

## **Chapter 9 Important Concepts**

### **Concepts to Remember**

#### **Subrogation**

Subrogation is the substitution of one party in place of another party in respect to a claim or a lawful right. When one's property is damaged by another party, the individual has a right to recover from the other party for the damage. When the insurance company pays for the loss, it takes over the rights of recovery that previously belonged to the individual.

For example, Bob destroys Scott's guitar, which is covered by Scott's homeowners' policy. The insurance company pays Scott for the covered loss, and then goes after Bob to recover the amount, for which Bob is liable.

Subrogation evolved in order to prevent injured parties from collecting from the insurance company and the responsible party. Scott cannot collect on a claim from his insurance company and then sue Bob as well for the same loss. By accepting payment for the claim, Scott waives his right of subrogation to the insurance company.

#### **Statements**

Insured individuals have certain rights regarding claim statements. There are these two kinds of statements that they may be asked to give in regards to a claim:

1. An informal statement taken by the company representatives when they inspect the loss.

This kind of statement is either handwritten or recorded on tape. The statement is taken to record facts, and the policyholder's story. The existence of a statement lessens the probability of a policyholder changing his or her story over time.

2. A formal statement under oath. If requested by the company, a formal statement can be required under a homeowners' policy. It is usually taken by an attorney and is, in effect, sworn testimony. If the insured lies, he or she would be guilty of perjury. If the insured refuses, the claim could be rendered void. Formal statements usually indicate something is suspicious about the claim.

#### **Salvage**

The insurance company has the right to salvage property such as fixtures, appliances and any other part of a building as long as the policyholder has been paid for a total loss.

Sometimes, the salvage goods will be sold back to the policyholder, however, they are under no obligation to accept this offer. For the most part, insurance companies will seek the services of a salvage company and do not care to directly involve themselves. After the salvage company subtracts expenses and a percentage for profit, the balance goes to the insurance company as a return on the salvage operation.

#### **Non-Waiver Agreement**

By merely investigating the facts of a case, the insurance company can sometimes lose its right to deny a claim. There is a term known as "estoppel," which means that in the event a company leads a policy holder to believe that a claim will be paid or implies that it will be paid in some manner, estoppel prohibits the insurer from denying the claim.

If the investigation uncovers facts that clearly indicate that the claim is not covered, this can still hold true. To avoid this possibility, many companies that investigate questionable claims have the insured sign a non-waiver agreement that states that the insured understands that the company is not committed to paying the claim just because the facts are being explored.

#### **Cancellation**

A homeowners' policy may be canceled by the company or the policyholder. If the company cancels, the insured is entitled to the full amount of unused premiums on a pro-rated basis. If the insured cancels, he/she will receive slightly less than the remaining unused premium. In order for

a policyholder to cancel, he/she only needs to notify the company in writing to do so. If the company cancels, it must give five days' notice.

## **Policy Terminology**

Like all insurance policies homeowners' insurance has its own definition of terms. Because of consumer complaints and court decisions terms are defined in each policy to reflect their definition within that policy. The following are representative of terms used in homeowners' policies or otherwise relate to homeowners policies.

**Additional insured** refers to an individual or company in addition to the insured, who is listed on the Declaration page. An example of this is a lien holder, which is usually an insurance company.

**Aggregate Limit** is a term that refers to the maximum liability limit covered in total for all losses occurring within the policy period.

**Appurtenant structure** refers to a building of lesser value that is situated on the same land as the main building that is insured by the policy.

**Bodily injury** means any physical injury that results in bodily harm, sickness or diseases, including the pain and suffering that may result. Also included in this definition is any resulting care, loss of services or death caused by the bodily injury.

**Broad theft endorsement** is a dwelling endorsement that covers theft, attempted theft, vandalism and malicious mischief resulting from the theft. Property is covered while it is on or off the premises.

**Burglary** is defined as the taking of property by a person, unlawfully entering or leaving the premises, as evidenced by visible signs and physical damage.

**Business** is a term that includes any trade, profession or occupation. It applies to any type of usual or ongoing business pursuit, from a professional office in the home to weekly garage sales.

