form of an automobile policy. The Personal Auto Policy, for example, includes Part A - Liability Coverage, which provides protection against economic loss to an insured for "bodily injury" or "property damage" that arises out of the operation, maintenance or use of an insured automobile. Under this policy section, the insurance company makes two promises to the insured:

To pay damages on behalf of the insured for which he or she becomes legally responsible because of an accident; and

To settle or defend any claims under the policy, up to the policy's limit of liability.

It is important to note that the insurer has no duty to defend lawsuits or to settle any claims that are not covered under a particular insurance policy. For example, an insurer who provides automobile or homeowners insurance is not required to defend an insured who is sued by a neighbor for intentionally using a motor vehicle to damage the neighbor's lawn because intentional damage is not covered.

Handling Personal Injury Liability

The personal liability provided that under the ISO homeowner's policy specifically covers two types of liability:

- Bodily Injury, meaning bodily harm, sickness or disease, including required care, loss of services and death that results;
- Property Damage, meaning physical injury to, destruction of or loss of use of tangible property.

The policy does not mention coverage for personal injury losses meaning any injury to another's person, rights or reputation, including torts such as libel, slander or invasion of privacy. Many insurers contend that they did not intend to provide coverage for personal injury liability under a standard homeowner's policy and coverage is often denied on that basis.

When coverage is not provided by the homeowner policy itself, a personal injury endorsement may be added to the policy to provide coverage for certain offenses committed during the policy period. The ISO personal injury endorsement does not provide coverage for liability:

- ✓ Arising out of disputes between insured;
- ✓ From contracts not related to the premises;
- ✓ From the injured person's employment by the insured;
- ✓ Involving a violation of a penal law;
- ✓ Arising out of business pursuits;
- ✓ Arising out of civic or public activities performed for pay.

Personal injury liability protection may also be extended by a personal umbrella liability policy.

THE STRUCTURE OF PRIMARY POLICIES

Property-casualty policies usually contain the same policy elements, regardless of what type of property or liability coverage they provide. Each policy begins with a Declarations page that contains information found on the client's application for insurance and any information that is unique to that particular policy.

A Declarations page usually contains the name and mailing address of the insured(s), the name of the insurance company providing coverage, the policy number, the inception date and expiration date of the policy, the dollar amount of the applicable policy limits and deductibles, the numbers and edition dates of any forms and endorsements and the premium.

Policies usually contain a separate Definitions section that explains the meaning of certain words that are used in the insurance contract. The defined words may appear in boldface type, italics or within quotation marks. For instance, this section often explains that throughout the policy the named insured is referred to as "you," "your" and "yours" and the insurance company is referred to as "we," "us" and "our."

If a word is not defined in the Definitions section or in the body of the policy, rules of contract interpretation are used to determine the meaning. For example, technical words are interpreted according to their ordinary technical meaning and legal words are assigned their usual legal meaning.

The policy's Insuring Agreements provision sets forth the insurance company's promise to pay the insured (or to pay on behalf of the insured) for a covered loss. In return for the insurers promise the insured must pay a premium and comply with certain policy requirements, which are spelled out in a section call Conditions.

The Conditions section states that the insured must, in addition to paying a specified premium, report losses promptly, cooperate with the insurer in settling a loss and avoid anything that might harm an insurer's right to recover damages from a responsible third party. If the insured fails to comply with these conditions, the insurer may be relieved of its obligation to pay for the loss or defend a lawsuit.

Policies also contain a number of coverage exclusions that restrict or eliminate insurance coverage for specified loss exposures. These exclusions appear throughout the policy as well as in a separate section call Exclusions. Finally, some policies may contain various amendments or Endorsements to the basic policy provisions. The insurance company or its duly appointed agent must issue these endorsements.

Focus Points

- Risk management identifies probability and severity of risk.
- There are five basic steps in the risk management process:
- Loss exposure describes conditions in which loss is possible and unpredictable.
- Potential property losses include direct and indirect losses.
- Potential liability losses are those associated with torts or, breach of contract.
- Real property consists of land and, is erected or growing upon or affixed to it.
- Real property includes the earth's surface, the air above and the ground below and all appurtenances.
- Personal property consists of tangible, movable possessions.
- Two basic types of risk cause financial loss: Direct Physical Damage and Indirect Loss.
- The two types of liability loss exposure are Casualty Loss and Liability Risk.
- Casualty Loss that results from perils such as robbery, burglary, vandalism or arson.
- Liability Risk results from other people's bodily injuries or for damage to their property.
- Remedies based on contractual agreements and tort actions seek monetary damages.
- Remedies based on equitable actions seek some other remedy, such as performance of a contract.
- Intolerable risks are those so large that a loss from one might cause a bankruptcy.
- Difficult to tolerate risks are those that would cause the individual a significant financial loss.
- Tolerable risks are losses or damages to personal property that might be large but are not intolerable to individual's finances.
- Frequency is a measure of how often a particular event has occurred.
- Severity is a measure of the damage caused by each incident.

- Risk management techniques include avoidance, retention, loss control, non-insurance transfer and insurance.
- The size of the potential loss must relate favorably to the resources of the one who must bear the loss.
- The possible benefits of taking a risk must be reasonably related to the possible costs.

- The amount of potential loss can usually be reduced or prevented through effective loss control programs.
- Personal liability insurance may be purchased as a separate policy or is provided as part of a package.
- Property-casualty policies begin with a Declarations page.
- A Declarations page contains basic information about the insured and the company.
- Definitions section explains the meaning of certain words that are used in the contract.
- The Insuring Agreements provision is the insurance company's promise to pay the insured) for a covered loss.
- The Conditions section lists the premium and requirements the insured must comply with.

CHAPTER 11: THE NEED & PURPOSE OF UMBRELLA INSURANCE

THE NEED

People can be held legally liable to pay damages for the bodily injury or property damage caused by their negligence. The need for liability can arise as a result of a person's personal or recreational activities as well as a person's business. Some of the higher liability claims arise when insured are entertaining guests or permitting people to use their property.

Consider how a jury's desire to punish a negligent person could result in a judgment for damages in the following situations:

A practical joke misfires and results in a lawsuit for defamation of character.

A neighbor or guest falls on a person's property, resulting in permanent disability.

A protective watchdog proves that his bite is even worse than his bark.

A person's child accidentally breaks an expensive vase while at another person's house.

A moment's inattention while driving results in a multi-car accident.

A spark from burning leaves starts a fire that inadvertently burns a neighbor's roof.

A letter to the editor triggers a libel suit.

At this point, it is important to make a distinction between two terms frequently used in liability suits: coverage and liability.

The word coverage refers to the contractual obligation imposed on the insurance company that agrees to indemnify the insured for sums he or she becomes legally responsible to pay as damages. Liability refers to the legal responsibility of the policyholder to other persons arising out of an occurrence. In some cases, a particular peril will not be covered by the policy and the insurance company is under no contractual obligation to indemnify the insured.

For example, assume the insurer issued homeowners policy covering an insured's liability arising out of the ownership of a certain property. The insurer is under no obligation to provide coverage under that homeowner's policy for an automobile accident that occurred away from the residence premises even if the insured was at fault. In this case, there may be liability on the part of the insured, but there is no coverage provided under the policy.

On the other hand, there may be coverage under the policy but no liability on the part of the insured. For example, the Personal Auto Policy provides coverage for property damage up to the policy limits. However, if the insured vehicle is stolen and the thief uses the car to damage several lawns in the area, the insured has no liability for the damage.

Even if the insured feels sorry for the neighbors and perceives some moral obligation to repair their lawns, he or she has no legal liability to do so. Likewise, the insurance company has no responsibility, either by way of settlement or as a gift, to make any payment to the neighbors. In this case, while there may be coverage under the policy, but there is no liability on the part of the insured.

The insured should be cautioned to remember that even when there is no apparent liability on the part of the insured or available insurance coverage, the insured may still be sued and found legally responsible. In a civil case, it is possible that the plaintiff, who must establish his or her claim by a preponderance of evidence, may produce evidence that is more credible and convincing than that of the defendant's. And, if the plaintiff's case is more believable, the plaintiff will win. The settlement the plaintiff receives might be quite substantial because of three factors:

- Public attitude toward claims;
- Application of the law of negligence;

- Jury opinion about damage awards;

IDENTIFYING GAPS IN LIABILITY COVERAGE

The insured routinely believe that their policies cover every possible loss exposure, but this is simply not the case. When a liability loss occurs, insured may be surprised to learn that there are serious holes, or gaps, in their insurance coverage. As stated earlier, an insurance policy covers the insured only up to its liability limits; beyond these limits, a liability insurance policy does not protect the insured.

The majority of policies covering liability for bodily injury have two limits, a limit of liability for one person and another limit (usually higher) for any single occurrence, where more than one person is involved. For example, assume an insured has a Personal Auto Policy that covers him or her up to a \$300,000 liability limit for bodily injury for each accident or occurrence.

If the insured is involved in an accident and is held liable for \$200,000 in bodily injury damages, the auto policy will pay for those damages. However, if the insured is held liable for damages in excess of \$300,000, he or she will be held personally liable for the additional damages.

The underlying personal liability insurance, in addition to paying only up to certain limits of liability, excludes certain loss exposures. For example, the liability portion of the homeowner's policy does not cover the following:

- ✓ Damage from the intentional acts of the insured;
- ✓ Damage caused by the rendering or failure to render professional services;
- ✓ Damage from acts of war;
- ✓ Damage from communicable diseases;
- ✓ Damage arising out of business activities.

In addition, not all individuals on the insured's property or in the insured's auto are afforded coverage by the insured's primary liability insurance. Residence employees, defined as employees of the insured whose duties are related to the maintenance or use of the residence premises, including household or domestic services, may not be covered under the liability section of the homeowner's policy if the insured is required to have workers' compensation coverage in force for such employees.

The basic Personal Auto Policy excludes liability coverage for:

- ✓ Damage caused by intentional acts of an insured;
- ✓ Damage to property owned by, rented to, used by or in the care of an insured;
- ✓ Bodily injuries to employees covered under workers' compensation;
- ✓ Damages resulting from the ownership or operation of a vehicle while it is being used as a public or livery conveyance;
- ✓ Damages incurred while a party is employed or engaged in the business of selling, repairing, servicing, storing or parking vehicles.

Finally, underlying policies generally do not provide liability coverage for unusual loss exposures or for losses that occur outside the United States. For example, the Personal Auto Policy limits coverage to accidents and losses that occur within the policy territory, meaning the United States of America, its territories or possessions; Puerto Rico; Canada; or while the auto is being transported between their ports.

PURPOSE OF UMBRELLA POLICIES

The Personal Umbrella Liability Policy was created to expand the insured's liability coverage by filling gaps in the basic liability coverage provided by underlying policies and to reduce the insured's worry, trouble and burden of facing personal litigation on his or her own. Personal umbrella liability coverage is usually sold in units of \$1 million or more and may be added to a basic homeowners or auto policy that is already written by the insurance company.

Many companies also write stand alone, or separate, personal umbrella policies without writing the underlying coverage. To qualify for stand-alone coverage, however, the applicant is usually required to show proof of certain underlying insurance coverage with other insurance companies. Umbrella policies provide insurance for accidents and other situations not ordinarily covered under primary insurance, subject to a deductible of between \$250 and \$1,000.

There is no standard personal umbrella liability policy. The policy's forms, format and coverage vary by insurer. This does not necessarily mean that because one company's policy looks more extensive that it is superior to another policy. Rather, each contract should be reviewed to determine which offers the best coverage for a particular policyholder.

Regardless of which company is providing the policy, all personal umbrella policies are designed to give insured and their families' two types of extra liability protection:

They add to the liability of any homeowners, automobile or other liability policies currently in force. Most homeowner's policies provide basic personal liability coverage of \$100,000; auto policies typically contain a combined single limit of \$300,000 per occurrence.

An umbrella policy supplements this basic personal liability coverage. If, for example, the insured has a standard auto policy with liability limits of \$300,000 and a personal umbrella policy with limits of \$1 million, the insured is protected up to \$1,300,000, if a covered auto accident occurs and the insured is found legally responsible.

They are designed to cover liability exposures that other policies do not cover. The personal umbrella policy is designed to cover some of the more unusual exposures, such as personal injury claims, that an insured might face but that are typically not covered under most standard liability policies. A personal umbrella is the liability counterpart of

Difference in Conditions (DIC) insurance, a property coverage that expands insurance written on a named perils basis to an open perils basis and protects the insured against risks of direct physical loss to the insured property, subject to certain exclusions and deductibles. An umbrella contract provides (subject to a deductible) liability coverage where no other liability insurance exists, and in addition provides coverage for liability when the limit of the primary or underlying insurance has been exhausted.

CHARACTERISTICS OF UMBRELLA POLICIES

The insurance company that issues the umbrella policy provides additional liability coverage over the primary policies, up to the limits listed on the Declarations page of the umbrella policy, even if the same insurer does not provide the underlying insurance.

The personal umbrella policy covers any number of accidents or occurrences that occur during the policy term, regardless of how many claims are presented. However, the policy restricts payment for any one accident to the limit listed in the policy (usually up to \$1 million per occurrence). In other words, even though the insurer may pay for ten claims totaling \$10 million during a one-year period, it will not pay more than \$1 million for any one occurrence.

To limit the insurer's liability, however, many umbrella policies are beginning to offer aggregate limits, meaning a maximum dollar amount that may be paid during the policy period or during the insured's lifetime, as specified in the policy. A policy with a \$10 million aggregate limit, for example, may pay several claims for \$1 million each, but it will only pay out a maximum of \$10 million during a given policy period.

It is important to remember that the personal umbrella is a third-party liability policy that covers only another person's claim against the insured. It does not cover damage to the insured's own property, motor vehicles, home or other valuables.

Focus Points

- People can be liable for bodily injury or property damage caused by negligence.
- Liability refers to the legal responsibility of the policyholder to others arising out of an occurrence.
- Liability policies have a limit of liability for one person and limit for any single occurrence, where more than one person is involved.
- Personal Umbrella Liability Policies fills gaps in the basic liability coverage provided by underlying policies.
- Personal Umbrella Liability coverage is usually sold in units of \$1 million or more.
- Personal Umbrella coverage and may be added to a basic homeowners or auto policy.
- Umbrella forms, format and coverage vary by insurer.
- Umbrella policies are designed to cover liability exposures other policies do not cover.
- Liability insurance provides coverage when the limit of the primary insurance has been exhausted.
- Personal umbrella policy covers multiple claims occurrences during the policy term.
- Umbrella policies carry aggregate limits.
- Aggregate limits are maximum dollar amounts payable as specified in the policy.

CHAPTER12: BASIC POLICY COMPONENTS

PERSONAL UMBRELLA LIABILITY POLICIES

The insurance industry has developed a number of liability contracts over the years to meet the basic liability exposures of individuals and businesses. It was not until 1960, however, that a personal catastrophe liability contract (or as it is more commonly called a personal umbrella liability policy) was developed.

The contract was originally aimed at insurance buyers with the idea of providing broader insurance protection for individuals, especially professionals and wealthy members of society, who were excellent targets for liability lawsuits that could result in significant claims.

Today, however, it is not unusual for liability claims to exceed the basic limits of liability afforded by an average insured's homeowners or auto policy. These claims, which may result from personal activities or professional or business pursuits, are usually covered by a personal umbrella liability policy.

As we have said, there is no standard personal umbrella liability policy form or format. Each insurer develops its own policy based on its own preferences and/or the needs of its clients. Because coverage varies by insurer, it is important for the insurance producer and his or her client to examine each personal umbrella policy to make sure that it is not merely an ordinary excess liability contract.

An excess policy provides only additional layers of coverage to the coverage already furnished by the underlying policy. The terms and conditions of an excess policy should be precisely the same as those of the underlying policy. A true umbrella policy, on the other hand, provides not only excess liability but also responds to claims that may be excluded in the underlying policy but are not excluded under its own form.

Personal umbrella liability insurance is intended for catastrophe-type claims; an umbrella insurer is simply not interested in covering small claims. To support this intent, personal umbrella policies that cover loss exposures that are not covered by the underlying policies are subject to deductibles commonly referred to as a retention or self-insured retention. Most insurers offer minimum deductibles of \$250 but offer higher ones for additional reductions in premium. In some cases, an insurance underwriter will require a substantial deductible when a particular risk is not otherwise insurable because of some unusual exposure to loss.

In general, the purpose of a personal umbrella policy is not only to provide million dollar-plus excess limits but also to broaden basic liability protection in several ways. In most cases, the personal umbrella liability policy is intended to:

Provide coverage for liability assumed by the insured under certain oral or written agreements

Cover a broad range of personal injury hazards such as libel, slander, false arrest, humiliation, defamation of character, false apply worldwide coverage (where permitted by law), without territorial restriction as is the case with most primary insurance coverage;

Provide liability coverage for the insured who uses certain non-owned automobiles, watercraft and aircraft when this coverage is excluded under Section II of the homeowners policy;

Include imprisonment, wrongful eviction, wrongful detention, malicious prosecution or invasion of privacy; and

Provide payment of defense costs when primary insurance does not apply.

To adequately protect the insured, a personal umbrella liability policy should serve three purposes:

Add an additional amount of liability coverage above the limits provided by the insured's homeowners, personal auto or other underlying policies.

Provide insurance coverage for some exposures that are not covered (or only minimally covered) by the insured's underlying policies.

Provide protection for the insured against certain catastrophic liability losses that might otherwise cripple the insured financially.

BASIC POLICY COMPONENT PARTS

Depending on the preferences of the insurance company, the actual format of the personal umbrella liability policy will vary among companies. In addition, the amounts and types of coverage may also vary. Regardless of how it looks or exactly what it covers, however, a personal umbrella policy will usually contain six basic components or policy provisions that outline the details of the contract between the insurer and the insured.

Declarations

This part identifies the parties to the contract and defines who and what the policy insures and for what period of time. The premium and amount of insurance are also stated in the Declarations.

Definitions

The contract's commonly used words and phrases are defined in this section to reduce any misunderstandings between the parties about what the insurer intends to cover.

Insuring Agreements

An umbrella policy contains a number of promises and specific obligations assumed by the insurance company, including its duty to pay certain losses on behalf of the insured. In addition to an introductory insuring clause, there may be several additional statements within the body of the policy that must be referenced when a loss occurs to determine both the insured's and the insurer's responsibilities.

Conditions

This policy provision describes the policy requirements with which the insured must comply before the insurer is obligated to pay.

Exclusions

This provision specifically lists causes of loss for which the insurer does not intend to provide coverage.

Miscellaneous Provisions

Some policy provisions, such as the insured's duties when a loss occurs, do not neatly fit into the Declarations, Definitions, Insuring Agreement, Conditions or Exclusions headings. These provisions may be grouped together as Miscellaneous Provisions.

Declarations Page

The preliminary section of each umbrella liability policy contains a Declarations page (also called a Dec page or the Dec) that contains pertinent information about the insurance risk, on the basis of which the policy was issued. The insurer, which draws up the insurance contract, is expected to represent clearly the intent and terms of the policy. Therefore, the purpose of the Declarations page is to provide information about who is covered (the named insured), what is covered (the property and perils listed in the policy), when it is covered (the effective dates of coverage), where it is covered (the described location) and why it is covered (a premium has been paid) so that there is no ambiguity.

The entire policy, including any endorsements or changes to the policy, is inserted into a policy jacket that serves the same function as the covers of a book. The policy jacket keeps the Declarations page and all the policy forms in one place, thereby allowing the insured to easily find, read and review his or her insurance policy.

INSURING AGREEMENTS

Every umbrella liability policy contains an insuring clause that is a general statement of the promises the insurance company makes to the insured. In addition to this general clause, the policy often contains a number of other guarantees referred to as Insuring Agreements.

These Agreements state what the company promises to do, such as agreeing to defend the insured in a liability lawsuit.

Definitions

In response to complaints from insured and the courts that the terms used in insurance policies were not clearly defined, the insurance industry developed a section called Definitions that is now contained in every insurance policy, including a personal umbrella policy. Personal umbrella liability policy definitions are not standardized. An insurer develops its own definitions and policy wording, which may later be modified by the underwriter to meet the requirements of the applicant or to adapt to unique situations presented by different underlying forms of coverage.

For example, an insurance company's definition of an insured may include the person named in the Declarations page (the "named insured"), the named insured's spouse, any relatives and persons under a specified age and in the care of any of the persons previously named - if they live in the insured residence. However, another company's definition might specifically remove coverage for any person, other than the named insured, using automobiles or watercraft while engaged in an automobile or boat-related business.

Conditions

Like other insurance contracts, the umbrella policy is a conditional contract. The insured must pay the premium indicated in the Declarations and abide with certain requirements specified in the policy. The personal umbrella policy's Conditions component describes the rights and duties of both parties to the insurance contract - the insurer and insured. Conditions are provisions inserted in the contract that qualify or place limitations on the insurer's promise to pay for losses. In addition to being contained in a separate section, a policy's conditions may also be found anywhere in the contract where the insurer intends to limit coverage.

Exclusions

A personal umbrella policy does not cover every risk that the insured faces. For example, many insurers will not provide coverage for perils that they consider being uninsurable, such as war or some other potentially catastrophic event. They also intend to deny coverage under the umbrella if coverage could be better provided by another type of insurance policy or if there are extraordinarily hazardous conditions present. Finally, insurers exclude coverage for losses that are difficult to measure or for perils that are not needed by the typical insured. Therefore, the personal umbrella policy also contains an Exclusions component that specifically lists causes of loss for which there will be no coverage. The policy may place limitations on coverage or exclude certain perils or types of losses.

Typically, personal umbrella policies exclude the following types of losses:

Obligations under workers' compensation, unemployment compensation, disability benefits or similar laws

Business pursuits, professional services and liability resulting from owned or rented aircraft and watercraft excluded under the homeowner's policy

Property damage to any property owned by the insured or in the care, custody or control of the insured

Any act committed by or at the direction of the insured with the intent to cause personal injury or property damage

Personal injury or property damage for which the insured is covered under a nuclear energy liability policy

Although these exclusions are fairly standard, additional exclusions may be listed in the policy. In some cases, the insurer allows the insured to "buy back" certain coverage, such as workers' compensation, for an additional premium. The agent should be familiar with each insurer's exclusions and be careful to point them out to his or her clients so that there will be fewer surprises if a loss occurs that is not covered under the umbrella liability policy.

MISCELLANEOUS PROVISIONS

Some umbrella policies contain provisions that cannot be strictly classified within one of the previous five policy components. These Miscellaneous Provisions might include a discussion of the insurer's production and underwriting rules, it's required underlying limits or any other special company guidelines.

