Module 1

Commercial Liability Loss Overview

LOSS EXPOSURES

LEGAL BASIS

-LEGAL LIABILITY
-CIVIL LAW:
  -TORTS
  -CONTRACTS
  -STATUTES

COMMERCIAL LIABILITY EXPOSURES

-PREMISES AND OPERATIONS
-PRODUCTS AND COMPLETED OPERATIONS
-AUTO
-WORKERS COMPENSATION

CONTROLLING LOSSES

RISK CONTROL

-REASONS FOR RISK CONTROL
-FOUNDATION FOR RISK CONTROL
-PRE-ACCIDENT TECHNIQUES
-POST-ACCIDENT TECHNIQUES

CONTROLLING LIABILITY LOSSES

-RISK CONTROL DECISIONS
-PREMISES LIABILITY
-OFF-PREMISES OPERATIONS
-PRODUCTS AND COMPLETED OPERATIONS
-RISK CONTROL EVALUATION
-AUTO
-WORKERS COMPENSATION

Commercial Liability Loss Overview

Module 1
Chapter 1

1

1

Objectives

- Obj I: Torts, Contracts, and Statutes
- Obj II: Commercial Liability Loss Exposures
- Obj III: Using Commercial Liability Risk Control
- Obj IV: Controlling Liability Losses

2

2

Torts, Contracts, and Statutes

Objective I

3

3

Legal Liability

- Legal liability is an obligation for a person or entity to pay a sum of money to another.
  - Can be imposed by civil and/or criminal law.
- Liability insurance responds to civil losses.
  - Insurance for criminal liability is prohibited.
- Legal liability imposed by civil law is based on:
  - Torts.
  - Contracts.
  - Statutes.

4

4

Torts

- Torts are civil wrongs, and include negligence, intentional torts, and strict liability torts.
  - Most claims covered by liability insurance are based on tort law.
- Negligence is the failure to exercise a reasonable degree of care.
  - Duty owed to another person.
  - Breach of that duty.
  - Resulting harm.
  - Actual loss or damage occurs.

5

5

Torts

- An intentional tort is a tort committed by a person who foresees the act will cause harm.
  - Does not necessarily have to be performed with malicious or hostile intent.
- Strict liability is liability imposed even though defendant acted neither negligently nor with intent to cause harm.
  - Absolute liability.

6

6

Contracts

- Legal liability can also be imposed by contracts.
  - Breach of contract – failure to fulfill promise.
    - Breach of a seller's warranty is generally only type of breach that is insurable.
  - Agreement one party has made to assume the liability of another party.
    - Contractual liability is assumed through a hold-harmless agreement and is often covered under liability insurance.

7

7

Statutes

- A statute is a written law passed by a legislative body, at either the federal or state level.
  - Can impose legal liability on certain persons or organizations.
  - Can give certain persons or organizations an absolute legal obligation to compensate other persons if certain events occur.

8

8

Practice

- A civil law claim alleging a tort would most likely be based on:
  - A. Criminal acts.
  - B. Negligence.
  - C. Statute.
  - D. Breach of contract.

9

9

Commercial Liability Loss Exposures

Objective II

10

10

Loss Exposures

- Categories of commercial liability exposures:
  - Premises and operations liability.
  - Products and completed operations liability.
  - Auto liability.
  - Workers compensation and employers liability.
  - Professional liability, management liability.
  - Marine liability, aircraft liability.
  - Cyber liability.

11

11

Premises and Operations Liability

- Premises and operations liability arises from bodily injury or property damage caused by:
  - An accident occurring on an organization's owned, leased, or rented premises.
  - An accident arising from organization's ongoing operations away from the premises.
  - Certain mobile equipment, such as cranes.
- Liability is usually based on negligence.
  - In some cases, can be based on strict liability.

12

12

Products Liability

- Products liability arises out of the manufacture, distribution, or sale of an unsafe, dangerous, or defective product.
- For negligence actions, the plaintiff must prove:
  - Product was defective when it left the manufacturer's or supplier's control.
  - Condition made the product dangerous.
  - Product was proximate cause of injury.
- Strict liability can be imposed on manufacturer.

13

13

Completed Operations Liability

- Completed operations liability is the liability of an entity arising out of their completed work.
  - Under the common-law accepted work doctrine, a contractor was not held liable once owner had accepted work.
  - Many courts have abandoned the accepted work doctrine.

14

14

Automobile Liability

- Automobile liability arises out of the ownership, maintenance, or use of automobiles.
  - Many states make the owner liable for damages arising from any person's operation of the auto with the owner's permission.
  - Liability can also arise from negligent maintenance of a commercial auto.
- Anyone injured has a right of action against the operator of the auto.
  - Operator's employer can also be held liable.

15

15

Workers Compensation

- An employer's responsibility to pay claims under workers compensation liability is generally imposed by statute.
- The typical workers compensation statute is intended to provide an exclusive remedy for occupational injury or illness to all employees.
  - Only remedy available is to recover the benefits required by the applicable statute.
  - No-fault basis.

16

16

Workers Compensation

- An employer's liability for the injuries of employees can also be assumed under contract.
  - Hold-harmless agreement.
- An employer who agrees to indemnify another party may be agreeing to indemnify the other party for claims made by the employer's own employees.

17

17

Practice

- Irene was visiting a local artist's studio to pick out some art for her office. While she was perusing the art, a sculpture of hubcaps fell over and injured her arm. From the commercial liability standpoint of the artist, this is an example of:
  - A. Completed operations liability.
  - B. Products liability.
  - C. Premises and operations liability.
  - D. Professional liability.

18

18

Using Commercial Liability Risk Control

Objective III

19

19

Reasons for Risk Control

- Risk control is an action or non-action that reduces the frequency and/or severity of loss, or makes losses more predictable.
- Reasons for risk control programs:
  - Liability exposures that arise from products and activities can cause serious harm.
  - Exposures can result in significant financial consequences.
  - Poor safety records and serious accidents can cause reputational damage.

20

20

Pre-Accident Techniques

- General considerations in development of risk control techniques:
  - Cost-effectiveness – evaluating cost of the measure against the benefit to be derived.
  - Legal requirements – certain techniques are required by local building ordinances.
  - Requirements and recommendations of the organization's insurers.
  - Image of the company.
  - Degree of risk aversion of management.

21

21

Pre-Accident Techniques

- Risk control techniques:
  - Loss prevention – reduces the frequency of a particular loss.
    - Placing back-up alarms on trucks.
    - Installing sidewalk heaters to melt snow.
  - Loss reduction – reduces the severity of a loss.
    - Installing smoke detectors or sprinkler systems.

22

22

Pre-Accident Techniques

- Risk control techniques:
  - Avoidance – ceasing or never undertaking an activity, thus eliminating loss potential.
  - Separation – separating loss exposures to reduce frequency or severity.
    - Rarely practical for liability exposures.
  - Noninsurance risk transfer – one party transfers loss to another party.
    - Hold-harmless agreement.

23

23

Post-accident Techniques

- Claims management mitigates the effects of losses after they occur.
  - Effective claims management measures can result in significantly improved outcomes.
- Information provided by the investigation after accidents can be used in determining root cause of accidents.
  - Determining root causes helps to direct future loss prevention and loss reduction techniques.

24

24

Practice

- A restaurant adds markings to its glass doors so patrons will not accidentally walk into the glass. This is an example of:
  - A. Loss prevention.
  - B. Loss reduction.
  - C. Avoidance.
  - D. Non-insurance risk transfer.

25

25

Controlling Liability Losses

Objective IV

26

26

Risk Control Decisions

- When determining appropriate risk control measures, professionals should consider:
  - Organizations and individuals must respect others' rights.
    - Some rights are contained in constitutions, or are determined by common or tort law.
  - Governments create laws and regulations that impose responsibilities.
    - Statutory law includes workers comp and environmental laws.

27

27

Premises Liability

- Risk control can provide these safeguards:
  - Regular inspections.
  - Maintenance programs – reduces chance of an accident.
  - Policies and procedures – removal of snow, preservation of sensitive customer data.
  - Protection – fire protection, security systems.
- Risk control program depends on type of operation.

28

28

Off-Premises Operations

- Off-premises operations present liability hazards more difficult to control than those that arise on-premises.
  - Construction contractors may be confronted with different hazards on each job site.
  - Operation of mobile equipment should be a focus of risk control efforts.

29

29

Products and Completed Operations

- Products loss exposures arise from products or services that are provided by an organization.
  - Any organization that manufactures products has this loss exposure.
- The goal of products liability risk control is to prevent or reduce product liability.
  - Product liability exposures are not always obvious.

30

30

Products and Completed Operations

- Product risk control practices should include:
  - Research and testing of materials.
  - Quality control of raw materials.
  - A manufacturing process with precise specifications and quality control.
  - Strict adherence to procedures.
  - Clear instructions for employees and users.
  - Design of proper packaging.
  - Documentation of product test results.

31

31

Product Risk Control Evaluation

- A manufacturer should consider risk control evaluation of these potential areas of concern:
  - Unpredictable behavior of consumers.
  - Strict liability standard that applies to products liability.
  - Evolving regulatory requirements.
  - Catastrophic consequence of having a batch of products found defective.

32

32

Motor Vehicle Liability

- Risk control plays important role in reducing motor vehicle accidents.
  - Strict adherence to traffic signs reduces liability exposure.
- Organizations should exercise care in hiring and training drivers.
  - Should have a written safe-driver policy and disciplinary procedures for unsafe driving.
  - Should have substance abuse testing.

33

33

Workers Compensation

- For many organizations, workers compensation represents the highest-cost liability.
  - Most states require employers with a certain number of employees to purchase insurance.
- Differs from general liability because workers compensation provides no-fault coverage.
  - Employee negligence does not eliminate employer's liability.
- Workers compensation benefits are the exclusive remedy available to the employee.

34

34

Employers Liability

- Management should develop a safety culture.
  - Employees are not only concerned for their own safety, but also for that of co-workers.
- Post-accident claim management is important following workers compensation injuries.
  - Litigation can occur regarding coverage and benefits.
- Care should be taken in the delivery of medical and disability benefits.

35

35

Practice

- Yellow Checker taxi service is a new company and wants to be proactive in managing its motor vehicle liability through stringent loss control techniques. Which one of the following situations would be most useful in preventing auto-related liability losses?
  - A. Purchasing only vehicles with side-curtain airbags.
  - B. Implementing consistent disciplinary procedures for unsafe driving practices.
  - C. Using outside contractors instead of Yellow Checker employees to drive the taxis.
  - D. Enforcing a safe-driver policy that is available to staff upon request.

36

36

Module 2

Commercial General Liability Insurance, Part I

CGL OVERVIEW

TYPES OF LOSSES

-BODILY INJURY AND PROPERTY DAMAGE LIABILITY
  -PREMISES AND OPERATIONS
  -PRODUCTS AND COMPLETED OPERATIONS
-PERSONAL AND ADVERTISING INJURY LIABILITY
-MEDICAL PAYMENTS
-OTHER GENERAL LIABILITY EXPOSURES

COMPONENTS

-DECLARATIONS
-COVERAGE FORMS
-ENDORSEMENTS

CGL COVERAGE A

INSURING AGREEMENT

-INSURER'S DUTY TO PAY DAMAGES
  -LEGALLY OBLIGATED TO PAY DAMAGES
  -BODILY INJURY AND PROPERTY DAMAGE
  -OCCURRENCE
  -COVERAGE TERRITORY
  -POLICY PERIOD
  -DAMAGE NOT KNOWN BEFORE POLICY PERIOD
-INSURER'S DUTY TO DEFEND

EXCLUSIONS

-EXPECTED/INTENDED INJURY
-CONTRACTUAL LIABILITY
-LIQUOR LIABILITY
-WORKERS COMP & EMP LIABILITY
-POLLUTION
-AIRCRAFT, AUTO, WATERCRAFT
-MOBILE EQUIPMENT
-WAR
-DAMAGE TO INSURED'S PROPERTY
-DAMAGE TO YOUR PRODUCT
-DAMAGE TO YOUR WORK
-DAMAGE TO IMPAIRED PROPERTY
-ELECTRONIC DATA

CGL OTHER COVERAGES

COVERAGE B

-PERSONAL/ADVERTISING LIAB
-INSURING AGREEMENT
-EXCLUSIONS:
  -KNOWING VIOLATION OF RIGHTS
  -KNOWLEDGE OF FALSITY
  -PRIOR TO POLICY PERIOD
  -CRIMINAL ACTS
  -CONTRACTUAL LIABILITY
  -BREACH OF CONTRACT
  -QUALITY OF GOODS
  -WRONG DESCRIPTION OF PRICES
  -COPYRIGHT INFRINGMENT
  -INSUREDS IN MEDIA
  -UNAUTHORIZED USE OF PRODUCT
  -POLLUTION
  -WAR
  -VIOLATION OF LAW

COVERAGE C

-NO FAULT
-MINOR INJURIES
-INSURING AGREEMENT
-EXCLUSIONS:
  -INJURED INSURED
  -HIRED BY INSURED
  -ATHLETIC CONTESTS

SUPPLEMENTARY PAYMENTS

-ADDITION TO LIMITS
-TYPES:
  -INSURER EXPENSES
  -BAIL BONDS ($250)
  -LOSS OF EARNINGS ($250)
  -COURT COSTS
  -INTEREST ON JUDGMENTS

Commercial General Liability Insurance, Part I

Module 2
Chapter 2

1

1

Learning Objectives

- Obj I – Overview of Commercial General Liability Insurance
- Obj II – Coverage A – Insuring Agreement
- Obj III – Coverage A – Exclusions
- Obj IV – Coverage B – Personal and Advertising Injury Liability
- Obj V – Coverage C – Medical Payments
- Obj VI – Supplementary Payments

2

2

Overview of Commercial General Liability Insurance

Objective I

3

3

Overview of CGL

- All businesses face the possibility of liability losses arising out of their premises, operations, products, and other sources.
  - The ISO Commercial General Liability Coverage Form is widely used.
- Two broad categories of coverage:
  - Bodily injury and property damage liability.
  - Personal and advertising injury liability.

4

4

Bodily Injury and Property Damage

- The primary type of liability loss covered is Coverage A – Bodily Injury and Property Damage Liability.
  - Premises and Operations – accident on the premises or arising from ongoing operations.
  - Products and Completed Operations – accident arising out of products sold or arising out of completed work.
- Separate premium rates typically apply for each of the two exposures.

5

5

Personal and Advertising Injury

- Coverage B – Personal and Advertising Injury Liability covers the insured's liability for personal and advertising injury.
  - Exposure can be omitted if the insured does not want to purchase it.
- Covered perils include liability for:
  - False arrest.
  - Wrongful eviction.
  - Libel, slander.
  - Copyright infringement in advertisement.

6

6

Medical Payments

- Coverage C – Medical Payments pays medical expenses of others in certain circumstances.
  - Does not require insured to be legally liable.
  - Technically not liability insurance.
  - Pays small bodily injury claims without having to establish liability.
- Medical expenses must result from bodily injury due to an accident on the insured's premises or arising out of the insured's operations.

7

7

Other General Liability Exposures

- ISO forms covering specific loss exposures:
  - Owners and Contractors Protective Liability Coverage Form.
  - Railroad Protective Liability Coverage Form.
  - Liquor Liability Coverage Form.
  - Electronic Data liability Coverage Form.
  - Product Withdrawal Coverage Form.
  - Various pollution liability coverage forms.

8

8

CGL Declarations

- The declarations page of the CGL includes:
  - Insurer's and producer's names.
  - Insured's name and mailing address.
  - Policy inception and expiration date.
  - Promise to provide coverage.
  - Limit of insurance.
  - Description of the insured's business.
  - Rating and premium auditing information.
  - List of endorsements.

9

9

CGL Coverage Forms

- ISO general liability coverage forms typically contain these major sections:
  - Coverages – insuring agreements.
  - Who Is an Insured.
  - Limits of Insurance.
  - Conditions.
  - Definitions.

10

10

CGL Endorsements

- Many endorsements are available to tailor the general liability coverage forms, which can:
  - Help meet the specialized needs of particular insureds.
  - Make policy comply with state laws.
  - Eliminate exposures that insurers are not willing to insure.

11

11

Practice

- Which two broad categories of loss exposures are covered by a Commercial General Liability (CGL) Coverage Form?
  - A. Medical expenses and contractual liability.
  - B. Advertising injury and copyright infringement.
  - C. Property damage and criminal acts.
  - D. Bodily injury and personal injury.

12

12

Practice

- Which one of the following would be included in the Commercial General Liability (CGL) Coverage Form Coverage B definition of "personal and advertising injury?"
  - A. False arrest.
  - B. Product recall.
  - C. Liquor liability.
  - D. Pain and suffering.

13

13

Coverage A – Insuring Agreement

Objective II

14

14

Insuring Agreement

- The Coverage A insuring agreement contains the insurer's promise to pay damages and defend the insured.
- Conditions which must be fulfilled for coverage:
  - Insured must be legally obligated.
  - Must be bodily injury or property damage.
  - Policy must apply.
  - Occurrence must be in coverage territory.
  - Loss must occur during the policy period.
  - Must not be known to the named insured.

15

15

Legally Obligated to Pay Damages

- The insured must be legally liable for damages before coverage will apply.
  - Can be determined through court proceeding or by the insurer's claim investigation.
- Types of damages:
  - Special damages – medical expenses and loss of earnings.
  - General damages – pain and suffering.
  - Punitive damages – punish wrongdoer.

16

16

Bodily Injury and Property Damage

- Bodily injury includes damages for care, loss of services, or death resulting at any time from the bodily injury.
  - Includes damages for pain and suffering.
- Property damage includes:
  - Physical injury to tangible property, including resulting loss of use of the property.
  - Loss of use of tangible property that is not physically injured.

17

17

Injury to Which Insurance Applies

- To be insured, the bodily injury or property damage must be caused by an occurrence.
  - An accident, including repeated exposure to harmful conditions.
- Occurrence must generally take place in the U.S., Puerto Rico, and Canada.
  - Worldwide coverage applies to products made or sold by the named insured in the coverage territory.

18

18

Policy Period

- Occurrence version of the CGL policy requires that the bodily injury or property damage occur during the policy period.
  - Policy in effect when injury occurs applies, even if claim is made many years later.
  - Claims-made version requires claim first be made during the policy period.
- Coverage is eliminated if injury was known by insured or employees before the policy's inception date.

19

19

Duty to Defend

- The insuring agreement stipulates the insurer has the right and duty to defend the insured.
  - Duty to defend is broader than duty to pay damages.
- Insurer must defend its insured whenever a claimant alleges a wrongful act or omission.
  - Duty to defend exists even if the allegations are later proven groundless, false, or fraudulent.

20

20

Practice

- Barry's Builders is a construction company headquartered in Texas. A crane they were using on a construction site in Mexico accidentally dropped a steel beam on a parked car, causing significant damage. Although there were no injuries, the owner of the car sued Barry's Builders, resulting in a judgment against the company. Assuming Barry's Builders is insured under a Commercial General Liability policy, and the accident took place during the policy period, will the policy provide coverage?
  - A. No, because accidents are not considered "occurrences" under the policy.
  - B. No, because the accident occurred in Mexico.
  - C. Yes, because bodily injury and property damage are covered.
  - D. Yes, because the insured was found legally liable for the damages.

21

21

Coverage A – Exclusions

Objective III

22

22

Exclusions

- Coverage A general exclusions:
  - Expected or Intended Injury – no coverage if insured intentionally injures claimant.
    - Exclusion does not apply to the use of reasonable force to protect property.
  - Contractual Liability – no coverage for liability assumed by the insured under a contract.
  - Liquor Liability – exclusion applies only if the insured is in the alcoholic beverage business.

23

23

Exclusions

- Coverage A general exclusions:
  - Workers Compensation and Employers Liability – eliminates coverage for obligation of the insured under workers compensation, disability benefits, or similar law.
  - Pollution – eliminates coverage for pollution liability claims related to the insured's premises and operations.
    - Can be covered under various environmental policies.

24

24

Exclusions

- Coverage A general exclusions:
  - War – eliminates coverage resulting from war and other warlike actions.
  - Aircraft, Auto, or Watercraft – eliminates coverage for ownership, maintenance, or use of any aircraft, auto, or watercraft, except:
    - Watercraft ashore on insured's premises.
    - Non-owned watercraft less than 26 feet.
    - Certain equipment attached to autos.
    - Auto valet services.

25

25

Exclusions

- Coverage A general exclusions:
  - Mobile Equipment – eliminates coverage for:
    - Transportation of mobile equipment by an auto owned or operated by an insured.
    - Use of mobile equipment for racing or demolition contest.

26

26

Exclusions

- Coverage A general exclusions:
  - Damage to Property – no coverage for damage to:
    - Property owned or rented by the insured.
    - Premises the insured has sold, given away, or abandoned.
    - Property loaned to the insured.
    - Property in the care of an insured.
    - Part of real property on which work is being done by the insured.

27

27

Exclusions

- Exclusions relating to insured's product or work:
  - Damage to Your Product – no coverage for any damage to insured's product resulting from a defect in any part of the product.
  - Damage to Your Work – no coverage for damage to the insured's completed work.
  - Damage to Impaired Property or Property not Physically Injured.
  - Recall of Products, Work or Impaired Property.

28

28

Practice

- Which one of the following statements is correct regarding Commercial General Liability (CGL) Coverage Form Coverage A – Bodily Injury and Property Damage?
  - A. Coverage for most claims exists for claims in the U.S. and Mexico.
  - B. The insurer has no duty to defend the insured if the lawsuit is proven to be groundless.
  - C. Damages for pain and suffering are covered as part of bodily injury.
  - D. Mobile equipment is almost never covered under the policy.

29

29

Coverage B – Personal and Advertising Injury Liability

Objective IV

30

30

Insuring Agreement

- Coverage B responds to claims for personal and advertising injury.
  - False arrest, detention, or imprisonment.
  - Malicious prosecution.
  - Wrongful eviction.
  - Slander or libel.
  - Violation of rights of privacy.
  - Copyright infringement in advertisement.
- Injury is not defined in policy, but can include humiliation and mental anguish.

31

31

Insuring Agreement

- A personal and advertising injury offense must be committed within the CGL coverage territory.
  - Includes worldwide coverage for offenses taking place through the Internet or similar electronic means of communication.
- Under the occurrence form, the coverage trigger is an offense committed during policy period.
  - Policy in effect when the insured committed the offense is the policy that covers damages.

32

32

Exclusions

- Coverage B general exclusions:
  - Knowing Violation of Rights of Another – no coverage provided for injury by an insured who had knowledge the act would violate the rights of another person.
  - Material Published With Knowledge of Falsity – injury arising out of publication of material with knowledge of its falsity is excluded.
  - Material Published Prior to Policy Period.

33

33

Exclusions

- Coverage B general exclusions:
  - Criminal Acts – eliminates coverage for injury arising out of a criminal act committed by or at the direction of the insured.
  - Contractual Liability – no coverage for injury for which the insured has assumed liability in a contract or agreement.
  - Breach of Contract – excludes injury arising out of a breach of contract.

34

34

Exclusions

- Coverage B general exclusions:
  - Quality or Performance of Goods – Failure to Conform to Statements – eliminates coverage for injury arising out of the failure of goods to conform to quality described in advertisement.
  - Wrong Description of Prices – eliminates coverage for losses arising out of wrong descriptions of the price of goods.
  - Infringement of Copyright, Patent, Trademark, or Trade Secret.