**Business Pursuits Endorsement** refers to a homeowners' policy endorsement that provides Liability coverage for a business conducted away from the residence.

**Earthquake Endorsement** is available as an add-on endorsement to the Dwelling or Homeowner policy.

**First Named Insured** is the first named individual in the Declaration page. The first named insured may have higher degree of rights, responsibilities and duties under the policy.

**Insured** means the person named on the Declaration page, spouse, any relatives and persons under the age of 21 and in the care of any of the persons previously named, if they live in the insured residence. Under Section II of the policy, the definition also means persons who, with permission, are responsible for watercraft or animals owned by the insured. Coverage of the watercraft and animals are excluded if used for business purposes. The definition also applies to the insured's employees and other persons while they are operating vehicles covered under the policy on an insured location, as long as they have permission of the insured.

**Insured Location** includes the residence premises, any other residential premises listed in the Declaration page, and any residence premises acquired after the inception date of the policy. Also included are any premises the insured does not own but where he or she temporarily resides (such as a motel or hotel).

Also included is vacant land owned (excluding farmland) or rented by the insured, land on which a one or two-family residence is being built for the insured, individual or family cemetery plots or burial vaults owned by an insured. Additionally, any premises the insured occasionally rents, such as a banquet hall, as long as the reason is not for business purposes.

## **Types of Coverage**

## **Business Coverage**

### **Property Insurance**

Property insurance protects an owner's buildings and equipment, stock, furniture and fixtures. Some policies include equipment breakdown and business income coverage. Basic property insurance will generally cover a business for losses in the event of a fire or lightning strike and will pay the cost of removing property to protect it from further loss. Additionally, a standard small business insurance policy will usually cover losses from windstorm, hail, explosion, riot and civil commotion and damage caused by aircraft, automobiles or vandalism.

How much property insurance does a small business need?

Property insurance can be purchased on the basis of the property's actual value (the replacement cost minus depreciation), its replacement value (the cost of replacing the item without deducting for depreciation), or an agreed-upon amount.

### **Liability Insurance**

#### **How does liability insurance coverage protect a small business?**

There are many different types of third-party liabilities to be covered for a business. Business liability insurance may protect from claims arising from someone's bodily or personal injuries.

Other items that could be covered are damage to the property of others, products-completed operations, advertising, premises operations, fire, legal liability and related legal defense costs. For instance, liability insurance will not only pay the cost of covered damages but also the attorney fees and other costs associated with your defense.

#### **What exactly does the term "bodily injury" in a liability insurance policy mean?**

"Bodily injury" refers to the injury, sickness, disease, or even death, of any person that occurs during the policy period.

#### **What does "personal and advertising injury" mean in general liability insurance coverage?**

Personal and advertising injury means being responsible for libel, slander or any defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; wrongful entry or eviction, or other invasion of the right of private occupancy; false arrest, wrongful detention, false imprisonment, or malicious prosecution; which occurs during the policy period.

#### **What's the difference between claims-made coverage and prior acts coverage?**

While claims-made coverage applies to a claim that is made during the policy period, prior acts coverage offers protection for wrongful acts that happened before the inception date of an insurance policy...but have yet to become known.

For example, a buyer of errors and omissions (E&O) Insurance may want to extend coverage for a period of time prior to when the coverage becomes effective...just in case.

### **Umbrella Policy**

#### **How does an umbrella insurance policy work?**

A policy designed to provide protection against catastrophic losses, the umbrella insurance policy is generally written over various primary liability policies, such as a general liability insurance policy, business auto policy and employers' liability coverage. Once the underlying limits of these primary policies are exhausted, the umbrella liability policy would provide further coverage beyond the limits of those policies.

#### **What is a personal umbrella liability policy?**

This is an insurance contract designed to accomplish two goals. First, it increases liability protection beyond what individuals have in homeowners' and automobile insurance policies. Second, it aims to fill gaps in the liability coverage since some things are simply not covered by

automobile and homeowners' policies - for example, libel and slander. Together with homeowners' and automobile insurance policies, a personal umbrella policy gives the highest level of protection.