In addition, any endorsements that add to, delete or modify the provisions in the original contract may be included in this section.

An endorsement is an attachment to an insurance policy that is used to clarify, extend or restrict coverage with regard to perils, coverage periods or premiums. It can be a standard endorsement that is used to fit a general situation or it may be worded to fit a particular situation.

These special endorsements are called manuscript forms. When an endorsement is attached to a policy, the endorsement's terms normally take precedence over any conflicting wording in the policy. However, if state law requires any provisions in the policy, an endorsement cannot be used to subvert the intention of the required legislation.

For example, the law may hold a person liable for damages if he or she is found guilty of negligently operating a motor vehicle. The personal umbrella and underlying auto policies cannot be endorsed to delete liability for negligence.

If endorsements are in conflict with a state regulation or law, the laws take precedent and the policy is read and interpreted as if the conflicting endorsements had not been added. In other words, the original intent and coverage are preserved.

REQUIREMENTS OF A LEGAL CONTRACT

A contract is an agreement entered into by two or more parties under the terms of which one or more of the parties, for a consideration, undertakes to do or to refrain from doing some specified act or acts. In order to be binding on the parties involved, a contract must meet five basic requirements:

- Offer and Acceptance;
- Consideration;
- Competent Parties;
- Legal Purpose;
- Legal Form.

OFFER AND ACCEPTANCE

A contract is in essence an enforceable promise. In order for a valid contract to exist, there must be a valid offer and an unqualified acceptance of that offer, so that the seller understands the buyer's offer and the buyer understands to what the seller has agreed. In other words, a contract begins with a meeting of the minds.

The general rule is that it is the applicant for insurance who makes the offer, and it is the insurance company that accepts or rejects the offer. For example, the potential insured requests insurance and fills out an application for personal umbrella insurance; the application constitutes the offer. The agent then accepts the offer on behalf of his or her company. Assuming that the other requirements for a valid contract are met, the property-casualty agent can usually bind coverage and make it effective immediately.

However, the insurer retains the right to investigate, underwrite and cancel the coverage (as described in the policy and in accordance with state law) if the risk does not meet the company's underwriting guidelines. For example, the applicant may not have disclosed several large liability losses that would have made him or her ineligible for umbrella coverage with some insurance companies. In this case, the insurance company may decline to offer coverage. In most cases, the agent cannot bind personal umbrella liability insurance.

CONSIDERATION

The second requirement of a valid contract is consideration, which is the value that each party gives to the other. In the case of an umbrella policy, the insured's consideration is the payment of the first premium (or the promise to pay) and his or her agreement to abide by the conditions specified in the policy.

The insurance company's consideration is the promise to do certain things that are specified in the policy. This includes indemnifying the insured for covered losses and defending the insured in a liability lawsuit.

It should be noted that the values of the considerations exchanged are not always equal. When the insured purchases a policy, he or she usually pays a relatively small premium in exchange for a comparably large amount of insurance protection. For example, the annual premium for a \$1 million umbrella policy might be less than \$200, a decidedly unequal exchange of values if a large loss occurs.

In fact, for the benefits the insured receives, a personal umbrella policy may be the best buy in insurance. This relatively inexpensive policy raises the insured's liability coverage to a million dollars or more, and protects him or her from personal responsibility for damages.

COMPETENT PARTIES

In order to be legally enforceable, a contract must be between at least two bona fide parties. A person cannot make a legally enforceable promise to himself or herself. Thus, John Doe cannot agree to sell a piece of property to himself; however, he could agree to deed the property to himself and his wife as tenants in common.

The parties involved must be legally competent in order to enter into a valid contract. Generally speaking, competent parties are adults (usually age 18 or 21, depending on the state) who are able to understand the terms and conditions of the contract into which they are entering. In some states, however, minors as young as 14 may enter into some contracts.

For example, minors have limited ability to contract, which means that the contract of a minor is valid only if the minor does not disavow a contract entered into during his or her minority or shortly after reaching majority (usually age 18 or 21). For example, a minor possesses the limited capacity to enter into a valid contract to purchase property from an adult. Such a contract would be enforceable by the minor against the adult, but would be voidable by the minor.

A voidable contract is an agreement that for a reason satisfactory to the courts may be set aside by one of the parties to the contract. Contracts made by minors to obtain such necessities as food, clothing or shelter, however, are not voidable by the minor and will be enforced against him or her.

Some entities are excluded parties to legally binding contracts. When a person has been adjudicated insane or is an officer of a corporation who is not authorized to execute a contract on behalf of the corporation, he or she has no capacity to contract. Lack of a capacity would also cover acts of a corporation beyond its powers as defined in the articles of incorporation.

Also considered incompetent is any person who is impaired by reason physical or mental disability, drugs, alcohol, age or any other cause to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself. Therefore, insane and, in certain, intoxicated people are incapable of entering into valid contracts. An illiterate person, however, is not incompetent as long as he or she understands the nature of his or her acts.

LEGAL PURPOSE

In order to be enforceable, contracts must be made for some legal purpose. If the contract does not have a legitimate purpose, it would be contrary to public policy to enforce such a contract. For example, Robert may contract with another person to paint his house for a fee. Such a contract is considered legal and binding. However, Robert cannot legally contract with another person to kill his wife. Because murder-for-hire is not legal, it is not considered a valid contract and would not be enforceable in a court of law.

LEGAL FORM

Unless otherwise required by laws, oral contracts can be just as valid as written contracts. Generally, however, an insurance contract must follow a specific legal form and must be in writing to be enforceable. All essential terms of the contract must be complete and certain so that the entire agreement is set forth in writing and nothing material to the contract is left to be agreed upon in the future. Once the policy is issued, changes may be made by endorsement, but only if the insurer agrees to the requested changes.

Focus Points

- The personal umbrella liability policy was developed in 1960.
- Umbrella liability was developed for people who were targets for large liability lawsuits.
- Liability claims beyond the homeowners or auto policy limits are usually covered by personal umbrella liability policies.
- No standard Personal Umbrella Liability policy form or format exists.
- Umbrella policies provide excess liability coverage and respond to claims excluded in the underlying policy.
- Umbrella Policies are subject to deductibles called retention or self-insured retention.
- Umbrella Policies contain six basic components outlining the details of the contract.
- The Declaration portion names the parties to the contract and defines who and what is insured and for what period of time.
- The Declaration lists the premium and amount of insurance.
- Commonly used words and phrases are defined in the Definitions portion of the contract.
- The list of promises and obligations assumed by the insurance company is found in the Insuring Agreements section.
- Conditions describe requirements the insured must meet before the insurer is obligated to pay.
- Exclusions list causes of loss for which the insurer does not intend to provide coverage.

- Any endorsements that add to, delete or modify provisions in the contract may be found under Misc. Provisions.
- An endorsement is an attachment to a policy that clarifies, extends or restricts coverage.
- Special endorsements are called manuscript forms.
- Endorsements attached to a policy take precedence over any conflicting wording in the policy.
- State regulations or laws take precedent over endorsements.
- A contract is an agreement entered into by two or more parties.
- Enforceable contracts contain 5 basic requirements.
- A contract must have valid offer and an unqualified acceptance of that offer to be valid.
- Consideration is the value that each party gives to the other.
- The parties involved must be legally competent in order to enter into a valid contract.
- Competent parties are adults 18 and older who understand the terms and conditions of the contract.
- Minors as young as 14 years old may, in some states, enter into a contract.
- Contracts must be made for some legal purpose to be enforceable.
- Oral contracts can be just as valid as written contracts.
- Insurance contract must follow a specific legal form and must be in writing to be enforceable.
- Once the policy is issued, changes may be made by endorsement.

CHAPTER 13: COMMON UMBRELLA CONDITIONS

KNOWING POLICY CONDITIONS

Insurance policies are conditional contracts that create a continuing relationship between the insured and the insurance company. In the policy's Insuring Agreement, the insurance company promises to pay on behalf of the insured those sums for which the insured is found legally responsible, to provide a defense for the insured or to furnish other services as stated in the policy.

However, the insurer's promises are enforceable only if an insured peril occurs and if the insured has complied with certain conditions contained in the policy. The insured understands that they must pay premiums in order to keep their insurance policies in force, but that is not the only thing they have to do. Additional duties are spelled out in the Conditions section of the policy.

As an insurance professional, you should review insurance policies before they are forwarded to your clients to assure that the policies have been issued as you requested. You should also discuss the policy with your client to assure that they understand what is covered and excluded. You should also be certain they are aware of their rights and obligations under their contracts so they will have fewer problems should a loss occur.

We will discuss the important conditions that apply to most personal umbrella liability policies and explain how you can help your insured to understand this important part of their insurance coverage.

UNDERSTANDING POLICY CONDITIONS

All property-casualty insurance contracts are written subject to certain conditions or prerequisites. The duties of the insured are primarily listed in the Conditions section of the policy; however, other provisions that qualify the otherwise enforceable promise of the insurer may also be found elsewhere in policy forms or endorsements.

As explained previously, insured should fully understand their obligations under their policies because they cannot expect the insurance company to fulfill its part of the contract unless the insured fulfills all of the required policy conditions. Failure to do so may release the insurer from its obligations.

Most of the policy's conditions have to do with such matters as loss settlements, actions required at the time of a loss, cancellation of coverage and suits against the insurer. Under most umbrella contracts, insured are obligated to report losses in a timely manner; provide

any required documentation of losses to the insurer; cooperate with the insurer in investigating, negotiating and settling claims; and avoid any action that would risk the insurer's rights to recover from a responsible third party.

COMMON PERSONAL UMBRELLA CONDITIONS

Personal umbrella liability policies contain a number of conditions that describe the circumstances under which the contract is to operate. The insured should be certain that they understand how these conditions modify, suspend or rescind the original obligations. In the Conditions section of most policies, the insurer explains that the insured must meet a number of obligations before insurance coverage will apply. For instance, the policy might state:

There are certain responsibilities, which you must fulfill (in addition to paying the premium) as a condition for us to provide coverage.

Policy conditions may be classified in one of two ways:

- A condition precedent;
- A condition subsequent.

A condition precedent is a requirement or qualification that must take place before the contract exists. For example, in a contract of insurance, the insured agrees to pay the premium and the insurer agrees to provide certain insurance coverage in return. The principal duty of the insurer is to provide this coverage, but this obligation is conditioned on the insured's payment of the premium. The failure of the insured to pay the premium (condition precedent) relieves the insurance company of its principal obligation and, in fact, nullifies or voids the contract.

A condition subsequent is a requirement that must be met after the contract is in force. For example, the insured must report all accidents and potential claims to the insurer as soon as possible. A typical clause might read:

In case of a claim or "occurrence" that may be covered by this policy or if a "covered person" is sued in connection with an "injury" or "damage" which may be covered under this policy, the "covered person" must do the following:

Promptly notify us or our agent in writing;

Promptly send us copies of any notices, legal documents and any other documents that will help us with your defense;

Cooperate with us in the investigation, settlement or defense of any claim.

Assume the insured is involved in an auto accident. The insured feels he or she was not at fault, so the insurance company is not notified of the accident until a year later when the other driver files a lawsuit. Because the insured breached the contract by not notifying the insurance company "promptly," the insurer may be relieved of its obligation to defend and indemnify the insured for that particular loss.

The insured's failure to comply with this policy condition does not void the entire contract. The insurer will still respond to other losses during the policy term with the same obligation to defend and indemnify the insured provided that the insured complies with the policy's terms and conditions.

The things that an insured or other covered person must do as a condition before the insurance company will provide coverage will vary by company. Generally speaking, umbrella insurers will include conditions relating to claims notification, assignment of the policy, cancellation of coverage and legal action against the insurer.

UNDERSTANDING INSURING AGREEMENTS

You'll recall that an insurance contract is an agreement entered into by two parties, the insurance company and the insured. The contract usually begins with an insuring clause (or clauses) called Insuring Agreements that outlines the insurance coverage that the company promises to provide in return for the insured's promise to pay a premium and compliance with the terms of the contract. Technically, complying with these conditions is also a part of the consideration.

If a covered loss occurs but the conditions are not met by the insured, the insurer has no obligation to pay. A rather broad Insuring Agreement might read:

"We will provide the insurance described in this policy if you pay the premium and comply with all the terms of the policy."

With this statement, the insurance company (one competent party) enters into a legally binding contract with the insured (a second competent party). Based on the insured's application for insurance (offer) and payment of a specified premium (consideration), the umbrella insurer agrees to provide coverage (acceptance) and issues a personal umbrella liability policy (legal form). In return for the insured's premium and promise to abide with the terms of the policy, the insurer agrees to assume many of the insured's liability loss exposures. The exact terms of the agreement are specified in the various policy provisions.

COVERAGE RESTRICTIONS

At first glance, Insuring Agreements like the one above might appear to cover every loss exposure. However, because it is unlikely that a company intends to provide unlimited coverage, the insurance producer should look for words or phrases in a policy's Insuring Agreements that might restrict or limit coverage. In our first example, the words insurance described in this policy are included to warn the reader to look for additional definitions, conditions, exclusions and miscellaneous provisions throughout the policy that will clarify exactly what the insurer intends to cover under the policy. The policy is not intended to cover every hazard an insured faces. Coverage applies only as described throughout the policy.

Insurance companies may include words or phrases in their Insuring Agreements that have a special meaning as used in its personal umbrella policy. This interpretation may be quite different from that normally used by the average person. As explained previously, many insurers use boldface type, italics or quotation marks throughout the policy to identify words or phrases that may be used in a special way by the insurer.

An insurance producer or insured that is uncertain about what the insurer intends to cover when a loss occurs will usually find that the intended meaning of a term is explained in the Definitions section of the policy. The definitions are included to reduce confusion about what the insurer expects to cover.

For example, the following Insuring Agreements contain a number of accented words.

The company agrees to indemnify the "insured" for "ultimate net loss" in excess of the "retained limit" which the "insured" shall become legally obligated to pay as damages because of "personal liability."

In this case, the insurer wishes to alert the insured that certain words, including "insured," "ultimate net loss," "retained limit" and "personal liability," are used in a way that may be unique to this particular company. The insurance producer and the insured should use the policy's Definitions section to determine whether these terms are used in a way that is familiar to them. Let's review how most insurance companies define these highlighted terms.

INSURED

An Insured (or covered person) is defined under most personal umbrella policies as the person named in the Declarations, his or her spouse and any relatives living in the named insured's household. As mentioned earlier, some companies will limit coverage to relatives under a specified age or require that the named insured have custody of child or stepchild in order for coverage to apply. In many cases, any person insured under the named insured's basic or underlying policies is also covered under the personal umbrella.

ULTIMATE NET LOSS AND RETAINED LIMIT

The intent of an ultimate net loss provision is to limit the insurer's liability to the amount specified in the Declarations less any required retained limits, either specified underlying limits or a retained limit or self-insured retention (a form of deductible). The policy wording will usually go on to explain exactly how and when the insurer intends to make payments under the policy.

A Retained limit provision requires the insured to pay some portion of a covered loss before the umbrella policy pays. A retained limit is the larger of: The total of the applicable limit(s) of all required underlying insurance required by the insurer and described in the Declarations or elsewhere in the policy and any other insurance available to a covered person; or Any deductible required by the insurer or by the state in which the insurer does business.

The insured bears the risk to the extent of the uninsured amount. The retained limit or retention applies on a per loss basis to any loss covered under the umbrella policy but excluded in primary underlying policies. The retained limit does NOT apply when the umbrella is simply supplementing a primary policy that has exhausted its limits in the payment of a covered claim.

In other words, before the umbrella insurer makes any payment, the primary coverage must pay first or the insured must meet a specified deductible, such as \$250 per occurrence. There is a common misunderstanding that there is a GAP or space between the primary and the umbrella coverage. No such corridor exists.

In those cases where the insured has purchased the required underlying primary coverage, the protection applies right up to the top collar of the umbrella. In other words, if the insured has the required primary coverage, only that coverage and the umbrella coverage come into play. The insured is not out of pocket for any deductible.

PERSONAL LIABILITY

In most umbrella policies, the term personal liability means: bodily injury, sickness, disease, disability, shock, mental anguish and mental injury, false arrest, false imprisonment, wrongful entry or eviction, wrongful detention, malicious prosecution or humiliation.

Assault and battery, including death resulting there from. Many policies also include injury to or destruction of tangible property, including its loss of use.

To illustrate how an umbrella policy would indemnify an insured for a loss, assume an insured's umbrella policy specifies that its retained limits are the larger of either the minimum underlying comprehensive personal liability limits of \$300,000 or \$250. The insured's homeowner's policy has a \$300,000 limit of liability.

The insured is found legally responsible for covered damages of \$500,000 when someone is injured. In this case, the primary coverage (the liability section of the homeowners policy) pays the first \$300,000 (the retained limit) and the umbrella policy pays the remaining \$200,000. There is no corridor or gap between the primary and excess coverage, and the insured pays no deductible him or her.

Now, assume that the insured is found legally responsible for slander in the amount of \$500,000. Coverage for personal injury damages is not provided under the homeowner's policy. However, coverage is provided under the personal umbrella, up to its policy limits of \$1 million. In this case, there is no underlying coverage so the insured must pay the first \$250 (retained limit) before the umbrella insurer is obligated to pay the remaining balance of \$499,750.

Now, assume that the insured in these examples allows the required homeowners policy to lapse and is subsequently found legally responsible for covered damages of \$500,000 when someone is injured on his or her property. In this case, there is no primary liability coverage available; however, the personal umbrella insurer is NOT relieved of its obligation to pay even though the insured has failed to maintain the basic liability limits required as a condition of obtaining and maintaining personal umbrella liability coverage.

Before the insurer pays, however, the insured, in essence, must take the place of the primary insurer and pay the amount that the primary insurer would have paid if the homeowner's coverage had been in force. The umbrella insurer then responds in the same way that it would of had the primary liability insurance been in force to act as the retained limit. In this case, the insured pays the first \$300,000 (the retained limit before the personal umbrella insurer pays the remaining \$200,000. The insured does NOT pay an additional \$250 deductible.

EXCESS VERSUS PERSONAL UMBRELLA LIABILITY INSURANCE

Many insurance producers use the term excess personal liability insurance and umbrella insurance interchangeably. These two insurance coverages are actually quite different and should not be confused. Unlike excess liability that provides additional coverage ONLY if the underlying policy provides coverage for a loss exposure, a typical personal umbrella policy will respond in two ways:

If the listed underlying insurance coverage's, such as the homeowners policy or personal auto policy, are exhausted in the payment of a loss, the umbrella picks up the protection and continues payment on behalf of the insured until the personal umbrella's limit of liability is also exhausted.

If a loss occurs that is NOT insured under the underlying policies, because of policy exclusions or for any other reason, the personal umbrella policy will often cover a loss subject to a deductible, RETAINED LIMIT or SELF-INSURED RETENTION payable by the insured. However, the umbrella policy does NOT cover every loss, and it should be analyzed to determine any coverage exclusions.

REQUIRED UNDERLYING LIMITS

The insurer will include policy language that clearly states the types and minimum limits of liability that the insured must carry. In some policies, this provision is called MAINTENANCE OF INSURANCE OR REQUIRED UNDERLYING LIMITS. A typical provision might read:

The named insured agrees that as of the inception and for the duration of this policy (1) the following underlying insurance shall be maintained in force for at least the minimum primary limits stated hereafter, and (2) that such underlying insurance insures all residences occupied by the insured and all farms, watercraft and land motor vehicles owned, rented, hired or controlled by the named insured.

As explained earlier, an umbrella insurer does not intend to provide first-dollar coverage; therefore, the insurer requires that certain primary insurance be in place to provide the first layer of liability coverage if a loss occurs. To illustrate how a claim involving an umbrella policy should be settled, assume the umbrella insurer requires underlying automobile liability insurance with split limits of 250/500/50 (or a combined single limit of \$500,000) and homeowners liability coverage in the amount of \$300,000 before it will insure a personal umbrella policy for \$2 million.

The insured purchases the required policies in the required amounts and an umbrella policy is issued. The insured is involved in an auto accident and found legally liable for the other driver's bodily injuries. Damages of \$1.3 million are awarded. The insured's auto policy pays up to \$500,000 for the covered accident and the umbrella policy pays the remaining \$800,000.

To guarantee that the applicant is aware of its underlying insurance requirements, insurers include questions about underlying limits on their umbrella applications. In addition, when the umbrella policy is issued, the Declarations page typically includes information about the insured's primary insurance coverage. The types of loss exposures, names(s) of the insurance carrier(s), policy numbers, effective dates of coverage and limits of liability are shown. Finally, the policy will include some explanation of how a loss will be handled when the primary insurance required by the umbrella policy is in place.

FAILURE TO PROVIDE UNDERLYING LIMITS

Although the insured is expected to supply certain underlying limits, these basic policies may be unavailable at the time of a loss for a number of reasons. For example, the insured may have allowed the primary policy to lapse or it may have been canceled for nonpayment

of premium. The limits of coverage may be less than required by the umbrella insurer or may have been reduced by payments of losses. The primary insurance company may have become insolvent or it may refuse to pay a claim because a covered person has not complied with the terms of the primary policy.

As stated earlier, umbrella insurers intend to pay only for damages that exceed a retained limit. Therefore, insurers, safeguard themselves by having certain coverage exclusions, which will apply if the underlying insurance is missing. For example, a policy might state:

If your "primary insurance" has terminated, is un-collectable, or reduced, this will not void coverage's. In these cases, we will pay the same manner as though your "primary insurance" was in force, collectable and with required limits, and you had fully complied with all conditions or agreements.

This provision explains the insurer's intention for provide defense, investigation, legal fees, court costs or any similar fees or costs. However, the insured becomes personally responsible for the amounts of coverage that would have been in effect if the policies had remained in force. For example, if the underlying insurance would have provided the first \$300,000 of liability coverage, the insured must pay that amount before the umbrella insurer steps in.

The insurer has no legal obligation until the retained limit has been met. It should be noted, however, that the umbrella insurer retains the right to enter the matter sooner and provide a defense. This could occur when the insurer sees the opportunity to quickly settle a lawsuit that could escalate if left uninvestigated or undefended.

SUMMARY

The Insuring Agreements contain the promises the insurer makes to the insured. Some umbrella policies have relatively simple Insuring Agreements. While others include a number of definitions, exclusions and conditions within their Insuring Agreements. Regardless of the policy wording, however, the Insuring Agreements provide a general description of the circumstances under which the policy becomes applicable.