35

35

Exclusions

- Coverage B general exclusions:
  - Insureds in Media and Internet-Type Business – no coverage for injury committed by an insured whose business is in advertising, broadcasting, publishing, or designing websites.
  - Electronic Chatrooms or Bulletin Boards – excludes injury arising out of an electronic chatroom or bulletin board the insured owns.

36

36

Exclusions

- Coverage B general exclusions:
  - Unauthorized Use of Another's Name or Product – eliminates coverage for injury arising out of the unauthorized use of another organization's name or product.
  - Pollution – exclusion applies to any injury arising out of threatened discharge of pollutants at any time.
  - War – eliminates coverage for injury arising directly or indirectly out of war.

37

37

Practice

- The Commercial General Liability (CGL) Coverage B – Personal and Advertising Injury Liability excludes coverage for which one of the following?
  - A. Infringing upon another's copyright in the insured's advertisement.
  - B. The use of another's advertising idea in the insured's advertisement.
  - C. Written publication that slanders a person or organization.
  - D. An offense committed by an insured whose business is publishing.

38

38

Coverage C – Medical Payments

Objective V

39

39

Insuring Agreement

- Coverage C covers medical expenses for bodily injury caused by an accident.
  - Applies to accidents on the premises.
  - Applies away from the premises if accident results from the named insured's operations.
- Accident must occur in the policy's coverage territory and during the coverage period.
  - Medical expenses must be incurred and reported to the insurer within one year after the date of the accident.

40

40

Exclusions

- Medical payments coverage does not apply to bodily injury to:
  - Any insured, other than a volunteer worker.
  - Anyone hired to do work for an insured.
  - An individual injured on that part of the insured's premises they normally occupy.
  - A person injured while taking part in any physical exercises or athletic contests.
- Coverage does not apply to products-completed operations injury.

41

41

Practice

- Commercial General Liability (CGL) Coverage Form Coverage C – Medical Payments coverage applies to which one of the following categories of persons?
  - A. An individual injured on that part of the insured's premises that the individual normally occupies.
  - B. An individual injured while taking part in any physical exercises.
  - C. An individual hired to do work for an insured.
  - D. An individual performing volunteer work for the insured.

42

42

Supplementary Payments

Objective VI

43

43

Supplementary Payments

- Supplementary payments are specific items the insurer will pay in addition to damages.
  - Payable in addition to limits of insurance.
- Supplementary payments:
  - Fees for attorneys, witnesses, police reports.
  - Bail bonds, up to $250.
  - Loss of earnings, up to $250 per day.
  - Court costs.
  - Prejudgment or post-judgment interest.

44

44

Indemnitee Defense Costs

- Supplementary payments section states the insurer will pay an indemnitee's defense costs in addition to the policy limits.
  - Indemnitee and insured must both be named as parties in the same suit.
- Insured must have assumed the obligation to defend the indemnitee.

45

45

Practice

- Stacy is a wholesaler who was insured under a Commercial General Liability (CGL) Coverage Form. She was sued by a former customer, and as a result, was found liable for bodily injury losses sustained by the customer. In addition to the damages awarded, the following supplementary payments were incurred by Stacy:
  - Attorney fees - $15,000
  - Court costs - $1,500
  - Loss of earnings (missed work for four days while testifying) - $2,000
- What amount of these supplementary payments will be covered by Stacy's CGL policy?
  - A. $16,500.
  - B. $17,000.
  - C. $17,500.
  - D. $18,500.

46

46

Module 3

Commercial General Liability Insurance, Part II

CGL POLICY

LIMITS

- -GENERAL AGGREGATE LIMIT
  - -PERSONAL/ADVERTISING LIMIT
  - -EACH OCCURRENCE LIMIT
    - -PREMISES RENTED LIMIT
    - -MEDICAL EXPENSE LIMIT
- -PRODUCTS/OPERATIONS LIMIT
  - -EACH OCCURRENCE LIMIT

CONDITIONS

- -INSURED'S DUTIES
- -OTHER INSURANCE
- -BANKRUPTCY
- -LEGAL ACTION AGAINST US
- -PREMIUM AUDIT
- -REPRESENTATIONS
- -SEPARATION OF INSUREDS
- -TRANSFER OF RECOVERY RIGHTS
- -WHEN WE DO NOT RENEW (30 DAYS)

RATING

- -RATING FORMULA
  - -RATE
  - -EXPOSURE
- -BUSINESS CLASSIFICATIONS
- -PREMIUM BASE

ADDITIONAL LIABILITY COVERAGES

CGL CLAIMS-MADE PROVISIONS

- -CLAIMS-MADE TRIGGER
- -RETROACTIVE DATES
- -EXTENDED REPORTING PERIODS

CGL COVERAGE FORM MODIFICATIONS

- -DEDUCTIBLE
- -EMPLOYEE BENEFITS LIAB
- -ELECTRONIC DATA LIAB
- -ADDITIONAL INSURED:
  - -SCHEDULED PERSON
  - -AUTOMATIC STATUS
- -EXCLUSION ENDORSEMENTS
- -CLASSIFICATION ENDORSEMENTS
- -AMENDING LIMITS ENDORSEMENTS
- -CLAIMS-MADE ENDORSEMENTS
- -UNMANNED AIRCRAFT ENDORSEMENTS

OTHER LIABILITY FORMS

- -ELECTRONIC DATA LIABILITY
- -OWNERS PROTECTIVE LIABILITY
- -RAILROAD PROTECTIVE LIABILITY
- -LIQUOR LIABILITY

Commercial General Liability Insurance, Part II

Module 3
Chapter 3

1

1

Learning Objectives

- Obj I – Who is an Insured Provisions
- Obj II – Limits of Insurance
- Obj III – Conditions
- Obj IV – Rating CGL Coverage
- Obj V – ISO Claims-Made Provisions
- Obj VI – Modifying the CGL Coverage Form
- Obj VII – Unmanned Aircraft Endorsement
- Obj VIII – Other General Liability Coverage

2

2

Who is an Insured Provisions

Objective I

3

3

Named Insured and Related Parties

- The named insured may be a(n):
  - Individual, trust.
  - Partnership, joint venture.
  - Corporation, LLC.
- If the named insured is an individual, his or her spouse is also an insured.
  - Not covered for nonbusiness activities.

4

4

Named Insured's Employees

- The named insured's employees and volunteer workers are also insureds, except for:
  - Injury to the named insured (or partners), or to a co-employee or other volunteer worker.
  - Injury arising out of the worker's providing or failing to provide healthcare services.
  - Property damage to property owned or in the care of named insured.

5

5

Other Persons and Organizations

- Additional insureds:
  - Real estate managers – real estate manager for the named insured is an insured.
  - Legal representatives – if the named insured dies, any person with temporary custody of the insured's property is an insured.
  - Newly acquired organizations – any new organization qualifies as a named insured.
    - Covered for 90 days.

6

6

Unlisted Entity

- Coverage does not apply to the conduct of any partnership, joint venture, or LLC that is not shown as a named insured.
  - Such entities are covered only if they are specifically declared and named in the policy.
- A policy issued in the name of the corporation will not cover a former sole proprietor who is sued for injury arising when the business was a proprietorship.

7

7

Practice

- Which one of the following losses would be covered under a Commercial General Liability (CGL) policy?
  - A. Sharon, an employee of Anderson Company, caused damage to the company car when she ran into a tree while driving the car to deliver goods to a customer.
  - B. Dave, a volunteer worker for Ultimate Food Bank, accidentally damaged a donor's car when the forklift Dave was operating ran into the car in the parking lot of Ultimate's warehouse.
  - C. Gabe, a nurse employed by Systemic Manufacturing Company, provides improper medical treatment to a guest visiting Systemic Manufacturing Company's office.
  - D. Sandra, an employee of JustWin Company, received second-degree burns at work when another employee, Val, spilled coffee on Sandra's leg in the company's break room.

8

8

Limits of Insurance

Objective II

9

9

Limits and Sublimits

- The dollar amounts of the CGL coverage form's limit are shown in the policy declarations.
  - General Aggregate Limit.
    - Personal and Advertising Injury Limit.
    - Each Occurrence Limit.
      - Damage to Premises Rented to You.
      - Medical Expense.
  - Products-Completed Operations Aggregate Limit.
    - Each Occurrence Limit.

10

10

General Aggregate Limit

- The General Aggregate Limit is the most the insurer will pay for the sum of damages under Coverage A, B, and C.
  - Except for products-completed operations.
- The personal and advertising injury limit is the most the insurer will pay under Coverage B.
  - Damages arising out of personal and advertising injury to any one person or organization.

11

11

General Aggregate Limit

- The Each Occurrence Limit is the most the insurer will pay for any one occurrence.
  - Including all damages under Coverage A and medical payments under Coverage C.
  - Defense costs do not apply to the each occurrence limit.
- Coverage A Each Occurrence sublimits:
  - Damage to premises rented to you limit.
  - Medical expense limit.

12

12

Products Aggregate Limit

- The Products-Completed Operations Aggregate Limit is the most the insurer will pay under the products-completed operations hazard.
  - Bodily injury and property damage occurring away from premises and arising out of the named insured's product or work.
- If policy does not have a products-complete operations aggregate limit, the general aggregate limit applies.

13

13

Practice

- Aaron owns a manufacturing business in West Virginia. The business is insured by an unendorsed Commercial General Liability policy (occurrence version). The policy has the following limits:
  - General aggregate limit - $2,000,000
  - Products-Completed Operations Aggregate Limit - $2,000,000
  - Each Occurrence Limit - $1,000,000
  - Personal and Advertising Injury Limit - $1,000,000
  - Damage to the Premises Rented to You Limit - $100,000
  - Medical Expense Limit - $5,000
  - Deductible - $0
- Aaron was found liable for the following liability losses during the policy period, each resulting from a separate occurrence.
  - August – Personal Injury - $800,000
  - September – Personal Injury - $900,000
  - October – Product Liability - $600,000
  - November – Product Liability - $300,000
- How much of the total loss will be paid by the insurer?
  - A. $1,700,000.
  - B. $2,000,000.
  - C. $2,300,000.
  - D. $2,600,000.

14

14

Conditions

Objective III

15

15

Duties

- The insured must perform the duties required by the Duties in the Event of Occurrence, Offense, Claim or Suit condition.
  - Otherwise, the insurer may be relieved of its duty to defend and pay claims.
- When the insured becomes aware of an occurrence that may result in a claim, notice must be given to the insurer as soon as practicable.

16

16

Duties

- When a claim is brought against any insured, the insured must:
  - Immediately record the details of the claim.
  - Immediately forward to the insurer copies of any legal papers received.
  - Authorize the insurer to obtain legal records.
  - Cooperate in the investigation or settlement.
- No insured may make voluntary payment, or incur any expense without the insurer's consent, other than first aid.

17

17

Other Insurance

- The Other Insurance condition applies when insured has other insurance that also covers the claim.
  - Coverages are classified as primary or excess.
  - If two policies are primary, liability is shared between the two policies.
- If the CGL policy is excess, the insurer generally has no obligation to provide defense coverage.

18

18

Other Insurance

- CGL policy is excess if the other insurance is:
  - Fire, builders risk, installation risk, or similar coverage on the named insured's work.
  - Fire ins. on premises rented to the insured.
  - Aircraft, auto, or watercraft coverage.
  - Any primary insurance available covering liability for damages arising out of:
    - Premises or operations.
    - Products and completed operations.

19

19

Other Insurance

- If two or more policies apply at the same level, the policy provides for two methods of sharing:
  - Contribution by equal shares – each insurer pays an equal amount until the claim is fully paid or until one insurer exhausts its limit.
  - Contribution by limits – each insurer pays that proportion of the claim that the insurer's limit bears to the total of all applicable insurance.

20

20

Other Conditions

- Other CGL Conditions include:
  - Bankruptcy – establishes that the bankruptcy of an insured will not relieve the insurer of any of its policy obligations.
  - Legal Action Against Us – provides that no person can bring the insurer into any suit seeking damages from an insured.
  - Premium Audit – condition requires the named insured to keep adequate records to permit correct calculation of the premium.

21

21

Other Conditions

- Other CGL Conditions include:
  - Representations – insured agrees statements in the declarations are accurate/complete.
    - Places a heavy burden on the named insureds to read the policy declarations.
  - Separation of Insureds – the insurance provided by the policy applies separately to each person insured.

22

22

Other Conditions

- Other CGL Conditions include:
  - Transfer of Rights of Recovery Against Others to Us – when the insured has rights to recover a claim from a third party, it must transfer those rights to the insurer.
    - Subrogation provision.
  - When We Do Not Renew – requires insurer to give written notice of non-renewal to the first named insured at least 30 days before the expiration date of the policy.

23

23

Practice

- Which one of the following statements is correct regarding the conditions applicable to the Commercial General Liability (CGL) Coverage Form?
  - A. No insured may make voluntary payments without the insurer's consent, except for first aid expenses at the time of the occurrence.
  - B. Third-party claimants are required to include the insurer as a defendant in any suit seeking damages from the insured.
  - C. The insured's bankruptcy relieves the insurer of its obligations under the policy.
  - D. Written notice must be provided to an insurer as soon as practicable after an insured becomes aware of an occurrence that may result in a claim.

24

24

Practice

- Geraldo is an employee and salesman of Vitamins-R-Us. Vitamins-R-Us is covered under a Commercial General Liability (CGL) Coverage Form, and Geraldo is covered under a Personal Auto Policy (PAP). Geraldo was driving his own car making sales calls for the company, when he accidentally crashed into a customer's building. The accident injured two people and caused damage to the customer's building and business personal property. The CGL policy would be considered:
  - A. Strict.
  - B. Vicarious.
  - C. Excess.
  - D. Primary.

25

25

Rating CGL Coverage

Objective IV

26

26

CGL Rating Formula

- The basic formula used to determine the premium for a CGL policy is:
  Rate x Exposure = Premium
- Rate depends on the classification of the insured organization's operations.
  - Rate reflects the organization's susceptibility to liability losses.
- Exposure is a measure of the size of the business operations to be insured.
  - Expressed in terms of the premium base.

27

27

Rates for Business Classifications

- Insurer develops a rate for each business classification that it is willing to insure.
  - Classifications are listed in the classification table of the ISO Commercial Lines Manual.
- CGL rates applicable for most classifications:
  - Premises-operations rate.
  - Products-completed operations rate.

28

28

Premium Base

- The premium base is also indicated in the classification table.
- Common premium bases:
  - Mercantile businesses – gross sales.
  - Contracting businesses – payroll.
  - Building and premises risks – area, gross sales, or the number of units in the building.
  - Special events – number of admissions.

29

29

Other Rating Considerations

- Information about an organization must be gathered carefully and completely in order to measure the exposure accurately.
- Actual premium is often calculated at the end of the policy period after the exposure can be determined accurately.
  - Premium is then reconciled with the estimated premium.

30

30

Other Rating Considerations

- An increased limits factor is used to generate higher premiums for policies written with coverage amounts greater than the basic limits.
  - Premium credits are offered if the insured chooses not to buy or the underwriter is unwilling to provide certain coverages.
- Any coverages added to the CGL form by endorsement will increase the premium.

31

31

Practice

- Ronald owns and operates a contracting business. If Ronald purchased a Commercial General Liability (CGL) policy for the business, the premium base would most likely be rated on the basis of:
  - A. Gross sales.
  - B. Payroll.
  - C. Inventory.
  - D. Number of floors in the building.

32

32

ISO Claims-Made Provisions

Objective V

33

33

Problem With Occurrence Trigger

- A claim could be made today for something that occurred decades ago.
  - May be difficult to determine policy premiums for these long-tail claims.
- Liability policy with occurrence trigger covers injury occurring during policy period, regardless of when claim is made.
  - Some insurance companies became insolvent as a result of claims made long after policies were written.

34

34

Claims-Made Trigger

- A claims-made policy covers only claims first made against the insured during policy period.
  - Can help insurers control problems associated with long-tail claims.
  - Not widely used outside of specialty coverage.
- Insureds usually select policies with occurrence triggers, unless claims-made policy is required by insurer.

35

35

Retroactive Dates

- Under the claims-made coverage trigger, the claim must first be made during the policy period, or an extended reporting period.
  - Event cannot occur before retroactive date.
- Policy may or may not have retroactive date.
  - Retroactive date – policy covers claims made during the policy period, if event causing the loss occurred on or after the retroactive date.
  - No retroactive date – policy covers claims made during the policy period, regardless of when event occured.

36

36

Retroactive Dates

- After a retroactive date has been established, the insurer cannot advance the retroactive date:
  - Without insured's consent and,
  - If at least one of these events has occurred:
    - Insured has changed insurers.
    - Insured's operations have changed, with a resulting increase in loss exposure.
    - Insured failed to provide insurer with material information.
    - Insured has requested the change.

37

37

Extended Reporting Periods

- An extended reporting period is an additional period after expiration of a claims-made policy.
  - Also called a tail.
- Expired policy covers claims first made against any insured during this additional period.
  - Injury must have occurred on or after the retroactive date (if any) and before policy expiration.

38

38

Extended Reporting Periods

- Some policies automatically provide a basic extended reporting period.
  - Other forms give the insured the right to purchase an optional extended reporting period through an endorsement.
- CLM rules apply caps on the amount the insurer can charge for an optional extended reporting period.

39

39

Extended Reporting Periods

- Extended reporting periods also available if:
  - Insurer replaces coverage with claims-made coverage having a later a retroactive date.
  - Insurer replaces coverage with coverage that does not apply on a claims-made basis.
  - Coverage form is canceled or nonrenewed.

40

40

Practice

- A claim that is characterized by an extended delay between the claim's triggering event and the reporting of the event to the insurer is known as a(n):
  - A. Extended claim.
  - B. Delayed claim.
  - C. Retroactive claim.
  - D. Long-Tail claim.

41

41

Modifying the CGL Coverage Form

Objective VI

42

42

Endorsements

- Over 200 endorsements are available for modifying the ISO CGL Coverage Form.
  - Endorsements are divided into categories.
  - Each endorsement begins with "CG" and has a two digit code afterward.
- Some insurers have drafted additional endorsements.

43

43

Deductible Endorsement

- Deductible Liability Insurance endorsement adds a deductible for bodily injury liability, property damage liability, or both.
  - Per-claim deductible – applies to all damages sustained by any one person or organization as a result of any one occurrence.
    - Example – 4 claims filed from 1 occurrence; deductible applies to each claim.
  - Per-occurrence deductible – applies only once to the total of all claims paid arising out of one occurrence.

44

44

Additional Coverage Endorsements

- Additional Coverage Endorsements include:
  - Employee Benefits Liability Coverage – covers negligence in the administration of the insured's employee benefits program.
    - Intentional torts or breach of contract are not covered.
    - Usually has claims-made coverage trigger.
  - Electronic Data Liability – limited coverage for loss of electronic data.
    - Must result from physical injury to property.

45

45

Additional Insured Endorsements

- Additional Insured-Owners, Lessees, or Contractors-Scheduled Person or Organization.
  - Used for naming owners or lessees as insureds under CGL policies of organizations entering into contracts with those parties.
  - Covers injury or damage caused only by the acts or omissions of the named insured at the designated location of operations.
  - Additional insured is not included in the definition of "named insured."

46

46

Additional Insured Endorsements

- Additional Insured-Owners, Lessees, or Contractors-Automatic Status.
  - Provides coverage in construction agreements for an additional insured without having to name the additional insured.
  - The named insured and the person requesting additional insured status must have agreed to this in a written contract.

47

47

Exclusion Endorsements

- Exclusion endorsements add exclusions to the CGL coverage form.
  - These endorsements may be optional.
- Examples of optional exclusion endorsements:
  - Products/Completed Operations Hazard – excludes injury or damage arising from products-completed operations hazard.
  - Coverage C-Medical Payments – omits Cov C.
  - Personal/Advertising Injury – omits Cov B.

48

48

Exclusion Endorsements

- Examples of required exclusion endorsements:
  - Nuclear Energy Liability – eliminates coverage for bodily injury or property damage resulting from hazards of nuclear material.
  - Employment-Related Practices – eliminates coverage for injury arising out of any employment-related practice.
    - Required for CGL insureds with employment practices liability policies.
    - Optional for insureds without EPL policies.

49

49

Classification Endorsements

- Examples of classification endorsements:
  - Exclusion – Corporal Punishment.
    - Intended for schools to exclude coverage for injury to a student.
  - Exclusion – Construction Management Errors and Omissions.
  - Exclusion – Public Utilities – Failure to Supply.
  - Misdelivery of Liquid Products Coverage.
    - Intended for fuel oil dealers.

50

50

Endorsements for Amending Limits

- Examples of amending limits endorsements:
  - Amendment of Limits of Insurance – replaces limits shown in the policy declarations.
  - Designated Construction Project(s) General Aggregate Limit – provides a separate general aggregate limit for each construction project designated in the endorsement's schedule.
  - Designated Locations(s) General Aggregate Limit – provides a separate general aggregate limit for each location designated.

51

51

Claims-Made Endorsements

- Examples of claims-made endorsements:
  - Supplemental Extended Reporting Period Endorsement.
  - Supplemental Extended Reporting Period Endorsement for Employee Benefits Liability Coverage.

52

52

Practice

- Which one of the following endorsements to the Commercial General Liability (CGL) Coverage Form provides coverage for damages resulting from errors or omissions in administering an insured's benefits program?
  - A. Employment-related Practices Exclusion endorsement.
  - B. Employee Benefits Liability Coverage endorsement.
  - C. Additional Insured – Owners, Lessees, or Contractors endorsement.
  - D. Exclusion – Financial Services endorsement.

53

53

Unmanned Aircraft Endorsement

Objective VII

54

54

Drones

- Whether a drone is considered aircraft is subject to interpretation.
  - CGL Coverage A contains an exclusion for Aircraft, Auto, or Watercraft.
  - Coverage B does not exclude aircraft.
- ISO introduced drone-related endorsements for the CGL that define unmanned aircraft.
  - Resolves the ambiguity as to whether a drone is an aircraft.

55

55

Unmanned Aircraft Endorsements

- Three exclusion endorsements exist:
  - Exclusion – Unmanned Aircraft.
  - Exclusion – Unmanned Aircraft (Coverage A).
  - Exclusion – Unmanned Aircraft (Coverage B).
- Three coverage endorsements exist:
  - Limited Coverage for Unmanned Aircraft.
  - Limited Coverage for Unmanned Aircraft (A).
  - Limited Coverage for Unmanned Aircraft (B).

56

56

Exclusion Endorsements

- The Unmanned Aircraft exclusion is the most expansive of the endorsements.
  - Coverage A – coverage is not provided for bodily injury or damage from using drones.
    - Also excludes coverage for drones entrusted to others.
  - Coverage B – coverage is not provided for personal and advertising injury arising out of the use of drones.

57

57

Exclusion Endorsements

- Exclusion-Unmanned Aircraft (Cov. A Only).
  - Modifies Coverage A exactly as the Unmanned Aircraft exclusion does.
  - Silent with respect to Coverage B.
- Exclusion-Unmanned Aircraft (Coverage B Only).
  - Modifies Coverage B in the same manner as the Unmanned Aircraft exclusion.
  - Silent with respect to Coverage A.