### **How do I know if I need a personal umbrella liability policy?**

In the past, people who purchased personal umbrella liability policies were wealthy individuals, with sizable amounts of personal assets that would be at risk in a lawsuit. However, our society has become more litigious, and many people desire more liability insurance than that provided under their homeowners and automobile insurance policies. How much protection an individual wants against potential lawsuits is a choice he/she should make based on his/her personal circumstances and what he/she needs to feel comfortably protected.

### **What coverage is provided in the typical personal umbrella liability insurance policy?**

Before we discuss the contents of the typical personal umbrella liability (PUL) policy, it should be noted that these contracts often vary substantially from one insurance company to another.

Therefore, when comparison shopping, one should look closely at the extent of the liability protection provided under each policy to be considered. There are several common characteristics in most umbrella insurance policies. First, umbrella policies only pay liability claims when the policy limits on the underlying insurance policy are exhausted. For example, suppose an individual is found negligent in an automobile accident and the court requires them to pay damages of \$500,000. The umbrella insurance policy will only pay that portion of the \$500,000 that exceeds the policy limit in the private passenger automobile insurance policy. Second, an umbrella insurance policy is going to provide broad coverage.

## **Workers' Compensation Insurance**

### **What does workers' compensation insurance do?**

Workers' compensation pays for the rehabilitation, recovery and medical bills of employees' work-related injuries, as well as lost time when they are unable to work because of a work-related injury. Workers' compensation is not a substitute for health or medical insurance, since employees are only covered for on-the-job injuries. This is also due to the fact that health and medical policies exclude job-related injuries or illnesses.

### **When does an employer need to buy workers' compensation insurance?**

In most states, workers' compensation is required when there are one or more employees. There are a few states that do not require employers to carry workers' compensation coverage. Those states are Texas and New Jersey.

Not providing workers' compensation coverage is usually a bad idea, even if you have the option of opting out. When an injured employee accepts the benefits of his or her employer's workers' compensation, he or she cannot also sue the employer for those injuries/illnesses. This is called "exclusive remedy."

### **Who provides workers' compensation?**

Almost all states are "open market," which means the coverage is underwritten by private insurers. Some states are "closed" or "monopolistic." This means that coverage is underwritten by a state-sponsored fund (ND, OH, WA, WV, and WY). In states that are open, rates can vary between insurance carriers depending on the type of business the carrier is attempting to attract. In an open market, the rates for workers' compensation are competitive.

### **How much does workers' compensation insurance cost?**

Workers' compensation pricing is based upon employee payroll, the number and job classification of the employees, classification of the business and past loss experience. The employer pays for the cost of the workers' compensation.

## **Commercial Auto Insurance**

### **Why should someone purchase commercial auto insurance?**

Many personal auto insurance policies exclude coverage if a vehicle is used mainly for business. A commercial auto policy provides coverage for autos owned by a business if these vehicles are in

an accident. The insurance pays to repair or replace the vehicle and the vehicle of the third party damaged by the employee. It also pays for the medical expenses of those injured in an accident.

### **Are employees' personnel covered under a commercial auto policy if they are using their cars for business?**

Most commercial auto insurance policies cover the liability for a business if employees use their own cars for business, provided that the business owner has purchased coverage for non-owned liability. Separate non-owned physical damage coverage is available to cover actual damage to the auto. However, the employees' personal auto policy would be the primary coverage for damage to their automobiles.

## **Errors & Omissions Insurance**

### **What is errors & omissions insurance?**

Errors & omissions insurance provides coverage for people who give advice, make educated recommendations, design solutions or represent the needs of others. "E&O" is also referred to as professional liability or malpractice insurance. This type of liability insurance would cover the owner and the employees in the event someone claims that services were incorrectly performed or failed to perform the agreed upon professional duties.

## **Business Owners' Policy**

### **What is a business owners' policy or a "BOP"?**

A BOP is a customized policy for small businesses that combines property insurance and liability insurance in one policy, and generally includes additional coverages at little or no additional premium. It allows one to have broad coverage at affordable premiums. Most insurance carriers have customized BOPs for particular industries and services.