In addition to Insuring Agreements, umbrella policies contain a separate section called CONDITIONS, which enumerates the duties of the parties to the contract, and in some cases, defines the terms being used. Many conditions found in an umbrella policy, such as notice of occurrence, assignment and the cooperation of the insured, are common to most property-casualty policies. Other conditions, such as maintenance of underlying insurance and appeals, are peculiar to umbrella policies.

RESTRICTIONS AND EXCLUSIONS

The personal umbrella policy provides broader coverage than any underlying liability policy, but it is not intended to cover every risk that a person might face. Like other property and liability policies, the personal umbrella includes a number of provisions to clarify that certain perils are not to be covered. The wording of various provisions determines what is specifically excluded under the policy.

We will discuss a number of exclusions or coverage limitations that are commonly found in personal umbrella liability policies. Basically, policy exclusions are intended to prevent the insured from profiting from non-fortuitous losses, duplicate insurance coverage or unusual risks. To this end, a basic personal umbrella policy includes a number of exclusions that modify the policy's Insuring Agreements.

UNDERSTANDING POLICY RESTRICTIONS

Insurance policies contain a number of policy limitations or restrictions on specific perils, property, locations or losses for which the insurance company does not intend to provide coverage. The personal umbrella liability policy is no exception.

Policy exclusions are usually listed and explained in a separate section of the policy called What Is Not Covered or Exclusions. An Exclusions section explains any exceptions to the policy's Insuring Agreements and clarifies the insurer's intentions by limiting or modifying certain aspects of coverage that the insurer plans to provide.

In theory, the policy language should clearly express an insurer's intentions as they might apply to a wide variety of loss situations. Unfortunately, the meaning of certain phrases may be debated and it is not uncommon for the courts to find that coverage applies to losses that the insurer never intended to cover when the policy was developed.

In an attempt to be certain that an umbrella policy provides or limits certain coverage's, an underwriter may issue an endorsement to amend, enlarge or completely eliminate coverage's in the basic contract.

Focus Points

- Property-casualty contracts are written subject to certain conditions or prerequisites.
- The Conditions section of the policy describes the duties of the insured.
- The Conditions section of most policies explains what obligations the insured must meet before coverage will apply.
- Policy conditions may be classified in one of two ways: a condition precedent or a condition subsequent.
- A condition precedent is a requirement that must take place before the contract exists.

- A condition subsequent is a requirement that must be met after the contract is in force.
- The Insuring Agreement describes coverage the company provides in return for the insured's payment of premium.
- If the insured does not meet all conditions the insurer has no obligation to pay claims.
- Policy restrictions and exclusions can be found in the Insuring Agreement.
- Specific meanings of terms are explained in the Definitions section of the policy.
- An insured is the person named in the Declarations, his/her spouse and any relatives living in the insured's household.
- An ultimate net loss provision limits the insurer's liability to the amount specified in the Declarations.
- A Retained limit provision requires the insured pay some portion of a covered loss before the umbrella policy pays.
- Excess liability provides additional coverage only if the underlying policy provides coverage for a loss exposure.
- The wording of various provisions determines what is specifically excluded under the policy.
- Policy exclusions are listed and explained in the What Is Not Covered or Exclusions section.

CHAPTER 14: THE UNDERWRITING PROCESS

As part of their duties, underwriters identify and evaluate loss exposures, price the insurance product, determine policy terms and conditions, make the final risk selection and monitor and service the account. The series of steps that underwriters use to select evaluate and approve (or reject) applicants for insurance is called the underwriting process. An underwriter who understands and observes each step in this process is likely to achieve a profitable book of business for the insurer.

IDENTIFYING AND SELECTING A RISK

The personal umbrella underwriting process begins with the identification and selection of a particular risk. In most cases, it is the property-casualty insurance producer who initially determines whether a risk will be acceptable to the company. In essence, the producer is a field underwriter for the company who often selects the umbrella risk from his or her existing book of business.

The producer typically has had personal or business dealings with the applicant and may attest to his or her personal reputation, background and loss experience over a long period. In fact, the insured's long-term relationship with the insurance producer is often the primary reason that a personal umbrella policy is issued.

In many cases, the prospect for umbrella coverage will be an affluent client, although this is not a requirement for umbrella coverage. As we have stated, anyone who has loss exposures that could result in large liability claims is a candidate for personal umbrella coverage.

However, the producer should be careful not to select applicants who present loss exposures greater than those assumed by the insurer in its rates or premiums. Risks should be in the good to above-average range to assure that they may be profitability underwritten.

GATHERING, ORGANIZING AND ANALYZING UNDERWRITING INFORMATION

The insured is usually asked to answer a series of questions on a detailed application for insurance. Although the producer may complete the application, the named insured is usually asked to verify the information and then sign the application. The application requests information about the risk being considered for insurance coverage, and in some cases, the completed application will be attached to and become part of the umbrella policy.

The questions on the application will vary by insurer, but most applications will ask for information in three specific categories:

- Personal information about the named insured and other members of the household;
- Information about real and personal property owned, leased or used by the insured that might present a liability exposure;
- Insurance information that can be used to assist the underwriter in determining a premium to be charged for the umbrella coverage.

In the following sections, the information from these three categories will be used to show how to determine whether a risk is acceptable.

After the application has been completed and signed by the applicant, the insurance producer forwards the information to the line underwriter (usually located in the home office) who makes the final determination about whether the risk can be written and at what premium. The home office underwriter analyzes the information provided on the application and measures it against a theoretically ideal risk to judge whether the applicant is a good candidate for insurance.

Personal Information

The underwriter needs personal information about the insurance applicant to determine whether the risk presents any unwanted hazards for the company. The underwriter looks for specific warning signs of potential moral or morale hazard. For example, assume that during the ten years the insured has carried homeowners and auto insurance with a particular insurer he or she has maintained extremely low limits of liability.

The applicant's sudden interest in increasing the underlying limits and obtaining an umbrella may indicate that this is a poor umbrella risk. The underwriter should question what has happened to make the applicant now interested in increased limits.

The application provides the underwriter with basic information about the individual applying for insurance (the named insured) and members of the named insured's household.

The information is used to give the underwriter a feeling for the loss exposures faced by the entire household. The application typically asks for the following details:

- ✓ Name, mailing address and residence address of the applicant;
- ✓ Marital status; age (or birth date) of the applicant and spouse, in states where such questions are permitted;
- ✓ Occupation and employer of applicant and spouse (if any);
- ✓ Information about stability factors, such as ownership of home, years at present address, previous residence address and length of time at that address;
- ✓ Information about any liability claims made against the insured during a specified period (usually three to five years).

Such information is intended to assist the underwriter in deciding whether the applicant has any unusual exposures to loss. For example, many insurers will decline coverage for people, such as actors, professional athletes and politicians, whose professions or activities expose them to extraordinary publicity and potentially large lawsuits.

Property Loss Exposures

The personal umbrella liability application asks the applicant to describe any residence or other real property owned by the insured that could generate a liability claim. The underwriter is specifically looking for clues about the property, such as inferior construction or poor housekeeping, which might increase the chance of loss. Cause the personal umbrella typically provides coverage on a worldwide basis, the underwriter needs information about all the property at risk. The application seeks:

Information about all residences occupied by the applicant, type of interest (owned or rented), description of any other buildings on the residence premises, the number of swimming pools at each location.

Information about any farms owned or rented by the applicant, including the acreage and value of any leased property.

Information about all automobiles owned or leased by the applicant, including the type and principal operator of each, where it is garaged and the rate class used for each vehicle.

Information about watercraft owned or leased by the applicant, including manufacturer, model year, type, length, horsepower, location of operation and whether any underlying policy has restrictions on water-skiing;

Information about any aircraft owned or used by the applicant with descriptions of each aircraft and additional information about the pilot;

A description of employer's liability or workers' compensation exposures, including number and type of domestic and/or farm employees;

A description of all business pursuits and business properties of the applicant; and

A description of any unusual hazards, such as dangerous animals on the premises, water-skiing activities by any member of the family, child care duties (such as baby-sitting) by any member of the family, plans to enter a race, contest or exhibition, etc.

General Insurance Information

An underwriter needs as much general information about the risk as possible to properly quote the risk. Rating is based in part on an underwriter's experience and judgment and without fairly complete knowledge of the risk, an underwriter cannot provide a competitive quotation. At the very least, an underwriter will request the following:

- ✓ The policy limits desired and the requested effective date;
- ✓ A schedule of all applicable underlying policies: automobile, homeowners, boat, recreational vehicles, aircraft, employer's liability or workers' compensation insurance (information typically includes the name of the insurer, policy number, effective dates, limits of liability and the premium per policy);

- ✓ Information about other insurance policies in force, such as those providing coverage for business pursuits or business properties (any exclusions or limitations of liability coverage must be noted on the application for the personal umbrella policy);
- ✓ Information about any previous personal umbrella insurer, including name of the insurer, policy number, effective dates and reason for changing insurers; and
- ✓ An explanation of the circumstances if any insurer has ever canceled, refused or denied renewal of a personal umbrella policy for the applicant.

ACCEPTING OR REJECTING THE RISK

Based on the personal, property and general information received on the application and an analysis of that information, the underwriter will make a decision about whether to accept or reject the risk. Many underwriters will not go to great lengths to secure information other than that on an application. They assume that if another insurer willingly provided underlying insurance, the risk should be acceptable for umbrella insurance.

However, some insurance companies will write umbrella coverage only if they also write the required underlying coverage. Other insurers write stand-alone policies and do not require that they issue the underlying policies but only that the coverage's are in place with some insurance company.

The underwriter determines the acceptability of a particular risk by checking it against a large number of factors known to be related to loss potential. Some underwriters feel that if a property is eligible for a homeowner's policy under another insurer's underwriting guidelines, it is also eligible for umbrella coverage.

Most underwriters would agree, however, that even though a risk is eligible for insurance coverage, it might be declined for any number of reasons. For example, the applicant may have an attractive nuisance, such as a swimming pool or a vicious dog that is not properly safeguarded.

Although the primary insurer may consider this an acceptable risk, the umbrella underwriter may be concerned about the likelihood of a multimillion-dollar lawsuit if a child drowns in the insured's pool or is killed by the insured's dog. It is likely that an umbrella underwriter would decline such a risk or require additional safeguards before the umbrella policy is issued. The underwriter may also charge additional premium for certain hazardous exposures.

Most insurers refuse to issue coverage for persons who are engaged in illegal activities, who have unusual exposures to libel or slander suits, such as broadcasters and newspaper reporters, or whose activities cause them to face significant publicity, such as actors, professional athletes, public lecturers and politicians. The general feeling among insurers is that such persons offer substantial exposure to lawsuits and large liability settlements.

Pricing the Risk

One of the most important parts of a personal lines underwriter's job is to determine the proper pricing for various insurance products. The policy premium is determined by multiplying an insurance rate, the dollar amount charged per a particular amount of insurance coverage, by the amount of insurance needed.

Actuaries who collect data and analyze the many factors that determine the relative hazards of different risks usually accomplish the highly technical procedure of establishing rates. The costs of establishing rates would be prohibitive if each insurance company were to maintain its own rating bureaus.

A practical method of solving this problem is for groups of insurers to act together to set up a central body to promulgate proper rates. In addition, the pooling of various insurers' experience makes more accurate results possible.

Strictly speaking, no two personal umbrella risks present exactly the same hazards. Even if two applicants have identical dwellings, the structures will differ as to their contents, maintenance, and number of occupants and so forth.

The applicants will have different types and numbers of automobiles, insurance requirements, loss histories, etc. Because these applicants have different loss exposures, an underwriter will use specific (or schedule) premium rates. The rate is determined by an analysis of the insured's application, which is compared in terms of the relative loss exposures against a theoretical average risk.

Using a predetermined average price as a base, the risk being considered is given credit for superior elements, such as fire-resistive construction, loss control devices and high-level maintenance. Risks with hazardous exposures, such as swimming pools, are often surcharged if the underwriter wishes to cover those types of risk.

ISSUING THE POLICY

After the underwriter has analyzed and priced the risk, he or she will usually forward a written premium quotation to the producer. The underwriter will note the general terms of the policy, such as the required underlying limits of liability, the amount of the self-insured retention, the proposed effective date of the policy and so forth. The producer then forwards the information to the insured that accepts or declines the quote. If the insured accepts, the underwriter proceeds with the issuance of the actual policy. In almost all cases, the producer cannot bind or issue personal umbrella liability coverage.

Although the basic coverages do not vary greatly, the policy appearance and format will be quite different. In addition, the underwriter may change the coverages and modify the basic policy by endorsement. The underwriter may wish to amend the general policy provisions to comply with the special needs of the applicant, to cover unique situations also covered by the underlying policies or to restrict certain risks that the underwriter does not wish to cover.

MONITORING THE RISK

The final step of the underwriting process is monitoring the risk throughout the policy term to confirm that the decision to write the risk was a good one. The underwriter often works with other departments, such as the accounting and claims departments, to be certain that the premiums are paid in a timely manner and that the insured's loss experience is not excessive.

As part of the monitoring step, the underwriter will often follow up with the producer about three months before the umbrella's expiration date to offer a renewal policy. Although most umbrella policies are annual policies without a guaranteed renewal provision, some underwriters will send a notice of non-renewal if the company does not want to reissue the coverage.

Sending a notice of non-renewal informs the producer and the insured that umbrella coverage will have to be placed with another insurer and also protects the insurer if there is some dispute about whether coverage should have been in force after a specific date. In some states, this notice may be required by statute.

Focus Points

- Underwriters evaluate loss exposures, price products, set policy terms, select risk and monitor and service the account.
- The underwriting process is a series of steps that select, evaluate and approve applicants for insurance.
- The first step in the underwriting process is the identification and selection of a particular risk.
- The property-casualty producer initially determines the acceptability of a risk.
- The producer is thought of as a field underwriter for the company.
- Prospects for umbrella coverage will often be affluent clients with large loss exposure.
- Clients with loss exposures that could result in large liability claims are candidates for personal umbrella coverage.
- Risks should be good to above-average to be profitability underwritten.
- Underwriters look at applications for warning signs of potential moral or morale hazard.
- Application information assists underwriters in deciding whether an applicant has unusual exposures to loss.
- Underwriters need as much information as possible to properly quote the risk.
- Underwriters determine acceptability a risk by checking it against number of factors related to loss potential.
- Personal lines underwriters determine the proper pricing for various insurance products.
- The policy premium is determined by multiplying an insurance rate by the amount of insurance needed.
- No two personal umbrella risks present exactly the same hazards.
- Underwriters may change the coverages and modify the basic policy by endorsement.
- The final step of the underwriting process is monitoring the risk throughout the policy term.

CHAPTER 15: COMMERCIAL INSURANCE

OVERVIEW

Commercial insurance is not unlike personal insurance in the types of coverage offered and in the different variations of the basic plan. For example, commercial insurance offers protection for property loss and liability. Also, as with personal insurance, a business owner can purchase additional coverage to supplement the coverages of his or her basic policy.

However, despite any similarities that these two types of insurance share, business owners must carry commercial insurance, or insurance that is designed for businesses, since they may be exposed to considerably more loss than the personal insurance policyholder because of employees, inventory, and the constant stream of people entering the establishment.

The term multiple-line, or multiple-peril, is used to describe an insurance policy that combines different lines of insurance in a single package; for instance, those who purchase this type of insurance are buying several policies—perhaps property and liability—for one premium.

Therefore, this type of policy is more comprehensive than a single-line policy, which offers only one type of insurance. For example, a single-line policy might offer coverage for liability or property, but it does not offer coverage for both liability and property. Finally, because this package policy insurance exists as a single entity, it may not be subdivided into several separate policies.

If a person does not wish to purchase the entire package, he may consider opting for a single-line policy although he will lose the discounted price and the convenience of the package policy.

This course covers three types of commercial multi-peril policies—the special multi-peril policy (SMP), the business owners policy (BOP) and the farm-owners package policy.

History of the Commercial Package Policy Concept

For decades, package policies, although only offered for 40 years in homeowners policies and for 30 years in commercial policies, have been an integral part of the insurance industry. Even the simple fire and extended coverage policy, one of the first insurance policies ever available, is a package in that the extended coverage endorsement, which means additional insurance that an insured has the option of adding to his basic policy to broaden coverage, combines a number of separate perils (wind, hail, explosion, impact by vehicles or aircraft, and riot and civil commotion) into one package. Since then, many different packages of insurance coverages have been introduced and implemented as important components of the insurance industry.

The first real commercial multi-peril packages offering protection for both property and liability did not appear until the early 1960s. Probably part of the reason for the late arrival of these types of policies is due in part to governmental regulations of insurance and because insurance at this time, with the exception of homeowners policies, had changed very little.

For instance, for quite some time, many states were forced to comply with laws that required insurance agents to be licensed in the single-line form of insurance since most insurance companies were required to offer only single-line insurance. In other words, companies who specialized in property insurance were not allowed to sell liability coverage; therefore, insurance companies only hired agents who were licensed to sell property insurance.

The same was true for other single-line policies such as liability, marine and aircraft policies. These regulations were slowly relaxed during the 1950s because by that time it was evident that many buyers of the homeowners package policy welcomed the "new" package policy.

Naturally, business owners, many of whom were also homeowners, complained that they, too, could benefit from the reduced cost and the convenience of the package policy. Up to this time, they, as homeowners had done until the 1950s, were only able to purchase single-line policies.

Furthermore, because of the increased risks of store or company ownership, business owners had to purchase a much larger number of separate policies than a homeowner had ever had to buy. In the 1960s, one decade after homeowners insurance had been available, insurers, together with agents and brokers, focused on the desires of

Only a few innovative, aggressive insurance companies had worked to develop these new packages. Therefore, when the business package policies were finally approved, these few companies, taking advantage of the principles of free enterprise, were the first to market them, therefore jumping ahead of their competitors and attracting more business.

Structure and Terminology of Commercial Insurance Policies

As with any type of insurance policy, an understanding of the basic terminology that one will encounter in the policy is crucial to understanding the policy itself and its coverages.

Structure of the Policy

Probably the first concept that a purchaser of one of these policies must understand is the structure of the policy. Commercial policies contain at least two sections—property and liability. These are referred to, respectively, as Section I and Section II. Depending on the type of policy, some insurance contracts contain other sections (such as theft and burglary) that are a part of the basic policy.

These sections may describe a particular type of optional coverage or endorsement, or additional coverages that the purchaser may consider adding to extend the basic coverage of his policy. Regardless of how many sections the policy might contain, each section describes in detail the specific types of protection that the policy covers and the specific types of damages that are excluded, or not covered.

The Named Insured

The "named insured," usually stated as item one on the policy's declarations page, is the person(s) or organization that is protected by the policy's coverage as long as the named insured is acting either in the business's interest or according to his role in that business.

Many times, the word "insured" is quite broad, but the term can apply to any of the following: a sole proprietor and his spouse; a partnership or joint venture; an organization or any executive officer; a member of the board of trustees; directors of governors; any stockholder; any employee of the named insured; or any person or organization who acts as the real estate manager for the named insured.

The Named Peril Form Versus the All-Risk Form

Under the standard form policy, businesses are protected against the usual named perils, but there are special form policies that protect against multiple risks, and this type of protection is called all-risk coverage.

Named peril insurance means that the insurance policy specifically names those perils from which the business owner is protected. All-risk insurance policies state that the business is protected against all risks except those that are specifically excluded, such as earthquake coverage.

The named peril form states specifically which perils are covered, and if a policyholder feels that additional coverage is necessary, he can usually add these by endorsement or by optional coverage to broaden the coverage of his policy. The all-risk form works differently. This type of policy covers all situations except for those that are specifically excluded in the policy. As with the named peril form, additional policies, endorsements or optional coverages may be added to the all-risk form so that insureds may more fully cover their exposures to risk.

The Actual Cash Value Versus Replacement Cost

Replacement cost means that damaged or destroyed property is covered for what it actually costs to replace or to restore the item to its original condition rather than its actual cash value (ACV), which is its current market or depreciated value.

For instance, if a policy states that property is covered according to its replacement cost, using the example from above, if a business has a computer that originally cost \$2,000, the insurance company will replace the damaged or destroyed computer with a new, similar computer even if that computer in today's market is now worth \$3,000.

The insurance company does not consider that perhaps the damaged or destroyed computer is really only worth \$1,500 (the original cost of the computer less its depreciation) as it would if the policy stated that damaged or destroyed property would be replaced or covered according to its present market value, or its ACV. Using the same example, when calculating an insurance company's obligation to cover part of a loss, according to the ACV method for calculation, the insurance company would pay the insured business owner \$1,500, the original cost of the computer less its depreciation, \$1,500.

In either situation, replacement cost or ACV, the business owner is responsible for paying the deductible, stated above as \$250.

The Co-Insurance Clause

This provision states that both the insurer and the insured are responsible for paying a specified percentage of a covered loss in a specified ratio.

Assessing Insurance Risks and Needs

Business owners must carefully assess their insurance needs from two standpoints. First, a business owner must examine his business's exposure to loss, or risks (pertaining to both property and liability) from which he wishes to be protected. If the basic policy does not include coverage for the type of risk to which a business is exposed, business owners can usually add the necessary coverage for the risk by purchasing an endorsement or optional coverage for added protection.

Secondly, business owners should also consider the limits of liability that the policy contains. Like increased protection for exposure to risk, most liability limits can be raised by endorsement or optional coverage.

Considering exposure to risk is essential since many types of exposures such as fire can severely impair the business's normal activities or may even cause business operations to cease altogether. All risks, even those that seem unlikely, must be anticipated, and the insurance policy's premiums, deductibles, and coinsurance clause, if the policy contains one, must be compared to the policy's coverage.

For example, business owners must carefully weigh the advantages of lower annual (or monthly or quarterly, as the case may be) premiums against having high deductibles or low limits of protection. While it is less expensive to purchase an insurance policy that has a \$1,000 deductible than one, which has a \$250 deductible, a business owner must decide whether he wants a higher premium for the \$250 deductible or a lower premium with the \$1,000 deductible.

In the same way, it is less expensive to have a deductible of \$1,000 in liability coverage than it is to have a deductible of \$250. Again, the business owner must assess his own situation to make the best decision for the well being of his company.

Companies that offer commercial insurance often have questionnaires that a potential policyholder must fill out. The company's agent can help the business owner pinpoint his insurance needs and then suggest the best coverages to meet those needs.

FARM OWNERS PACKAGE POLICIES

Introduction

While farm owners do not qualify for any of the insurance packages previously discussed, these business people in some ways face more risks than the average business person. For example, a farmer's business is not only tied to supply and demand, but to unpredictable factors as well, such as the weather. Therefore, insurance companies developed a specific policy for farm owners, a package designed to meet their unique needs.