58

58

Coverage Endorsements

- Limited Coverage for Designated Unmanned Aircraft endorsement.
  - Excludes drone-related bodily injury, property damage, and advertising injury coverage.
- However, includes limited drone-related coverage under CGL.
  - Drone and its use must be scheduled for coverage to apply.
  - For example, a drone can be covered specifically for roof inspection.

59

59

Coverage Endorsements

- Limited Coverage for Designated Unmanned Aircraft (Coverage A Only).
  - Modifies Coverage A exactly as the Limited Coverage for Designated Unmanned Aircraft endorsement.
  - Silent with respect to Coverage B.
- Limited Coverage for Designated Unmanned Aircraft (Coverage B Only).
  - Modifies Coverage B.
  - Silent with respect to Coverage A.

60

60

Practice

- Which one of the following statements is correct regarding CGL coverage of unmanned aircraft?
  - A. The unmanned aircraft coverage endorsements indicate that no coverage will be provided under the CGL for drones.
  - B. The Limited Coverage for Designated Unmanned Aircraft (Coverage B Only) endorsement modifies Coverage A to exclude coverage for drones.
  - C. The Exclusion – Unmanned Aircraft (Coverage A) endorsement is the most expansive of the endorsements.
  - D. The definition of Aircraft in the CGL coverage form makes no specific reference to drones.

61

61

Other General Liability Coverage

Objective VIII

62

62

Electronic Data Liability Coverage

- Electronic Data Liability (EDL) Coverage Form provides coverage for liability for loss of data caused by an "electronic data incident."
  - Includes accidents or negligent acts which result in loss of electronic data.
  - Applies on a claims-made basis.
- Provides much more broad coverage than the EDL endorsement to the CGL.

63

63

Owners/Contractors Protective Liability

- Property owners can be held vicariously liable for acts committed by their contractors.
  - CGL policies cover these losses.
  - However, some property owners prefer the contractor pay for coverage.
- Owners and contractors protective (OCP) liability insurance is purchase by the contractor.
  - The named insured is the project owner or contractor for whom the contractor has purchased the insurance.

64

64

Owners/Contractors Protective Liability

- OCP form provides coverage for losses from:
  - Operations performed for the named insured by contractor at the location specified.
  - Insured's own acts in connection with the general supervision of such operations.
- OCP exclusions are similar to exclusions contained in Coverage A of CGL policy.
  - Completed Operations – unique to OCP.
  - Acts or Omissions of Insured – unique to OCP.

65

65

Owners/Contractors Protective Liability

- OCP form is subject to a general aggregate limit and an each occurrence limit.
  - OCP does not cover personal/advertising injury, medical payments, or products and completed operations.
- OCP form has an occurrence coverage trigger.
  - ISO has not developed a claims-made version of the form.

66

66

Alternatives to OCP insurance

- Alternatives to OCP insurance:
  - Requiring the contractor to add the owner as an additional insured on contractor's CGL.
    - However, additional insured usually does not receive notice of cancellation.
  - Hold-harmless and indemnification agreement in the construction contract.
    - Contractor's CGL policy may cover the loss.

67

67

Railroad Protective Liability Coverage

- Railroad Protective Liability Coverage Form.
  - Covers injury or damage arising from acts at the job site related to contractor's work.
  - Occurrence basis form.
- Coverage agreements:
  - Coverage A – Bodily Injury and Property Damage Liability.
  - Coverage B – Physical Damage to Property.

68

68

Railroad Protective Liability Coverage

- Coverage A – Bodily Injury and Property Damage of RPL is similar to Coverage A of CGL.
  - However, contractor is not an insured.
  - Exclusion for liability assumed under any contract other than a "covered contract."
  - Completed work exclusion eliminates coverage for losses after work is completed.
  - Covers for injury or damage sustained by employees of the designated contractor.

69

69

Railroad Protective Liability Coverage

- Coverage B – Physical Damage to Property.
  - Provides first-party physical damage coverage for property of the insured.
  - Property includes rolling stock and contents, tracks, signals, bridges, and buildings.
- Exclusions under Coverage B:
  - Completed work.
  - Acts or omissions of the insured.
  - Nuclear incidents or conditions.
  - Pollution.

70

70

Liquor Liability Coverage Form

- Liquor Liability Coverage Form.
  - Covers losses resulting from the selling, serving, or furnishing of alcoholic beverages.
  - Both occurrence version and a claims-made version are available.
- Excludes coverage for injury arising out of any alcoholic beverage sold, served, or furnished while any required license is not in effect.
  - Also excludes coverage for injury arising out of the named insured's products.

71

71

Practice

- Which one of the following statements is correct regarding the Owners and Contractors Protective (OCP) Liability Cover form?
  - A. ISO has developed forms that cover both on an occurrence and clams-made basis.
  - B. The named insured is the project owner or contractor for whom the contractor has purchased the insurance.
  - C. It provides coverage for the named insured's day-to-day business operations.
  - D. It provides coverage for completed operations for up to three years after a project is finished.

72

72

Module 4

Commercial Auto Insurance, Part I

COMMERCIAL AUTO INSURANCE

OVERVIEW

- LIABILITY LOSS EXPOSURES
  - RESPONDEAT SUPERIOR
  - EMPLOYER'S NONOWNERSHIP LIABILITY
  - BAILEE LOSS EXPOSURE
- PROPERTY LOSS EXPOSURES
- PERSONAL LOSS EXPOSURES
  - MEDICAL PAYMENTS COVERAGE
  - PIP COVERAGE
  - UNINSURED MOTORISTS COVERAGE
- COMPONENTS OF COMMERCIAL COVERAGE AUTO PART

COVERED AUTO

- SECTION I
- DEFINITION OF AUTO
  - NOT MOBILE EQUIPMENT
- AUTO COVERAGE SYMBOLS
- NEWLY ACQUIRED AUTOS
- OTHER COVERED ITEMS
  - TRAILERS (2,000 POUNDS)
  - TEMPORARY SUBSTITUTE
  - MOBILE EQUIP BEING TOWED

BACF COVERAGE

LIABILITY

- SECTION II
- INSURING AGREEMENT
  - DUTY TO PAY DAMAGES
  - DUTY TO PAY POLLUTION COSTS
  - DUTY TO DEFEND (IN ADDITION TO LIMIT OF INSURANCE)
- DEFINITION OF INSURED
- COVERAGE EXTENSIONS
- EXCLUSIONS:
  - EXPECTED OR INTENDED INJURY
  - WORKERS COMPENSATION
  - CARE, CUSTODY, OR CONTROL
  - LOADING OR UNLOADING
  - OPERATIONS AND COMPLETED OPERATIONS
  - POLLUTION, WAR, RACING
- LIMIT OF INSURANCE

PHYSICAL DAMAGE

- SECTION III
- COLLISION COVERAGE
  - COLLISION WITH OBJECT
  - OVERTURN
- COMPREHENSIVE COVERAGE
- SPECIFIED CAUSES OF LOSS
- COVERAGE EXTENSIONS
- EXCLUSIONS:
  - NUCLEAR HAZARDS
  - WAR, MILITARY ACTION
  - WEAR AND TEAR
  - FREEZING
  - MECHANICAL BREAKDOWN
  - CERTAIN ELECTRONIC EQUIP
- LIMIT OF INSURANCE

BACF CONDITIONS

LOSS CONDITIONS

-APPRAISAL FOR PHYSICAL DAMAGE LOSS
-DUTIES IN THE EVENT OF LOSS
-LEGAL ACTION AGAINST THE INSURER
-LOSS PAYMENT-PHYSICAL DAMAGE COVERAGES
-TRANSFER OF RIGHTS AGAINST OTHERS

GENERAL CONDITIONS

-BANKRUPTCY
-CONCEALMENT, FRAUD
MISREPRESENTATION
-LIBERALIZATION
-NO BENEFIT TO BAILEE
-OTHER INSURANCE
-PREMIUM AUDIT
-PERIOD, COVERAGE TERRITORY
-TWO OR MORE COVERAGE FORMS

BACF OTHER PROVISIONS

-PRIVATE PASSENGER VEHICLES
-RATING TABLES
-TRUCKS, TRACTORS, TRAILERS
-ZONE RATED
-NOT ZONE RATED

Commercial Auto Insurance, Part I

Module 4
Chapter 4

1

1

Learning Objectives

- Obj I – Overview of Commercial Auto Insurance
- Obj II – BACF Covered Autos
- Obj III – BACF Liability Coverage
- Obj IV – BACF Physical Damage Coverage
- Obj V – BACF Conditions
- Obj VII – Rating Commercial Auto Insurance

2

2

Overview of Commercial Auto Insurance

Objective I

3

3

Liability Loss Exposures

- Commercial autos create liability, property, and personal loss exposures.
  - Can result from the ownership, maintenance, and use of autos.
- Most organizations are subject to auto liability loss exposure.
  - Liability can arise from the use of owned, hired, or borrowed autos.
  - Doctrine of respondeat superior – places liability on the employer.

4

4

Liability Loss Exposures

- An organization can become liable to others because of autos it does not own.
  - Hired autos – hiring organization can be held legally liable for injury that results from the vehicle's operation.
  - Borrowed autos – organization that borrows an auto from another can be held liable.
  - Employers nonownership liability – if an employee uses their own auto for their job duties, employer is exposed to liability.

5

5

Liability Loss Exposures

- Any business that services customers' autos can become liable for damage to cars temporarily left in its custody.
  - Bailee loss exposures.
  - Auto dealers can purchase garagekeepers coverage.
    - Insures auto while in custody of auto dealer.

6

6

Property Loss Exposures

- Any organization that has a financial interest in one or more autos is exposed to loss if those vehicles are damaged or destroyed.
  - Decrease in or loss of the autos' value.
  - Loss of use of the auto.
- Auto physical damage insurance covers damage to or destruction of a covered auto.
  - Since autos are mobile, they are susceptible to additional perils, such as collision, overturn, and theft.

7

7

Personal Loss Exposures

- Personal loss exposures include financial loss resulting from injury, sickness, or death.
  - Anyone who could suffer injury in an auto accident has a personal loss exposure.
- Various commercial auto policies cover personal loss exposures.
  - Auto medical payments coverage.
  - Personal injury protection (PIP) coverage.
  - Uninsured motorists coverage.

8

8

Commercial Auto Coverage Part

- A commercial auto coverage part includes declarations, coverage forms, and endorsements.
  - Can be included in a commercial package policy or issued as a monoline policy.
- Commercial auto declarations forms include various schedules for recording applicable coverages, covered autos, applicable limits, etc.

9

9

Commercial Auto Coverage Part

- Insurers use the Business Auto Coverage Form to insure the auto loss exposures of businesses.
  - Not used for motor carriers or auto dealers.
  - BACF provides liability insurance, and may also insure physical damage to autos.
- Auto dealers are eligible for the Auto Dealers Coverage Form.
  - Provides the equivalent of general liability and auto insurance in a single form.
  - Includes garagekeepers coverage.

10

10

Practice

- If an employee is using his or her own automobile while performing job duties, the employer can become exposed to liability, which is referred to as:
  - A. Bailee liability.
  - B. Res Ipsa Loquitur.
  - C. Employers nonownership liability.
  - D. Strict liability.

11

11

BACF Covered Autos

Objective II

12

12

Coverage Symbols

- Coverage symbols are used to indicate the autos to which each coverage applies.
  - 10 coverage symbols.
  - Appropriate symbols are entered beside each coverage in the Schedule of Coverages.

Coverages	Covered Autos
Liability	1
Personal Injury Protection	5
Physical Damage Comprehensive	7,8

13

13

Coverage Symbols

- Coverage symbols of BACF:
  - Symbol 1 – Any Auto – autos owned by the insured, autos the insured hires or borrows, and other nonowned autos used for business.
  - Symbol 2 – Owned Autos Only – autos owned by the named insured.
    - Excludes hired, borrowed, nonowned.
  - Symbol 3 – Owned Private Passenger Autos Only – owned private passenger autos.
    - Excludes buses and trucks.

14

14

Coverage Symbols

- Coverage symbols of BACF:
  - Symbol 4 – Owned Autos Other Than Private Passenger Autos Only – owned autos except private passenger autos.
  - Symbol 5 – Owned Autos Subject to No-Fault – entered only on PIP line of coverage table.
    - Provides PIP coverage only for those autos required by law to have it.

15

15

Coverage Symbols

- Coverage symbols of BACF:
  - Symbol 6 – Owned Autos Subject to a Compulsory Uninsured Motorists Law – used for uninsured motorists coverage only.
    - Autos required by law to have uninsured motorists coverage.
  - Symbol 7 – Specifically Described Autos – autos specifically described in the policy.
  - Symbol 8 – Hired Autos Only – autos leased, hired, rented, or borrowed by the insured.

16

16

Coverage Symbols

- Coverage symbols of BACF:
  - Symbol 9 – Nonowned Autos Only – autos not owned, leased, hired, or borrowed while such autos are used in the insured's business.
    - Used only for liability coverage.
  - Symbol 19 – Mobile Equipment Subject to Compulsory or Financial Responsibility or Other Motor Vehicle Insurance Law Only – land motor vehicles that would meet the definition of mobile equipment if they were not subject to a motor vehicle insurance law.

17

17

Newly Acquired Autos

- If any of symbols 1 through 6, or 19, is shown for a coverage, that coverage applies to vehicles of the type indicated by the symbol if such vehicles are acquired during the policy term.
- Coverage for newly acquired vehicles of the type indicated by the symbol is automatic.
  - No requirement that the insurer be notified of the acquisition.

18

18

Other Covered Items

- If the BACF provides liability insurance, trailers with a load capacity of 2,000 pounds or less are covered automatically for liability insurance.
  - Mobile equipment is automatically covered for liability while being carried or towed by an auto that has liability coverage.
- Auto used as a temporary substitute for a covered auto is also covered for liability.
  - Covered auto must be out of service due to breakdown, repair, service, or destruction.

19

19

Practice

- Under the Business Auto Coverage Form (BACF), Coverage Symbol 19 is used to provide:
  - A. Coverage for mobile equipment that is subject to financial responsibility laws.
  - B. Medical expense coverage for autos not owned by the insured.
  - C. Liability coverage for owned autos, other than private passenger autos.
  - D. Personal injury protection for those automobiles required by law to have it.

20

20

Practice

- Jay, the owner of Jay's Industrial Services, was driving a vehicle insured by an unendorsed Business Auto Coverage Form (BACF). He was using the vehicle to pull a trailer with a 1,000 pound load capacity, when he had an accident. Will the BACF provide liability coverage for this accident?
  - A. No, because the policy was unendorsed.
  - B. No, because trailers are specifically excluded from coverage.
  - C. Yes, because the trailer is covered automatically.
  - D. Yes, because Jay was driving the vehicle.

21

21

BACF Liability Coverage

Objective III

22

22

Insuring Agreement

- Insurer duties in the insuring agreement:
  - Duty to pay damages.
  - Duty to pay pollution costs.
  - Duty to defend the insured.
- The insurer's Duty to Pay Damages indicates the insurer will pay amounts an insured owes due to an accident with a covered auto.
  - Bodily injury.
  - Property damage.

23

23

Insuring Agreement

- The Duty to Pay "Covered Pollution Cost or Expense" portion of the insuring agreement indicates the BACF covers certain pollution costs and expenses.
  - Must result from the escape of fuel or fluids needed for the normal running of the auto.
  - Must be caused by an accident and must result from the ownership, maintenance, or use of a covered auto.

24

24

Insuring Agreement

- The Duty to Defend portion of the insuring agreement indicates the insurer has the right and the duty to defend any insured.
  - Defense against any claim alleging damages that would be covered under the policy.
  - Claim only needs to allege damages that would be covered.
- Duty to defend ends when the insurer has paid its applicable policy limit in full or partial settlement of the claim.

25

25

Who Is an Insured

- The named insured is an insured for any covered auto.
  - Others are also insureds when using a covered auto.
- Those not considered an insured:
  - Owner from whom the insured hires or borrows a covered auto.
  - Employee if the covered auto is owned by the employee or a member of the employee's household.

26

26

Who Is an Insured

- Those not considered an insured:
  - Person using a covered auto while working in the business of selling, servicing, or parking.
  - An individual not working for the insured who moves property to or from a covered auto.
  - A partner or LLC member of the named insured using a covered auto owned by that partner.

27

27

Coverage Extensions

- BACF supplementary liability payments:
  - All expenses incurred by the insurer.
  - Up to $2,000 for the cost of bail bonds.
  - Cost of bonds to release attachments.
  - Reasonable expenses incurred by the insured.
  - Court costs taxed against the insured.
  - Post-judgment interest.
- Paid in addition to the limit of insurance.

28

28

Coverage Extensions

- Coverage under the BACF is extended to include out-of-state coverage.
  - If the auto is outside the state it is licensed, the limit of insurance is increased to the minimum required by the other state.
  - If the other state requires a different type of coverage, the policy will provide that coverage automatically.

29

29

Exclusions

- BACF exclusions include:
  - Expected or Intended Injury and Contractual Liability.
  - Workers Compensation and Related Exclusions – generally eliminates coverage for injury to employees.
  - Care, Custody, or Control – eliminates coverage for property owned by the insured or in the care, custody, or control of the insured.

30

30

Exclusions

- BACF exclusions include:
  - Handling of Property – eliminates coverage for bodily injury or property damage resulting from the handling of property.
    - Does not apply to accidents that occur while property is being moved into a covered auto, or from a covered auto.
  - Operations – eliminates coverage for the operation of several specified types of equipment attached to covered autos.

31

31

Exclusions

- BACF exclusions include:
  - Completed Operations – no coverage for completed operations performed with the insured's autos.
  - Pollution – eliminates coverage for the discharge of any pollutants being transported or stored in a covered auto.
  - War.
  - Racing.

32

32

Limit of Insurance

- BACF liability coverage is subject to a combined single limit of insurance.
  - Applicable to all bodily injury, property damage, and covered pollution cost or expense arising from a single accident.
- The single limit is the maximum amount the insurer will pay for all claims.
  - Regardless of the number of vehicles, drivers, or claimants involved.

33

33

Practice

- Which one of the following statements is correct regarding Section II – Covered Autos Liability Coverage of the Business Auto Coverage Form (BACF)?
  - A. Coverage is only provided for bodily injury, but not property damage under this section.
  - B. The insurer is not obligated to defend the insured if the claim is false or fraudulent.
  - C. If the employee owns the covered auto, the employee would be considered an insured under the policy.
  - D. Certain pollution costs are covered, such as those resulting from the escape of fuel.

34

34

BACF Physical Damage Coverage

Objective IV

35

35

Available Coverages

- The primary purpose of Section III - Physical Damage coverage is to provide coverage for damage to autos owned by the named insured.
  - Coverage can be provided for hired or borrowed autos as well.
- Basic types of coverage:
  - Collision.
  - Comprehensive.
  - Specified Causes of Loss.

36

36

Available Coverages

- Collision Coverage insures direct loss or damage to a covered auto caused by collision with another object or by overturn.
  - Collision is not specifically defined.
  - Generally means striking with violent impact.
- Comprehensive Coverage insures any peril except collision, overturn, or excluded perils.
  - Hitting an animal, falling objects, glass breakage (may be collision).
  - Generally lower deductible than collision.

37

37

Available Coverages

- Specified Causes of Loss Coverage covers certain perils.
  - Less expensive than Comprehensive.
  - Named-perils coverage.
  - Fire, lightning, explosion, theft, windstorm, hail, earthquake, flood, mischief, vandalism.
  - Sinking, burning, collision, or derailment of a conveyance transporting the covered auto.

38

38

Available Coverages

- Towing Coverage pays for towing and labor costs due to disablement of a passenger auto.
  - Must be performed at place of disablement.
- Transportation Expenses is a coverage extension for substitute transportation costs.
  - Applies when private passenger auto is stolen.
  - Subject to a daily limit of $20.
- Loss of Use Expenses is a coverage extension that pays for loss of use of a rental auto.
  - Subject to a daily limit of $20.

39

39

Exclusions

- Auto physical damage insurance is subject to relatively few exclusions.
  - Covers earthquake, flood, and water damage.
- Exclusions include:
  - Nuclear hazards, war, military action, racing.
  - Wear and tear, freezing, mechanical failure, and road damage to tires.
  - Electronic equipment such as tapes, discs, radar detectors, and stereos.

40

40

Limit of Insurance

- The insurer will pay the lesser of:
  - Actual cash value at the time of loss.
  - Cost of repairing or replacing the property.
- Insurer's payment for each covered auto is reduced by any applicable deductible.
  - Comprehensive coverage deductible does not apply to loss by fire or lightning.

41

41

Practice

- Under the Business Auto Coverage Form (BACF) Section III – Physical Damage Coverage, which one of the following causes of loss would be covered under Specified Causes of Loss Coverage?
  - A. Flat tire.
  - B. Collision with an animal.
  - C. Mechanical breakdown.
  - D. Windstorm.

42

42

Business Auto Coverage Form Conditions

Objective V

43

43

Loss Conditions

- BACF loss conditions:
  - Appraisal for Physical Damage Losses – if the parties cannot agree on the amount of a covered loss, either may call for an appraisal.
    - Each party hires and pays for appraiser.
    - Umpire hired at shared cost if necessary.
  - Duties in the Event of an Accident – insured must give prompt notice to the insurer.
    - Insured must do what is necessary to preserve property from further loss.

44

44

Loss Conditions

- BACF loss conditions:
  - Legal Actions Against the Insurer – no legal action can be brought against insurer unless all policy provisions are complied with.
    - For liability coverage, a court must determine the insured is liable for the loss.
  - Transfer of Rights Against Others – if insurer pays the loss, it is entitled to take over the insured's right of recovery.

45

45

Loss Conditions

- BACF loss conditions:
  - Loss Payment – Physical Damage Coverages – with damaged or stolen property, the insurer can:
    - Pay to repair or replace the property.
    - Return the property and repair any damage caused by theft.
    - Take over the property and pay its agreed or appraised value.

46

46

General Conditions

- BACF general conditions:
  - Bankruptcy – bankruptcy or insolvency of the insured does not relieve the insurer of any of its obligations under the policy.
  - Concealment, Misrepresentation, or Fraud – coverage is void if any insured intentionally conceals or misrepresents a material fact.
  - Liberalization – if insurer provides more coverage under policy, it becomes effective immediately, not at next renewal.

47

47

General Conditions

- BACF general conditions:
  - Other Insurance – for any covered auto not owned by the insured, coverage is excess.
    - Insurance of auto's owner is primary.
    - Leased, hired, rented, or borrowed autos are deemed to be owned by the insured.
  - Premium Audit – premium is determined by a premium audit and based on actual exposures at the end of the policy period.

48

48

General Conditions

- BACF general conditions:
  - Policy Period, Coverage Territory – coverage territory is U.S., Puerto Rico, and Canada.
    - Worldwide coverage applies to leased, hired, rented, or borrowed private passenger autos for up to 30 days.
  - Two or More Coverage Forms – when loss is covered by two or more policies of the same insurer, the maximum payment is the highest limit under any one policy.