Even if a business owner has a BOP, most small business owners should consider adding coverage for conditions that might not otherwise be covered. Additional coverages tailored to their industry are often available, such as temperature changes, equipment breakdown, or computer equipment failure.

## **Business Income Insurance**

### **What is business income insurance?**

This insurance reimburses for the net income that would have been earned if, for example, a fire or other covered causes of loss had not occurred. Losses due to down time or extra expenses needed to restore operations (such as additional property rental) also may be covered.

## **Employment Practice Insurance**

### **What is employment practices liability insurance?**

Employment practices liability insurance (EPLI) is designed to protect employers against claims of employee sexual harassment, discrimination, wrongful termination and other employment-related litigation. Many insurance companies offer employment practices liability insurance as part of their business owners' policy or as a stand-alone policy.

## **Inland Marine Insurance**

### **What is inland marine insurance? Why does someone need it for his/her business?**

Despite its misleading name, inland marine is a broad type of insurance that covers articles that may be transported from place to place as well as via bridges and tunnels. Specifically, this type of insurance protects a wide range of high risk, mobile items, including specialized contractor's tools and equipment, electronic data processing systems, from mainframe computers to laptops, fine art objects and jewelry.

## **Watercraft and Boat Insurance**

If an individual is an avid watercraft enthusiast with some nice toys in the garage, that person

might want to check into watercraft insurance. Some consumers assume that their craft is covered under homeowners' insurance, and in most cases, they aren't. The first thing a consumer must do is know his/her watercraft! Fully understanding all operational aspects and characteristics before heading out onto the open water is a critical element to safety. The personal watercraft is considered a powerboat, so all the rules governed for powerboats by the Coast Guard and other marine authorities must be obeyed. Local waterways sometimes have their own guidelines for use, so a consumer must get to know and understand them as well in order to promote public safety.

### **Who and What Is Covered?**

It comes down to the policy specifics, but in most cases, the policy will cover the insured, the spouse, or any other household members that have permission to ride the craft. The policy will pay for bodily injury or other property damages caused by the craft. Various available coverages include medical payments, physical damage, uninsured boater, and personal effects.

**Medical Payments:** This extra coverage will pay for the cost of necessary medical treatment which results from an accident involving the watercraft.

**Physical Damage:** This will cover the cost of repair to the watercraft if there is a collision with another craft or other object. In most cases, there will also be coverage in cases of theft, vandalism, or fire.

**Uninsured Boater:** This coverage pays for medical treatment which results from an accident with another boater who does not have insurance.

**Personal Effects:** This optional coverage will cover some of the various common contents kept within a watercraft. These may include cameras, binoculars, clothing, or assorted accessories.

**Lowering the Premium:** Taking a watercraft safety course not only will make the insured a more proficient rider, but will help him/her receive a premium discount from most providers. It can range anywhere from 10-15 percent off.

### **Personal Property**

If an unfortunate occurrence such as a fire or theft should happen, it is best to have an accurate and detailed inventory of personal property.

Having an inventory list not only helps the insurance company give a more accurate replacement value for personal property, but the insured will be assured that he/she remembered everything he/she owned, which, when it is all gone, may sometimes be hard to do.

The first step is to encourage the insured to take a few minutes to list everything he/she owns. It may be easier to start the list in categories such as furniture, clothing, personal items, jewelry, etc.

Next, there should be a notation as to the estimate of what it would cost to replace the items on the list. In making the estimate, it must be kept in mind that some things appreciate in value while others depreciate. Clothing is a good example of something depreciating, and a jukebox is something that would typically appreciate.

The personal property inventory list, along with photos and/or inventory videos, should be kept in a safe place away from home, such as in a bank lock box.

The most used method by insurance companies to calculate the value of personal property that has depreciated is to subtract the estimated depreciation (dollar amount the property has decreased) from the current cost.

Here are a few more tips when taking an inventory of personal property:

- Keep sales receipts and attach to the personal property inventory list.
- Keep a video inventory or photographs of the personal property in addition to the inventory list.

- List any serial #'s that may be on the personal property.
- A serial number should be engraved into items that are of value.