History of the Policy

Throughout time, insurance practices that are relevant to farm and non-farm risks have changed because of the evolution of farming and because of the evolution of farm owners insurance.

Although policies have been around for decades to protect farmers against non-farm risks, insurance that protects against farm risks has not. One reason that farm risk insurance has not been available is that historically small mutual companies or associations operating only in a state or a county used to write these policies.

These small companies usually provided farm risk insurance for isolated farmers who in the past had joined together for the mutual protection of their property and operations. Therefore, consistency in providing uniform policies was not an issue.

Since the companies offering the insurance were not regulated according to any government protocol, these companies, because the needs of the farmers were specific to a particular area, wrote insurance contracts that met the farmers' real and perceived needs. In fact, many of these companies still offer farmers insurance policies.

Since then, many commercial insurance companies, including national mutual and stock insurance companies, have developed their own versions of farm owners insurance, and, like the SMP and the BOP, many of these plans are offered as a package policy.

Policies Currently Available to Farmers

The farmers insurance packaged policies that are available today offer farmers, whether they own a large or a small farm, with two broad sections of protection. One of these offers property coverage, and the other offers liability should a lawsuit be filed that holds the farmer or his operations responsible for damage or injury. Under each of these categories is a wide range of coverage that can be modified to meet most of a farmer's property and public liability insurance requirements. The farmer usually can purchase the necessary coverage not offered in the policy by optional coverage, by endorsement, or by purchasing another policy.

Currently, three policies—the basic, the broad and the all-risk perils forms—are available to meet farmers' insurance needs. While these three forms offer different types of property coverage, the liability section and optional coverages available are generally the same in all three forms.

Property Replacement in Case of Loss in All Farmers Policies

The farm owners package policy provides for replacement cost on the farmer's dwelling up to the limits of the policy. Although outbuildings are almost always insured on a ACV basis, coverage for other key structures (defined as a dwelling or outbuilding which is vitally important to the farmer's operations) is calculated differently if the recommended amount of insurance, usually 80 percent of the rebuilding cost, is carried.

If the amount of insurance carried at the time of the loss is at least 80 percent of the rebuilding, the loss would be fully insured up to the limits of the policy. Blanket personal property is also fully insured for the amount of the loss if 80 percent of the value is insured. However, if the policy's limits are less than 80 percent of the current rebuilding cost, the farmer's insurance company will cover the loss for its ACV.

Ideally, a farmer's insurance should adequately cover the cost of repairing, rebuilding or replacing a key structure with the same type of materials (in kind and quality) without any reduction for depreciation. Therefore, for best protection of the farmer's assets, a farmer may decide to insure his dwelling and all key farm structures for 100 percent of their replacement value.

His outbuildings and farm personal property, such as machinery, equipment, livestock, grain and feed, should normally be insured for 100 percent of its ACV. Household and personal effects should be inventoried and insured for 100 percent of replacement cost or their ACV (whichever the policy provides).

Basic Perils Property Policy (Section I)

While the basic perils property coverage is more limited since it is based on the named peril approach rather than on the broad perils or the all-risk approach, some farmers might opt for this type of coverage since it is the least expensive. If a farmer feels that any other coverages are necessary for adequate coverage, he probably can purchase such coverage with an additional policy, an endorsement or optional coverage.

Basic Perils Property Coverages

Generally, basic perils coverage insures:

- The dwelling;
- Personal property in the dwelling;
- Other farm property such as farm machinery, livestock, farm structures and stored crops;
- Farm personal property.

These kinds of property are insured against the following perils:

- Fire and lightning, windstorm and hail;

- Explosion, riots, vandalism and malicious mischief;
- Damage to property from vehicles or falling aircraft;
- Damage to property which is being moved to a safe place for protection from a covered peril;
- Accidental damage from smoke;
- Accidental damage to electrical appliances resulting from an artificially generated electrical currents, sonic boom and theft.

The following specific property also usually is insured against certain additional perils:

- 1) Injury to livestock or other farm personal property (except mobile farm machinery and equipment) from overturn or collision of the vehicle in which it is being transported;
- 2) Damage to mobile farm machinery and equipment from overturn;
- 3) Injury to livestock on or off the premises that is caused by a flood;
- 4) Damage or injury to mobile farm machinery and equipment, other farm property, and livestock from earthquake;
- 5) Damage or injury to mobile farm machinery and equipment, other farm personal property, and livestock from bridge or culvert collapse; and
- 6) Damage or injury to mobile farm machinery and equipment, other personal property, and livestock in the event that the vessel in which such property is being transported is stranded, sunk, burned or involved in a collision.

Basic Perils Policy Exclusions

While the basic perils form coverage is quite broad, it does not protect farmers against all losses. For example, the following are not covered:

- Loss caused directly or indirectly by frost or cold weather, ice (other than hail), snowstorm or sleet whether or not driven by wind;
- Loss or damage to the interior of the farmer's buildings and the property in the building caused by rain, snow, sand or dust, all whether or not driven by wind, unless the covered building has sustained actual damage to roof or walls by the direct force of wind or hail. If there has been damage to the roof or walls of the covered building by the direct force or loss to the interior of that building or to the property in the building if it is caused by rain, snow, sand or dust entering the building through the openings in the roof or walls;
- Loss by water from sprinkler equipment or other piping unless there is damage to such equipment or piping as a direct result of wind or hail;
- Loss to livestock or poultry by fright, by freezing, or smothering in blizzards or snowstorms, or by their running into streams or ditches or against fences or other objects; and
- Loss to crops, grain, hay or straw outside of buildings.

Coverage for the perils of aircraft and vehicles (which are stated above as being a coverage of the basic named perils form) excludes loss to driveways, walks, fences, lawns, trees, shrubs and other plants if the damage is caused by any vehicle or aircraft that is owned or operated by the farmer or by an occupant of his covered premises. Injury to electrical appliances, devices, fixtures and wiring from electrical currents artificially generated does not include loss to television tubes.

Finally, while theft is stated above as a coverage, it, like the named perils or aircraft and vehicles, also has exclusions, which are:

- 1) Loss covered by relatives living with the farmer;
- 2) Loss caused by the farmer's tenant, his employees, or members of his household;
- 3) Loss to money, securities and other valuable personal articles if the portion of the dwelling customarily occupied exclusively by the farmer is rented to others;
- 4) Loss to any other residential premises or property therein or thereon or rented by the farmer to a member of the family residing with him except when in actual use as his or their temporary residence;
- 5) Loss in or to a dwelling during the course of construction until the dwelling is completed and ready for occupancy;
- 6) Loss of property left unattended in any motor vehicle unless the loss is the result of forcible entry into a fully enclosed body or compartment (not including a glove compartment), and there is visible evidence of such forcible entry and the doors and the windows were locked except when on the farmer's insured residential premises or when he is required to surrender the keys to a bailee;

- 7) Loss by mysterious disappearance or unaccountable shortage; and
- 8) Loss due to the acceptance of counterfeit money, fraudulent post office or express money orders, or checks, or promissory notes which are not paid upon presentation.

Broad Named Peril Property Policy (Section I)

While the basic peril policy is adequate for some farmers, others might find that it does not meet their insurance needs. Those farmers who feel that the basic named peril policy is too narrow in coverage might consider purchasing a broad peril policy.

Broad Peril Property Coverages

Broad peril coverage generally includes the same protection for the farmer's dwelling, its contents, and other farm property as these are featured in the basic perils policy. However, the broad perils form insures the farmer's dwelling and its contents against the following perils, which are not included in the basic perils form:

- 1) Damage resulting from falling objects;
- 2) Steam or a hot water heating system rupture;
- 3) Damage to buildings or property within them resulting from weight of ice, snow or sleet;
- 4) Collapse of buildings;
- 5) Glass breakage in buildings;
- 6) Water escape resulting from leakage or overflow in plumbing, heating or air conditioning systems;
- 7) Freezing of plumbing, heating and air conditioning systems.
Reimbursement is also provided for additional living expenses incurred as a result of damages caused by the covered perils.

Broad Named Peril Exclusions

In addition to other exclusions, several of the policy's coverages contain either exclusions or limited coverage.

Falling Objects

The peril of falling objects excludes:

- 1) Loss from earthquake, landslide or other earth movement;
- 2) Loss to the interior of buildings or the property covered therein caused by falling objects unless the building first sustains actual damage to roof or walls from such falling objects;
- 3) Loss to lawns, trees, shrubs and plants.

Weight of Ice, Snow and Sleet

The weight of ice, snow and sleet excludes losses to outdoor equipment; fences; retaining walls (if not considered to be a part of the covered building); driveways; walks; lawns; trees, shrubs and plants, except as a direct result of the collapse of the building.

Glass Breakage

The glass breakage peril does not include losses that occur while the covered building is vacant beyond a period of 30 days except that a building that is undergoing construction is not be deemed to be vacant.

Water Escape or Water Damage

The water escape peril does not include the cost of repairing or replacing the plumbing, heating or air-conditioning system, domestic appliances, or parts thereof unless the loss is caused by earthquake, landslide or other earth movement or the result of freezing. In addition to these exclusions the policy carries the same coverage as the basic named peril form for losses, which are due to flood, surface water, waves, tidal waves or overflow of streams or other bodies of water. However, losses or damage that results from fire or explosion is covered.

Freezing of Plumbing, Heating and Air-Conditioning

Excluded from the freezing of plumbing, heating, and air-conditioning perils are losses that resulted from earthquake, landslide or other earth movement and losses that occurred while the insured building was vacant or unoccupied unless the farmer performed the proper precautions for ensuring that the plumbing, heating or air-conditioning systems are in working order and that domestic appliances had been drained and the water supply shut off during the period of vacancy or un-occupancy.

In addition to the exclusions listed above, the policy does not cover losses that are caused by a flood unless these losses are covered by the basic named peril policy. Any other losses that are caused by surface water, waves or tidal waves, overflow of streams, or other bodies of water or a spray from any type of liquid are not covered either. However, these types of losses or damage that occur as a result of fire or explosion are covered by this policy.

Misappropriation, Civil Authority, War, Insurrection and Nuclear Reaction

Also excluded from broad named peril coverage are:

- 1) Loss by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the farmer or any other party of interest, his or the other party of interest's employees or agents and others to whom the property may be entrusted except carriers for hire;
- 2) Loss caused by order of any civil authority;
- 3) Loss from hostile or warlike action in time of peace or war;
- 4) Loss from insurrection, rebellion, revolution, etc
- 5) Loss from nuclear reaction as defined in the policy.

All-Risk Property Policy

The all-risk farm owners packaged policy offers farmers the most comprehensive coverage of the three currently available forms. Because of its broader coverage, this policy is also the most expensive.

All-Risk Property Coverages

The all-risk form includes all of the coverages for the farmer's dwelling, its contents, and other farm personal property that are available in the basic named peril and in the broad named peril forms.

All-Risk Property Exclusions

Although the farmer's dwelling and mobile farm machinery are insured against all risk of direct physical loss or damage from any perils that are not specifically mentioned in the basic peril or in the broad peril form, the following are not protected against loss:

- 1) Damage to any insured item caused by regular wear and tear, dampness of atmosphere or extreme temperature;
- 2) Damage to the dwelling caused by termites or other insects;
- 3) Damage from deterioration, rust, wet or dry rot, mold, settling, or the shrinkage or expansion of the foundation, walls, floors or ceilings;
- 4) Damage to physical property outside the dwelling such as pavements, swimming pools, and foundations caused by freezing, thawing or the pressure of the weight of the water;
- 5) Routine breakdown of farm vehicles;
- 6) Damage to tires, unless the loss results from fire, windstorm or theft;
- 7) Damage caused by animals or birds owned by the farmer or his employees unless the loss is the result of fire, explosion or smoke.

Excluded Property of the Basic, Broad Perils and All-Risk Policies

Although the three farmers policies offer varying degrees of coverage, they do contain identical exclusions and monetary limitations for the policyholder's reimbursement.

Exclusions to Property Losses

All three forms of the farm owners insurance policies specifically do not include protection against loss from any of the following:

- 1) Aircraft;
- 2) Vehicles designed and licensed primarily for use on public roads;
- 3) Recreational vehicles, except for specific coverage previously mentioned;
- 4) Property otherwise insured under specific policies such as live animals covered under mortality insurance;
- 5) Race horses while on the grounds of public racetracks;
- 6) Growing crops, trees, plants, shrubs and lawns;

- 7) Portable buildings; property stored in or being processed in public facilities;
- 8) Outdoor radio and television equipment, silos, windmills, wind pumps, and their towers;
- 9) Light poles, wiring, fencing and corrals;
- 10) Property belonging to a tenant;
- 11) Property rented to others except while on the insured premises or in the dwelling customarily occupied exclusively by the insured.

For the property listed above to be covered, any of the exclusions that are described above may be protected against loss if the farmer purchases another policy or an endorsement to protect himself against loss.

Monetary Limitations for Loss

Each form also carries different monetary limitations for specific property, but the following limits may be increased by endorsement:

- 1) Money is limited to \$100.
- 2) Securities, tickets and manuscripts in any combination thereof are limited to \$500.
- 3) Firearms and jewelry of various descriptions as well as furs is limited to \$500.
- 4) Boats and their equipment are limited to \$500 (this coverage applies only while boats and their equipment are in an enclosed building or on the farmer's insured premises).
- 5) Stamps and coin collections are limited to \$1,000.
- 6) Property while being transported is limited to \$1,000.

Additional Features and Extensions of the Basic, Broad and All-Risk Forms

The following additional features or extensions of coverage are available:

- 1) Increased coverage for valuable personal articles such as jewelry furs and antiques.
- 2) Extended theft coverage, including mysterious disappearance.
- 3) Additional coverages for perils involving livestock, including accidental shooting, attack by wild animals, drowning and electrocution.
- 4) Coverage against the fraudulent use of credit cards in the event that they are stolen.
- 5) Coverage against loss of income as the result of physical damage to property that is named as a covered peril.
- 6) Coverage against extra expenses incurred while damaged property is being repaired.
- 7) Higher deductibles, which can result in, lower premiums.

Liability Coverages of the Basic, Broad and All-Risk Forms (Section II)

No matter what size their farms are or how many employees they hire, as with the other forms of policy packages insurance, farmers are protected against liability. Farmers must select the proper limits of coverage. Therefore, as with property coverage needs and limits, a farmer and his insurance representative must carefully assess his needs so that the policy that he ultimately purchases offers adequate coverage for all instances where he might be held as liable for injury or damage.

For example, suppose that a farmer operates a roadside stand on a nearby highway so that he can sell his products to passersby. This type of business operation is covered under the basic liability coverage of Section II. However, the farmer may not be protected under the liability's basic coverage if he operates a more complicated type of business such as a processing plant, a farm implement dealership, a crop dusting or spraying service, or other related commercial farming operations.

Personal Liability Coverages

Regardless of which form of property policy a farmer selects, he is also insured against liability that occurs as a result of his personal and farming activities up to the limits, which are specified in Section II. While selecting coverage, farmers should not forget that protection is limited not only by the coverage selected, but also by the amount of coverage purchased.

Under this policy, personal liability resulting from personal activities, even though these activities may have nothing to do with farming, is also covered. Protection also extends to accidents, which occur on the premises as a result of the farmer's operations, and any claim for which he is legally liable is covered up to the limits of his policy. Furthermore, medical expenses for guests who are accidentally injured on his property will also be paid, regardless of whether the farmer or the guest is responsible for the accident.

In certain cases, when someone else's property is damaged while in the farmer's care, custody or control, the liability section of the farmer's policy provides for either payment or replacement. Furthermore, insurance companies agree to represent and to defend policyholders in all lawsuits, no matter whether these lawsuits are successful or groundless, and, in most cases, the insurance company will pay all of the court costs and judgments as long as these payments do not exceed the policy's limits.

Under Section II of the policy, farmers may also want to purchase coverage for loss by death of any cattle, horse, dog, sheep or goats that he owns that are injured or killed in a collision between the animal and a vehicle not owned or operated by the farmer or by any of his employees if the collision happens while the animal either is on a public highway or is not being transported.

Personal Injury Liability

Although personal injury liability is usually included as part of the farm owners insurance policy, this type of insurance also contains several exclusions of coverage.

Personal Injury Coverages

Bodily injury and property damage protects the farmer's personal activities and farming business against the following: false arrest, detention or imprisonment; malicious prosecution; the publication or utterance of a libel, slander, or of any defamatory or disparaging material; or a publication of utterance violating an individual's right of privacy unless these are related to advertising, broadcasting or television. Wrongful entry, eviction or other invasion of the right of private occupancy is also covered.

Personal Injury Exclusions

Exclusions to personal injury coverage are:

- 1) Liability assumed under contracts or agreements.
- 2) Willful violation of a penal statute or ordinance.
- 3) Injury to a farmer's employee arising out of his employment.
- 4) An utterance made by or at the direction of the farmer with knowledge of the falsity of the utterance.

Extensions of Liability Coverage

Liability coverages under the policy may be extended to insure against claims arising out of injury to the farmer, to his family, to his farm, or to other employees in certain limited non-farm business pursuits in which he or members of his family may participate.

Workers' Compensation and Employers' Liability

Depending on the farmer's operations, he may encounter workers' compensation and employers' liability, which goes beyond the liability coverage of Section II of the package policy for employers' liability. In some states, farmers are required by law to be covered by workers' compensation insurance. In those states that require it, if a farmer does not have workers' compensation insurance, he may lose any common-law defenses against an insured employee in case that employee sues him for an injury that occurred as a result of his farm-related employment.

Even if workers' compensation is not required in the state where he conducts his farming operation, he should seriously consider insuring this risk under a standard workers' compensation policy that includes employers' liability. Also, although agricultural employees may be exempt from workers' compensation laws in the state where the policyholder operates his farm, the farmer may not carry enough insurance if he only has employers' liability even under the most comprehensive liability policy available.

For example, if one of a farmer's employees, while engaged in nonagricultural work that is related to the farmer's operations, is injured, he might successfully sue and secure a judgment against the farmer.

Additionally, if the court were to rule that the employee's injury may be categorized under workers' compensation law, the farmer's liability coverage that is provided even under the farmers comprehensive liability policy or under the package policy would not cover any of the farmer's legal expenses or any judgment that the courts may require the farmer to pay the claimant.

Additional Insurance Available to Farmers

While farmers may find that the package policy meets most of their farming needs, they may also want to consider purchasing additional insurance so that their farms are protected by broader coverage.

Crop Hail Insurance

As stated earlier, crops in the field are excluded from coverage. However, a crop hail policy protects a farmer's crops against direct loss from the perils of hail, fire and lightning once there is a normal stand, or height to which a plant has grown, clearly visible above the ground.

If the crop is begun with transplanted plants grown elsewhere—such as tobacco—coverage becomes effective until a specified time after the crop has been set in the field. For example, most crop hail insurance becomes effective on a tobacco crop on the fifteenth day after the crop has been set in the field. The crop hail policy is not only a named peril policy; the policy also names the specific crops and specific locations of insured crops for identification in case of loss. Therefore, crops and fields that are not specifically named on the policy are not covered by the policy's protection.

Usually, the crop hail policy becomes effective one minute after midnight on the day immediately following the date that the farmer and the insurance company representative sign the application, which becomes a legal and binding part of the contract of insurance. If damage occurs during the day between the signing of the application and the attachment of the coverage, no insurance coverage will be provided. However, the premium that the farmer has already paid will be returned to him if notice is given to the company within 72 hours after the damage.

The insurance company must also be advised of any other insurance written on the described crops, including Federal Crop Insurance Corporation coverage. The Federal Crop Insurance Corporation, which is subsidized by federal taxes, provides all-risk protection in several sections of the country for various crops.

If farmers are interested in this type of crop hail insurance, they should contact the local agent of the Department of Agriculture. If a farmer decides to carry this insurance, he must notify his insurance company of this immediately, or his insurance company will refuse to cover any damages to the crops that are covered under this federal program.

The crop hail policy has special provisions applying to specific crops and also to each state or group of states in which the crop or crops are most prevalent. Generally, there are specific termination dates named in the policy for coverage of each crop. Certain optional coverages are also available. These are:

- 1) The optional extension of fire coverage to certain crops excluded in the basic policy;
- 2) Coverage for wind with hail in certain situations;
- 3) Coverage applying only to an amount in excess of a certain percentage of the loss;

Other than specific exclusions applying to varying crops and various states, there is only one general exclusion in the policy—nuclear accidents.

A very important consideration for farmers in obtaining crop hail insurance is the method of adjustment for claims of loss. The adjustment of crop losses is considerably different from that of the adjustment method for other property and casualty losses. Therefore, farmers should always ask their insurance representative for the specific adjustment procedures.

Livestock Mortality Insurance

Only certain limited coverages are provided for livestock or farm animals under the farmers package policy. However, there is a specific policy—the livestock mortality policy—that provides life insurance for farm animals and livestock.

Livestock Mortality Insurance Coverage and Conditions

The livestock mortality policy insures against loss by death only, but the coverage extends to loss by death resulting from intentional destruction for humane reasons to avoid or to terminate incurable and excessive suffering provided that the destruction of the animal is carried out according to the terms of the policy. The following terms must be explicitly covered for coverage to apply:

- 1) A veterinary surgeon acceptable by the insurance company must certify in advance of the destruction that the destruction is necessary to terminate incurable and excessive suffering; or
- 2) With respect to horses injured in the course of a race, a qualified veterinarian appointed by the state to serve at the racetrack where the injury occurs may certify that the suffering was incurable and so excessive that immediate destruction was imperative for humane reasons as an alternative to the employment of a veterinarian surgeon who is acceptable to the company.

Specific conditions that apply to livestock mortality and its coverage are:

- 1) At the time the insurance becomes effective, the farmer must be the sole owner of each covered animal. Coverage for any animal ceases immediately upon sale of the animal or any interest in it.
- 2) Any covered animal cannot be operated on for castration or spaying without the permission of the company. Furthermore, upon recovery of the animal from such operation, the farmer is required to forward to the company a veterinary certificate for review. The company reserves the right to revise coverage under the policy within 30 days of the operation.
- 3) Failure to obtain company permission for an operation will terminate coverage for the animal at midnight prior to the day of the operation.

Livestock Mortality Insurance Exclusions

Livestock mortality does not insure against loss should an insured animal become unsuitable for a particular use or purpose. This includes the animal's use that is specified in the policy. The reason for the animal's inability to perform as it is expected is irrelevant. It does not matter that the animal's un-usability is due to disease, injury or otherwise. Also, the policy does not cover death by intentional destruction because of such unsuitability.