49

49

Practice

- Which one of the following statements is correct regarding the Other Insurance condition of the Business Auto Coverage Form (BACF)?
  - A. For any covered vehicle not owned by the named insured, the BACF and the insurance carried by the owner of the auto are both primary.
  - B. For any covered vehicle not owned by the named insured, the BACF coverage is primary.
  - C. For any covered vehicle not owned by the named insured, the BACF coverage is excess.
  - D. For any covered vehicle not owned by the named insured, BACF coverage does not apply.

50

50

Rating Commercial Auto Insurance

Objective VII

51

51

Private Passenger Vehicles

- Premiums for private passenger autos are determined using private passenger premium tables.
  - Liability premiums – tables list premiums by rating territory and policy limit.
  - Physical damage premiums – tables list premiums by rating territory, vehicle's original cost new, and deductible.

52

52

Trucks, Tractors, and Trailers

- Trucks, tractors, and trailers are rated by first determining a primary factor, which is based on:
  - Size class – light, medium, heavy, and extra-heavy.
  - Business use – service, retail, or commercial.
  - Radius class – local, intermediate, long.
- After primary factor is determined, the premium is based on whether the vehicle is zone rated.
  - Zone rated – medium and larger size operated beyond 200-mile radius of garaging location.

53

53

Trucks, Tractors, and Trailers

- Non-zone rated premium formula:
  - Premium = Combined Factor x Base Premium
- Determination of factors:
  - Combined Factor = Primary + Secondary Factor
  - Base liability premium – based on policy limit and territory where auto is garaged.
  - Base physical damage premium – based on vehicle's age and cost new.

54

54

Trucks, Tractors, and Trailers

- Zone rated – premium calculation:
  - Premium = Primary Factor x Base Premium
- Determination of factors:
  - Base liability premium – based on zones where vehicle is operated.
  - Base physical damage premium – based on zones where vehicle is operated, cost new, age of vehicle, type of vehicle, and deductible.

55

55

Practice

- Under the Business Auto Coverage Form (BACF), which of the following factors are used in determining the physical damage base premium for zone-rated autos?
  - A. Vehicle's cost new.
  - B. Geographical zones in which the vehicle is operated.
  - C. Age of the vehicle.
  - D. All of the above.

56

56

Module 5

Commercial Auto Insurance, Part II

AUTO DEALERS COVERAGE FORM

SECTION I

- COVERAGES:
  - BODILY INJURY/PROP DAMAGE
  - GARAGEKEEPERS
  - PHYSICAL DAMAGE
- EXCLUSIONS:
  - BODILY INJURY/PROP DAMAGE
  - GARAGEKEEPERS
  - PHYSICAL DAMAGE
- DEDUCTIBLES

SECTION II

- COVERAGES:
  - BODILY INJURY/PROP DAMAGE
  - PERSONAL/ADVERTISING INJURY
  - MEDICAL PAYMENTS
- LIMITS
- EXCLUSIONS:
  - DEFECTIVE PRODUCTS
  - WORK YOU PERFORMED
  - DAMAGE TO IMPAIRED PROP
  - PRODUCTS RECALL
  - POLLUTION

SECTION III

- COVERAGES:
  - ACTS
  - ERRORS/OMISSIONS
- EXCLUSIONS:
  - INTENTIONAL ACTS
  - BODILY INJURY/PROP DAMAGE
  - PROFIT
  - CONTRACT LIABILITY
  - FINES OR PENALTIES

ENDORSEMENTS

AUTO DEALERS COVERAGE FORM

- BROAD FORM PRODUCTS COVERAGE
- DEALERS DRIVEAWAY COLLISION COVERAGE
- FALSE PRETENSE COVERAGE
- CUSTOMER COMPLAINT LEGAL DEFENSE COVERAGE

COMMERCIAL AUTO

- RENTAL REIMBURSEMENT
- STATED AMOUNT INSURANCE
- UNINSURED/UNDERINSURED
- PERSONAL INJURY PROTECTION
- AUTO MEDICAL PAYMENTS
- EMPLOYEES AS INSUREDS
- EMPLOYEE HIRED AUTOS
- INDIVIDUAL NAMED INSURED
- DRIVE OTHER CAR
- BUSINESS INTERRUPTION
- LIVERY PASSENGER EXCLUSION

MOTOR CARRIER COVERAGE FORM

OVERVIEW

- DIFFERENCES FROM BACF
- ELIGIBILITY

COVERAGE

- OWNER-OPERATORS
- NONTRUCKING USE
- TRAILER INTERCHANGE:
  - COVERAGE
  - EXCLUSION
- MCS 90 ENDORSEMENT

Commercial Auto Insurance, Part II

Module 5
Chapter 5

1

1

Objectives

- Obj I: Auto Dealers Coverage Form: Section I
- Obj II: Auto Dealers Coverage Form: Sections II and III
- Obj III: Auto Dealers Coverage Form: Common Endorsements
- Obj V: Motor Carrier Coverage Form
- Obj VI: Commercial Auto Endorsements

2

2

Auto Dealers Coverage Form: Section I

Objective I

3

3

Auto Dealers Coverage Form

- ADCF is only available to franchised and non-franchised auto and trailer dealers.
  - Section I – Covered Autos.
    - Bodily injury/property damage coverage.
    - Garagekeepers coverage.
    - Physical damage coverage.
  - Section II – General Liability.
  - Sec. III – Acts, Errors or Omissions Liability.
  - Section IV – Conditions.
  - Section V – Definitions.

4

4

Covered Auto Designation Symbols

- Covered autos under ADCF are designated in the same manner as in the BACF.
  - Symbols 21-29 are parallel to symbols 1-9 of BACF.
  - Symbol 30 is garagekeepers coverage.
  - Symbol 31 is damage coverage for dealers' autos.
- Definition of auto includes any land vehicle.
  - Includes both autos and mobile equipment as defined in the BACF.

5

5

Covered Autos Liability Coverage

- ADCF provides coverage for bodily injury or property damage caused by an accident.
  - Insured must be legally liable.
  - Must be the result of ownership, maintenance, or use of covered autos.
  - Also covers defense costs.
- The persons insured for covered autos are the same as under the BACF.
  - Customers are also covered if they have no insurance or if it is less than state minimum.

6

6

Exclusions

- Most exclusions are similar to BACF.
  - Intended injury, workers compensation, etc.
- Unique exclusions to the ADCF:
  - Leased autos.
  - Defective products.
  - Work you performed.
  - Damage to Impaired Property or Property Not Physically Damaged.
  - Products recall.

7

7

Garagekeepers Coverage

- Auto dealers have potential liability for damage to customers' autos in their care, custody, or control.
- Under garagekeepers coverage, the insurer will pay damages the insured must legally pay.
  - Insured must be legally liable.
  - Applies to losses while the insured is repairing the customer's auto.
  - Also covers legal defense costs.

8

8

Garagekeepers Coverage

- Exclusions to garagekeepers coverage:
  - Contractual obligations.
  - Theft – theft caused by the insured, employees, or stockholders.
  - Defective parts.
  - Faulty work.
  - Electronic equipment – loss to electronic equipment that is not permanently installed.
  - War.

9

9

Garagekeepers Coverage

- Garagekeepers coverage can be modified to apply on a direct coverage basis instead of a legal liability basis.
  - Insured is covered even if not legally liable.
- Direct coverage options:
  - Excess insurance – primary insurance when insured is legally liable; excess insurance when insured is not legally liable.
  - Primary insurance – primary insurance regardless of whether insured is legally liable.

10

10

Physical Damage Coverage

- Physical damage insurance on dealers' autos is usually arranged by using symbol 31 in Item Two of the Auto Dealers Declarations.
  - Includes any autos and the interests in these autos described in the Declarations.
- Table indicates physical damage coverage (collision, comprehensive, etc.) for:
  - Types of autos – new, used, owned autos.
  - Interests covered – your interest only, your interest and interest of creditor, etc.

11

11

Physical Damage Premiums

- Premiums are calculated on the basis of the total value of covered autos.
- Nonreporting approach – applicable rates are applied to the policy limits.
  - Simplifies rating.
  - Causes problems for dealers whose inventory values fluctuate substantially.
  - Coverage formula:
    - $\text{Coverage} = \frac{\text{Limit of Insurance}}{\text{Value of Autos at Time of Loss}} \text{ x Loss}$

12

12

Physical Damage Premiums

- Reporting approach – insurer calculates premiums based on actual value of autos.
  - Reported monthly or quarterly.
  - Premium is charged at beginning of policy period, and adjusted at the end.
  - Coverage formula:
    - $\text{Coverage} = \frac{\text{Amount Reported on Last Report}}{\text{Value of Autos at Time of Report}} \text{ x Loss}$

13

13

Physical Damage Exclusions

- Physical damage coverage is subject to BACF's physical damage exclusions, plus:
  - Autos Leased or Rented to Others – exclusion doesn't apply to customer whose auto is left with insured for repair.
  - False Pretense – parting with a covered auto as the result of a scheme or acquiring an auto from a seller who does not have legal title.
  - Profits – excludes expected profits of the named insured.

14

14

Physical Damage Exclusions

- Physical damage exclusions also include:
  - Loss at Unnamed Locations – excludes loss occurring over 45 days after insured begins using the unnamed locations.
  - Driveaway Collision Exclusion – excludes coverage if auto is being driven more than 50 miles to its destination.
    - Endorsement exists to provide coverage.
  - Collision of Transporting Conveyance – eliminates coverage for loss by collision of any vehicle transporting the covered auto.

15

15

Deductibles

- Garagekeepers and physical damage deductibles:
  - Collision deductible – deductible applies separately to each auto.
  - Comprehensive deductible – deductible applies separately to each auto, with a maximum deductible for all loss due to one event.
    - Can apply to all causes of loss, or just to theft, mischief, or vandalism.
  - Specified causes of loss coverage – same options as comprehensive deductible.

16

16

Practice

- Susie left her car at the dealership for service. While her car was being brought around for her to pick it up, an employee drove too close to the garage wall and knocked off one of the auto's side-view mirrors. The dealership agrees to repair the damage. Which coverage will apply to this claim?
  - A. Auto Dealers General Liability Coverage.
  - B. Physical Damage Coverage.
  - C. Garagekeepers Coverage.
  - D. Covered Autos Liability Coverage.

17

17

Practice

- Super Autos has a standard Auto Dealers Coverage Form (ADCF) policy with the following coverages:
  - Liability limit - $1,000,000.
  - Direct Primary Garagekeepers Coverage (Symbol 30) - $50,000 limit - $500 deductible.
  - Physical Damage Coverage (Symbol 31) - no coverage.
- A mechanic in the dealership's shop caused $1,500 in damage to a customer's car, and two days later a storm caused $20,000 damage to the 20 dealer's cars on the lot. What amount would be paid by the ADCF?
  - A. $1,000.
  - B. $1,500.
  - C. $21,000.
  - D. $21,500.

18

18

Auto Dealers Coverage Form: Sections II and III

Objective II

19

19

Section II Coverage

- The ADCF provides coverage for auto dealers' business operations.
  - Section II provides general liability coverage.
  - Similar to CGL coverage.
- Major coverages under Section II:
  - Bodily injury and property damage liability.
  - Personal and advertising injury liability.
  - Locations and operations medical payments.
- Also a subsection for supplementary payments.

20

20

Bodily Injury

- Bodily injury and property damage liability coverage pays damages caused by an accident.
  - Must result from named insured's auto dealer operations other than ownership, use, or maintenance of autos.
- Exclusions are similar to those in CGL.
  - Watercraft exclusion does not apply while the watercraft is ashore on dealer's premises.
  - Watercraft and aircraft exclusion does not apply to liability assumed under contract.

21

21

Bodily Injury

- Additional bodily injury exclusions:
  - Defective products – comparable to Damage to Your Product exclusion in the CGL.
  - Work you performed – comparable to Damage to Your Work exclusion in the CGL.
  - Damage to impaired property or property not physically damaged.
  - Products recall.
  - Pollution – broad exclusion for any loss or claim related to pollution.

22

22

Personal and Advertising Injury

- Personal and advertising injury insuring agreement coverage is similar to CGL.
  - However, coverage is limited to offenses arising out of auto dealer operations.
- Important exclusions related to auto dealers:
  - Quality or Performance of Goods – Failure to Conform to Statements.
  - Wrong Description of Prices – applies to injury resulting from incorrect statement of prices in advertisements.

23

23

Medical Payments

- ADCF provides coverage for medical expenses related to bodily injury.
  - Accident must be on dealer's premises.
  - Expenses must reported within one year.
  - No fault coverage.
- Covered medical expenses:
  - First aid at time of accident.
  - Necessary medical, including prosthetics.
  - Ambulance, hospital, professional nursing, and funeral services.

24

24

Medical Payments

- Exclusions are similar to CGL:
  - Injury covered by workers compensation.
  - Person hired to perform work for any insured.
  - Tenant of any insured.
  - Injury resulting from athletic activities.
- Injury sustained away from insured's premises is also excluded from coverage.
  - Unlike CGL.

25

25

General Liability Limits

- The ADCF's general liability limits are similar to limits for the CGL.
  - Names may differ between the two forms.
- Limits provisions unique to the ADCF:
  - Damages payable under limits for Section II are not payable under Sections I or III.
  - A $500 deductible applies to the damages payable resulting from work the insured has performed on the auto.

26

26

Section III Coverage

- Section III covers acts, errors, or omissions arising out of auto dealer operations.
  - Act must be committed in the coverage territory and during the policy period.
- Acts, errors, or omissions include:
  - Failure to comply with regulations regarding the disclosure of credit terms or accurate odometer mileage.
  - A defect in title.
  - Insured's actions as an insurance agent.

27

27

Section III Exclusions

- Section III exclusions:
  - Criminal, fraudulent, malicious, dishonest, or intentional acts by an insured.
  - Bodily injury, property damage, or personal and advertising injury.
  - Damages based on the gaining of any profit to which any insured was not entitled.
  - Liability assumed by the insured in contract or an agreement.
  - Criminal fines or penalties, punitive damages, and demands for equitable relief.

28

28

Section III Exclusions

- Section III exclusions:
  - The failure of products or services to conform with any statement of quality or performance.
  - Recording and distribution of material or information in violation of law.
  - Damages arising out of any act that violates a person's civil rights.
  - Damages resulting from the bankruptcy of any insurance company in which the insured obtained insurance for a customer.

29

29

Practice

- Section II of the Auto Dealers Coverage Form (ADCF) would provide coverage for:
  - A. Expenses related to autos recalled due to faulty transmissions.
  - B. Losses resulting from hail damage to new autos on the dealer's lot.
  - C. Damage to a customer's auto occurring after it hit a tree as a result of improper brake repair by the dealer.
  - D. Pollution losses resulting from the improper disposal of fluids used in servicing autos.

30

30

Auto Dealers Coverage Form: Common Endorsements

Objective III

31

31

ADCF Endorsements

- The following endorsements are available with the ADCF:
  - Broad Form Products Coverage.
  - Dealers Driveaway Collision Coverage.
  - False Pretense Coverage.
  - Customer Complaint Legal Defense Coverage.

32

32

Broad Form Products Coverage

- The Broad Form Products Coverage endorsement can be used to delete ADCF defective products exclusion.
  - Covers liability for property damage to the insured's products resulting from defects.
  - Subject to a $500 deductible.
- Insurer that pays to replace a defective product may be able to obtain a subrogation recovery from the manufacturer.

33

33

Dealers Driveaway Collision Coverage

- The Dealers Driveaway Collision Coverage endorsement covers damage to an auto being driven to a destination more than 50 miles away.
  - Requires insured to include, in its reports of values, a statement of the point of origin and destination for delivery trips over 50 miles.
- ADCF's physical damage coverage does not cover trips over 50 miles.

34

34

False Pretense Coverage

- The False Pretense Coverage endorsement deletes the false pretense exclusion.
  - Covers losses if someone causes the insured to voluntarily part with a covered auto by false pretenses.
  - Covers losses if the insured acquires an auto from a seller who did not have legal title.
- The endorsement excludes any loss that results from the failure of a bank or another drawee to pay funds for any reason.

35

35

Customer Complaint Legal Defense

- The Customer Complaint Legal Defense Coverage endorsement provides coverage for legal defense costs.
  - Must result from complaints or suits related to the sale, service, or repair of an auto.
  - Does not provide coverage for damages or awards, only.
- Coverage is subject to the limits of insurance shown in the declarations.

36

36

Customer Complaint Legal Defense

- Excludes defense costs for following complaints:
  - Accidents.
  - Personal and advertising injury.
  - Acts, errors, or omissions.
  - Loss to an auto while the insured is attending, servicing, repairing, parking, or storing it.
  - Criminal, fraudulent, or intentional acts.
  - Product recall.
  - Any obligation under a warranty or mechanical breakdown agreement.

37

37

Practice

- Sunshine Auto Sales accepts a trade-in from a customer buying a truck. The auto dealer later discovers that the customer did not have legal title to the trade-in auto. Which of the following endorsements would provide the auto dealer with coverage for this loss?
  - A. Customer Complaint Legal Defense Coverage endorsement.
  - B. False Pretense Coverage endorsement.
  - C. Broad Forms Coverage endorsement.
  - D. Dealers Driveaway Collision Coverage endorsement.

38

38

Motor Carrier Coverage Form

Objective V

39

39

Motor Carrier Coverage Form

- The Motor Carrier Coverage Form insures organizations providing transportation by auto.
  - Symbols 61-68 are similar to BACF 1-8.
- Symbol comparison:
  - Any auto: BACF = 1, ADCF = 21, MCCF = 61.
  - Owned autos only: 2, 22, 62.
  - Nonowned autos only: 9, 29, 71.
  - Mobile equipment: 19, covered, 79.
- MCCF also includes trailer coverage (69, 70).

40

40

Motor Carrier Coverage Form

- The Motor Carrier Coverage Form differs from the BACF in these areas:
  - Eligibility.
  - Motor carriers' use of owner-operators.
  - Coverage for owner-operators.
  - Trailer interchange coverage.
  - Trailer interchange exclusion.
  - MCS 90 endorsement.

41

41

Eligibility

- Any motor carrier is eligible for the Motor Carrier Coverage Form.
  - Motor carrier includes any person or organization providing transportation by auto in the furtherance of a commercial enterprise.
- Includes companies that use autos to transport:
  - Property of others as carriers for hire.
  - Their own property.
  - Persons.

42

42

Motor Carriers’ Use of Owner-Operators

- Owner-operators are individuals who lease themselves and their trucks to motor carriers.
  - Written lease agreement exists.
  - Lease can include hold-harmless agreement.
- Liability for the owner-operator’s negligence can be imputed (charged) to the motor carrier.
  - If owner-operator is held to have been acting within the terms of the lease.

43

43

Coverage for Owner-Operators

- MCCF automatically covers owners and lessors of autos hired by the insured.
  - Not the case with the BACF.
- The owner from whom the insured hires a trailer is an insured while the trailer is:
  - Connected to a power unit that is a covered auto.
  - Not connected to a power unit but is being used exclusively in the insured’s business.

44

44

Insurance for Nontrucking Use

- Many owner-operators buy auto liability insurance only for nontrucking use of their rigs.
  - Lower premium than with full coverage.
  - Trucking use is typically covered by MCCF.
- Nontrucking use coverage is obtained by purchasing a BACF with a Truckers-Insurance for Non-Trucking Use (IFNTU) endorsement.
  - Major problem with IFNTU is that the MCCF does not provide insured status to an owner-operator if hold-harmless agreement exists.

45

45

Trailer Interchange Coverage

- A trailer interchange agreement is a contract.
  - Two motor carriers swap trailers and indemnify each other for any damage.
  - A motor carrier can purchase trailer interchange coverage to cover damages.
- Symbol 69 in MCCF is marked next to any of these coverages:
  - Trailer interchange comprehensive.
  - Trailer interchange collision.
  - Trailer interchange specified causes of loss.

46

46

Trailer Interchange Exclusion

- MCCF physical damage coverage excludes loss to an auto while in someone else's possession under a written trailer interchange agreement.
  - This is different than BACF.
- This exclusion can be removed for an additional premium.
  - Symbol 70 should be marked beside the chosen physical damage coverages.

47

47

MCS 90 Endorsement

- The MCS 90 endorsement is required of any carrier subject to the Motor Carrier Act of 1980.
  - Pays for damages resulting from negligence in the operation or use of any vehicle subject to the Act.
- Act requires minimum liability limits for:
  - Certain trucks used to transport certain hazardous cargoes in bulk.
  - Trucks for hire used for interstate transportation of any type of material.

48

48

Practice

- Which one of the following represents a difference between the Motor Carrier Coverage Form (MCCF) and the Business Auto Coverage Form (BACF)?
  - A. The BACF provides liability and property damage coverage, while the MCCF only provides liability coverage.
  - B. The BACF contains a trailer interchange exclusion that is not found in the MCCF.
  - C. The MCCF automatically covers owners and lessors of autos hired by the insured, while this is not the case with the BACF.
  - D. The MCS 90 endorsement is available for the BACF, but is not available for the MCCF.

49

49

Commercial Auto Endorsements

Objective VI

50

50

Rental Reimbursement Coverage

- Endorsement pays the cost to rent a temporary substitute auto.
  - Covered auto must be damaged by a covered cause of loss.
  - Daily limit and a maximum limit are selected by the insured and shown in the declarations.
- Reimbursement ends at lesser of:
  - Days required to repair or replace the auto.
  - Days shown in the schedule of the endorsement.

51

51

Stated Amount Insurance

- Endorsement limits insurer's liability for physical damage loss to the least of:
  - Actual cash value of the property at the time of the loss.
  - Cost of repairing or replacing the property with other property of like kind and quality.
  - Limit of insurance (stated amount) shown in the endorsement's schedule.
- Endorsement is mainly used on high-value, specialized vehicles whose cost may increase.

52

52

Uninsured and Underinsured Motorist

- Uninsured and Underinsured Motorist coverage is available through endorsement.
  - UM – covers occupants of a covered auto or pedestrians injured by a motorist who does not have bodily injury liability insurance.
    - In some states, property damage to a covered auto is also covered.
  - UIM – covers situations in which at-fault motorist has inadequate insurance.
- UM and UIM provisions differ by state.

53

53

Uninsured and Underinsured Motorist

- Reasons organization purchase coverage:
  - Workers comp. benefits do not always pay all of an employee's damages.
  - Employees may be injured by while driving a company auto for personal use.
    - Does not qualify for workers comp.
  - Organization may transport customers who are not covered by workers comp.
  - Insured may be a sole proprietor who has chosen not to be covered by workers comp.

54

54

Personal Injury Protection

- PIP typically provides first-party benefits for medical expenses, loss of income, loss of services, and funeral expenses.
  - Pays regardless of which party was at fault in the accident.
  - Coverages differs by state.
- None of the ISO commercial auto coverage forms contain coverage provisions for PIP.
  - In states where no-fault insurance applies, an endorsement adds coverage to the policy.

55

55

Auto Medical Payments Coverage

- Endorsement provides a prompt source of medical expense reimbursement for the insured and other persons injured in auto accidents.
  - No-fault coverage.
  - Subject to a relatively low limit of insurance.
- Many organizations purchase this coverage on autos furnished to executives or key employees.
  - Also purchased on autos used to transport customers.

56

56

Employees as Insureds

- Endorsement includes employees as insureds while using their own autos on insured's behalf.
  - Covers autos the insured does not own, hire, or borrow in their business.
  - Provides liability coverage only, not physical damage.
- Endorsement applies to BACF and MCCF.
  - ADCF automatically provides this coverage for the named insured's employees.

57

57

Employee Hired Autos

- Endorsement considers an employee an insured while operating a rental car in their name.
  - Must be rented with the named insured's permission.
  - Provides liability and physical damage coverage.
- Employee is covered only while performing duties related to named insured's business.
  - Employee renting a car for personal use is not covered under the endorsement.

58

58

Individual Named Insured

- Amends BACF or MCCF to provide Personal Auto Policy coverage to a named insured and family members.
  - Applicable to sole proprietors.
- Coverages provided:
  - Liability – coverage extended to resident relatives.
  - Physical damage – coverage extended to non-owned autos.

59

59

Drive Other Car – Broadened Coverage

- Endorsement provides liability insurance for individuals using cars they do not own.
  - Also provides spouse coverage.
  - Additional coverages are available for an increased premium.
- Could be appropriate for individuals driving company cars that do not have their own car.

60

60

Business Interruption Coverage

- Endorsement covers the loss of business income when a covered vehicle is damaged.
  - Must result from a covered cause of loss.
- Can be written for business income and extra expense, or for business income only.
  - Also contains an Extended Business Income additional coverage.
- The schedule requires a description of the insured's business activities that are dependent on the scheduled property.

61

61

Livery Passenger Conveyance Exclusion

- Endorsement explicitly excludes coverage for any covered auto while it is being used as a public or livery conveyance for passengers.
  - Exclusion applies whenever a transportation network driver is logged in to TNC platform.
- On-Demand Delivery Services Exclusion endorsement excludes coverage for insureds logged in to a delivery network platform.

62

62

Practice

- Xavier is provided with a company car by Klass Corporation, where he is a top executive. Since he does not own a car of his own big enough for his extended family, he would like to borrow his neighbor's SUV for a family vacation. Klass Corporation can provide coverage for Xavier and his family when he borrows his neighbor's SUV by adding which of the following endorsements to their Business Auto Coverage Form (BACF)?
  - A. Uninsured Motorists Coverage.
  - B. Employee Hired Autos.
  - C. Employees as Insureds.
  - D. Drive Other Car—Broadened Coverage for Named Individuals.

63

63

Module 6

Workers Compensation

WORKERS COMP STATUTES

PURPOSE & BENEFITS

-PURPOSE:
- -NO FAULT
- -LIMITED EMPLOYER LIABILITY

-BENEFITS:
- -MEDICAL EXPENSES
- -DISABILITY BENEFITS
- -REHABILITATION BENEFITS
- -DEATH BENEFITS

-PERSONS COVERED

CHARACTERISTICS

-EXTRATERRITORIAL PROVISIONS
-FOREIGN COVERAGE
-LHWCA (MARITIME WORKERS)
-MEETING EMPLOYER OBJECTIVES:
- -VOLUNTARY INSURANCE
- -ASSIGNED RISK PLANS
- -STATE FUNDS
- -QUALIFIED SELF-INSURANCE PLANS
- -SELF-INSURED GROUPS

WC&EL POLICY

WORKERS COMP

-INFORMATION PAGE
-GENERAL SECTION
-BODILY INJURY
-NO EXCLUSIONS
-DUTY TO DEFEND
-CONFLICT OF LAWS

EMPLOYERS LIABILITY

-LIABILITY CLAIMS
-INSURING AGREEMENT
-EXCLUSIONS:
- -STATUTORY OBLIGATIONS
- -INJURY OUTSIDE U.S.
- -CONTRACT LIABILITY
- -EMPLOYMENT PRACTICES
- -PUNITIVE DAMAGES

-LIMITS OF LIABILITY

OTHER COVERAGE

-OTHER STATES
-ENDORSEMENTS:
- -VOLUNTARY COMP & EL
- -LHWCA COVERAGE

RATING

BASE PREMIUMS

-CLASS RATING
- -GOVERNING CLASSIFICATIONS
- -STANDARD EXCEPTION CLASSIFICATIONS

-PREMIUM BASE
- -PAYROLL

-AUDITS

PREMIUM ADJUSTMENTS

-EXPERIENCE RATING
-RETROSPECTIVE RATING
-PREMIUM DISCOUNT
-MERIT RATING FACTORS
-RATE DEVIATIONS
-EXPENSE CONSTANT
-DEDUCTIBLE PLANS
-DIVIDEND PLANS

Workers Compensation

Module 6
Chapter 6

1

1

Learning Objectives

- Obj I – Overview of Workers Compensation Statutes
- Obj II – Workers Compensation Statutes – Additional Concerns
- Obj III – Workers Compensation Insurance
- Obj IV – Employers Liability Insurance
- Obj V – Other States Insurance
- Obj VI – Workers Compensation Endorsements
- Obj VII – Rating Workers Compensation Insurance

2

2

Overview of Workers Compensation Statutes

Objective I

3

3

Basic Purpose

- Before the enactment of workers compensation statutes, workers could sue their employers for damages resulting from injury.
  - Employee had to establish employer fault.
- Every state has enacted workers compensation statutes, providing no-fault protection.
  - Removed employees' right to sue.
  - Obligated employers to compensate injured.
  - Employer's liability limited by statute.

4

4

Benefits Provided

- Workers compensation statutes cover occupational injury or disease.
  - Must arise in the course of employment.
- Workers compensation benefits:
  - Medical – first-dollar benefits.
    - No deductible or coinsurance requirement.
  - Disability income – waiting period.
  - Rehabilitation – medical and vocational.
  - Death – funeral and wage replacement.

5

5

Disability Income Benefits

- Disability income benefits are meant to compensate an injured employee for wage loss.
  - Benefits are subject to a waiting period.
  - Benefit is payable weekly.
- Types of disability covered:
  - Temporary partial disability.
  - Temporary total disability.
  - Permanent partial disability.
  - Permanent total disability.

6

6

Persons Covered

- Workers compensation statutes apply to virtually all industrial workers and most other kinds of private employment.
  - Small employers may be exempt.
- Individuals often excluded from coverage:
  - Government workers.
  - Maritime and railroad workers.
  - Farm labor.
  - Domestic workers.

7

7

Persons Covered

- Entitlement to benefits depends on whether a person qualifies as an employee.
  - Employment status is a question of fact, not of law.
- Independent contractors are not subject to direction regarding the details of the work.
  - Not covered under workers compensation.
  - An independent contractor must provide workers compensation benefits for its employees.

8

8

Persons Covered

- A firm supplying temporary employees provides workers compensation for the temporary employees.
  - Temporary employee is an employee of the providing firm.
- Leased employees are subject to control by the firm as if they were its direct employees.
  - Leasing company is responsible for workers compensation coverage.

9

9

Practice

- Which one of the following employees would fall into the disability classification of temporary total disability?
  - A. Jay, an employee of ABC Company, is blinded in one eye as a result of an accident, and he returns to work immediately in a lower-paid position.
  - B. Chuck, an employee of XYZ Company, lost both of his arms as a result of an accident, rendering him unable to work.
  - C. Valerie, an employee of QRS Company, injured her back as a result of an accident, causing her to work behind a desk for 30 days before returning to her existing job in the warehouse.
  - D. Marybeth, an employee of DEF Company, breaks her leg as a result of an accident, causing her to miss work for six weeks before she returned to work.

10

10

Workers Compensation Statutes – Additional Concerns

Objective II

11

11

Extraterritorial Provisions

- Extraterritorial provisions address situations where workers are working in another state.
  - May address working in another country.
- If an employee is working in a different state, they could receive benefits from:
  - State in which they were hired.
  - State of their employment.
  - State of residence.
  - State where the employer is domiciled.

12

12

Extraterritorial Provisions

- Employees who are temporarily working outside the U.S. are generally covered by the workers compensation law of the state where they regularly work.
  - Most laws have time limits for how long someone can be out of the U.S.
- Foreign voluntary workers compensation coverage provides home-state coverage.
  - Often includes coverage for repatriation expense and endemic disease.

13

13

Federal Jurisdiction

- Some occupational injuries are covered under federal law.
  - Most maritime workers, employees of interstate railroads, and certain other workers.
- U.S. Longshore and Harbor Workers' Compensation Act (LHWCA) provides an exclusive remedy to injured maritime workers.
  - Eliminates the right of injured workers to sue their employers in exchange for no-fault coverage.

14

14

Meeting Employer's Obligations

- Most statutes require employers to demonstrate financial ability to pay any claims that may arise.
  - Voluntary Insurance – purchasing insurance from a private insurer.
  - Assigned Risk Plans – available to employer rejected by private insurers.
  - State Funds – some states (monopolistic) prohibit insurers from selling WC insurance.
  - Qualified Self-Insurance Plans – employers that post a surety bond can self insure.

15

15

Practice

- A correct statement regarding a monopolistic state is that:
  - A. Private insurers are not permitted to sell workers compensation insurance in the state.
  - B. The federal government administers the workers compensation program in the state.
  - C. Employers must purchase a surety bond with the state's workers compensation administrative agency.
  - D. Coverage for workers compensation is automatically provided to employers with maritime workers.

16

16

Workers Compensation Insurance

Objective III

17

17

Overview

- The Workers Compensation & Employers Liability (WC&EL) Policy was developed by the National Council on Compensation Insurance.
  - Primarily covers employer's obligation to pay workers compensation benefits.
  - Also covers employer's liability.
- Information page is similar to declarations:
  - Item 1 – insured's information.
  - Item 2 – policy coverage period.
  - Item 3 – WC & EL coverage provided.
  - Item 4 – premium.

18

18

Part One – Workers Compensation

- Part One obligates the insurer to pay benefits required by the workers compensation law.
  - Coverage applies to states listed in Item 3.A of the Information Page.
- Coverage applies to bodily injury by accident and disease.
  - Last exposure to disease must occur during policy period.
  - Insurer has the right and duty to defend the insured, and agrees to pay additional costs.

19

19

Part One – Workers Compensation

- Insurer will pay benefits based on state law.
  - No dollar limit for benefits under Part One.
  - No exclusions under Part One.
  - If the policy conflicts with state law, state law will prevail.
- Benefits will be paid to dependents in the case of employee death.
  - Dependents have a direct right of action against the insurer.

20

20

Part One – Workers Compensation

- The insured must reimburse the insurer for any penalties required as a result of the employer's:
  - Willful misconduct.
  - Knowing employment of anyone illegally.
  - Failure to comply with health and safety laws and regulations.
  - Discrimination against employees who claim workers compensation benefits.

21

21

Practice

- Which one of the following statements is correct regarding Part One of the Workers Compensation and Employers Liability Policy?
  - A. The employer is only covered for the operations listed on the Information Page.
  - B. Dependents of a deceased employee have no right of action against the insurer.
  - C. No exclusions are contained under Part One of the policy.
  - D. If Part One conflicts with the applicable workers compensation law, Part One will take precedence over the law.

22

22

Employers Liability Insurance

Objective IV

23

23

Insuring Agreement

- Part Two of the WC&EL policy is Employers Liability coverage.
  - Protects employers against liability claims by employees for injuries not covered by WC statutes.
- Insurer agrees to pay damages the insured is legally obligated to pay.
  - Insurer also agrees to defend the insured.

24

24

Insuring Agreement

- An employer can be held liable for:
  - Third-party claims – employee sues a third-party for an injury, and third-party then sues the employer.
  - Claim for care and loss of services – family member of an injured employee sues the employer for loss of services.
- Same coverage triggers that apply to WC also apply to EL coverage.
  - Bodily injury by accident or disease.

25

25

Exclusions

- Employers liability exclusions:
  - Statutory obligations – eliminates coverage for claims covered under various statutes:
    - Workers compensation laws.
    - U.S. Longshore and Harbor Workers' Compensation Act (LHWCA).
    - Federal Employers' Liability Act.
    - Migrant and Seasonal Agricultural Worker Protection Act.

26

26

Exclusions

- Employers liability exclusions:
  - Injury Outside the U.S. or Canada – coverage does not apply to injury that occurs outside the U.S., its territories, and Canada.
  - Employment practices – coverage does not apply to damages from employment practices.
    - Demotion, evaluation, harassment, discrimination, and termination.
  - Liability assumed under contract.
    - May be covered by CGL policy.

27

27

Exclusions

- Employers liability exclusions:
  - Punitive damages for injury or death of any illegally employed person.
  - Bodily injury to employees employed in violation of the law with insured's knowledge.
  - Bodily injury intentionally caused by the insured.
  - Fines or penalties imposed for violation of federal or state law.

28

28

Limits of Liability

- Employers liability coverage limits:
  - Bodily injury by accident – most the insurer will pay for bodily injury resulting from one accident, regardless of number of employees.
  - Bodily injury by disease – policy limit – most insurer will pay for bodily injury by disease, regardless of the number of employees.
  - Bodily injury by disease – each employee – most the insurer will pay for bodily injury by disease to any one employee.

29

29

Limits of Liability

- Defense costs and supplementary payments are covered in addition to the limits of liability.
  - Expenses the insurer incurs.
  - Cost of bail bonds.
  - Cost of bonds to release attachments.
  - Reasonable expenses incurred by the insured.
  - Court costs taxed against the insured.
- Insurer has no duty to pay defense costs or supplementary payments after it has paid damages equal to the limit of insurance.

30

30

Practice

- Which one of the following statements is correct regarding the limits of liability applicable to the employers liability coverage in a Workers Compensation & Employers Liability (WC&EL) policy?
  - A. Supplementary payments are only covered up to the limits of liability.
  - B. The insurer has no duty to pay defense costs after it has paid damages equaling the applicable limit of insurance.
  - C. Punitive damages are covered, even if the injury occurred to an illegally employed person.
  - D. The bodily injury by disease – policy limit is the most the insurer will pay for bodily injury by disease to any one employee.

31

31

Other States Insurance

Objective V

32

32

Other States Insurance

- Employers need additional coverage if they expand their operations into states not listed in Item 3.A of the Information Page.
  - Mechanism for extending insurance to cover such operations is known as “other states” insurance.
- Item 3.A of Information Page represents states the insured currently conducts business.
  - Item 3.C represents states where insured expects to conduct business in the future.

33

33

Other States Insurance

- If insured begins operations in a state listed in Item 3.C, the policy provides the same coverage as if that state were listed in Item 3.A.
  - Insured must notify insurer at once when business operations begin.
- If the insured has operations in a state on the policy's effective date, but that state is not listed in Item 3.A, the insured must notify the insurer within 30 days.
  - Otherwise, no coverage will apply.

34

34

Other States Insurance

- The wording used in Item 3.C often reads:
  - "All states except those listed in Item 3.A and ND, OH, WA, and WY."
  - Protects the insured if it begins operations in any state other than those listed in Item 3.A.
- Workers compensation policies issued by some monopolistic state funds do not include employers liability insurance.
  - Many employers purchase separate liability insurance, called stop gap coverage.

35

35

Practice

- Malibu Warehouse is currently insured under a Workers Compensation and Employers Liability Insurance Policy. Item 3.A of the policy Information Page lists the following states:
  - California, Oregon, Utah
- Item 3.C reads as follows: "All states except those listed in Item 3.A and ND, OH, WA, and WY." Malibu purchased a new warehouse in Texas, and the next day, sent a letter to the insurer informing them of the expanded operations. An employee of Malibu is injured in the Texas warehouse the day prior to the insurer receiving the letter. How will the insurer respond to the injury?
  - A. No coverage would be provided because the letter was not received by the insurer until after the injury.
  - B. No coverage would be provided because Texas is not listed in Item 3.A of the Information Page.
  - C. Coverage would be provided based on workers compensation law in Texas.
  - D. Coverage would be provided based on the average limits of coverage in California, Oregon, and Utah.

36

36

Workers Compensation Endorsements

Objective VI

37

37

Voluntary Compensation & EL

- Most state WC laws exempt some types of employment from statutory workers compensation benefits.
  - Farm labor and domestic employees.
- Voluntary Compensation & Employers Liability Endorsement amends the WC&EL policy.
  - Obligates insurer to pay the benefits that would be payable to such employees if they were subject to the workers compensation law designated in the endorsement.

38

38

Voluntary Compensation & EL

- If an employee sues under common law, the coverage provided by the endorsement reverts to employers liability insurance.
  - Insurer will defend against the employee's suit and pay any settlement awarded, subject to the stipulated liability limits.

39

39

LHWCA Coverage Endorsement

- Employer may be subject to both the U.S. Longshore and Harbor Workers' Compensation Act and the state workers compensation law.
  - U.S. Longshore and Harbor Workers' Compensation Act endorsement amends the definition of "workers compensation law."
    - Includes the LWHCA with respect to operations in any state designated in the endorsement's schedule.

40

40

Practice

- Charlie lives on a farm in Texas. He employs several farm workers, as well as a housekeeper. Charlie is in the process of purchasing a Workers Compensation & Employers Liability (WC&EL) policy. Which one of the following would be the best endorsement to the WC&EL policy for Charlie to purchase?
  - A. Voluntary Compensation and Employers Liability Endorsement.
  - B. Employment Practices Endorsement.
  - C. Qualified Self-Insurance Endorsement.
  - D. United States Longshore and Harbor Workers' Compensation Act Endorsement.

41

41

Rating Workers Compensation Insurance

Objective VII

42

42

Rating

- Exposure varies considerably according to the size of the employer's workforce and the degree of hazard in the work performed.
  - Several states have rating bureaus for workers compensation insurance.
- A class rating system identifies groups of similar employments.
  - Premiums and losses must be accurately and consistently assigned to the proper classes.

43

43

Premium Base

- The premium base for workers compensation insurance is generally payroll.
  - Varies directly with the exposure covered.
  - Relatively easy to determine and verify.
  - Not readily subject to manipulation.
- Insured pays an estimated premium based on a payroll estimate at the inception of the policy.
  - An audit of the actual payroll after policy expiration allows the insurer to determine the final premium.

44

44

Premium Adjustments

- An experience rating plan adjusts the premium for a future period based on the insured's own loss experience for a period in the recent past.
  - Produces an experience modification, which is a rate multiplier.
  - Past period is typically the three-year period beginning four years before policy inception.
- Provides insureds with an incentive to implement risk control measures that reduce workplace accidents.

45

45

Premium Adjustments

- A retrospective rating plan adjusts an insured's premium for a policy period based on the insured's own losses during the same period.
  - Insured pays an estimated premium at the beginning of the period.
  - Insured receives either a refund or a bill after the end of the period.

46

46

Premium Adjustments

- Other premium adjustments include:
  - Premium discount – many of the expenses of providing workers compensation insurance do not increase proportionally with increases in premium.
  - Expense constant – a flat charge designed to cover administrative expenses.

47

47

Premium Adjustments

- Other premium adjustments include:
  - Deductible plans – insured can reduce its premium by selecting a deductible plan.
    - Large deductible plan allows the insured to self-insure most of its claims.
  - Dividend plans – cost of the insurance can be reduced by dividends declared by the insurer.
    - Dividends are a return of a portion of the premiums paid.

48

48

Example

- ABC Company has a total payroll of $500,000.
  - Rate is 25 cents per $100 of payroll.
- Estimated premium:
  - Base premium = 5,000 x .25 = $1,250
  - Experience modification = 1.30 = $ 375
  - Estimated premium discount = ($ 200)
  - Expense constant = $ 50
  - Estimated premium = $1,475

49

49

Practice

- Which one of the following statements is correct regarding the rating of workers compensation insurance?
  - A. Several states have independent rating bureaus for workers compensation insurance.
  - B. The retrospective rating system identifies groups of similar employments whose experience is combined to establish rates.
  - C. The premium reflected on the Information Page of the policy is the final premium that must be paid by the employer.
  - D. With only a few exceptions, the premium base for workers compensation insurance is the total number of employees.

50

50

Module 7

Management Liability Loss Exposures

DIRECTORS AND OFFICERS LIABILITY

LOSS EXPOSURES

-FIDUCIARY DUTIES:
  -DUTY OF CARE
  -DUTY OF LOYALTY
  -DUTY OF DISCLOSURE
  -DUTY OF OBEDIENCE
-TYPES OF SUITS:
  -DERIVATIVE
  -NONDERIVATIVE
  -CLASS ACTION
-INDEMNIFICATION OF DIRECTORS
-CONTROLLING LOSS EXPOSURES

INSURANCE

-INSURING AGREEMENTS
  -COVERAGE A
  -COVERAGE B
  -COVERAGE C
-CLAIMS AND LOSSES
-PERSONS/ORGS INSURED
-EXCLUSIONS
-DUTY TO DEFEND
-DEDUCTIBLES/COINSURANCE

SPECIALTY COVERAGES

-OCCUPATION-SPECIFIC
-OUTSIDE DIRECTORS COVERAGE
-SEPARATE COVERAGE:
  -SIDE A-ONLY
  -ENHANCED SIDE A-ONLY
  -INDEPENDENT DIRECTORS

EMPLOYMENT PRACTICES LIABILITY

LOSS EXPOSURES

-LAWS AFFECTING EPL LOSS EXPOSURES:
  -CIVIL RIGHTS ACT
  -AGE DISCRIMINATION IN EMPLOYMENT ACT
  -AMERICANS WITH DISABILITIES ACT
  -FAIR LABOR ACT
  -FAMILY AND MEDICAL LEAVE ACT
  -WORKER ADJUSTMENT & RETRAINING ACT
  -COBRA
  -ERISA
-TYPES OF DISCRIMINATION
-CLAIMS

INSURANCE

-INSURING AGREEMENT
-WRONGFUL ACTS
-DEFINITION OF EMPLOYEE
-EXCLUSIONS
-INSUREDS
-ADDED COVERAGES:
  -THIRD-PARTY DISCRIMINATION
  -WORKPLACE VIOLENCE
  -REPUTATION MANAGEMENT
-RISK CONTROL SERVICES

FIDUCIARY LIABILITY

LOSS EXPOSURES

-BASIS OF CLAIMS:
  -ERISA
  -FIDUCIARY DUTY
  -HIPAA

INSURANCE

-SIMILARITIES TO D&O
-PERSONS INSURED
-WRONGFUL ACT
-EXCLUSIONS
-HIPAA

Management Liability Loss Exposures and Insurance

Module 7
Chapter 7

1

1

Objectives

- Obj I: Directors and Officers Liability Loss Exposures
- Obj II: Directors and Officers Liability Insurance
- Obj III: Specialty Directors and Officers (D&O) Coverages
- Obj IV: Employment Practices Liability Loss Exposures
- Obj V: Employment Practices Liability Insurance
- Obj VI: Fiduciary Liability Loss Exposures
- Obj VII: Fiduciary Liability Insurance

2

2

Directors and Officers Liability Loss Exposures

Objective I

3

3

Role of Directors and Officers

- A corporation is owned by its stockholders but controlled by its board of directors.
  - Directors are elected by its stockholders.
- Major responsibilities:
  - Establishing corporation's goals and policies.
  - Electing or appointing officers.
  - Approving important financial matters.
  - Fulfilling their fiduciary duties.
    - Breach of duty is common basis for claims.

4

4

Duty of Care

- Directors have a duty of care (diligence).
  - Must act in good faith and in a manner they believe to be in corporation's best interests.
  - Must discharge their responsibilities with informed judgment and reasonable care.
- Courts have held that directors and officers are not guarantors of the enterprise's profitability.
- Directors have a duty to keep themselves informed of the facts required to make prudent business decisions.