The insurance company has the additional right, any time, at its discretion and expense, to assume control of the treatment of any insured sick or injured animal. The insurer, at its expense, also may elect to move the covered animal to any place where proper treatment is available and to have the treatment administered by a veterinarian of the company's choice. In the event that the animal recovers from the illness or injury as a result of the treatment and is returned to the insured, no claim for loss of the animal can be made by reason of the insurance company's exercise of its rights.

Specific exclusions to this coverage are:

- 1) Loss resulting, directly or indirectly, from neglect or failure to provide proper veterinary care and attention;
- 2) Willful or malicious injury by the farmer, his agent, his employees or bailees (except bailees for hire);
- 3) Loss which results from fraudulent, dishonest, or criminal acts or omission done by the farmer, at his instigation, or by his employee or any other person having the care, custody or control of the animal including independent contractors;
- 4) The destruction of any animal because the animal has contracted or been exposed to any contagious or communicable disease whether such destruction is by order of any government or otherwise;
- 5) Confiscation, nationalization, requisition or destruction by or under the order of any government, public or local authority, or any person or activity having jurisdiction in the matter;
- 6) Loss to any animal, which has been, unnerved (the operation of neurotomy for lameness);
- 7) Loss caused by or resulting from hostile or warlike action, by any government or sovereign power using military forces, or by any agent of such government, power, authority or forces;
- 8) Loss caused by insurrection, rebellion, revolution, riots, civil commotion and so on.

The policy itself will not cover:

- 1) The death of any covered animal if the animal is used for any purpose other than that specified in the policy;
- 2) Death directly or indirectly occurring as a consequence of a surgical operation, unless conducted by a qualified veterinary surgeon and certified by him to have been necessitated solely by a peril insured against and to have been carried out in an attempt to preserve the animal's life;
- 3) Death directly or indirectly occurring as a consequence of an inoculation, unless conducted by a qualified veterinary surgeon and certified by him to be of prophylactic nature or necessitated by a peril insured against Loss by nuclear reaction or nuclear radiation or radioactive contamination, or by any weapon of war employing nuclear fission or radioactive force;
- 5) Loss by death or destruction of any animal because it is unfit for or incapable of fulfilling any particular functions or duties;
- 6) Loss as a consequence of delay, loss of use, or loss of market. Livestock mortality insurance is provided only upon the receipt and acceptance of a completed and signed application including a veterinary certificate of examination. Veterinary certification is also necessary for policy renewal.

Focus Points

- o Commercial Insurance is similar to personal insurance in the types of coverage offered and in the different variations of the basic plan.
- o Commercial Insurance offers protection for property loss and liability.
- o The term multiple-line, or multiple-peril, is used to describe an insurance policy that combines different lines of insurance in a single package.
- o Multiple-line policies are more comprehensive than a single-line policy, which offers only one type of insurance.
- o The first real commercial multi-peril packages appeared in the early 1960s.
- o Commercial policies are divided into at least two parts.
- o Section one of a Commercial policy covers property issues.

- Section two of a Commercial Policy covers liability issues.
- The "named insured" is the person(s) or organization that is protected by the policy's coverage as long as the named insured is acting either in the business's interest or according to his role in that business.
- Named peril insurance means that the insurance policy specifically names those perils from which the business owner is protected.
- All-risk insurance policies state that the business is protected against all risks except those that are specifically excluded.
- Replacement cost means that damaged or destroyed property is covered for what it actually costs to replace or to restore the item.
- Co-insurance requires that both the insurer and the insured pay a specified percentage of a covered loss in a specified ratio.
- The farmers insurance packaged policies that are available today offer farmers two broad sections of protection. Property coverage, and liability coverage.
- Currently, three policies—the basic, the broad and the all-risk perils forms—are available to meet farmers' insurance needs.
- Optional coverages are available and are generally the same in all three forms.
- The farm owners' package policy provides for replacement cost on the farmer's dwelling up to the limits of the policy.
- Outbuildings are almost always insured on an ACV basis.
- Coverage for key structures is calculated differently if the recommended amount of insurance, usually 80 percent of the rebuilding cost, is carried.
- Basic perils coverage insures the dwelling, personal property in the dwelling, other farm property such as farm machinery, livestock, farm structures and stored crops; and farm personal property.
- Broad peril coverage generally includes the same protection for the farmer's dwelling, its contents, and other farm property as those are featured in the basic perils policy.
- The farmer owners broad perils form insures the farmer's dwelling and its contents against seven perils not included in the basic perils form.
- In addition to other exclusions, several of the policy's coverages contain either exclusions or limited coverage.
- The weight of ice, snow and sleet excludes losses to outdoor equipment except as a direct result of the collapse of the building.
- The glass breakage peril does not include losses that occur while the covered building is vacant beyond a period of 30 days.
- The water escape peril does not include the cost of repairing or replacing the plumbing, heating or air-conditioning system, domestic appliances, or parts thereof unless the loss is caused by earthquake, landslide or other earth movement or the result of freezing.
- Excluded from the freezing of plumbing, heating, and air-conditioning perils are losses that resulted from earthquake, landslide or other earth movement and losses that occurred while the insured building was vacant or unoccupied.
- The policy does not cover losses that are caused by a flood unless these losses are covered by the basic named peril policy.
- Other losses caused by surface water, waves or tidal waves, overflow of streams, or other bodies of water or a spray from any type of liquid are not covered.
- The all-risk farm owners package policy offers farmers the most comprehensive coverage of the three currently available forms.
- The all-risk form includes all of the coverages for the farmer's dwelling, its contents, and other farm personal property that are available in the basic named peril and in the broad named peril forms.
- Farmer dwellings and mobile farm machinery are insured against all risk of direct physical loss or damage from any perils that are not specifically mentioned in the basic peril or in the broad peril form.
- Any exclusion may be protected against if the farmer purchases another policy or an endorsement to protect himself against loss.
- While selecting coverage, farmers should not forget that protection is limited not only by the coverage selected, but also by the amount of coverage purchased.
- Protection extends to accidents occurring on the premises as a result of the farmer's operations.

- Medical expenses for guests who are injured on the property will also be paid.
- The liability section of the farmer's policy provides for payment or replacement of property that is damaged while in the farmer's care, custody or control.
- Bodily injury and property damage protects the farmer's personal activities and farming business.
- Exclusions to personal injury coverage are: Liability assumed under contracts or agreements; Willful violation of a penal statute or ordinance; Injury to a farmer's employee arising out of his employment; and An utterance made by or at the direction of the farmer with knowledge of the falsity of the utterance.
- Liability coverages under the policy may be extended to insure against claims arising out of injury to the farmer, to his family, to his farm, or to other employees in certain limited non-farm business pursuits in which he or members of his family may participate.
- In some states, farmers are required by law to be covered by workers' compensation insurance to cover liability that goes beyond the liability coverage of Section II of the package policy for employers' liability.
- The Federal Crop Insurance Corporation, which is subsidized by federal taxes, provides all-risk protection in several sections of the country for various crops.
- Only certain limited coverages are provided for livestock or farm animals under the farmers package policy.

ENVIRONMENTAL AND GENERAL LIABILITY EXPOSURES

Overview

For qualified Environmental and General Liability Exposures, Umbrella policies provide limits up to \$35,000,000 and broad coverage not found in standard excess programs.

Program Benefits

A Special Umbrella policy follows form over the primary policy, providing general liability as well as pollution legal liability coverage for specified locations. Pollution liability coverage is not available in most standard liability umbrella policies, leaving companies uninsured for this exposure. This coverage gap can be covered with a special Umbrella policy.

Special Umbrella policies offer broader coverage than standard excess policies including pollution coverage for upset and overturn of vehicles where covered by the primary automobile liability policy.

Special environmental Umbrella policies provide the Insured with a single point of contact for primary and umbrella liability coverages, including pollution legal liability. This single source allows the Insured ease of access, saving the insured valuable business time.

Purchasing general liability and umbrella coverages from one insurer eliminates problems in claims handling that can occur when the primary and umbrella coverages are placed with different insurance companies.

Customer Profile

- ✓ Chemical Manufacturers and Distributors,
- ✓ Paper and Pulp Manufacturers,
- ✓ Paint and Solvent Manufacturers,
- ✓ Foundry Operations,
- ✓ Tool and Die Manufacturers,
- ✓ Commercial Printers and Ink Manufacturers,
- ✓ Photographic Equipment Manufacturers,
- ✓ Soap, Detergent and Industrial Cleaner Manufacturers,
- ✓ Cosmetics and Shampoo Manufacturers,
- ✓ Plastic Goods Manufacturers,
- ✓ Selected Light to Medium Hazard Products Manufacturers,
- ✓ Waste Treatment, Storage or Disposal Facilities,
- ✓ Pesticide Manufacturers.

Asbestos Umbrella Policy

Overview

The Asbestos Umbrella (Asbestos in Place) policy protects building owners against bodily injury and property damage claims resulting from a release of asbestos at covered locations. This policy is for building owners with an operations and maintenance program for asbestos-containing materials and is written on an occurrence basis.

Since owners', landowners' and tenants' standard general liability insurance policies exclude pollution conditions (including asbestos), building owners can be left without protection for asbestos releases. The Asbestos Umbrella fills this gap. Additionally, this policy can cover the potential liability from completed operations of abatement or in-place management jobs.

Program Benefits

Because the Environmental Protection Agency and other research groups have recommended that asbestos-containing materials be managed in place or encapsulated, building owners have an exposure from any future disturbances or releases of those materials. This exposure creates the potential for bodily injury and property damage claims arising out of the building owners' premises.

Standard insurance that provides coverage for liability arising out of premises excludes liability for asbestos releases.

Owners are concerned with the long-term liabilities associated with an asbestos contractor's operations. The Asbestos Umbrella policy provides owners with an insurance policy that will cover completed operations' claims for past asbestos abatement projects. Previous insurance policies for these contractors may have been offered on a claims made basis, may have been issued by an insolvent or undercapitalized entity, or may have a contractors' policy aggregate which is exhausted by other claims.

Because some Asbestos Umbrella policies are offered on an occurrence basis, the claims reporting period for events that occur during the policy term is not restricted.

Customer Profile

- Property Owners and Managers,
- Warehouses,
- Municipalities,
- Buyers and Sellers of Commercial Real Estate.

Product Features

- Provides coverage for third-party bodily injury and property damage claims caused by an asbestos incident during the policy period at an insured location.
- Provides coverage for defense costs.
- Covers the continuous and repeated release of asbestos in place at an insured location (occurrence trigger).
- Provides coverage for potential claims resulting from completed operation exposures of past abatement or in-place management projects.
- Provides site-specific policies requiring a scheduled list of locations.

Secured Creditor Impaired Property Policy (Secured Creditor)

Overview

The Secured Creditor Impaired Property Policy (Secured Creditor) helps expedite and secure loans, while putting financial assurances in place that help protect against the losses caused by environmental contamination. Here's how Secured Creditor can serve as a valuable financial tool for all types of financial institutions.

➤ **Community Banking Operations:**

A locally defined market, modest assets, and a more focused line-of-business often characterize community banks. In accordance with this structure, community banks usually contract vendors to supplement in-house capabilities; oftentimes because they are unable to financially justify the overhead required to perform certain services in-house.

The Secured Creditor Impaired Property Policy can help community banks in expanding services and eliminating costly outsourcing. Since the policy can supplement a Phase One site assessment, and streamline loan approvals, it can help community banks become more competitive by increasing business opportunities that they were once forced to pass-up.

➤ **Commercial Banking Operations:**

Large commercial banks often require equally large environmental departments to handle the volume and complexity of loans posed by the real estate market. The demands placed on personnel are intense and compounded by an increasingly litigious business environment.

The Secured Creditor Impaired Property Policy not only protects commercial lenders but also provides their environmental departments with valuable tools to help expedite and secure loans. The underwriting process and the policy have the ability to add efficiencies to the credit review process, provide fast turnaround and simplify the sale of loan pools to other lenders, etc. - allowing bank personnel to do their jobs more effectively profitably.

➤ **Securitization:**

Financial institutions submit loan pools to the rating agencies for securitization. The rating helps investors determine the stability of an investment. Generally, a prime rating indicates that the issuer does have sufficient access to funds to meet payments to investors under periods of market stress - deeming the loan pool a sound investment.

The Secured Creditor policy can help stabilize the performance of a bond by mitigating the effect of delinquent loans with contaminated collateral.

➤ **Life Insurance Companies/Pension Funds:**

Life insurance companies and pension funds often have a division that lends on commercial real estate transactions. A majority of their loans are more complex in nature requiring them to hire staff or outside vendors to provide environmental reviews of the properties they lend against.

Secured Creditor insurance is a beneficial risk management tool that these lenders can use in combination with their environmental review of a property.

➤ **Credit Unions:**

Some credit unions have commercial real estate lending units. This is a recent development for credit unions, therefore, they may not have the personnel in place to evaluate the environmental risk of a property.

Secured Creditor may help the credit union by eliminating outsourcing of the environmental reviews of a property and also streamlining the loan approval process in a more timely manner for these institutions.

Program Benefits

Secured Creditor will either pay off the outstanding loan balance or pay for cleanup costs of the on-site environmental condition-whichever is less-in the event of a default on a commercial real estate loan which is secured by an insured property.

Secured Creditor is a risk management tool designed to protect the lender from both past and future pollution conditions. Secured Creditor is commonly used in addition to environmental due diligence to help mitigate environmental risk. It is also used to support or serve as an alternative to indemnification agreements and to reduce or serve as an alternative to escrow accounts.

Some insurance policies behave as a secondary coverage - assisting only after other policies have taken effect. Secured Creditor Impaired Property Policy responds immediately in the event of a loss - acting as a primary source of protection.

In addition to either paying off the outstanding loan balance or paying for the cleanup costs-whichever is less-, the policy provides the lender protection from a wide range of environmental exposures including claims for bodily injury, property damage and cleanup costs arising from pollution conditions that occur on the insured property and cleanup costs incurred by the lender in the event of foreclosure.

Customer Profile

- Community Banks,
- Large Commercial Banks,
- Capital Market Lenders,
- Investment Firms,
- Specialty Lenders,
- Insurance Companies,
- Life Companies/Pension Funds,
- Credit Unions.

Product Features

Coverage A, for loss arising from a default accompanied by an environmental condition on a commercial real estate loan secured by an insured property, the Secured Creditor policy will either pay the lesser of the outstanding loan balance or cleanup costs.

Coverage B responds to legal obligations and claims for third-party bodily injury, third-party property damage and on- and off-site cleanup costs resulting from pollution conditions at insured properties.

Coverage C, which protects the bank after foreclosure, responds to cleanup of on-site pollution conditions at insured properties.

Policies are available for single-site transactions, securitizations and portfolios.

Professional Package Policy

Overview

Professional Package Policy is a package policy, which includes general, environmental and optional professional liability coverage, for environmental consultants, contractors and engineers. This special policy provides coverage for bodily injury, property damage or personal injury claims resulting from an Insured's premises, operations and professional services and products or completed operations.

The policy includes coverage for claims that are a result of a pollution release arising from an Insured's contracting operations or professional services. The Commercial General Liability Coverage Part, which incorporates contractor's pollution coverage can be written on an occurrence or claims made coverage basis.

Program Benefits

The Policy:

- Eliminates multiple minimum premium payments that would exist if separate policies were purchased, providing a cost savings for the Insured;
- Reduces potential gaps that may surface when separate coverages are purchased from different insurers;
- Offers occurrence-based coverage for general and contractor's pollution liability that is not available generally in the marketplace (claims made is also available);
- Provides smaller firms an affordable alternative when purchasing environmental insurance;
- Offers professional liability coverage, which is excluded from most standard commercial general liability policies, including coverage for liability arising out of pollution conditions caused by an error or omission;
- Is written on a flat-rate basis giving Insureds a fixed yearly cost for this insurance.

Customer Profile

Environmental Contractors, Consultants, Engineers
Environmental Lab Testing/Analysis Facilities

Product Features

Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage Parts:

- Provides coverage for bodily injury, property damage or personal injury claims resulting from the Insured's premises, operations or products.
- Provides coverage for claims that are a result of a pollution release arising from an Insured's contracting operations. Coverage is afforded by amendment to the pollution exclusion.
- Covers both sudden and gradual pollution releases.
- Covers completed operations.
- Optional: can provide nose coverage at an additional charge to eliminate any gaps, which may occur when switching from claims made (Commercial General Liability (CGL) or Commercial Pollution Liability (CPL)) to occurrence coverage.
- For accounts that remain claims made, the policy can provide prior acts coverage back to the same date the previous insurer provided.
- Asbestos and Lead Abatement operations are not excluded.
- Insured's clients are included as additional insureds.
- Blanket additional insured coverage available for written contracts.
- Waiver of subrogation against Insured's clients automatically included for written agreements concluded prior to a claim.
- Coverage is available for pollution conditions arising from transportation including loading and unloading (owned vehicles and third-party carriers).
- Multi-year policies are also available.
- Professional Liability Coverage Part (Optional Coverage):
 - For Insureds rendering professional services, the policy offers protection against claims arising out of errors and omissions while performing professional services.
 - Covers both sudden and gradual pollution releases.

- The policy can provide prior acts coverage back to the same date a previous insurer provided.
- Optional: separate defense costs limit available.
- Professional coverage available only if the Commercial General Liability (including CPL) is purchased.

Professional Package Umbrella Coverage

Overview

With limits up to \$10 million, the Professional Package Umbrella follows form to the primary policy providing standard excess coverage for professional and environmental liability. Offering your clients higher limits at a lower cost, Professional Package Umbrella provides additional flexibility in meeting bid/contract requirements.

Program Benefits

Professional Package Umbrella offers broader coverage than standard excess policies including coverage for upset and overturn under auto liability (if included in the primary policy).

Purchasing general liability and umbrella coverage from one insurer eliminates potential problems in claims handling that can occur when the primary and umbrella coverages are placed with different insurance companies.

Because of increased litigation and large compensatory damage awards, Insureds need higher limits on their insurance programs. Professional Package Umbrella provides higher limits to protect the Insured's assets.

Subject to its limits, Professional Package Umbrella offers a drop-down aggregate feature for commercial general liability, commercial auto liability and employers liability that results in the immediate restoration of the Insured's primary insurance limits of liability.

Customer Profile

Environmental Contractors, Consultants, Engineers
Environmental Lab Testing/Analysis Facilities

Product Features

Professional Package Umbrella follows form over the underlying policy including the general liability environmental and professional liability coverage parts.

Professional Package Umbrella is available over auto liability and employer's liability (\$1,000,000 minimum underlying limit).

The Umbrella Auto Liability coverage includes pollution coverage for sudden upset and overturn - where covered in the Auto Policy.

The umbrella provides a drop-down coverage feature when aggregate limits have been reduced or exhausted.

Pay-on-behalf of the insuring agreement coverage is provided on a non-auditable basis.

Environmental Surety Programs

Overview

Environmental Surety insurers provide bid, performance and payment bonds for qualified environmental contractors performing a wide range of remediation and hazardous waste work. Coverage capacity is \$10 million per individual job and \$30 million for an aggregate, bonded work program. Specific programs can be discussed on a case-by-case basis.

Customer Profile

Environmental Contractors, including:

- ✓ Lead Abatement Contractors;
- ✓ Soil and Groundwater Remediation Contractors;
- ✓ Underground Storage Tank Contractors (Removal/Replacement);
- ✓ Demolition Contractors;
- ✓ Environmental Engineers and Consultants;
- ✓ Hazardous Waste Transporters/Non-Hazardous Waste Transporters;
- ✓ Landfill and Liner Contractors.

Product Features

Provides bid, performance and payment bonds for environmental contractors.

Uses a treasury-listed surety company and establishes a standard surety relationship with our insured contractors.

Contractors Pollution Occurrence (CPO) for Contractors

Overview

Contractors Pollution Occurrence (CPO) protects contractors against claims for third-party bodily injury, property damage or environmental damage arising from pollution conditions caused in the performance of covered operations. The coverage applies to sudden and gradual pollution events and responds to clean-up costs, both on and off the work site.

CPO provides coverage for events arising from the performance of covered operations by the Insured or subcontractors, claims alleging improper supervision of subcontractors against the Insured, and coverage for claims arising out of environmental work performed by the insured or subcontractor.

CPO is available on a claims made basis as Contractors Pollution Liability (CPL).

Program Benefits

Offers the pollution coverage to contractors that most standard general liability programs specifically exclude. The policy provides broad environmental coverage as opposed to the limited givebacks or no coverage afforded by CGL programs.

Governmental agencies have varying standards concerning contractors' environmental liability in remediation work. Having an insurer who has experience with governmental agencies helps provides guidance through the unique liability requirements of each agency.

The CPO policy provides protection against third-party action over claims to include coverage for liability assumed by the Named Insured under an insured contract. This enhancement protects the insured against pollution-related damages arising out of contractual liabilities excluded under the Insured's Commercial General Liability policy.

Customer Profile

- General Contractors
- Construction Managers
- Street and Road Contractors
- Maintenance Contractors
- Electrical Contractors
- Mechanical Contractors
- Demolition Contractors
- Environmental Contractors
- Aboveground and Underground Storage Tank Contractors
- Site Restoration and Clean-up Contractors
- Response Action/Emergency Spill Response Contractors
- Transformer/PCB Contractors
- Trade Contractors
- HVAC Contractors
- Industrial Contractors

Product Features

Contractors Pollution Occurrence provides coverage for bodily injury, property damage and environmental damage arising out of the Named Insured's covered operations. The CPO policy is written on an occurrence basis and can be written on a claims made basis.

- Coverage protects all construction activities of the Named Insured: a listing of operations is no longer required.
- Covers both on- and off-site clean-up costs arising from sudden and gradual pollution conditions.
- Covers completed operations.
- Blanket or project-specific coverage is available.
- The definition of bodily injury does not exclude mental anguish.
- Project specific, contractor controlled and wrap-up coverages for:
 - ✓ Long-term Superfund or other remedial/construction projects,
 - ✓ Infrastructure construction projects,
 - ✓ Single- or multiple-site projects,
 - ✓ Brownfield projects,
 - ✓ Land-based or marine projects.
- Increased limits are available to meet contract requirements for specific projects.
- An Insured Property Pollution Legal Liability Coverage Endorsement is available as an enhancement providing claims made coverage for scheduled properties owned or operated by the Insured.
- Provides full coverage for work performed on Superfund sites.
- Legal defense within the policy limits.

- Coverage for claims alleging improper supervision or lack of supervision of qualified subcontractors.
- Liability coverage for the named insured that is assumed by contract with their client for subcontracted operations. Contractual liability coverage is provided for contracts Insureds enter into with their clients.
- Natural resource damages are defined and covered in the definition of property damage.
- Multi-year policies are available.
- Coverage for pollution conditions arising from transportation by third-parties and coverage for loading and unloading performed in the course of covered operations by owned vehicles and third-party carriers.

Contractors Professional and Pollution Liability

Overview

To address the unique professional service and general contracting exposures of the design build and construction management industry, insurers have developed the Contractors Professional and Pollution Liability Policy (CP2) combining Errors and Omissions Coverage (E&O) with Contractors Pollution Occurrence Coverage (CPO). This policy covers loss arising from a Breach of Professional Duties by the Insured and hired design professionals and joint ventures for which the Insured is legally liable. The Contractors Pollution Occurrence Coverage provides protection against claims arising from pollution conditions caused by general construction activities performed at a job site by the Insured or others for which the Insured is legally obligated.

By combining E&O and CPO under one form, potential gaps or overlaps in coverage are reduced. By extending coverage to the Insureds liability for their subcontractors' professional services and general construction operations the Insured can be confident that their bottom line has been protected.

Program Benefits

The CP2 program addresses the Insured's legal liability associated with their involvement in joint ventures, and subcontracted design and general construction operations where the adequacy and duration of protection under indemnities and insurance provided by partners of and subcontractors cannot be guaranteed.

With the introduction of environmental occurrence coverage for contractors, The insurer provides a CP2 policy with CPO coverage that provides the Insureds the ability to report claims at any time, provided the covered damage occurred during the policy period. This alleviates contractors' concerns with long-term liabilities that arise years after project completion.

Contractors working for governmental agencies on potential contaminated sites face ever-changing liabilities, indemnities and insurance requirements from different regulatory agencies. CP2 can be customized to help meet contractual requirements, allowing contractors to successfully negotiate and win contracts while addressing their risk management needs.

The CP2 program reduces potential gaps or overlaps between the Insured's Contractor Pollution Liability and Errors & Omissions coverage and that of their subcontractors.

Customer Profile

- HVAC Contractors
- Commercial Building General Contracting/Design Build
- Municipal Structures General Contracting/Design Build
- Street and Road General Contractors
- Industrial General Contractors, including process systems
- At-Risk and Agency Construction Managers

Product Features

CP2 is comprised of two coverage parts, Professional Liability and Contractors Pollution Occurrence.

- The definition of Insured includes temporary or leased workers performing professional services or operations on behalf of the Insured.
- The definition of Insured includes Joint Ventures as respect to the Named Insured's liability.
- Punitive Damage coverage applies where permitted by law.
- Faulty workmanship exclusion does not apply to work performed by subcontractors.
- Coverage applies to any Insured who did not participate in or have knowledge of dishonest or fraudulent acts.
- Includes coverage for Natural Resource Damages.
- Deductible credit applies to claims resolved through mediation.

- Deductible does not erode the policy limits.
- Policy provides worldwide coverage.
- Broad reporting provision for potential claims or incidents where the damage occurs during the policy period.
- Coverage pollution conditions arising from transportation by third-parties and pollution conditions arising from loading and unloading of owned vehicles performed in the course of covered operations.

Professional Liability Coverage Part:

- This policy covers loss arising from a Breach of Professional Duties by the Insured and hired design professionals and joint ventures for which the Insured is legally liable.
- Provides complete professional service coverage, including coverage for pollution liability that is the result of a Breach of Professional Duties.
- E&O is provided on a claims made and reported basis.

Contractors Pollution Occurrence Coverage Part:

- Provides protection against claims for third-party bodily injury, property damage or environmental damage caused by pollution conditions resulting from general construction activities of the Insured or for which the Insured is legally liable as the result of the performance of others.
- Provides coverage for clean-up costs when mandated by governmental entities, when required by law or as a result of third-party claims.
- Clients of Named Insured for construction services automatically receive additional Insured status where required by contract under the Contractors Pollution Occurrence Coverage.
- The CPO coverage part provides broadened contractual liability coverage for third-party action over claims arising from pollution conditions and includes coverage for Insured Contracts.

Abatement Umbrella

Overview

For qualified insureds, this Umbrella policy provides limits up to \$35,000,000 and broad coverage not found in standard excess programs.

Program Benefits

The Abatement Umbrella follows form over the primary policy, providing asbestos and/or lead liability coverage for covered locations. Asbestos and lead liability coverage is not available in most standard liability umbrella policies, creating an uninsured, potential exposure to loss. The Environmental Abatement Umbrella fills this coverage gap.

The Abatement Umbrella offers broader coverage than standard excess policies including pollution coverage for upset and overturn under auto liability (if included in the primary policy).

The Environmental Abatement program provides the Insured with a single point of contact for primary and umbrella liability coverages including asbestos and lead liability. This single source allows the Insured ease of access, saving valuable business time.

Purchasing general liability and umbrella coverage from one insurer eliminates potential problems in claims handling that can occur when the primary and umbrella coverages are placed with different insurance companies.

Customer Profile

- Asbestos and Lead Abatement Contractors
- Property Owners and Managers
- General Contractors
- Roofing Contractors
- Bridge and Tank Painters
- Industrial Painters
- Public and Private Housing Managers

Product Features

The Abatement Umbrella follows form over the underlying primary policy including the general liability and asbestos and/or lead liability coverage parts.

The Abatement Umbrella is available over auto liability and employer's liability (\$1,000,000 minimum underlying limit).

The Umbrella Auto Liability Coverage includes pollution coverage for sudden upset and overturn - where covered in the primary auto liability policy.

The umbrella provides a drop-down coverage feature when aggregate limits have been reduced or exhausted.

- Coverage is on a pay-on-behalf basis.
- Coverage is provided on a non-auditable basis.

Asbestos/Lead Abatement Liability Insurance

Overview

The Asbestos/Lead Abatement Liability Insurance policy protects the Insured against claims of third-party bodily injury and property damage arising from asbestos and/or lead incidents at abatement projects. The policy includes occurrence commercial general liability coverage, but can be purchased as a stand-alone Asbestos/Lead Abatement Liability Insurance Form.

Program Benefits

Contractors must meet the compulsory bid requirements imposed by owners of public or private abatement projects. Because Environmental Asbestos/Lead Abatement Liability Insurance meets these requirements, contractors with this coverage can offer stronger bids and win more jobs.

Owners are concerned with the long-term liabilities associated with contractors' operations. The financial stability of the insurer becomes a very critical consideration.

Because an Environmental Asbestos/Lead Abatement Liability policy is offered on an occurrence basis, the claims reporting period for events that occur during the policy term is not restricted.

Because the asbestos and lead liability coverages are offered on a broad-form ISO Commercial General Liability (CGL) Policy, contractors are able to get broad-form contractual liability coverage that is not offered in all asbestos programs.

Asbestos/Lead Liability coverage can also be provided without CGL coverage for those contractors already having CGL and only have minor or contingent asbestos abatement exposures.

For contractors in monopolistic states for workers compensation, Environmental can provide stop-gap coverage that might not be available from other carriers.

Customer Profile

- Asbestos Abatement Contractors
- Property Owners and Managers
- Lead Abatement Contractors
- Bridge and Tank Painters
- Industrial Painters
- Public and Private Housing Managers
- General Contractors

Owners Spill Liability (OSL) - Coverage Part I Within Pollution Legal Liability

Overview

Owners Spill Liability (OSL) is designed for generators of hazardous and non-hazardous waste or manufacturers of potentially environmentally hazardous products who use third-party carriers to transport their waste or product. Coverage protects the Insured against liability for bodily injury, property damage and clean-up costs arising out of spills that occur in the course of transit by rail, air, auto or vessel. Defense cost coverage is also provided.

Program Benefits

Prior to the Environmental Owners Spill Liability, potential Insureds relied upon copies of certificates of insurance and/or the imposition of additional Insured requirements on their transportation vendors.

Many times transporters fulfilled this paperwork requirement but evidenced insurance for environmental liabilities with a bonding mechanism, not true insurance. Without OSL, the Insured relies on the financial security of the vendor.

The Export and Import of Hazardous Waste (EIH) regulations under the Canadian Environmental Protection Act tracks and controls international shipments of hazardous waste. Owners Spill Liability is designed to meet the compulsory proof of insurance requirements imposed by EIH for exporters and importers of hazardous waste.

Customer Profile

- Manufacturers
- Chemical/Petrochemical Operations
- Municipalities
- Hospitals

Product Features

Coverage for transportation of hazardous and non-hazardous materials or waste via a third-party transporter. Transportation can be by auto, air, rail or watercraft.

Transportation pollution coverage is provided from the time the material or waste leaves the Insured's site until it reaches the disposal facility or location of final shipment (except for temporary storage greater than 72 hours in length), including loading and unloading.

- Provides third-party bodily injury, property damage and clean-up coverage (including defense coverage).
- Coverage is worldwide, including blue water.

Supplemental Environmental Automobile Liability

Overview

The Supplemental Environmental Automobile Liability monoline policy is designed to cover losses resulting from claims of bodily injury, property damage or clean-up costs caused by a pollution release from transported cargo which is carried by a covered auto.

This policy is designed for commercial transporters who transport hazardous and non-hazardous materials.

Program Benefits

Businesses that occasionally transport hazardous wastes or non-hazardous materials may not be covered for environmental liability exposures. With Supplemental Environmental Automobile Liability commercial transporters are able to close the gap in their business auto or trucking policy and reduce the potential for an uninsured environmental mishap.

The typical business auto or trucking policy excludes coverage for bodily injury, property damage or clean-up costs that arise out of the discharge, dumping, releasing or escape of pollutants from property that is transported cargo. Coverage for environmental contamination is limited to contamination caused by the release of fluids such as fuels, lubricants or exhaust from the engine or mechanical systems of the covered vehicle. The policy provides protection for pollution releases from transported cargo, not merely the engine or mechanical systems of the vehicle.

The MCS-90 endorsement to the Motor Carrier evidences financial responsibility for bodily injury, property damage and environmental restoration. However, the MCS-90 is a bonding, indemnification mechanism, and not true insurance. The policy will pay monetary awards and settlements of compensatory damages on behalf of the Insured arising from bodily injury or property damage or clean-up costs resulting from a covered pollution release.

Customer Profile

Commercial Transporters

Product Features

Covers losses resulting from claims of bodily injury, property damage or clean-up costs caused by a pollution release from a covered auto.

Provides coverage for releases that occur as a result of collision, upset or overturn, loading or unloading performed by the Named Insured, failure of the cargo containment structure in transit and vandalism.

Types of covered autos may include:

- ✓ Any autos,
- ✓ Owned autos only,
- ✓ Owned commercial autos only,
- ✓ Hired autos only, trailers in the Insured's possession under a written trailer or equipment interchange agreement, or
- ✓ The Insured's trailers in the possession of anyone else under a written trailer interchange agreement.

Overview

Investing in and redeveloping contaminated property historically has had more risks than benefits. The potential for environmental liability or unknown clean-up costs often turned an attractive real estate deal into a financial nightmare. Environmental insurance has made investment in contaminated property less risky over the past decade.

Cleanup Cost Cap (CCC) is designed to address the risk and uncertainty associated with beginning or continuing an environmental remediation project. The Environmental Cleanup Cost Cap Program covers cost overruns when environmental remediation projects exceed the projected costs.

Cleanup Cost Cap becomes a tool in an investment strategy or for better managing liabilities by ensuring that unexpected costs don't make investing in contaminated property an unknown financial proposition.

Program Benefits

Cleanup Cost Cap responds to cost overruns associated with the implementation of a remedial plan. The policy structure covers a variety of clean-up scenarios that include fully approved plans as well as plans in progress.

New owners are protected against a financial loss that could impair the firm's operations and profitability. For the existing owner, clean-up costs are set for budgetary purposes or for the purpose of attracting a buyer.

Cleanup Cost Cap can help protect the financial condition of the borrower and the value of the lender's collateral by protecting against cost overruns that could impair the borrower's cash flow or overall financial position.

The government, owners, third parties and/or investors have the assurance that if the cost exceeds the budgeted amount, a risk transfer mechanism provides funds to help complete remedial activities.

By putting the right environmental insurance in place and capping clean-up costs, contaminated property can be a good investment.

Customer Profile

- Owners, Buyers, Sellers or Operators of Contaminated Properties
- Brownfields Developers
- Investors
- Property Managers
- Potentially Responsible Parties (PRPs)
- Remediation Contractors

Product Features

Pays on behalf of the Insured for clean-up costs up to the limit of liability and subject to the co-insurance provision, for all activities as defined in the Remedial Plan, that are above the attachment point (Self-Insured Retention).

Coverage is provided for clean-up cost overruns at a covered location or for clean-up beyond the boundaries of a covered location which is part of the Remedial Plan.

The policy attaches over a prescribed Self-Insured Retention (SIR), which is generally equal to the expected cost of clean up plus a buffer layer.

- Clean up is defined by endorsement as set forth in Insured's Remedial Plan.
- Covers remediation cost overruns for:
- Clean-up costs for pollutants originating from the covered location, which are addressed in the Remedial Plan.
- Change orders to the Remedial Plan required by government authorities.

Cleanup Cost Cap also offers additional, optional coverage for newfound contamination that is discovered in the course of performing clean up pursuant to the Remedial Plan at a covered location. (Does not cover newfound contamination that is discovered outside of the performance of the Remedial Plan.)

Premium discounts are available if the Insured shares in the cost overruns via a co-insurance structure.

Multi-site programs can be offered.

Terms of up to ten years are available.

Preliminary premium indications can be provided within 24-hours (based on the Insured's selection of estimated clean-up costs, limit of coverage, buffer layer, co-insurance, etc.).

The policy requires reporting of clean-up costs during the policy term within an agreed upon time interval.

Contractors executing the Remedial Plan are scheduled by endorsement.

The cost of the clean-up should equal \$1,000,000 or more.

Owner Controlled Insurance Programs (OCIPs)

Asbestos or Lead Abatement Projects

Overview

Property owners and prime contractors have become increasingly aware of the need for limits of liability dedicated to their project. Without project specific limits, the majority of all contractors and consultants evidence a blanket annual aggregate limit that covers all work performed in the course of a year.

Owners and prime contractors may not get adequate protection for their exposure because the contractor's policy limit of liability is shared with other projects.

Additionally, many large projects will have multiple contractors due to logistics, size and project phases. These scenarios lead to probable coverage differences in the various policies such contractors provide. Some contractors may be uninsured for asbestos, lead exposures or environmental exposures.

The Owner Controlled Insurance Programs (OCIPs) offered by are designed to provide owners or prime contractors with the specialized coverage and program management control they need. OCIPs can efficiently cover an entire project including off-site transportation and exposures at non-owned locations.

Program Benefits

OCIPs allows the Insured to create a single insurance program with consistent coverage for all contractors on an abatement project.

By creating the program, the project owner has greater control of the job-related general liability insurance costs.

Customer Profile

Property Owners and Managers with an Asbestos or Lead Abatement Project

Product Features

- Deductibles are available up to \$1,000,000 for qualified accounts.
- ISO Commercial General Liability form (occurrence), or alternatively, asbestos or lead only coverage forms are available.
- Asbestos and lead liability coverage is available for abatement projects, which are scheduled to the policy.
- Completed operations coverage extension is available for one year after expiration.
- Contractors working for the owner or the prime contractor are included as additional Named Insureds.

Project size - preferably greater than \$500,000.

Contractor selection - every contractor selected by the owner will be underwritten, retaining the right of refusal of any one contractor.

Coverage available for contractor awarded projects; in no case will policies be issued for any projects using owner-employees for abatement.

Architect/engineer must be used for design, specification and contractor selection qualifications.

All projects and phases must provide air monitoring and have independent laboratory analyses of those samples.

Owner's Protective Environmental Liability Insurance (Owner's Protective)

Overview

Providing solutions for owner controlled projects, Owner's Protective Environmental Liability Insurance (Owner's Protective) protects project owners from liability that can result from third-party work performed on their behalf. If the project is remediation, including site development, owners now have additional options other than traditional insurance methods purchased by engineers/contractors.

With limits of up to \$100 million, Owner's Protective provides coverage for compensatory damages arising out of legal liability resulting from the action or inaction of hired independent contractors or engineers. The policy coverages respond if the insurance proceeds of the contractors'/engineers' policies are insufficient and the retained amount has been met.

Program Benefits

Owner's Protective protects the owner when the insurance policies of their independent contractors/engineers are exhausted or if those policies do not respond to claims because of coverage limitations, providing a cost-effective method of protecting against the liability arising out of an owner's project.

The Owner's Protective policy addresses concerns over cancellation or reduction of policy limits under the independent contractors'/engineers' policies after job completion.

The Owner's Protective underwriting process assists the owner in evaluating independent contractors/engineers on the basis of their insurability as well as their capability to comply with insurance bid specifications. This process streamlines the administrative duty of the owner, saving time and money. Having the policy in place helps the owner in the long-term monitoring of multiple insurance policies.

Owner's Protective is available on an annual basis or multi-year basis.

Customer Profile

Owners of Environmental Remediation Projects

Product Features

Owner's Protective protects the owner for the legal liability of the engineer to the owner as a result of the engineer's wrongful acts or omissions in the performance of professional services.

Owner's Protective protects the owner from damages resulting from third-party claims attributable to the engineer's wrongful acts or omissions in the performance of the professional services at the covered location.

Owner's Protective protects the owner for the legal liability of the contractor for bodily injury, property damage or environmental damages arising out of liability for work performed.

Owner's Protective protects the owner from damages resulting from third-party claims against the owner for bodily injury, property damage or environmental damages from pollution conditions and arising out of the performance of the contractor's services and for which the contractor is legally liable.

Closure/Post Closure (CPC)

Overview

Closure/Post Closure (CPC) is one type of Environmental Protection Program (EPP) product offered that may satisfy the closure/post-closure financial responsibility requirements imposed on hazardous and solid waste treatment, storage and disposal facilities (TSDFs). (Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).)

Closure/Post Closure covers future costs to close and monitor a regulated site such as a landfill. This policy enables the Insured to manage the site's long-term cost structure while it incorporates the Insured's financial, funding and risk transfer needs into a single policy.

Program Benefits

This policy may be used to satisfy the financial assurance requirements for closure and post-closure clean-up costs and liability protection as required by an individual state and the RCRA.

This program may offer cash flow and balance sheet advantages over other financial assurance mechanisms without tying up excessive lines of credit.

The Insured has the ability to assist in the structure of the program so that their specific financial and risk management objectives can be achieved. The Insured may be able to use any one of the following mechanisms in the structure of their insurance program:

- Fronting, funding,
- Retrospective rates,
- A large deductible or traditional insurance.

Multi-year contracts provide consistent long-term coverage while stabilizing insurance costs.

The structure of the policy can allow the Insured to share the profits of a favorable loss experience.

➤

Customer Profile

- Solid Waste Landfills
- Hazardous Waste TSDFs
- Incinerators
- Chemical Manufacturers
- Hospitals and Medical Facilities
- Mining Operations
- Bulk Storage Terminals
- Electric Utilities
- Waste Water Treatment Plants
- Recyclers

Product Features

- Policy allows for a combination of funding and risk transfer to cover closure and post-closure costs.

- Some closure liabilities may be covered on a pure risk transfer basis.
- Pollution Legal Liability coverage may be included.
- Multiple policy year terms are available.
- Future premium payments may need to be secured.

Environmental Protection Program (EPP)

Overview

Environmental Protection Program (EPP) uses individually tailored policy forms to satisfy the client's unique needs, and are often based upon "blended" insurance policies with multi-year terms that incorporate an element of self-funding and significant risk transfer.

The "blended" structure may provide a profit sharing provision, which allows the Insured to receive a benefit for favorable loss experience. Each policy is individually underwritten and structured to provide customized environmental management services and coverages.

Environmental Protection Program can cover the development of losses from existing liabilities in addition to losses associated with the discovery of new environmental liabilities.

Program Benefits

The Insured has the ability to assist in the structuring of the program so that specific financial and risk management objectives can be achieved.

The policy may be used to satisfy the financial assurance requirements of individual state and the Federal Resource Conservation and Recovery Act (RCRA) for closure, post-closure care, and corrective action.

The Insured may be able to realize the financial benefits of favorable loss experience. Multi-year contracts can provide consistent long-term coverage while stabilizing insurance costs.

Customer Profile

- Companies with environmental liabilities that are disclosed on SEC filings.
- Multi-party settlement of environmental liabilities, including "Superfund" settlements.
- Environmental liabilities that need to be quantified and capped as a result of merger or acquisition.
- Environmental liabilities associated with the restructuring of utilities.
- Mine reclamation.
- Well abandonment.
- Nuclear decommissioning.
- Portfolio assumption of environmental liabilities.

Product Features

Closure, post-closure care or corrective action of landfills or waste treatment facilities that result in financial uncertainties.

FOCUS POINTS

- For qualified Environmental and General Liability Exposures, Umbrella policies provide limits up to \$35,000,000 and broad coverage not found in standard excess programs.
- A Special Umbrella policy follows form over the primary policy, providing general liability as well as pollution legal liability coverage for specified locations.
- Pollution liability coverage is not available in most standard liability umbrella policies, leaving companies uninsured for this exposure. This coverage gap can be covered with a special Umbrella policy.
- Special Umbrella policies offer broader coverage than standard excess policies including pollution coverage for upset and overturn of vehicles where covered by the primary automobile liability policy.
- The Asbestos Umbrella (Asbestos in Place) policy protects building owners against bodily injury and property damage claims resulting from a release of asbestos at covered locations. This policy is for building owners with an operations and maintenance program for asbestos-containing materials and is written on an occurrence basis.
- The Asbestos Umbrella fills policy can cover the potential liability from completed operations of abatement or in-place management jobs.