5

5

Duty of Loyalty

- Directors have a duty of loyalty to both the corporation and the shareholders.
  - Cannot own or operate businesses that compete with the corporation.
- Directors cannot use insider information to buy or sell stock of the corporation.
  - Must pay back to the company any profit realized from sale of stock within six months of purchase.

6

6

Duty of Disclosure

- Directors must disclose material facts to all persons who have a right to know such facts.
  - Must refrain from discussing confidential or market-sensitive matters with others.
- Normally, directors are not authorized to act as spokespersons for the corporation.

7

7

Duty of Obedience

- Directors must perform their duties according to federal and state law.
  - In addition, must obey terms of the corporate charter.

8

8

Suits Against Directors

Description	Who Brings Suit?	Suit Brought on Behalf of?	Who Receives Damages?
Derivative	Shareholders	Corporation	Corporation
Nonderivative	Customers, employees, competitors, shareholders	Individual(s) bringing suit	Individual(s) bringing suit
Class Action	One or more individuals on behalf of group	Group	Group

9

9

Indemnification of Directors

- Directors who have successfully defended against a derivative suit have the right to indemnification from the corporation.
  - Corporations often make payment to settle claims against their directors.
- State legislatures enacted statutes granting directors the right to indemnification.
  - Some of the statutes are "exclusive" in that they authorize indemnification only to the extent provided by the statute.

10

10

Practice

- A lawsuit brought about by one or more shareholders in the name of the corporation, in which any damages awarded are paid directly to the corporation, is referred to as a:
  - A. Class action suit.
  - B. Derivative suit.
  - C. Nonderivative suit.
  - D. Fiduciary suit.

11

11

Directors and Officers Liability Insurance

Objective II

12

12

D&O Liability Insurance

- Directors and officers liability insurance covers losses from wrongful acts of directors.
  - Corporation usually purchases policy.
  - Individuals often refuse to serve on a board unless they are covered.
- ISO maintains a standard D&O form.
  - Many insurers use their own forms.

13

13

Insuring Agreements

- Most policies have two insuring agreements.
  - Coverage (Side) A – insures directors and officers.
    - Indemnifies directors and officers.
  - Coverage (Side) B – insures corporation for the amounts it is required to pay to defend or settle claims against the directors or officers.
    - Indemnifies corporation.

14

14

Insuring Agreements

- Coverage A is limited to losses for which the corporation does not or cannot provide indemnification to the directors or officers.
  - If corporation is lawfully able to indemnify the director, loss will be paid under Coverage B.
  - If corporation cannot indemnify the director, loss is payable to director under Coverage A.
- A D&O liability policy is ordinarily subject to an each loss limit of liability and an aggregate limit of liability.

15

15

Insuring Agreements

- Many D&O policies also contain a Coverage C.
  - Entity coverage.
  - Makes the corporation itself an insured for claims made against it.
- Without entity coverage, a policy covers the corporation only for indemnification of directors.
  - Coverage B.

16

16

Claim

- Almost all D&O policies are written on a claims-made basis.
  - Covers loss if claim is made during policy period, even if act occurred years prior.
  - Usually provides extended reporting period.
- Claims may include:
  - Demand for monetary or nonmonetary relief.
  - Civil proceeding commenced by a complaint.
  - Formal regulatory proceeding commenced by filing a notice of charges.

17

17

Loss

- The term “loss” includes damages directors and officers become legally obligated to pay.
  - Subject to certain exclusions and limitations.
- Many D&O liability policies define loss to include defense costs.
  - Limits of liability apply to the sum of damages and defense costs combined.
- Loss typically excludes fines or penalties, punitive or exemplary damages, or the multiplied portion of any damages.

18

18

Persons and Organizations Insured

- The insureds under Coverage A are the individual directors and officers.
  - Includes any persons who shall become duly elected or appointed.
  - In the event of the death, incapacity, or bankruptcy, coverage is usually provided for director's estate or legal representative.
- The entities insured for Coverage B are the insured corporation or corporations named in the declarations.

19

19

Exclusions

- Typical D&O exclusions:
  - Loss exposures better covered by other insurance – bodily injury, property damage, personal injury, advertising injury.
  - Claims covered under prior policies.
  - Failure to effect or maintain insurance.
  - Insured vs. insured exclusion – one director sues another director.
  - Loss exposures difficult to insure – fraudulent acts that are uninsurable.

20

20

Duty to Defend

- Under a D&O policy, the insured typically selects and pays the defense lawyers and pays the other defense expenses.
  - Insurer reimburses insured for costs.
  - Insurer's consent to incur expenses and settle claims is usually required.
- Most policies require the insurer to make payments for defense expenses as incurred.
  - Prevents insured from having to wait potentially many years for reimbursement.

21

21

Consent to Settle Claims

- Some D&O policies contain an absolute consent-to-settle provision.
  - Insurer cannot settle a claim without the insured's consent.
- If the insured does not consent to a proposed settlement, the insurer must continue to defend.
  - Must pay any judgment awarded until the limit of its coverage has been exhausted.
- Hammer clause provides that the insured must take over the defense and pay further expenses.

22

22

Deductibles and Coinsurance

- D&O liability insurance is almost always subject to a deductible, also called a retention.
  - Generally applies to both defense costs and judgments or settlements.
- Deductibles can vary substantially.
  - Coverage A deductible may apply separately to each individual.
  - Substantial deductibles often apply to Coverage B, with a small or no deductible applicable to Coverage A.

23

23

Arbitration

- Recent D&O policy conditions include a binding arbitration provision for disputes between the insured and the insurer.
  - Arbitration is less time-consuming and less expensive than judicial proceedings.
  - Arbitrators can be chosen from a panel of individuals who have specialized expertise.

24

24

Practice

- Which one of the following statements is correct regarding a standard, unendorsed directors and officers (D&O) liability policy?
  - A. It typically includes defense costs in the definition of loss.
  - B. It seldom includes a deductible.
  - C. It seldom covers wrongful acts that occurred before the policy period.
  - D. It typically provides 6- to 12-month automatic tail coverage.

25

25

Specialty Directors and Officers (D&O) Coverages

Objective III

26

26

Occupation-Specific Policies

- A number of insurers have created specialty policies for specific fields.
  - School boards, municipalities, not-for-profits.
- These policies are more likely to include employment practices liability coverage.
  - Sometimes include certain professional liability coverages.
  - Often include coverages that are specific to the particular occupation.

27

27

Outside Directors Liability Policies

- Corporation may requests its directors to serve as outside directors for an unaffiliated org.
  - Unaffiliated organization may have inadequate or no D&O coverage.
- Approaches to covering outside directors:
  - Adding a coverage extension or endorsement to an existing D&O policy.
  - Obtaining an outside directors liability policy.
    - Claims payable will not reduce the aggregate limit under regular D&O policy.

28

28

Separate Coverage

- Reasons directors may find themselves without D&O coverage they thought they had:
  - Cost of defending a claim has depleted the existing policy limits.
  - Aggregate limits have been used up in defending other claims.
  - Bankruptcy court freezes D&O policy.
  - Insurer rescinds the policy due to material misstatements.

29

29

Separate Coverage

- Side A-only coverage covers only the individual liability of the insured directors.
  - Coverage usually applies as excess over any other insurance.
- Some policies are pure excess.
  - Do not "drop down" to take the place of the underlying coverage if it is rescinded.
- Other policies provide for drop down.
  - May cover exposures not covered by corporate D&O, or if D&O policy is frozen.

30

30

Separate Coverage

- Enhanced Side A-Only coverage has broader wording or fewer exclusions than some Side A-only policies.
  - For example, the policy may not have a pollution exclusion or an ERISA exclusion.
  - Limited insured vs. insured exclusion.
- Most of these policies provide that coverage will be as broad as the underlying policy.
  - Will apply if the underlying carrier is financially unable to perform.

31

31

Separate Coverage

- Independent directors liability policy insures only independent director(s) named in policy.
  - Independent directors are not affiliated with the corporation they serve.
  - They may insist on having their own coverage with limits not diluted by other claims.
- Coverage is triggered when corporation does not indemnify the named director for a loss.
  - Can also be triggered if D&O policy is inadequate, invalid, or nonexistent.

32

32

Practice

- John is a Director for ABC Corporation. He is not an officer and has no preexisting business relationship with the corporation. ABC Corporation purchased a directors and officers liability insurance policy to cover liability for wrongful acts or omissions. However, John is concerned that ABC has not purchased enough insurance, and he is also concerned that the existing insurance limits will be diluted by claims against other directors or the corporation. What can ABC do to alleviate John's concerns?
  - A. Increase Coverage A of the directors and officers liability insurance policy.
  - B. Increase Coverage B of the directors and officers liability insurance policy.
  - C. Increase Coverage C of the directors and officers liability insurance policy.
  - D. Purchase an independent directors liability policy.

33

33

Employment Practices Liability Loss Exposures

Objective IV

34

34

Liability Loss Exposures

- Employers face employment practices liability (EPL) exposures under various fed/state laws.
  - Civil Rights Act of 1964 was first major Act.
- Many states have laws that are broader than federal laws.
  - Not all violations of these laws are covered by EPL insurance.

35

35

Laws Affecting EPL Loss Exposures

Statute	Affect
Civil Rights Act of 1964	Prohibits discrimination based on race, religion, or sex. Applies to ERs with 15 or more EEs.
Civil Rights Act of 1991	Authorizes damages up to $300,000 for intentional racial or gender discrimination.
Age Discrimination in Employment Act	Prohibits discrimination against age 40 or older based solely on age. Applies if 20 or more EEs.
Americans with Disabilities Act	Requires accommodations for disabled persons and prohibits discrimination.
Family and Medical Leave Act	Employers with 50+ employees must provide 12 weeks of unpaid leave to care for newborn.

36

36

Laws Affecting EPL Loss Exposures

Statute	Affect
Fair Labor Standards Act	Establishes minimum wage and overtime rates, and regulates employment of children.
Worker Adjustment and Retraining Notification Act	Requires employers to provide 60 days notice for plant closings or mass layoffs.
COBRA	Gives workers and families who lose health benefits the right to continue coverage.
ERISA	Sets minimum standards for pension and benefit plans.

37

37

Discrimination Claims

Type	Overview	Detail
Overt discrimination	Intentional	Observable action that discriminates.
Disparate treatment	Unequal treatment	Unfair treatment of someone in comparison to how similar individuals are treated.
Disparate impact	Adverse impact	Application of personnel policies to all employees that discriminates.

38

38

Wrongful Termination Claims

- Wrongful termination of employment accounts for the majority of EPL cases.
  - Includes constructive discharge, which occurs when employees resign because of unendurable conditions.
- Traditionally, the employment at will doctrine has allowed employers or employees to terminate the relationship at any time.
  - Several states base an exception to this doctrine on the theory of implied contract.

39

39

Sexual Harassment Claims

- Sexual harassment is unwelcome sexual advances made as a condition of employment.
  - Some claims are based on a hostile work environment.
- To prevail, an employee generally must prove:
  - They are a member of a protected class.
  - They were subjected to unwelcome harassment that affected a term or condition of employment.
  - The employer knew about the harassment.

40

40

Retaliation Claims

- Employment practices liability (EPL) claims can arise from an employer's alleged retaliation for an employee's legitimate act.
  - Retaliation claims may be combined with claims of race or age discrimination.
- Retaliation claims have increased since the mid-1990s.

41

41

Practice

- Amaco Inc. was concerned that its health insurance premiums were increasing, so they instituted a wellness program for their employees. The wellness program provided that an employee would receive a bonus if their body fat percentage dropped below 20%. A group of women filed a lawsuit against Amaco asserting that the provision penalized women. This is an example of:
  - A. Intentional discrimination.
  - B. Overt discrimination.
  - C. Disparate treatment.
  - D. Disparate impact.

42

42

Employment Practices Liability Insurance

Objective V

43

43

EPL Insurance

- CGL policies exclude coverage for EPL losses.
  - Employers liability exclusion.
- EPL insurance coverage includes indemnity and defense costs.
  - Most policies are written on independently developed forms.
- EPL policies resemble D&O policies.

44

44

Insuring Agreement

- EPL policies typically agree to pay losses resulting from claims for wrongful acts.
  - Wording similar to D&O policy.
- Definitions of wrongful acts:
  - Broad form – no specific listing of covered offenses.
  - Named perils – definition can range from brief listings of a few offenses to exhaustive lists that provide coverage equal to broad forms.

45

45

Definition of Employee

- Coverage is linked to employment status.
  - Definition of employee can include any natural person who is or was an employee.
  - Can include part-time employees.
  - Some policies include leased employees.
- Some policies specifically exclude claims made by independent contractors.
  - Some cover independent contractors' claims.

46

46

Exclusions

- Exclusions often included in EPL policies:
  - Claims arising out of circumstances reported under a prior EPL policy.
  - Fraud or deliberate violation of regulations.
  - Contract liability.
  - Bodily injury or property damage other than emotional distress or mental anguish.
  - Violation of ERISA, COBRA, or similar Acts.
  - Workers compensation obligations.
  - Costs to install accommodations for disabled.

47

47

Exclusions

- Some EPL policies exclude claim awards that include back pay.
  - Alternatively, may only cover back pay awards for certain types of claims.
  - Back pay is income the employee lost before a judgment was awarded.
- Front pay is income that would have been earned between the judgment and reinstatement.
  - Could also be an award to compensate the employee for lost future income.

48

48

Added Coverages

- Additional coverages in EPL policies:
  - Third-party discrimination coverage – covers harassment or discrimination claims made by customers, suppliers, or non-employees.
  - Workplace violence coverage – covers violence not covered under workers comp.
    - Includes costs of obtaining consulting services to help cope with turmoil.
  - Reputation management costs – coverage could apply to the expense to retain a public relations firm or crisis management firm.

49

49

Risk Control Services

- Some insurers offer comprehensive risk control services to their EPL insureds.
  - Usually aimed at small to medium-sized firms.
- Services include:
  - Training programs.
  - Review of employee handbooks.
  - Access to attorneys to discuss a problem.
  - Confidential EPL audits.
  - Consultants to help the insured prepare its response to an EEOC hearing.

50

50

Practice

- Which one of the following is an additional coverage that may be offered by an insurer in an EPL policy?
  - A. Second-party discrimination.
  - B. Workplace safety (OSHA).
  - C. Unemployment compensation.
  - D. Reputation management.

51

51

Fiduciary Liability Loss Exposures

Objective VI

52

52

Fiduciary Liability Loss Exposures

- Fiduciary liability loss exposures arise out of the possibility that beneficiaries of plans file a claim against plan administrator.
  - These claims are becoming more common, and can be significant.
- Claims are often based on:
  - Employee Retirement Income Security Act.
  - Duties and liabilities of fiduciaries.
  - Health Insurance Portability and Accountability Act.

53

53

ERISA

- ERISA governs various benefit plans.
  - Includes retirement plans and group health benefit plans.
  - Violators are subject to penalties such as fines and loss of favorable tax treatment.
- Government bodies are exempted from ERISA.

54

54

Fiduciary Duties

- Duties of a plan fiduciary:
  - Prudence – must carry out duties with the care and skill of a prudent person.
  - Loyalty – actions must be in the best interests of the plan and its participants.
  - Diversification – must diversify investments.
  - Adherence – must act according to the plan documents and applicable law.
- These duties are similar to duties of a corporate director.

55

55

Fiduciary Duties

- Fiduciary duties involve a high standard of care.
  - Duty of loyalty may present issues for fiduciaries who are also officers or directors.
- If a fiduciary breaches a duty, the fiduciary is personally liable to the plan for losses.
  - May also be subject to a fine and an action for monetary damages.
- A fiduciary may be liable for the breach of a duty by another fiduciary if there is no attempt to correct the breach.

56

56

HIPAA

- Major objectives of HIPAA:
  - Sets standards for health insurance portability.
  - Limits exclusions for preexisting conditions.
  - Prohibits discrimination based on health-related factors.
  - Improves disclosure about group plans.
- HIPAA also calls for the protection of employee medical information.

57

57

Practice

- Apache Energy is a company involved in the trading of complex energy derivatives. Their board of directors is compensated quarterly based on the performance of the company's stock price. The board of directors approved investment in the company's stock in their employee's pension plan. The pension plan was already invested in various equity and fixed income mutual funds. The company began to fall on hard times, and the board froze transfers out of the company stock investment option, fearing sales of the stock would put downward pressure on the stock price. Which one of their fiduciary duties have they violated by focusing only on the impact to the stock price?
  - A. Loyalty.
  - B. Prudence.
  - C. Diversification.
  - D. Adherence.

58

58

Fiduciary Liability Insurance

Objective VII

59

59

Fiduciary Liability Policies

- Fiduciary liability policies closely resemble D&O and EPL policies.
  - Coverage applies to wrongful act claims.
  - Coverage is normally on a claims-made basis.
  - Options for extended reporting periods are comparable to those for D&O policies.
  - Defense coverage can be on either a duty-to-defend or reimbursement basis.
  - Covered defense expenses are usually included within the overall limit.

60

60

Persons and Organizations Insured

- Persons and organizations insured:
  - Sponsor organization (named insured).
  - Insured plans.
  - Director, officer, or employee of any insured.
    - But only in their capacity as a fiduciary or trustee of an insured plan.
  - Anyone administering an insured plan.
- Multi-employer plans are usually not covered.

61

61

Definition of Wrongful Act

- Wrongful act usually includes:
  - Breach of responsibilities imposed by ERISA or by statutory law.
  - Any other matter claimed against insureds because of their service as fiduciaries.
  - A negligent act, error, or omission solely in the administration of any insured plan.

62

62

Exclusions

- Many exclusions in fiduciary policies are similar to those in D&O and EPL policies.
  - Criminal acts, fraud, etc.
- Differences include:
  - Workers compensation exclusion typically provides coverage for COBRA claims.
  - Exclusion of fines and penalties often covers certain penalties imposed by ERISA.
  - Excludes losses resulting from insured's failure to collect employee contributions.

63

63

HIPAA

- HIPAA applies to employers with more than 50 employees.
  - Allows for both civil and criminal penalties.
  - Criminal penalties are not insurable.
- Coverage for civil fines for unintentionally violating HIPAA privacy rules is generally limited to $25,000.

64

64

Other Coverage

- Employee benefits liability coverage can be added by endorsement to a CGL policy.
  - Endorsement provides coverage for administrative errors or omissions.
  - Coverage may be sufficient for some small employers whose plans are administered by agents who have fiduciary coverage.
- ERISA requires all fiduciaries to be bonded.
  - Organizations that administer benefit plans purchase fiduciary bonds.

65

65

Practice

- Claims arising from which one of the following would typically be covered in a fiduciary liability policy?
  - A. Certain fines and penalties imposed by ERISA.
  - B. Failure to collect required employee contributions.
  - C. Criminal or fraudulent acts.
  - D. Acts that occurred before the retroactive period.

66

66

Module 8

Professional Liability Loss Exposures

PROFESSIONAL LIABILITY

LEGAL FOUNDATIONS

-CONTRACT LAW
-TORT PRINCIPLES
-STATUTES AND REGULATIONS
-EXPERT WITNESS TESTIMONY

CGL COVERAGE

-EXCLUDED BUSINESSES:
  -BARBER SHOPS
  -BEAUTY PARLORS
  -COMPUTER CONSULTING
  -ENGINEERS, ARCHITECTS
  -INSURANCE AGENTS
  -MEDICAL OFFICES
  -TATTOO PARLORS
  -HEALTH OR EXERCISE
-COVERAGES

PROFESSIONAL LIABILITY POLICIES

-COVERED ACTS
-PERSONS/ORGS INSURED
-DEFENSE COVERAGE
-CLAIMS-MADE PROVISIONS
-COVERAGE TERRITORY
-EXCLUSIONS

SPECIFIC PROFESSIONS

HEALTHCARE

-LEGAL FOUNDATIONS:
  -NEGLIGENCE
  -VICARIOUS LIABILITY
  -SOVEREIGN IMMUNITY
-INFORMED CONSENT
-RISK MANAGEMENT TECHNIQUES
-INSURANCE

FINANCIAL AND LEGAL

-LEGAL FOUNDATIONS:
  -STATUTORY LIABILITY
  -THIRD-PARTY CLAIMS
  -BAD FAITH
-RISK CONTROL
-ARBITRATION
-INSURANCE:
  -PROFESSIONAL LIABILITY
  -SECURITIES BROKER
  -INSURER LIABILITY

ARCHITECTS AND ENGINEERS

-LEGAL FOUNDATIONS:
  -BREACH OF CONTRACT
  -NEGLIGENCE
  -LIABILITY TO OTHER PARTIES
-STATUTE OF LIMITATIONS
-RISK CONTROL
-INSURANCE

Professional Liability Loss Exposures and Insurance

Module 8
Chapter 8

1

1

Objectives

- Obj I: Legal Foundations of Professional Liability
- Obj II: Professional Liability Coverage Under CGL Policies
- Obj III: Common Characteristics of Professional Liability Policies
- Obj IV: Healthcare Professional Liability
- Obj V: Financial and Legal Professional Liability
- Obj VI: Architects and Engineers Professional Liability

2

2

Legal Foundations of Professional Liability

Objective I

3

3

Professional Liability

- Many types of occupations require professional liability insurance.
  - Professional liability, malpractice, and E&O are often used interchangeably.
- Professional liability can be based on:
  - Breach of contract.
  - Tort principles.
  - Statutes and regulations.

4

4

Contract Law

- Contract law approach to establishing liability is based on the relationship between professionals and their clients.
  - If a professional fails to perform the services agreed to, a breach of contract occurs.
  - If the client suffers harm as a result of the breach, the client is entitled to be restored.

5

5

Contract Law

- Damages recoverable for breach of contract:
  - Compensatory – intended to indemnify a person for injury or damage sustained.
  - Consequential – payment awarded to indemnify an injured party for indirect losses.
  - Liquidated – listed amount in a contract to be recovered if a breach occurs.
  - Nominal – small amount, such as one dollar.
- Injured party must prove they suffered a loss as a direct result of the breach.

6

6

Tort Principles

- Under tort principles, members of a profession are liable for injury from failure to perform with reasonable professional care and competence.
  - Must be found to have made an error or omission.
- Reasonable person standard applies under tort principles.
  - In a contract claim, allegation is that the defendant failed to do something that was required by the contract.

7

7

Statutes and Regulations

- Statutes and regulations can affect the liability of many professionals.
  - General application statutes – Racketeer Influence and Corrupt Organizations Act.
    - Offenses include mail fraud and wire fraud.
  - Specific application statutes – securities laws.
- Some laws apply to healthcare professionals.

8

8

Need for Expert Witness Testimony

- In professional liability suits, the plaintiff must prove the defendant failed to meet the applicable standards of professional conduct.
  - Without special knowledge, jurors could have difficulty determining if professional used the required level of skill and care.
- Jury needs to be informed of the standards that pertain to that particular profession.
  - Standards are established by expert witnesses.
  - Expert witnesses can state their opinion.