- Because the Environmental Protection Agency has recommended that asbestos-containing materials be managed in place or encapsulated, building owners have an exposure from any future disturbances or releases of those materials. This exposure creates the potential for bodily injury and property damage claims arising out of the building owners' premises.
- Standard insurance that provides coverage for liability arising out of premises excludes liability for asbestos releases.
- The Asbestos Umbrella policy provides owners with an insurance policy that will cover completed operations' claims for past asbestos abatement projects
- The Asbestos Umbrella policy provides for third-party bodily injury and property damage claims caused by an asbestos incident during the policy period at an insured location.
- The Asbestos Umbrella policy provides coverage for defense cost, the continuous and repeated release of asbestos in place at an insured location (occurrence trigger), and for potential claims resulting from completed operation exposures of past abatement or in-place management projects.
- The Asbestos Umbrella policy provides site-specific policies requiring a scheduled list of locations.
- The Secured Creditor Impaired Property Policy (Secured Creditor) helps expedite and secure loans, while putting financial assurances in place that help protect against the losses caused by environmental contamination.
- The Secured Creditor Impaired Property Policy can help community banks in expanding services and eliminating costly outsourcing. Since the policy can supplement a Phase One site assessment, and streamline loan approvals, it can help community banks become more competitive by increasing business opportunities that they were once forced to pass-up.
- The Secured Creditor Impaired Property Policy not only protects commercial lenders but also provides their environmental departments with valuable tools to help expedite and secure loans. The underwriting process and the policy have the ability to add efficiencies to the credit review process, provide fast turnaround and simplify the sale of loan pools to other lenders, etc. - allowing bank personnel to do their jobs more effectively profitably.
- Financial institutions submit loan pools to the rating agencies for securitization.
- The rating helps investors determine the stability of an investment.
- Generally, a prime rating indicates that the issuer does have sufficient access to funds to meet payments to investors under periods of market stress - deeming the loan pool a sound investment.
- The Secured Creditor policy helps stabilize the performance of a bond by mitigating the effect of delinquent loans with contaminated collateral.
- Secured Creditor insurance is a beneficial risk management tool that lenders can use in combination with their environmental review of a property.
- Secured Creditor helps credit unions by eliminating outsourcing of the environmental reviews of a property and also streamlining the loan approval process in a more timely manner for these institutions.
- Secured Creditor will either pay off the outstanding loan balance or pay for cleanup costs of the on-site environmental condition- whichever is less- in the event of a default on a commercial real estate loan which is secured by an insured property.
- Secured Creditor is a risk management tool designed to protect the lender from both past and future pollution conditions.
- Secured Creditor is commonly used in addition to environmental due diligence to help mitigate environmental risk.
- Secured Creditor is used to support or serve as an alternative to indemnification agreements and to reduce or serve as an alternative to escrow accounts.
- Some insurance policies behave as a secondary coverage - assisting only after other policies have taken effect.
- Secured Creditor Impaired Property Policy responds immediately in the event of a loss - acting as a primary source of protection.
- In addition to either paying off the outstanding loan balance or paying for the cleanup costs- whichever is less-, the policy provides the lender protection from a wide range of environmental exposures including claims for bodily injury, property damage and cleanup costs arising from pollution conditions that occur on the insured property and cleanup costs incurred by the lender in the event of foreclosure.
- Professional Package Policy is a package policy, which includes general, environmental and optional professional liability coverage, for environmental consultants, contractors and engineers.
- Professional Package Policy provides coverage for bodily injury, property damage or personal injury claims resulting from an Insured's premises, operations and professional services and products or completed operations.

- Professional Package Policy includes coverage for claims that are a result of a pollution release arising from an Insured's contracting operations or professional services.
- Professional Package Policy eliminates multiple minimum premium payments that would exist if separate policies were purchased, providing a cost savings for the Insured.
- Professional Package Policy reduces potential gaps that may surface when separate coverages are purchased from different insurers.
- Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage provides coverage for bodily injury, property damage or personal injury claims resulting from the Insured's premises, operations or products.
- Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage provides coverage for claims that are a result of a pollution release arising from an Insured's contracting operations. Coverage is afforded by amendment to the pollution exclusion.
- Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage covers both sudden and gradual pollution releases.
- Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage covers completed operations.
- For accounts that remain claims made, the Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage can provide prior acts coverage back to the same date the previous insurer provided.
- Asbestos and Lead Abatement operations are not excluded from the Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage.
- Insured's clients are included as additional insureds as part of Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage.
- Blanket additional insured coverage is available for written contracts as part of Commercial General Liability (CGL) and Contractors Pollution Liability (CPL) Coverage.
- With limits up to \$10 million, the Professional Package Umbrella follows form to the primary policy providing standard excess coverage for professional and environmental liability.
- Professional Package Umbrella offers broader coverage than standard excess policies including coverage for upset and overturn under auto liability (if included in the primary policy).
- Professional Package Umbrella follows form over the underlying policy including the general liability environmental and professional liability coverage parts.
- Professional Package Umbrella is available over auto liability and employer's liability (\$1,000,000 minimum underlying limit).
- The Umbrella Auto Liability coverage includes pollution coverage for sudden upset and overturn - where covered in the Auto Policy.
- The umbrella provides a drop-down coverage feature when aggregate limits have been reduced or exhausted.
- Environmental Surety insurers provide bid, performance and payment bonds for qualified environmental contractors performing a wide range of remediation and hazardous waste work. Coverage capacity is \$10 million per individual job and \$30 million for an aggregate, bonded work program. Specific programs can be discussed on a case-by-case basis.
- Environmental Surety provides bid, performance and payment bonds for environmental contractors.
- Environmental Surety uses a treasury-listed surety company and establishes a standard surety relationship with our insured contractors.
- Contractors Pollution Occurrence (CPO) protects contractors against claims for third-party bodily injury, property damage or environmental damage arising from pollution conditions caused in the performance of covered operations.
- Contractors Pollution Occurrence coverage applies to sudden and gradual pollution events and responds to clean-up costs, both on and off the work site.
- CPO provides coverage for events arising from the performance of covered operations by the Insured or subcontractors, claims alleging improper supervision of subcontractors against the Insured, and coverage for claims arising out of environmental work performed by the insured or subcontractor.

- CPO is available on a claims made basis as Contractors Pollution Liability (CPL).
- The CPO policy provides protection against third-party action over claims to include coverage for liability assumed by the Named Insured under an insured contract.
- Contractors Pollution Occurrence provides coverage for bodily injury, property damage and environmental damage arising out of the Named Insured's covered operations. The CPO policy is written on an occurrence basis and can be written on claims made basis.
- CPO coverage protects all construction activities of the Named Insured; a listing of operations is no longer required.
- CPO covers both on- and off-site clean-up costs arising from sudden and gradual pollution conditions.
- Property Pollution Legal Liability Coverage Endorsement is available as an enhancement providing claims made coverage for scheduled properties owned or operated by the Insured.
- CPO provides full coverage for work performed on Superfund sites.
- CPO provides coverage for claims alleging improper supervision or lack of supervision of qualified subcontractors.
- To address the unique professional service and general contracting exposures of the design build and construction management industry, insurers have developed the Contractors Professional and Pollution Liability Policy (CP2) combining Errors and Omissions Coverage (E&O) with Contractors Pollution Occurrence Coverage (CPO).
- Contractors Professional and Pollution Liability covers loss arising from a Breach of Professional Duties by the Insured and hired design professionals and joint ventures for which the Insured is legally liable.
- Contractors Pollution Occurrence Coverage provides protection against claims arising from pollution conditions caused by general construction activities performed at a job site by the Insured or others for which the Insured is legally obligated.
- By combining E&O and CPO under one form, potential gaps or overlaps in coverage are reduced.
- By extending coverage to the Insureds liability for their subcontractors' professional services and general construction operations the Insured can be confident that their bottom line has been protected.
- For qualified insureds, Abatement Umbrella policy provides limits up to \$35,000,000 and broad coverage not found in standard excess programs.
- The Abatement Umbrella offers broader coverage than standard excess policies including pollution coverage for upset and overturn under auto liability (if included in the primary policy).
- The Abatement Umbrella follows form over the underlying primary policy including the general liability and asbestos and/or lead liability coverage parts.
- The Abatement Umbrella is available over auto liability and employer's liability (\$1,000,000 minimum underlying limit).
- The Umbrella Auto Liability Coverage includes pollution coverage for sudden upset and overturn - where covered in the primary auto liability policy.
- The umbrella provides a drop-down coverage feature when aggregate limits have been reduced or exhausted.
- The Asbestos/Lead Abatement Liability Insurance policy protects the Insured against claims of third-party bodily injury and property damage arising from asbestos and/or lead incidents at abatement projects.
- Asbestos/Lead Abatement Liability Insurance includes occurrence commercial general liability coverage, but can be purchased as a stand-alone Asbestos/Lead Abatement Liability Insurance Form.
- Because an Environmental Asbestos/Lead Abatement Liability policy is offered on an occurrence basis, the claims reporting period for events that occur during the policy term is not restricted.
- Because the asbestos and lead liability coverages are offered on a broad-form ISO Commercial General Liability (CGL) Policy, contractors are able to get broad-form contractual liability coverage that is not offered in all asbestos programs.
- For contractors in monopolistic states for workers compensation, Environmental can provide stop-gap coverage that might not be available from other carriers.
- Owners Spill Liability (OSL) is designed for generators of hazardous and non-hazardous waste or manufacturers of potentially environmentally hazardous products who use third-party carriers to transport their waste or product.

- Owners Spill Liability (OSL) coverage protects the Insured against liability for bodily injury, property damage and clean-up costs arising out of spills that occur in the course of transit by rail, air, auto or vessel. Defense cost coverage is also provided.
- Owners Spill Liability (OSL) offers coverage for transportation of hazardous and non-hazardous materials or waste via a third-party transporter. Transportation can be by auto, air, rail or watercraft.
- Transportation pollution coverage is provided from the time the material or waste leaves the Insured's site until it reaches the disposal facility or location of final shipment (except for temporary storage greater than 72 hours in length), including loading and unloading.
- Owners Spill Liability (OSL) provides third-party bodily injury, property damage and clean-up coverage (including defense coverage).
- Owners Spill Liability (OSL) mono-line policy is designed to cover losses resulting from claims of bodily injury, property damage or clean-up costs caused by a pollution release from transported cargo which is carried by a covered auto.
- This policy is designed for commercial transporters who transport hazardous and non-hazardous materials.
- Businesses that occasionally transport hazardous wastes or non-hazardous materials may not be covered for environmental liability exposures. With Supplemental Environmental Automobile Liability commercial transporters are able to close the gap in their business auto or trucking policy and reduce the potential for an uninsured environmental mishap.
- The typical business auto or trucking policy excludes coverage for bodily injury, property damage or clean-up costs that arise out of the discharge, dumping, releasing or escape of pollutants from property that is transported cargo.
- Coverage for environmental contamination is limited to contamination caused by the release of fluids such as fuels, lubricants or exhaust from the engine or mechanical systems of the covered vehicle.
- The Supplemental Environmental Automobile Liability commercial policy provides protection for pollution releases from transported cargo, not merely the engine or mechanical systems of the vehicle.
- Supplemental Environmental Automobile Liability commercial covers losses resulting from claims of bodily injury, property damage or clean-up costs caused by a pollution release from a covered auto.
- Supplemental Environmental Automobile Liability commercial provides coverage for releases that occur as a result of collision, upset or overturn, loading or unloading performed by the Named Insured, failure of the cargo containment structure in transit and vandalism.
- Environmental insurance has made investment in contaminated property less risky over the past decade.
- Cleanup Cost Cap (CCC) is designed to address the risk and uncertainty associated with beginning or continuing an environmental remediation project.
- The Environmental Cleanup Cost Cap Program covers cost overruns when environmental remediation projects exceed the projected costs.
- The Owner Controlled Insurance Programs (OCIPs) are designed to provide owners or prime contractors with the specialized coverage and program management control they need.
- OCIPs allows the Insured to create a single insurance program with consistent coverage for all contractors on an abatement project.
- Owner's Protective Environmental Liability Insurance (Owner's Protective) protects project owners from liability that can result from third-party work performed on their behalf.
- Owner's Protective provides coverage for compensatory damages arising out of legal liability resulting from the action or inaction of hired independent contractors or engineers.
- Owner's Protective protects the owner for the legal liability of the engineer to the owner as a result of the engineer's wrongful acts or omissions in the performance of professional services.
- Owner's Protective protects the owner for the legal liability of the contractor for bodily injury, property damage or environmental damages arising out of liability for work performed.
- Owner's Protective protects the owner from damages resulting from third-party claims against the owner for bodily injury, property damage or environmental damages from pollution conditions and arising out of the performance of the contractor's services and for which the contractor is legally liable.

- Closure/Post Closure (CPC) is one type of Environmental Protection Program (EPP) product offered that may satisfy the closure/post-closure financial responsibility requirements imposed on hazardous and solid waste treatment, storage and disposal facilities (TSDFs).
- Closure/Post Closure covers future costs to close and monitor a regulated site such as a landfill. This policy enables the Insured to manage the site's long-term cost structure while it incorporates the Insured's financial, funding and risk transfer needs into a single policy.
- This policy may be used to satisfy the financial assurance requirements for closure and post-closure clean-up costs and liability protection as required by an individual state and the RCRA.
- Environmental Protection Program (EPP) uses individually tailored policy forms to satisfy the client's unique needs, and are often based upon "blended" insurance policies with multi-year terms that incorporate an element of self-funding and significant risk transfer.

IMPORTANT TERMINOLOGY

Accident

In most states, customers who have not had an at-fault accident in the previous five years qualify for this program. Accident forgiveness means that the insurer won't add a surcharge to the premium after an insured's next at-fault accident.

forgiveness

Actuary

A statistician who computes insurance risks and premiums. Actuaries keep insurers profitable and financially stable by setting prices, assessing trends, and determining how much to hold in reserve to pay claims.

After-Market

After-market parts (also called competitive auto repair parts) are made by a company other than the manufacturer of the auto. The after-market parts authorize by an insurer meet or exceed the quality of the manufacturer's parts but cost less.

Parts

Anti-theft

A device that deters auto theft. Autos equipped with these devices may entitle the insured to a discount on your insurance premiums.

device

At-Fault

The party that is legally liable for the damages in an accident.

Auto

Auto Insurance provides protection from losses resulting from owning and operating an auto. The insurance covers losses to the insured's property and losses for which the insured is liable as a result of owning or operating an auto.

Insurance

Auto

The theft of an auto is a type of loss that is covered under comprehensive coverage.

Theft

Bodily

Pays damages for bodily injury or death resulting from an accident for which the insured is at fault and provides the insured with a legal defense.

Injury

Liability

Coverage

Cancellation

When an insurer or policyholder decides to stop coverage before the policy expires.

Claim

A demand to recover for damages as a result of a loss.

Claims

The person responsible for investigating and settling a claim.

Adjuster

CLUE®

Comprehensive Loss Underwriting Exchange (CLUE) reports provide claims history information.

Report

Collision

Pays for damage to the insured's car when it hits or is hit by another car or object, or if the car overturns.

Coverage

Competitive

Auto

Repair

Parts

Competitive auto repair parts, or after-market parts, are generic parts made by a company other than the manufacturer of the auto. These parts meet or exceed the quality of the manufacturer's but cost less.

Comprehensive Physical Damage Coverage
Pays for damage to the insured's car from theft, vandalism, flood, fire or other covered perils.

Condo insurance
A type of homeowners insurance that meets the special needs of condominium owners.

Coverage
The scope of the protection provided in the insurance contract as well as any of several risks covered by a policy.

Customized Vehicle
An auto that has been altered or has additional equipment and accessories that were not factory-installed.

Damage
Loss or harm due to an injury to a person or property.

Damages
Money that one party becomes legally obligated to pay to another party because of a loss or harm to their person or property.

Declarations
The part of the policy that includes the name and address; the property that is being insured, its location and description; the policy period; the amount of insurance coverage and the applicable premiums.

Deductible
The portion of a claim the insured pays out-of-pocket before the insurance company pays. Choosing a higher deductible will lower the insurance premiums.

Defensive driver discount
Certain drivers (usually over age 50) who have voluntarily taken a defensive driving course may qualify for this discount on their auto insurance premiums.

Direct Check
Direct Check is an electronic payment method that lets the insured to pay their premium online with an electronic check.

Direct Pay
Direct Pay is an electronic payment method that lets the insured pay their premiums with automatic deductions from their checking account.

Discount
A reduction in the premium if the insured or their car meet certain conditions that reduce the insurer's losses or expenses. For example, auto insurance discounts are given for cars with auto theft devices and for drivers and passengers who use seatbelts.

Driver training discount
A discount for people who have taken an approved driver training course. This discount is not available in all states or for all individuals.

Emergency Road Service Coverage
Protection for problems that are not typically handled by the auto insurance such as:

- ✓ Being locked out of your car,
- ✓ Having a dead battery re-charged,
- ✓ Inflating a flat tire, or
- ✓ Filling an empty gas tank.

Endorsement
Any change made to the policy.

Estimate
The initial assessment of the cost to repair your damaged property.

Exclusion
Restriction in the insurance policy that denies coverage for certain perils, persons, property, or locations.

Expiration Date
This date, found on the declarations page, indicates when the policy coverage runs out. The renewal policy will start on this date.

Financed Car
An auto purchase financed by a loan. The lender retains a lien on the auto until it has been paid off.

Forms

Two types of forms are important in insurance: 1. preprinted contracts that form the insurance policy, 2. questionnaires or coverage selection forms that a policyholder is required to fill out.

Good student discount
May be awarded to full-time students who maintain a grade average of "B" or better.

Hazard
Anything that increases the chance of an accident occurring.

Homeowners Insurance
Insurance that protects the homeowners from losses to the insured's personal property and any damages for which the homeowner is liable.

Inspection
In some instances, policyholders will be asked to have their auto inspected. This inspection is not a safety inspection but is intended to reduce insurance fraud by verifying the condition of the auto and making sure that the auto exists.

Insurance
Insurance is a system in which groups of people who have similar chances of suffering a loss transfer their risk of loss to an insurer who pools the risk of many people together. In exchange for payment of premium, the insurer promises to reimburse the person for their covered losses.

Insurance Fraud
A variety of crimes that range from staging accidents, inflating medical bills, to falsifying an application for insurance.

Insurance ID Card
A card issued by the insurer containing basic information about their insurance policy. Some states require the card to keep an ID card in their vehicle.

Insurance Score
Used in the underwriting process in some states. An individual's insurance score is based, in part, on a person's credit history.

Insured
A person or organization covered by an insurance policy.

Insurer
An organization that provides insurance.

Leased car
An auto rented under a long-term contract (lease). The leasing company retains ownership of the auto and must be shown on your insurance policy.

Liability
Any legally enforceable obligation or responsibility for the injury or damage suffered by another person.

Limits of Liability
The amount specified in the policy up to which the insurance company will protect the insured.

Mechanical Breakdown Insurance
Covers repairs to all mechanical parts of the car, protecting the insured from expensive repair bills.

Medical Payments
Pays medical expenses (and in some cases lost wages) of the driver and passengers in the car.

Motor Vehicle Report (MVR)
A report from the agency that issues your driver's license, listing accidents and violations that appear on a driving record. This report is used to verify information provided by insurance applicants and policyholders.

Motorcycle Safety Foundation (MSF)
A national, nonprofit organization. Some applicants who complete MSF courses qualify for discounts on motorcycle insurance.

Multi-car discount
Available to policyholders who insure more than one vehicle at the same location.

No-Fault
An insurance system where your own insurance pays for your injuries regardless of who caused the accident.

Non-renewal
When an insurer decides not to renew a policy at the end of its policy period.

Original Auto parts obtained from the **Equipment** original manufacturer of the car or the **Manufacturer** supplier of the original **Parts** part.

Payment Auto insurance premium that can be paid using one of several installment payment **Plans** plans.

Peril A danger or hazard that can cause a loss, for example, a car collision with an object, or a fire.

Personal Pays medical expenses (and in some cases **Injury** lost wages) of the driver and passengers in your car. **Protection**

Personal Property that is not land or connected to land (real estate), such as furniture or **Property** jewelry.

Policy A contract between the insured and the insurance company.

Policy Any change made to the insurance policy during the period that the policy is in force. **Change**

Policyholder The person who took out the insurance policy and is named in the policy declarations.

Premium The price of the insurance policy that the insured pays in exchange for insurance coverage.

Property Pays when the insured is legally liable for **Damage** damage to the property of others caused by their auto. This coverage pays for property damage up to the dollar amount the insured selected plus the cost of any legal expenses. **Liability** **Coverage**

Quote A statement of the premium that will be charged for insurance coverages based on specific information provided by the person requesting the quote including drivers, vehicles, and driving record.

Rate Often used as a synonym for premium but actually refers to the base rating units that are used to determine the final premium.

Rating The rules that determine the cost of the insurance premium. These rules modify the base rates by applying discounts and surcharges based on the insured's personal characteristics, for example, using seat belts, insuring more than one car. **Plan**

Renewal The date that the insurance policy expires and the date that the renewed policy will begin. **Date**

Renters Insurance that provides protection from losses that arise out of the rental of a home. Protection covers losses to the insured's property, not to losses that occur as a result of owning a home. **Insurance**

Replacement Several types of parts may be used when a vehicle is repaired: new parts, both original equipment manufacturer and after-market; and recycled parts. New or after-market parts will be used if the insurer can't find like kind and quality recycled parts. A 5-year-old car, for instance, would be repaired with parts at least as good as the parts that had been in the car. The insurer guarantees the after-market parts used for these repairs for as long as they own the car. **Parts**

Rider In motorcycle insurance, a rider is someone who will operate the insured motorcycle.

Risk The chance of suffering a loss.

Self-Insured In umbrella insurance self-insured retention is similar to a deductible in other types of insurance. The self-insured retention is the amount of damages for which the policyholder is responsible before the umbrella coverage begins to cover a loss. **Retention**

Special Insurers help fight fraud through special **Investigation** investigation units, staffed with experts in fraud detection and investigation. **Units**

Subrogation If a car is damaged because of another driver's negligence and the insured asks the insurer to settle the claim for damage to their car, the

insurer will seek payment recovery (including the deductible) from the other party. This process of payment recovery is called subrogation.

Sunny Day Riding Program
Cycle-Gard's Sunny Day Riding Program gives riders who don't normally use their cycle in the winter a credit on their premiums, but it covers the rider and cycle year round.

Towing and Labor Coverage
Provides insurance if the insured's auto needs to be towed or requires roadside assistance.

Umbrella Insurance
Provides high limits of additional liability coverage above the limits of the homeowners and auto policy. In addition, it provides coverage that may be excluded by other liability policies.

Underwriting
The process an insurer goes through to determine whether or not it will provide coverage for an applicant.

Uninsured Motorist Coverage
Pays for the insured's injuries and, in some circumstances, certain property damage caused by an uninsured or a hit-and-run driver. In some cases it also includes coverage for underinsured motorists-an at-fault driver with insufficient insurance to pay your claim.