9

9

Need for Expert Witness Testimony

- Experts are not needed in every professional liability case.
  - In some situations, a layperson can understand, without the aid of experts, that a professional has committed a negligent act.
- Experts are also not needed if doctrine of Res ipsa loquitur applies.
  - The thing speaks for itself.
  - Applies when injury results that could not have occurred without negligence.

10

10

Practice

- An amount of damages for breach of contract that is specifically stipulated in the contract as a reasonable amount to be recovered is known as:
  - A. Liquidated damages.
  - B. Consequential damages.
  - C. Compensatory damages.
  - D. Nominal damages.

11

11

Professional Liability Coverage Under CGL Policies

Objective II

12

12

Professional Liability Coverage

- For many professions, the general liability loss exposure is minor.
  - Lends itself to coverage in businessowners policies that receive little individual underwriting.
- Many insurers do not want to expand their underwriting to include the personnel needed to underwrite professional liability insurance.

13

13

Professional Liability Coverage

- Insurers routinely endorse their CGL policies to exclude professional liability.
  - Even without an exclusion, a CGL policy does not cover many professional liability losses.
- A CGL policy covers:
  - Bodily injury.
  - Property damage.
  - Personal and advertising injury.

14

14

Professional Liability Coverage

- ISO Commercial Lines Manual indicates that businesses requiring a professional liability exclusion include:
  - Barber shops and beauty parlors.
  - Computer consulting.
  - Engineers, architects, and insurance agents.
  - Medical offices.
  - Tattoo parlors.
  - Health or exercise.

15

15

Practice

- Which one of the following businesses would most likely have professional liability excluded from coverage in its commercial general liability (CGL) policy?
  - A. Arts and crafts shop.
  - B. Hardware store.
  - C. Barber shop.
  - D. Grocery store.

16

16

Common Characteristics of Professional Liability Policies

Objective III

17

17

Professional Liability Policies

- Insurers use different types of policies to insure members of each profession.
  - Most forms are developed by insurers.
  - Can differ substantially.
- Professional liability policies are designed to cover claims arising from rendering or failing to render professional services.
  - Many policies limit their coverage to negligent acts, errors, or omissions.

18

18

Person and Organizations Insured

- All professional liability policies cover the individual professional(s) named in the policy.
  - Most policies also cover partners, owners, directors, officers, and stockholders.
  - Some policies cover employees.
- A partnership, corporation, or LLC may also be covered.
  - Some policies only cover organization's obligation to indemnify those who are sued.

19

19

Defense Coverage

- Professional liability policies ordinarily pay the costs of defending against claims.
  - Defense coverage typically includes supplementary payments.
- In some policies, the insurer assumes the right and duty to defend.
  - Therefore entitled to appoint defense counsel.
  - In other policies, insurer agrees to pay defense costs but does not assume the right and duty to defend.

20

20

Defense Coverage

- Sometimes defense costs are payable in addition to policy limits, as in CGL policy.
  - More commonly, defense costs are included within policy limits.
- A provision requiring that the insurer obtain the insured's consent to settle is common.
  - Provision is a specific recognition that the insured has a reputation to protect.

21

21

Defense Coverage

- Many policies include a hammer clause.
  - Settlement opportunity clause.
  - Discourages insureds from refusing to let the insurer settle a claim.
  - Apply some pressure on the insured to be reasonable in settling valid claims.
- Some policies provide that if the insured and the insurer do not agree on a settlement, it must be submitted to an arbitration committee.

22

22

Claims-Made Provisions

- Many professional liability policies cover long-tail claims.
  - Claims reported after policy has expired.
- Insurers prefer to use claims-made professional liability policies to match claims with policies.
  - ISO form offers automatic five-year extended reporting period.
  - Offers optional supplemental extended reporting period.

23

23

Claims-Made Provisions

- The option to purchase an extended reporting period is usually available if either party terminates the coverage.
  - Generally not available if policy is canceled because of nonpayment of premium or fraud.
- When professionals cease to practice, they no longer need coverage for future acts.
  - However, they may need tail coverage for claims that are not actually made against the insured until after the insured retires.

24

24

Coverage Territory

- Most professional liability policies provide coverage for acts committed anywhere in the world.
  - Suit must be brought in the U.S. or Canada.
- Some policies allow a suit to be brought anywhere in the world.
  - Some policies require act to be committed in a more restricted policy territory.

25

25

Exclusions

- Certain exclusions common to most liability insurance policies are usually also found in professional liability policies.
  - Intentional injury, pollution, workers comp.
- Policies for healthcare professionals, architects and engineers do not usually contain an exclusion of bodily injury.

26

26

Practice

- Which one of the following statements is correct regarding professional liability insurance policies?
  - A. They all provide coverage for employees of the professional organization.
  - B. They typically contain a provision requiring the insurer to obtain the insured's consent to a settlement.
  - C. They allow an insurer to turn over the claim to an arbitrator if the claim is not settled within the policy period.
  - D. They typically limit coverage to those acts committed in the U.S. or Mexico.

27

27

Healthcare Professional Liability

Objective IV

28

28

Legal Foundations

- Some of the highest-risk professional liability classifications are within the healthcare field.
  - Healthcare professionals have specific liability exposures.
- Medical professionals and facilities can be held liable for negligence when a patient is injured.
  - Healthcare professionals must exercise the level of skill that a reasonable person would exercise under the same circumstances.

29

29

Legal Foundations

- A plaintiff must establish the standard of care applicable to the medical treatment at issue.
  - Must also establish a causal connection.
  - Most courts require expert testimony.
- Most states have effectively established a national standard of care.
  - Implies rural practitioners have the same training and exercise the same judgment as urban practitioners.

30

30

Legal Foundations

- Practitioners and facilities can be held vicariously liable for negligence of employees.
  - Business entities can be held vicariously liable.
- Practitioners can also be held liable for acts of hospital employees.
  - "Captain of the ship" (borrowed servant).
  - Under this legal theory, hospital employees are considered temporary servants of the operating surgeon.

31

31

Legal Foundations

- Sovereign immunity can protect governmental entities from liability claims.
  - Charitable immunity historically extended the same immunity to not-for-profit hospitals.
  - Many hospitals are for-profit entities and would be ineligible for charitable immunity.
- Some states have Good Samaritan laws.
  - Protect those who render assistance at the scene of an accident without compensation.
  - Doesn't apply to gross negligence.

32

32

Informed Consent

- A physician must obtain the consent of the patient before performing surgery.
  - Except under emergency conditions or in unanticipated situations.
- Must also explain potential risks associated with the surgery or treatment.
  - Informed consent is also required for various procedures performed by hospital staff.

33

33

Informed Consent

- To obtain informed consent, physician must disclose to the patient:
  - Nature of the patient's condition or problem.
  - Nature of the proposed procedure.
  - Risks associated with the procedure.
  - Anticipated benefits of the procedure.
  - Alternatives to the procedure and the risks associated with them.

34

34

Risk Management Techniques

- Healthcare risk management emphasizes root-cause analysis.
  - Focuses on systems and processes to identify improvements that will decrease the likelihood of such occurrences in the future.
- Healthcare organizations adopt a variety of risk management techniques.
  - Some professionals and organizations use avoidance as a risk-control technique.

35

35

Healthcare Liability Insurance

- Healthcare professional liability policies cover liability for injury resulting from rendering of, or failure to render, professional services.
- Professional services can include:
  - Acts performed in the course of treatment.
  - Postmortem procedures.
  - Service as a director or chief of a hospital.
  - Service on a formal accreditation board.
  - Good-faith reporting of improper conduct.

36

36

Healthcare Liability Insurance

- Some policies split coverage into two insuring agreements:
  - First agreement covers individual healthcare professional(s) named in the policy.
  - Second agreement covers the entity of which professionals are stockholders or partners.
    - Entity coverage is provided only when claim arises out of the acts of the practitioners.
- Some policies also cover employees.

37

37

Healthcare Liability Insurance

- Coverage territory for is usually worldwide, provided the claim or suit is brought within the U.S. or Canada.
- Some policies include very few exclusions, such as:
  - Criminal acts.
  - Contractual liability.
  - Workers compensation.
  - Professional services rendered by others.

38

38

Practice

- To obtain informed consent, the physician is required to disclose to the patient information regarding:
  - A. Available insurance to cover hospital or clinic charges.
  - B. The costs associated with the proposed procedure or treatment.
  - C. The patient's legal rights and remedies if the treatment is unsuccessful.
  - D. The nature of the patient's condition or problem.

39

39

Financial and Legal Professional Liability

Objective V

40

40

Legal Foundations of Liability

- Financial professionals include accountants, attorneys, insurance agents, and brokers.
  - Policies for financial and legal professionals cover liability for financial harm resulting from errors and omissions.
- Professional liability claims can be based on:
  - Statutes.
  - Breach of contract.
  - Tort principles.

41

41

Statutory Liability

- Employee Retirement Income Security Act (ERISA) of 1974.
  - Sets minimum standards for most private-industry pension and health plans.
  - Requires fiduciary responsibilities for administrators.
  - Requires administrators to provide additional plan information to participants.
  - Gives participants a grievance process and the right to sue for breaches of fiduciary duty.

42

42

Statutory Liability

- Sarbanes-Oxley Act (SOX) of 2002.
  - Enacted in response to corporate scandals.
  - Imposes additional requirements on accountants, auditors, and attorneys.
  - Created Public Company Accounting Oversight Board to oversee auditors of publicly-traded companies.
  - Requires certification of corporate financial statements by CEO and CFO.
  - Subjects officers to criminal penalties for failing to fulfill its requirements.

43

43

Statutory Liability

- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.
  - Most comprehensive overhaul of financial regulation since the Great Depression.
  - Introduced comprehensive regulation of financial markets.
  - Contained consumer protection measures.
  - Demands transparency and accountability for financial derivatives.

44

44

Third-Party Claims

- A third party can assert breach of contract or a tort claim.
  - A third party is someone that is not a direct party to the contract.
  - Third party must prove they were an intended beneficiary of the contract.
- Example – investor who relied on a misleading financial statement could assert the accountant breached the contract with the organization.

45

45

Bad Faith

- Allegation of bad faith is a potentially severe professional liability loss exposure for insurers.
  - Can be asserted because of an insurer's denial of coverage without cause.
  - Can result in extracontractual damages, punitive damages, or both.
- Declining to accept a reasonable offer to settle a liability lawsuit can lead to bad faith.
  - Insurer might be required to pay entire court award even if it exceeds the policy limits.

46

46

Avoidance of Bad-faith

- Steps to avoid bad-faith awards:
  - Do not misrepresent policy coverages.
  - Respond promptly to claimants.
  - Thoroughly investigate all claims.
  - Outline reasons a claim is being rejected.
  - Document what is important in evaluating a claim.
  - Advise the insured as soon as possible about the possibility of a judgment in excess of policy limits.

47

47

Professional Liability Insurance

- Insurers develop their own legal and professional liability policy forms.
  - Separate policies for various professions.
  - Almost always have claims-made trigger.
- Insuring agreement covers losses resulting from the insured's professional services.
  - Clear definition of what is included and excluded is needed for both the insured and the insurer.

48

48

Exclusions

- Typical exclusions in professional policies:
  - Bodily injury and property damage.
  - Dishonest, fraudulent, or criminal acts.
- Reasons these exclusions exist:
  - Usual consequence of a financial or legal professional error is financial harm.
  - These claims are covered under other commercial policies such as the CGL.

49

49

Exclusions

- Policies can also contain exclusions for:
  - Claims for liability under ERISA or any securities laws.
  - Punitive damages or fines.
  - Claims made by or against a business enterprise not named in the policy.
  - Liability assumed under a contract.
  - Claims made by one insured against another.
  - Loss resulting from investment performance.

50

50

Securities Brokers Insurance

- Securities brokers and dealers professional liability policies.
  - Insure the firm and registered representatives for claims alleging negligence and errors.
- Also typically cover firm's liability for:
  - Selecting products for sale.
  - Oversight of registered representatives.
  - Implementation of compliance and supervisory procedures.

51

51

Insurer Liability Insurance

- Insurer professional liability insurance.
  - Often referred to as insurance company errors and omissions (E&O) liability coverage.
  - A major loss exposure for insurers is allegations of bad faith that can result in extra contractual payments.
  - Can cover claims for liability arising from claim handling and safety inspections.
  - May include coverage for punitive and exemplary damages.

52

52

Practice

- The Sarbanes-Oxley Act of 2002:
  - A. Enhanced financial disclosure requirements for privately-held corporations.
  - B. Created a regulatory organization that audits publicly-traded corporations.
  - C. Requires corporate officers to guarantee financial statements do not contain errors.
  - D. Subjects officers to criminal penalties for failing to fulfill its requirements.

53

53

Architects and Engineers Professional Liability

Objective VI

54

54

Legal Foundations

- Professional liability claims against architects can be asserted by members of the public.
- More common allegations against architects:
  - Practicing beyond the scope of the license.
  - Breach of contract.
  - Conflict of interest.
  - Negligent preparation of plans or designs.
  - Negligent selection of materials/equipment.
  - Negligent supervision of construction.
  - Liability to other parties.

55

55

Statute of Limitations

- Loss exposures of architects and engineers can be affected by statutes of limitations and statutes of repose.
  - All states have statutes of limitations.
  - Generally does not begin to run until the negligence is discovered.
- Statute of repose requires a plaintiff to file a lawsuit within a specific time period after a wrongful act.
  - Enacted by a number of states.

56

56

Risk Control

- Hold-harmless agreements are almost universally used as a noninsurance risk transfer technique by architects and engineers.
  - Standard contracts contain detailed hold-harmless agreements.
- Standard of care for most professionals is ordinary and reasonable skill.
  - Some project owners request that contract language be changed to require highest professional standards.

57

57

Architects Liability Insurance

- Insurer typically pays damages resulting from services as an architect or engineer.
  - Professional services are usually limited to those services that the insured is legally qualified to perform.
  - In some cases, the policy also covers the insured's subcontractors.
- Virtually all policies are written on a claims-made basis, and defense costs are usually payable within the limits of liability.

58

58

Exclusions

- Policy exclusions are similar to those found in other types of professional liability policies.
  - Discrimination, punitive damages, or dishonest or criminal acts.
  - Other exclusions are designed to eliminate overlaps with the CGL, business auto, or workers compensation policies.
- Coverage is usually excluded for projects where any construction is performed by the insured.

59

59

Other Provisions

- Policies are ordinarily subject to a per claim limit and an annual aggregate limit.
  - Deductible normally applies to each claim.
- Coverage territory is often worldwide.
  - Suit must be brought in the U.S. or Canada.
- Many policies provide that disputes between the insured and insurer be settled by binding arbitration.

60

60

Design-Build Projects

- Design-build firm is usually led by a contractor.
  - Either has in-house architects or contracts with independent firms for these services.
- Design-build projects do not fit neatly into standard insurance policy coverage.
  - CGL policy excludes professional liability.
  - Project-specific policies that combine professional and general liability coverage in one policy usually provide a solution.

61

61

Practice

- The roof of a new building collapsed due to lack of structural support. It was determined that the building was constructed in accordance with the architect's blueprint. In an attempt to recover their losses, the building owner could assert:
  - A. Negligent supervision of construction.
  - B. Conflict of interest.
  - C. Negligent preparation of plans or designs.
  - D. Breach of contract.

62

62

Module 9

Environmental Loss Exposures

ENVIRONMENTAL LOSS EXPOSURES

LEGAL FOUNDATIONS

- TORT LIABILITY:
  - NEGLIGENCE
  - INTENTIONAL TORTS
  - STRICT LIABILITY
- CONTRACTUAL LIABILITY
- STATUTES

STATUTES

- CLEAN WATER ACT
- CLEAN AIR ACT
- MOTOR CARRIER ACT
- TOXIC SUBSTANCE CONTROL ACT
- RESOURCE CONSERVATION ACT
- SUPERFUND ACT
- OIL POLLUTION ACT

RISK MANAGEMENT

RISK MANAGEMENT PRINCIPLES

- IDENTIFYING LOSS EXPOSURES
- UNIQUE CHARACTERISTICS:
  - DIFFICULT TO IDENTIFY
  - ELUDE TRADITIONAL IDENTIFICATION METHODS
  - DIFFICULT TO MEASURE
  - PERCEIVED EXPOSURE
  - SEVERE LOSSES
  - LOSS INCREASES OVER TIME
- OVERCOMING DIFFICULTIES

INSURANCE

- SITE-SPECIFIC POLICIES:
  - SITE-SPECIFIC EIL
  - CGL/EIL COMBINATION
  - UST COMPLIANCE
  - PROPERTY TRANSFER
  - REMEDIATION STOP-LOSS
  - SECURED CREDITOR
- OPERATIONS-SPECIFIC POLICIES:
  - CONTRACTORS POLLUTION LIABILITY
  - CGL/CPL COMBINATION
  - ASBESTOS AND LEAD ABATEMENT
- PROFESSIONAL LIABILITY POLICIES:
  - ENVIRONMENTAL E&O
  - PROFESSIONAL LIABILITY COMBO

Environmental Loss Exposures and Insurance

Module 9
Chapter 9

1

1

Objectives

- Obj I: Legal Foundations for Environmental Liability
- Obj II: Environmental Statutes
- Obj III: Environmental Risk Management
- Obj IV: Environmental Insurance

2

2

Legal Foundations for Environmental Liability

Objective I

3

3

Legal Foundations

- Almost every organization has environmental loss exposures.
  - Can result from pollutants being released into the environment.
- Environmental liability can be incurred under:
  - Tort liability.
  - Contract liability.
  - Statutory law.

4

4

Tort Liability

- Tort liability for pollution can be based on negligence, intentional torts, or strict liability.
  - Negligence – may result in pollution.
    - Organization can be held legally liable to pay claimant's damages.
  - Intentional torts – nuisance and trespass.
    - Nuisance – interference with another's peaceful enjoyment of their property.
    - Trespass – physical deposit of pollutants on the property of another.

5

5

Tort Liability

- Strict liability – when manufacturing operations use inherently hazardous materials or processes, courts may impose strict liability.
  - Eliminates common-law defenses normally available to the defendant in a negligence suit.
  - No degree of care is considered to be adequate for ultrahazardous activities.

6

6

Contractual Liability

- An organization can assume liability for environmental losses under a contract.
  - If contract contains a hold-harmless agreement.
- Example – contractor agrees to indemnify project owner for claims made against the owner.

7

7

Environmental Statutes

- Many environmental laws do not require fault on the part of the responsible party.
  - Creates strict liability by statute.
  - "Let the polluter pay" principle.
- Federal statutes provide the baseline standards for state and local environmental laws.
  - Local governments can impose more strict requirements.
- Statutes can result in injunctions, fines, and even criminal penalties.

8

8

Environmental Regulation

- Traditionally, environmental regulation involved physical inspections.
  - EPA set standards, counted contaminants, and enforced statutes.
  - Risk managers were rarely involved.
- Enforcement model for environmental laws has changed dramatically.
  - Now involves both a review of the physical facilities and control of the processes that pose a threat to the environment.

9

9

Environmental Regulation

- Enforcement model now evaluates:
  - Accountability of the board of directors.
  - Assignment of environmental responsibility within senior management ranks.
  - Effective dispersion of responsibility through all levels of the organization.
  - Day-to-day operation of the system in controlling activities that involve hazardous materials.

10

10

Practice

- As part of their day-to-day operations, Scott's Sandblasting, Inc. regularly releases dust and sand particles into the air. They take precautions to control these releases, however, air quality on a neighboring restaurant has become so poor they are unable to use their outdoor patio for customer dining on most days. The restaurant could sue Scott's Sandblasting for damages based on which of the following?
  - A. Trespass.
  - B. Nuisance.
  - C. Negligence.
  - D. Strict Liability.

11

11

Environmental Statutes

Objective II

12

12

Clean Water Act

- The Clean Water Act seeks to improve the quality of surface waters.
  - Prohibits/regulates the discharge of pollutants into navigable waters.
  - Restores them to fishable and swimmable quality.
- Also mandates a Spill Prevention, Control, and Countermeasure Plan for certain regulated facilities.

13

13

Clean Air Act

- The Clean Air Act seeks to improve the quality of ambient air.
  - Regulates emissions from both mobile and stationary sources of air pollution.
  - Parties that intend to construct or operate sources of air emissions must obtain permits.
- Zones where air quality fails to meet requirements are "Nonattainment Areas."
  - Regulators can curtail new commercial development by denying required air permits.

14

14

Toxic Substance Control Act

- The Toxic Substance Control Act regulates the chemical manufacturing industry.
  - Prevents the import or manufacture of dangerous chemicals without safeguards.
- Manufacturers must provide extensive information to the EPA.
  - Regarding formulation, use, and risks of each substance manufactured or imported.

15

15

Resource Conservation Act

- The Resource Conservation and Recovery Act imposes strict waste management requirements.
  - Imposed on generators and transporters of hazardous wastes and on disposal facilities.
  - Provides "cradle-to-grave" regulation.
- One of the first environmental Acts to require proof of financial responsibility.
  - Owners of facilities must show they have the resources to clean up any material that causes environmental damage.

16

16

Motor Carrier Act

- The Motor Carrier Act of 1980 established minimum levels of financial responsibility for carriers of hazardous materials.
  - Protects the environment from releases of harmful materials during transportation.
- MCS 90 endorsement is required of any carrier subject to the Motor Carrier Act of 1980.
  - Pays for damages resulting from negligence in the operation or use of any vehicle subject to the Act.

17

17

Superfund Act

- The Comprehensive Environmental Response, Compensation, and Liability Act facilitates the cleanup of any abandoned or uncontrolled sites containing hazardous substances.
  - Strict and retroactive liability.
    - Many sites subject to Superfund Act were legal at the time they were accepting waste.
  - Joint and several liability.
- Potentially responsible parties (PRPs) are responsible for remediation costs.

18

18

Superfund Act

- PRPs can include:
  - Current owners and operators of a site.
  - Prior owners and operators who may or may not have been involved during the disposal of hazardous materials.
  - Generators of the waste materials disposed of at the site.
  - Transporters who hauled waste to the site.
  - Anyone who arranged for the disposal of materials at the site.

19

19

Oil Pollution Act

- The Oil Pollution Act (OPA) seeks to reduce spills of hazardous materials into U.S. coastal or navigable waters.
  - Mandates technical standards for facilities and vessels operating in or near such waters.
- Imposes requirements on owners of vessels.
  - Must prevent releases and to pay for the costs of releases that are not prevented.
  - Liable for removal costs and damages.

20

20

Practice

- Which one of the following Acts was enacted to facilitate the cleanup of abandoned or uncontrolled sites containing hazardous substances?
  - A. Clean Air Act.
  - B. Resource Conservation and Recovery Act.
  - C. Comprehensive Environmental Response, Compensation, and Liability Act.
  - D. Toxic Substance Control Act.

21

21

Environmental Risk Management

Objective III

22

22

Identifying Loss Exposures

- Process to identify environmental exposures:
  - Identify what materials are present and the quantities of those materials.
  - Identify potential routes those materials could take if they were released.
    - Sewers and air ducts are examples of routes that contaminants can follow.
  - Identify target populations of living entities that could be affected.

23

23

Unique Characteristics

- Characteristics of environmental exposures:
  - Difficult to identify – many arise from activities conducted many years ago.
  - Tend to elude traditional exposure identification methods – physical inspections of facilities do not always reveal damage.
  - Amount of loss may be difficult to measure.
    - Often, no relationship is apparent between exposure to a substance and injury.