Vehicle Identification Number (VIN)
A 17-digit number assigned to each vehicle manufactured in the United States after 1980. This number is used for identification purposes and is visible on the dashboard when viewed from the outside of the vehicle.

CHAPTER 16: ETHICAL CONSIDERATIONS

An increasing amount of States now require insurance professionals to be tested as part of their continuing education requirement in the area of ethics. The purpose of this is twofold. One, licensed professionals are held to a higher level of legal responsibility to the general public and more specifically to their clients. Two, by standardizing ethics practices the insurance agent will run into less risk of unethical practice suits by the general public.

Ethics is not an issue of knowing what's right; it's a question of doing what's right.

Agents must understand the motivation behind their actions to properly counsel and advise their prospects and clients. Is the motivation due to the need to earn a commission or is the counseling based on meeting the best needs of the client?

Perceptions of Ethics

Ethics is "the discipline that deals with what is good and bad or right and wrong or with moral duty and obligation."

Ethics can be approached from two levels:

- The philosophical level dealing with the possibilities;
- The practical level - dealing with the reality of every day experiences.

Ethics is a person's perceptions or convictions about what is right or wrong.

Living by the Golden Rule is often the role model for sound religious ethics.

Society, through laws and accepted behavior patterns, imposes guidelines on how to deal with other people.

Ethics for Insurance Agents

An insurance agent is anyone who solicits insurance or who aids in the placing of risks, delivery of policies or collection of premiums on behalf of an insurance company.

There are four areas of ethical responsibility for an insurance agent:

- Responsibilities to the agent's insurer are covered under the concept of agency. The agent owes his or her insurer the duties of good faith, honesty and loyalty.
- The agent's day-to-day activities are a direct reflection of the insurer's "image" within the community.
- Responsibilities to policy owners require the agent to meet the needs of the client, provide quality service, maintain loyalty, confidentiality, timely submission of applications and prompt policy delivery.
- Responsibilities to the public require the agent to maintain the highest level of professional conduct and integrity in all public contact in order to maintain a strong positive image of the industry.

- Responsibilities to the state require the agent to adhere to the ethical standards mandated by his or her state.

Ethics for Insurance Brokers

A broker's primary responsibility is to his or her client, meaning that, the broker is charged with the responsibility of finding the appropriate insurance coverage and markets to meet a client's needs.

Brokers are held to the same standards of care as agents in terms of their responsibilities to the general public and the state.

CHARACTERISTICS OF A PROFESSIONAL

The word "profession" means an open or public declaration, but has come to mean any calling requiring academic training and specialized knowledge.

Insurance agents and real estate agents are considered professionals because their business meets the following six commonly accepted characteristics of a profession:

- Commitment to high ethical standards;
- Concern for the welfare of others;
- Mandatory licensing and training;
- Formal participation in an association or society;
- Acting with integrity and objectivity;
- Public acknowledgement as a profession.

FIDUCIARY RESPONSIBILITIES

The two fundamental principals of an agency relationship are power and authority and the high standards of conduct expected of the agent as a fiduciary

The concept of Agency

Agency is a legal term used to describe the relationship between two parties, in which the principal authorizes the agent-to, perform certain legally binding acts on the principal's behalf.

The main components of an agency relationship are:

- ✓ An agent is an agent of the principal, not the third party with whom the agent deals;
- ✓ An agent has the power to bind the principal to a legal contract and its terms;
- ✓ The acts of the agent, within the scope of authority, are the acts of the principal;
- ✓ Agency can be created by;
- ✓ Appointment or Explicit contract.

Estoppel

The principal allows someone to act in a way that would induce a third party to believe that a person was an agent of the principal.

Ratification

The principal later sanctions the actions of an authorized principal. Before an individual can act as an agent he or she must have the power and authority to take action. There are three types of agency authority:

Express authority

Is the authority the principal intentionally and expressly gives the agent.

Implied authority

Is the authority that the principal intends for the agent to have, but does not expressly give.

Apparent authority

Arises when a principal permits an agent to perform acts neither expressly nor implicitly authorized.

The limits to an insurance agent's authority are usually defined in his or her agency agreement and the agent must work within those perimeters.

The ethical significance of these limits to an insurance agent's authority is that an agent must serve the needs of the insurer, live up to the contract and operate within the scope of his or her authority. By entering into this contractual relationship with the insurer, the agent becomes a fiduciary of the insurer.

THE AGENT AS A FIDUCIARY

An individual whose position and responsibilities involve a high degree of trust and confidence is known as a fiduciary. An insurance producer has a fiduciary relationship with his or her insurer with regard to the following:

Loyalty to the insurer

A producer must at all times act in the insurer's best interest, not his or her interests of personal gain.

Skill and performance

An agent has the duty to carry out his or her actions with the care and skill because an agent represents the company to the public and must act in such a manner as not to create a tarnished image for the company.

Full disclosure

An agent is obligated to fully disclose all information he or she has that may affect the insurer and its ability to do business. Full disclosure is critical during the application and claims handling processes.

Follow up

An agent has the obligation to act promptly in all matters regarding the insurer's business, including the duties to forward completed applications as quickly as possible.

Handling of premiums

By law, payment to an agent is payment to the insurer. The agent has a fiduciary duty to turn over all funds given to him or her as specified in the agency agreement.

Avoiding conflicts of interest

An insurance agent cannot serve two principals at the same time. An agent has the ethical duty to make full disclosure to an insurer in regard to any other related service he or she provides and receives compensation.

Responsible solicitation

An agent has the duty to solicit only business that appears to be good and profitable to his employer.

Competitive integrity

An agent cannot misrepresent or in any way defame a competitive agent or insurer. An agent must compete only on the basis of products and services he or she can provide.

PRINCIPAL'S RESPONSIBILITIES

The principal is responsible for the acts of its agents and owes the agent three duties:

- Payment of compensation in the form of commissions or fees;
- Employment in return for meeting production responsibilities;
- Indemnification or reimbursement for damages or expenses incurred in defending claims for which the agent may be liable.

Legally, a broker acts as an agent and representative of the applicant. However, when an insurer gives a policy for delivery to an insured, the broker becomes the agent for the insurer. Should payment of a premium be involved, payment to the broker is considered payment to the insurer.

Although, the broker technically represents the client, the ethical and fiduciary standards that apply to an agent also apply to a broker.

Employing sound ethics principles permits producers to serve both the insurer and client may consider serving both the insurer and the client without creating a conflict of interest.

RESPONSIBILITIES TO CONSUMERS & CLIENTS

Agents fulfill their ethical responsibilities to their insurers by providing the appropriate Products to meet their consumers' needs, as well as, quality service. Making sure that the consumer understands both the products and underwriting process is a critical responsibility of the agent.

The insurance agent can serve the needs of the prospect by providing the prospect with the types of policies that best fit his or her needs, in the amounts he or she can afford. In order to accomplish these goals, the agent should:

- ✓ Obtain the required knowledge and skills to accomplish the needed objectives.
- ✓ Educate the prospect or policy owner about the products and plans being recommended by the agent.
- ✓ Additionally, the agent should be committed to, not only selling the product, but to quality service both before, during and after the sale.

This means:

- ✓ Educating the prospect about insurance products and the underwriting process;
- ✓ Treating all information obtained with confidentiality;
- ✓ Disclosing all necessary information so that an informed decision can be made; by both the insurer and the prospect;
- ✓ Keeping the prospect informed through out his application;
- ✓ Showing loyalty to prospects, clients and insurer.

Service begins with the application.

It is the agent's duty to:

- ✓ See to it that the application is completed both accurately and completely;
- ✓ To properly explain why required information is necessary;
- ✓ How the information will be evaluated by the underwriter;
- ✓ That accuracy and honesty are imperative in the application;
- ✓ A prospect should be informed that failure to disclose information could result in denial of claims or policy cancellation;
- ✓ It should be explained that a binder provides temporary protection while the policy is being underwritten and is not a guarantee that the policy will be issued.

The agent or broker is responsible for service before and after the sale, which includes:

- ✓ Maintaining accurate client records;
- ✓ Maintaining complete and accurate records of all business transactions;
- ✓ Knowledge of new coverage and products;
- ✓ Availability and changes in products offered in the marketplace;
- ✓ Assistance with claims processing;
- ✓ Reviewing clients' existing policies;
- ✓ Suggestions on updating coverage on existing policies;
- ✓ Ethically an agent or broker must respect the confidential information provided by the client and must assist the client in the following areas:
 - ✓ Selecting the most appropriate policy;
 - ✓ Understanding the basic features of the policy;
 - ✓ Evaluating the costs and features of similar plans.

Ethical standards must be used in evaluating risk management

Risk management is the process of decision making that protects assets and income against accidental or unintended loss by identifying, measuring, controlling and treating the elements that contribute to the risk.

Two basic risk management rules are:

The size of the potential loss must be within the scope of the resources available to the insurer.

The possible benefit must exceed the costs of the potential loss.

The risk manager, agent or broker should:

- ✓ Identify and measure the loss exposures and hazard;
- ✓ Determine the amount of money available to pay for the potential loss;
- ✓ Identify various risk management techniques to deal with potential losses.

Risk management techniques include:

- Avoidance-averting a loss by refusing to take part in something that could cause a loss;
- Transfer- shifting risk to another entity through a contract or hold-harmless agreement;

- Loss control-reducing the frequency or probability of loss through loss prevention or lowering the severity of loss through loss reduction;
- Retention-holding part of the risk through deductibles or all of the risk through self-insurance;
- Insurance-transferring risk to an insurance company.

RESPONSIBILITIES TO THE GENERAL PUBLIC

Because unethical behavior by agents and brokers can affect the whole industry, the integrity and professionalism of their conduct is of utmost concern to all.

The public's perception of the insurance industry is gagged by the behavior of both insurance agents and brokers and their commitment to professionalism is the key to the public's trust of the industry.

Insurance is something that is used by many, but yet, many are unaware of how insurance works and benefits them.

The ethical agent has a duty to provide the consumer with fair and honest information of the policies and services he or she has to offer.

The Insurance Industry is regulated by both the state and federal governments with the state departments of insurance issuing rules and regulations, licensing insurers, agents and brokers, suggesting laws to legislators, examining insurers' financial operations, approving policy forms and overseeing marketing practices.

A code of ethics is employed by the industry to guide corporations, agents and brokers.

Insurance producers continuously face complex issues dealing with skill, competence, and levels of knowledge required of professionals.

Professional conduct often dictates that the client's need be put ahead of the agent's needs, be dedicated to the insurance industry and offer quality plans from quality insurance companies. The agent should develop high ethical standards, adhere to integrity and serve the interests of the client.

The public's perception of the activities of an individual agent or broker shapes the perception of the industry as a whole.

Skill, competence, professionalism and moral integrity shape public perception.

THE ENFORCEMENT OF ETHICS

Each state regulates the ethical conduct of insurance producers by creating rules, regulations and legislation to protect the consumer.

States through an Insurance Commissioner or Director to oversee the marketing activities of agents regulates the Insurance industry.

The National Association of Insurance Commissioners (NAIC) proposes model legislation to:

- ✓ Encourage uniformity in state insurance laws and regulations;
- ✓ Assist officials in administering laws and regulations;
- ✓ Help protect the interest of policy owners;
- ✓ Preserve state regulation of insurance.

Most states have laws that protect consumers against unfair trade practices such as misrepresentation and/or false advertising, coercion, improper placement, or rebating.

States also prohibit unfair claims methods and practices, such as:

- ✓ Misrepresenting policy provisions to claimants or The insured;
- ✓ Failing to deliver a determination on a claim within a reasonable time;
- ✓ Failing to settle claims promptly and fairly;
- ✓ Attempting to settle a claim for less than could be reasonably expected;
- ✓ Engaging in activities that result in a disproportionate number of complaints;
- ✓ Failing to provide necessary claims forms;
- ✓ Unfair claims practices.

Insurers are prohibited from engaging in underwriting or rating that is based on race, religion, and national origin or redlined areas.

In most states the punishment for unethical practices ranges from fines to license suspension and revocation.

Once a license is revoked, normally a one-year waiting period is required for re-application. And in most states a bond will also be required.

People who set high personal and professional goals of honesty, integrity, loyalty, fairness and truthfulness will never have to deal with the penalties set by state governing bodies.

MAKING DECISIONS ETHICALLY

When trying to make decisions ethically, ask yourself the following questions:

To whom do I have obligations?

Whose rights must I protect?

What rules apply to this situation and should be observed?

Would I be proud of my decision and advocate this action again?

Even the most ethical producers are often time confronted with unhappy clients who feel their claim was improperly handled. Producers can help to protect themselves by:

- ✓ Maintaining high standards of personal ethics;
- ✓ Having errors and omissions insurance;
- ✓ Being diligent when recommending policies and placing business;
- ✓ Being committed to continuing education.

Competition and production quotas often encourage producers to look to an increased bottom line, regardless of what it takes.

An agent's moral values and standards should help to resolve this inner conflict and guide them to the right decision.

CODE OF ETHICS

Independent Insurance Agents of America believe in the insurance business and its future, and that the Independent Insurance Agent is the instrument through which insurance reaches its maximum benefit to society and attains its most effective distribution.

I will do my part to uphold and build the Independent Agency System, which has developed insurance to its present fundamental place in the economic fabric of our nation. To my fellow members of the Independent Insurance Agents of America, I pledge myself always to support right principles and oppose bad practices in the business.

I believe that these three have their distinct rights in our business: first, the Public; second, the Insurance Companies, and third the Independent Insurance Agents, and that the rights of the Public are paramount.

To the public:

I regard the insurance business as an honorable occupation and believe that it affords me a distinct opportunity to serve society.

I will strive to render the full measure of service that would be expected from an Independent Insurance Agent.

I will analyze the insurance needs of my clients, and to the best of my ability, recommend the coverage to suit those needs.

I will endeavor to provide the public with a better understanding of insurance.

I will work with the national, state, and local authorities to heighten safety and reduce loss in my community.

I will take an active part in the recognized civic, charitable, and philanthropic movements, which contribute, to the public good of my community.

To the companies:

I will respect the authority vested in me to act on their behalf.

I will use care in the selection of risky, and do my utmost to merit the confidence of my companies by providing them with the fullest creditable information for effective underwriting, nor will withhold information that may be detrimental to my companies' sound risk taking.

I will expect my companies to give to me the same fair treatment that I give to them.

To fellow members:

I pledge myself to maintain friendly relations with other agencies in my community. I will compete with them on an honorable and fair basis, make no false statements, or any misrepresentation or emission of facts.

I will adhere to a strict observance of all insurance laws relative to the conduct of my business.

I will work with my fellow Independent Insurance Agents for the betterment of the insurance business.

Realizing that only by unselfish service can the insurance industry have the public confidence it merits, I will at all times seek to elevate the standards of my occupation by governing all my business and community relations in accordance with the provisions of this Code and by inspiring others to do likewise.

American Institute for Chartered Property and Casualty Underwriters
Code of Professional Ethics

Canons and Rules

Canon 1

CPCUs Should Endeavor at All Times to Place the Public Interest Above Their Own.

Rules of Professional Conduct

- R1.1 A CPCU has a duty to understand and abide by all Rules of conduct, which are prescribed in the Code of Professional Ethics of the American Institute.
- R 1.2 A CPCU shall not advocate, sanction, participate in, and cause to be accomplished, otherwise carry out through another, or condone any act, which the CPCU is prohibited from performing by the Rules of this Code.

Canon 2

CPCUs Should Seek Continually to Maintain and Improve Their Professional Knowledge, Skills, and Competence.

Rules of Professional Conduct

- R2.1 A CPCU shall keep informed on those technical matters that are essential to the maintenance of the CPCU's professional competence in insurance, risk management, or related fields.

Canon 3

CPCUs Should Obey All Laws and Regulations, and Should Avoid Any Conduct or Activity Which Would Cause Unjust Harm to Others.

Rules of Professional Conduct

- R3.1 In the conduct of business or professional activities, a CPCU shall not engage in any act or omission of a dishonest, deceitful, or fraudulent nature.
- R3.2 A CPCU shall not allow the pursuit of financial gain or other personal benefit to interfere with the exercise of sound professional judgment and skills.
- R3.3 A CPCU will be subject to disciplinary action for the violation of any law or regulation, to the extent that such violation suggests the likelihood of professional misconduct in the future.

Canon 4

CPCUs Should Be Diligent in the Performance of Their Occupational Duties and Should Continually Strive to Improve the Functioning of the Insurance Mechanism.

Rules of Professional Conduct

- R4.1 A CPCU shall competently and consistently discharge his or her occupational duties.
- R4.2 A CPCU shall support efforts to effect such improvements in claims settlement, contract design, investment, marketing, pricing, reinsurance, safety engineering, underwriting, and other insurance operations as will both inure to the benefit of the public and improve the overall efficiency with which the insurance mechanism functions.

Canon 5

CPCUs Should Assist in Maintaining and Raising Professional Standards in the Insurance Business.

Rules of Professional Conduct

- R5.1 A CPCU shall support personnel policies and practices which will attract qualified individuals to the insurance business, provide them with ample and equal opportunities for advancement, and encourage them to aspire to the highest levels of professional competence and achievement.
- R5.2 A CPCU shall encourage and assist qualified individuals who wish to pursue CPCU or other studies, which will enhance their professional competence.
- R5.3 A CPCU shall support the development, improvement, and enforcement of such laws, regulations, and codes as will foster competence and ethical conduct on the part of all insurance practitioners and inure to the benefit of the public.
- R5.4 A CPCU shall not withhold information or assistance officially requested by appropriate regulatory authorities that are investigating or prosecuting any alleged violation of the laws or regulations governing the qualifications or conduct of insurance practitioners.

Canon 6

CPCUs Should Strive to Establish and Maintain Dignified and Honorable Relationships with Those Whom They Serve, with Fellow Insurance Practitioners, and with Members of Other Professions.

Rules of Professional Conduct

- R6.1 A CPCU shall keep informed on the legal limitations imposed upon the scope of his or her professional activities.
- R6.2 A CPCU shall not disclose to another person any confidential information entrusted to, or obtained by, the CPCU in the course of the CPCU's business or professional activities, unless a disclosure of such information is required by law or is made to a person who necessarily must have the information in order to discharge legitimate occupational or professional duties.
- R6.3 In rendering or proposing to render professional services for others, a CPCU shall not knowingly misrepresent or conceal any limitations on the CPCU's ability to provide the quantity or quality of professional services required by the circumstances.

Canon 7

CPCUs Should Assist in Improving the Public Understanding of Insurance and Risk Management.

Rules of Professional Conduct

- R7.1 A CPCU shall support efforts to provide members of the public with objective information concerning their risk management and insurance needs, and the products, services, and techniques, which are available to meet their needs.
- R7.2 A CPCU shall not misrepresent the benefits, costs, or limitations of any risk management technique or any product or service of an insurer.

Canon 8

CPCUs Should Honor the Integrity and Respect the Limitations Placed upon the Use of the CPCU Designation.

Rules of Professional Conduct

- R8.1 A CPCU shall use the CPCU designation and the CPCU key only in accordance with the relevant GUIDELINES promulgated by the American Institute. R8.2 A CPCU shall not attribute to the mere possession of the designation depth or scope of knowledge, skills, and professional capabilities greater than those demonstrated by successful completion of the CPCU program.
- R8.3 A CPCU shall not make unfair comparisons between a person who holds the CPCU designation and one who does not.
- R8.4 A CPCU shall not write, speak, or act in such a way as to lead another reasonably to believe the CPCU is officially representing the American Institute, unless the CPCU has been duly authorized to do so by the American Institute.

Canon 9

CPCUs Should Assist in Maintaining the Integrity of the Code of Professional Ethics.

Rules of Professional Conduct

- R9.1 A CPCU shall not initiate or support the CPCU candidacy of any individual known by the CPCU to engage in business practices, which violate the ethical standards, prescribed by this Code.
- R9.2 A CPCU possessing unprivileged information concerning an alleged violation of this Code shall, upon request, reveal such information to the tribunal or other authority empowered by the American Institute to investigate or act upon the alleged violation.
- R9.3 A CPCU shall report promptly to the American Institute any information concerning the use of the CPCU designation by an unauthorized person.

Focus Points

- An increasing amount of States now require insurance professionals to be tested as part of their continuing education requirement in the area of ethics.
- Ethics is not an issue of knowing what's right; it's a question of doing what's right.
- Ethics is "the discipline that deals with what is good and bad or right and wrong or with moral duty and obligation."
- Ethics can be approached from either the philosophical level or the practical level.
- Insurance agents are ethically responsible to the insurer, the community, the policy owner, the public and the state.
- Brokers are held to the same standards of care as agents in terms of their responsibilities to the general public and the state.
- Agency describes the relationship between two parties, in which the principal authorizes the agent to perform certain legally binding acts on the principal's behalf.
- The two fundamental principals of an agency relationship are power and authority and the high standards of conduct expected of the agent as a fiduciary.

- Estoppel describes the principal allowing someone to act in a way that would induce a third party to believe that a person was an agent of the principal.
- Ratification is defined as principal later sanctioning the actions of an authorized principal.
- The three types of agency authority are; express authority, implied authority and apparent authority.
- The limits to an insurance agent's authority are usually defined in his or her agency agreement.
- An individual whose position and responsibilities involve a high degree of trust and confidence is known as a fiduciary.
- The principal is responsible for the acts of its agents.
- Legally, a broker acts as an agent and representative of the applicant; however, when an insurer gives a policy for delivery to an insured, the broker becomes the agent for the insurer.
- Although, the broker technically represents the client, the ethical and fiduciary standards that apply to an agent also apply to a broker.
- By providing quality service and appropriate products that meet their consumer's needs agents may fulfill their ethical responsibilities to their insurers.
- Making sure that the consumer understands both the products and underwriting process is a critical responsibility of the agent.
- The insurance agent can serve the needs of the prospect by providing the prospect with the types of policies that best fit his or her needs, in the amounts he or she can afford.
- Two basic risk management rules are the size of the potential loss must be within the scope of the resources available to the insurer and the possible benefit must exceed the costs of the potential loss.
- Risk management techniques include; avoidance, transfer, loss control, retention and risk transferring.
- Each state regulates the ethical conduct of insurance producers by creating rules, regulations and legislation to protect the consumer.
- Most states have laws that protect consumers against unfair trade practices such as misrepresentation and/or false advertising, coercion, improper placement, or rebating.
- Insurers are prohibited from engaging in underwriting or rating that is based on race, religion, and national origin or redlined areas.
- In most states the punishment for unethical practices ranges from fines to license suspension and revocation.
- Once a license is revoked, normally a one-year waiting period is required for re-application.