24

24

Unique Characteristics

- Characteristics of environmental exposures:
  - Claims may result from a perceived, rather than real, exposure.
    - Or from a fear of future injury.
  - Environmental losses are often very severe.
  - Many remediation laws impose a “let the polluter pay” funding concept.
  - Technology can change the loss exposure.
  - Loss can increase over time as contamination spreads farther from its source.

25

25

Overcoming Difficulties

- The difficulty of identifying exposures can sometimes be overcome by the effective use of internal and external resources.
  - Compliance personnel within the firm are often familiar with the laws that apply to the operations of the firm.
  - Legal counsel is another source of expertise.
  - Operational personnel may be familiar with environmental loss exposures.
  - Environmental consultants can also be used.

26

26

Overcoming Difficulties

- Risk manager should attempt to distinguish between loss exposures resulting from:
  - Prior activities.
  - Those that could result from future activities.
- An essential element in controlling losses is to have a contingency plan in place.
  - Plan should address the procedures to follow in the event of an environmental contamination incident.

27

27

Overcoming Difficulties

- Insurance agents and brokers contemplating working with environmental insurance should seek specialized assistance.
  - Environmental insurance policies are complex and are not standardized.
  - Expertise can be found in consultants, wholesale insurance brokers, or some of the specially trained underwriters.

28

28

Practice

- Derek has recently joined Mira Bella Development Company as their Chief Risk Officer. Mira Bella is a developer for senior living communities in the Florida panhandle. Derek quickly identified several potential environmental liability issues with one of the company's new communities. Which one of the following would be the best strategy for Derek to implement to control environmental losses?
  - A. Avoid building new structures near water management districts.
  - B. Instruct their insurance agent to add an MCS 90 endorsement to their policy.
  - C. Put a contingency plan in place.
  - D. Join a Superfund group to reduce their risk.

29

29

Environmental Insurance

Objective IV

30

30

Environmental Insurance

- Environmental exposures may be covered in some cases through endorsements to existing liability policies.
  - However, coverage may be inadequate.
- Major categories of environmental insurance:
  - Site-specific.
  - Operations-specific.
  - Professional liability.
- Environmental policies are not standardized.

31

31

Site-Specific EIL Policy

- Site-specific environmental impairment liability (EIL) policy.
  - Type of site-specific policy.
  - Covers third-party claims arising from sudden or gradual releases of pollutants.
  - Typically sold to factories, golf courses, waste disposal sites, oil refineries, farms, and municipalities.

32

32

Site-Specific EIL Policy

- Insuring agreement obligates insurer to pay a loss for bodily injury, property damage, cleanup costs, and defense expenses.
  - Loss must result from pollution beyond the boundaries of the sites listed in the policy.
  - On-site cleanup can be added by endorsement.
- For coverage to apply, the bodily injury or property damage must result from pollutants emanating from an insured site.

33

33

Site-Specific EIL Policy

- Site-Specific EIL policies respond to losses arising from "pollution conditions."
  - Pollution conditions follows definition of pollutants in CGL and other policies.
- Provide coverage on a claims-made basis.
  - Often have no retroactive date.
  - Contain extended reporting period provisions.
    - Typically 1-3 years.
- Defense costs are typically payable within policy limits.

34

34

Site-Specific EIL Policy

- All claims arising from a pollution incident are treated as a single loss subject to one limit of liability and one deductible.
- Example – a manufacturing company determined that 500 gallons of chemicals seeped into a stream due to a leaking pipe. EIL policy covered the cleanup, after the deductible.
  - Three years later, some fishermen filed a class-action suit against the company. If company is found liable, the damages will be considered part of the earlier loss.

35

35

Site-Specific EIL Policy

- Typically contain most of these exclusions:
  - Known preexisting conditions.
  - Deliberate noncompliance with laws.
  - Punitive damages.
  - Sold or leased premises.
  - Nuclear liability, acid rain.
  - War, terrorism.
  - Contractual liability.
  - Damage to the insured site.

36

36

CGL/EIL Combination Policies

- CGL/EIL Combination Policies produce seamless coverage.
  - May be lower premium than separate policies.
- Combination policies are offered with EIL coverage on a claims-made basis.
  - CGL coverage is offered on either an occurrence or a claims-made basis.
  - Both coverages are subject to a single aggregate limit and deductible.

37

37

CGL/EIL Combination Policies

- CGL/EIL combination policies may also be endorsed to provide products liability coverage.
  - Includes protection against pollution claims resulting from failure of insured's product.
- Advantages over buying separate policies:
  - Combination policies can eliminate coverage disputes.
  - Combination policy is typically less expensive than if the forms were purchased separately.

38

38

Underground Storage Tank Compliance

- Underground storage tank compliance policies.
  - Provide proof of financial responsibility required under RCRA.
- Most UST policies do not provide the full scope of coverage granted by full EIL policies.
  - UST policy does not insure all releases of contaminants from the insured site.
  - Some policies respond only to a "corrective action" and not to other environmental damage claims.

39

39

Property Transfer Policies

- A property transfer policy is purchased in connection with the sale of property.
  - Transfers potential pollutant cleanup liability to an insurer.
- Essentially an EIL policy that has been amended to cover on-site cleanup on a first-party basis.
  - Can be written to provide remediation and third-party liability coverage.
  - Policies are usually assignable to new owners.
  - Commonly written for terms of 7-10 years.

40

40

Property Transfer Policies

- Policy typically has two insuring agreements:
  - Third-party liability.
  - On-site cleanup required under environmental protection laws.
- Coverage for cleanup is usually triggered by the discovery of contamination in excess of baseline cleanup levels.
  - Baseline levels are set forth in laws.
- Exclusions closely match those found in Site-Specific EIL policies.

41

41

Remediation Stop-loss Policies

- Remediation stop-loss policies are designed to facilitate real estate sales.
  - Used when a property contaminated but cost of remediation is uncertain.
- Used to close the gap between low and high estimates of cleanup costs.
  - Insures costs that exceed the projected or anticipated cleanup costs.
- Typically contain relatively few exclusions.
  - Written on a first-party coverage basis.

42

42

Remediation Stop-loss Policies

- Example – a grain elevator worth $2,000,000 is on land that is contaminated. The seller's estimate of remediation costs is $500,000, but an environmental consultant believes the costs could be as high as $3,000,000.
  - Remediation stop-loss policy could be purchased with a limit of $3,000,000 and a $500,000 deductible.

43

43

Secured Creditor Policies

- Secured creditor policies were developed to protect a lender's security interest in property.
  - For those with uninsured environmental loss exposures not severe enough for EIL policy.
- Pays for cleanup that a borrower is unable to perform without involvement of the lender.
  - Borrower must be in default on the loan.
  - Borrower receives no protection under policy.
  - Pays lesser of cleanup costs or loan balance.

44

44

Operations-Specific Policies

- The second major category of environmental insurance policies is operations-specific policies.
  - Contractors pollution liability policies.
  - CGL/CPL combination policies.
  - Asbestos and lead abatement contractors general liability policies.

45

45

Contractors Pollution Liability Policies

- Contractors pollution liability (CPL) policies address the needs of contractors performing environmental remediation services.
  - Cover operations at project sites.
  - Policies are available with either a claims-made or an occurrence coverage trigger.
- Emergence of mold as a contaminant has expanded the need for CPL coverage.

46

46

Contractors Pollution Liability Policies

- CPL policies often exclude these exposures:
  - Asbestos abatement operations.
  - Radioactive matter.
  - Claims arising out of the insured's products.
  - Damage to sites owned by or leased to the insured.
  - Professional liability.

47

47

CGL/CPL Combination Policies

- A CGL/CPL combination policy combines a CGL policy with a claims-made or an occurrence-based CPL policy.
  - Originally designed to provide seamless CGL and environmental coverage for environmental remediation contractors.

48

48

Asbestos and Lead Abatement

- Asbestos and lead abatement contractors general liability policies.
  - Essentially a CGL policy that amends the pollution exclusion, deleting asbestos from the definition of pollutants.
  - Usually includes defense costs within the general aggregate limit.
  - Deductibles are typically higher than those found in most contractors' CGL forms.

49

49

Professional Liability Policies

- Environmental professional errors and omissions (E&O) liability policies.
  - Resemble the coverage of traditional engineers' professional liability policies.
  - Do not contain pollution exclusions.
  - Written on a claims-made basis.
  - Usually subject to a retroactive date and a substantial deductible.

50

50

Professional Liability Policies

- Professional liability/CGL/CPL combination policies.
  - Can save the insured premium dollars.
- Combines components of:
  - Environmental professional E&O liability insurance.
  - CGL insurance.
  - Contractors pollution liability insurance.

51

51

Practice

- C&C Factories has a factory that is adjacent to a fuel storage facility. They are concerned about potential liability from any pollution that may occur from the underground storage tanks on the adjacent property. Which of the following would be the most appropriate policy to mitigate this loss exposure?
  - A. Remediation stop-loss policy.
  - B. Site-specific environmental impairment liability policy.
  - C. Property transfer policy.
  - D. Underground storage tank (UST) compliance policy.

52

52

Practice

- ABC Company is considering the purchase of a large tract of land in Texas. ABC Company has been made aware of the need for some environmental clean-up of the property after the purchase. The costs of the clean-up are unknown and cannot be precisely estimated at this time. Which of the following policies would be most appropriate for ABC Company to purchase to cover clean-up costs in excess of preliminary estimates?
  - A. Contractors pollution liability policy.
  - B. Property transfer policy.
  - C. Site-specific environmental impairment liability policy.
  - D. Remediation stop-loss policy.

53

53

Module 10

Marine and Aviation Loss Exposures

MARINE LOSSES

LOSS EXPOSURES

- -INJURY/ILLNESS:
  - -CREW
  - -PASSENGERS
  - -LONGSHORE WORKERS
- -PROPERTY DAMAGE
  - -OTHER VESSELS
  - -CARGO
  - -STRUCTURES
- -POLLUTION
- -GENERAL AVERAGE

P&I AND HULL INSURANCE

- -P&I INSURANCE:
  - -INSURING AGREEMENT
  - -BODILY INJURY
  - -PROPERTY DAMAGE
  - -UNIQUE COVERAGES
  - -EXCLUSIONS
- -HULL INSURANCE:
  - -COVERAGE
  - -EXCLUSIONS
  - -AMOUNT PAYABLE
  - -CLAUSES

OTHER MARINE INSURANCE

- -MARINE BUILDERS RISK
- -SHIP REPAIRERS LIABILITY
- -TERMINAL OPERATORS LIABILITY
- -MARINA OPERATORS LIABILITY
- -BOAT DEALERS
- -CHARTERERS LIABILITY
- -OIL & GAS FACILITIES

AVIATION LOSSES

LOSS EXPOSURES

- -SECTORS:
  - -GENERAL AVIATION
  - -AIRLINES
  - -MANUFACTURING
  - -AIRPORTS
- -CHARACTERISTICS:
  - -CATASTROPHIC
  - -LIMITED SPREAD OF RISK
  - -STATE LAW
- -PURPOSE OF USE:
  - -AIRLINE
  - -BUSINESS AND PLEASURE
  - -INDUSTRIAL AID
  - -COMMERCIAL USE
  - -SPECIAL USE
  - -INSTRUCTION
  - -SALES DEMONSTRATION

MANNED AIRCRAFT

- -LIABILITY FOR OWNED AIRCRAFT
- -USE OF NONOWNED AIRCRAFT
- -PHYSICAL DAMAGE
- -MEDICAL EXPENSE
- -PASSENGER SETTLEMENT

UNMANNED AIRCRAFT

- -COMMERCIAL USES
- -REGULATION OF DRONES
- -CHALLENGES
- -INSURANCE MARKET
- -DRONE COVERAGES:
  - -LIABILITY COVERAGE
  - -NONOWNED DRONES
  - -PERSONAL INJURY
  - -PREMISES LIABILITY
  - -WAR PERILS LIABILITY
  - -PHYSICAL DAMAGE

Marine and Aviation Loss Exposures and Insurance

Module 10
Chapter 10

1

1

Objectives

- Obj I: Marine Loss Exposures
- Obj II: Marine Insurance: Protection and Indemnity and Hull Insurance
- Obj III: Other Marine Insurance Policies
- Obj V: Aviation Loss Exposures
- Obj VI: Insurance for Manned Aircraft
- Obj VII: Unmanned Aviation Risk Management and Insurance

2

2

Marine Loss Exposures

Objective I

3

3

Marine Loss Exposures

- Owners or operators of vessels face unique loss exposures.
  - Many are excluded from coverage under standard property and liability policies.
- Primary marine liability loss exposures:
  - Injury or illness – vessel's crew or others.
  - Property damage – other vessels and cargo.
  - Pollution.
- Another exposure is damage to own vessel.

4

4

Injury to Crew

- Liability for injury to crew can be based on:
  - Obligation to provide maintenance and cure.
    - Medical care, food, lodging during illness.
  - Owner's warranty of seaworthiness.
    - Promise the vessel is fit for voyage.
  - Merchant Marine Act of 1920.
    - Gives crew members right to sue ER for injuries resulting from ER negligence.
  - Death on the High Seas Act.
  - General maritime law.

5

5

Injury to Other Persons on Board

- Owners/operators also owe a duty of care to other persons who may come on board:
  - Longshore workers who load or discharge cargo.
    - U.S. Longshore and Harbor Workers' Compensation Act (LHWCA).
  - Passengers on cruise ships or other vessels.
    - Some cruise ships carry 2,000+ passengers.
  - Various other visitors, such as harbor pilots or employees of ship repairers.

6

6

Injury to Persons Not on Board

- A significant loss exposure is injury to others on another vessel as the result of a collision.
  - Persons who are not on board a vessel can also be injured as a result of a vessel.
- Laws that apply to suits arising out of such accidents depend on the applicable jurisdiction.
  - Suit will likely be based on allegations of negligence or unseaworthiness of the vessel.

7

7

Property Damage

- An owner/operator may also be liable for damage to property owned by others.
  - Damage to other vessels and their cargoes – includes wreck removal expenses and damage to other vessel’s freight and cargo.
  - Damage to other structures – bridges, piers, docks, or other structures on or near water.
  - Damage to cargo of others on the vessel – ocean carrier can become liable for damage to customers’ cargo on board the vessel.

8

8

Property Damage

- Liability for cargo of others on the vessel depends on whether the carrier is a:
  - Common carrier – serves the general public.
    - Sails predetermined routes regularly.
    - Governed by U.S. Carriage of Goods by Sea Act (COGSA).
  - Contract carrier – engage in tramp shipping.
    - Scheduling each voyage separately.
    - Liability is determined by the terms agreed to in the charter party (contract).

9

9

Pollution

- Owners and operators of tankers and tank barges have pollution liability loss exposures.
  - Liability for environmental damage, cleanup costs, and bodily injury.
- Many countries' marine pollution laws conform to an international standard.
  - Convention on Civil Liability for Oil Pollution Damage.
  - Some countries, including the U.S., have their own laws relating to oil spills.

10

10

General Average

- General average is a partial loss that must be shared by all parties to a voyage.
  - Cargo owners and vessel owners.
  - General average originated in ancient times.
- Because of general average, a vessel owner (or a cargo owner) can become legally obligated to pay others' losses or expenditures.
  - General average sacrifices include not only sacrifices of cargo but also sacrificial damage to the vessel.

11

11

Damage to Vessel Owner's Vessel

- Vessels can be damaged or destroyed by a wide variety of perils.
  - When a vessel is inoperable during repair, its owner loses freight or passage money.
    - Freight – compensation received for transporting cargo.
  - Vessel owner may also incur additional expenses to perform promised services.

12

12

Practice

- A vessel valued at $30,000,000 is carrying the following cargo for three customers:
  - Customer A: $4,000,000 fireworks.
  - Customer B: $6,000,000 produce.
  - Customer C: $10,000,000 electronics.
- During a fire on the ship at sea, all of the fireworks are thrown overboard to prevent an explosion. What is the contribution to general average for Customer A?
  - A. $0.
  - B. $320,000.
  - C. $800,000.
  - D. $4,000,000.

13

13

Marine Insurance: Protection and Indemnity and Hull Insurance

Objective II

14

14

Marine Insurance

- Main coverages needs by vessel owners:
  - Protection and Indemnity (P&I) – covers various liability claims resulting from operation of a vessel.
    - Parallels auto liability insurance.
  - Hull – covers physical damage to vessels, including machinery and fuel.
    - Does not cover cargo.
    - Parallels auto physical damage coverage.

15

15

P&I Insurance

- The P&I insuring agreement limits coverage to liabilities the assured may incur as an owner.
  - Indemnity policy.
  - Coverage is restricted to the types of claims described in the policy.
- Coverages include:
  - Defense costs – included in limit of insurance.
  - Bodily injury.
  - Property damage.
  - Unique coverages.

16

16

P&I Insurance Coverages

Bodily Injury Coverages	Description
Loss of life, injury, and illness	Applies to crew members, the vessel's own passengers, and other vessels' passengers.
Repatriation expenses	Reasonable expenses incurred to return crew members to their sign-on port because of illness, injury, or an accident that results in termination of the voyage.

17

17

P&I Insurance Coverages

Property Damage Cov.	Description
Other vessels – collision	Covers damages to another vessel resulting from a collision with insured's vessel.
Other vessels – not caused by collision	Covers losses caused as a result of assured's negligence.
Property other than vessels	Covers property such as bridges and piers, but does not cover cargo.
Wreck removal expenses	Covers expenses when vessel owner is required by law to remove wreckage of a sunk vessel.
Cargo of others	Covers cargo of other vessels.

18

18

P&I Insurance Coverages

Unique Coverages	Description
Fines and Penalties	Covers liability for fines or penalties for violating federal or state laws.
Cost of resisting mutiny/misconduct	Expenses incurred in resisting any unfounded claim by persons employed on vessel.
Quarantine	Expenses incurred when authorities place a vessel in isolation to prevent spread of disease.
Putting-in expenses	Expenses of deviating from a route to deliver sick/injured crew member or passenger to a port.
Cargo's proportion of general average	Pays portion of a general average assured is unable to collect from the owners of cargo aboard the insured vessel.

19

19

P&I Insurance Exclusions

- General exclusions:
  - War or vessel seizure or detention.
  - Towage of any other vessel, unless the purpose is to assist a vessel in distress.
  - Liability exceeding the liability that would be imposed by law in absence of a contract.
  - Pollution liability is excluded under certain forms.

20

20

P&I Insurance Exclusions

- Additional exclusions and special conditions applicable to cargo:
  - Valuable property such as jewelry, furs, and bullion.
  - Refrigerated cargo when the assured does not meet certain conditions.
  - Liability expanded by contract.
  - Cargo on land.

21

21

Hull Insurance

- Hull insurance is property insurance for a vessel plus collision liability coverage.
  - Each vessel to be insured is named in the policy or in a schedule attached to the policy.
- Hull insurance can cover:
  - Vessel owners.
  - Agents who operate vessels for the owners.
  - Bareboat charterers of vessels – charterer that agrees to be responsible for operating and insuring the vessel.

22

22

Hull Insurance

- Hull policies ordinarily exclude:
  - Cargo – can be insured under ocean cargo policy or P&I policy.
  - Cargo containers – insured by their owners or lessees under special policies.
  - Passengers' or crew's property – vessel owner's liability is covered under P&I policy.
  - Barges – coverage is usually obtained by endorsement.
    - Transport cargo between ship and shore.

23

23

Hull Insurance

- Coverage is usually provided for:
  - Perils of the seas – rough seas, strandings.
  - Fire, lightning, and earthquake – while vessel is at sea or docked.
  - Assailing thieves – those who attempt to steal property; excludes passengers and crew.
  - Jettison – voluntary throwing part of vessel overboard when ship is in danger.
  - Barratry – misconduct by the crew.
  - All other like perils.

24

24

Hull Insurance

- Basic hull insurance generally excludes:
  - War and its aftereffects.
  - Piracy – eliminates much of the coverage granted under the assailing thieves peril.
  - Strikes and other labor disturbances.
  - Riot.
  - Taking or hindering of vessel by another.
- An endorsement is generally added to exclude losses resulting from nuclear reaction, radiation, or radioactive contamination.

25

25

Hull Insurance

- Most hull policies are issued for one year.
  - Some are issued for a specific voyage.
- Events that can trigger automatic termination:
  - Change in ownership, management, or vessel's flag designating country in which vessel is registered.
  - Charter/requisition of vessel on a bareboat basis.
  - Change in the vessel's classification.

26

26

Hull Insurance

- Clauses found in hull insurance:
  - Sue and labor clause – covers the cost of reasonable measures to protect property from damage at the time of loss.
  - General average and salvage clause – pays assured's contributions to general average and pays for salvage.
  - Collision liability clause – Collision liability claims are payable subject to a separate amount of insurance equal to the policy limit.

27

27

Hull Insurance

- Towers coverage applies to those who operate vessels that tow cargo barges.
  - Covers damage to other vessels or structures (such as bridges or a dock) resulting from collision by the insured vessel.
  - Covers damage to the barges and their cargoes being propelled by the insured tug.

28

28

Practice

- Which one of the following represents expenses of deviating from a stated route to deliver an injured passenger to a port for medical care?
  - A. Quarantine expenses.
  - B. Putting-in expenses.
  - C. Repatriation expenses.
  - D. Defense expenses.

29

29

Other Marine Insurance Policies

Objective III

30

30

Marine Builders Risk Policy

- A marine builders risk policy covers:
  - Physical loss or damage to the vessel during the entire course of the vessel's construction.
  - Property and liability losses for a completed vessel during trial trips or delivery.
    - Shipbuilders may operate the vessel before turning the vessel over to its owner.

31

31

Ship Repairers Liability Policy

- A ship repairers liability policy covers:
  - Liability loss exposure to the shipyard from the possession and repair of vessels.
  - Liability arising out of the insured's operation of customers' vessels.
- Some policies also offer general liability coverage.

32

32

Terminal Operators Liability Policy

- A terminal operator is an owner of a facility for docking and loading/unloading vessels.
  - Terminal operators liability policy covers the bailee liability loss exposures of the insured.
- Similar marine policies are available for stevedores and wharfingers.
  - Stevedores are independent contractors that provide loading and unloading services.
  - Wharfingers are facilities that provide docking space and services for vessels.

33

33

Marina Operators Liability Policy

- A marina is a waterfront facility that provides a variety of services for owners of pleasure craft.
  - Lease of dock space, repair services, fueling services.
- Marina operators liability policy covers liability for damage to boats in the care of the operator.
  - May also cover additional exposures, such as liability for injuries to marina customers.

34

34

Boat Dealers Policy

- Boat dealers policy covers both property and liability loss exposures.
  - Property coverage is ordinarily limited to covering pleasure craft and other merchandise held for sale by the dealer.
  - Liability coverage is usually limited to P&I insurance.
- Policy may be endorsed to cover bailee liability.

35

35

Charterers Liability Policy

- Bareboat charterers rent a vessel from the owner, who provides no crew or services.
  - Charterer usually must obtain P&I, collision liability, and hull insurance.
- Voyage and time charterers can direct where vessel will go, but owner employs the crew.
  - Charterers face breach of duty liability loss exposures.
  - Exposures can be insured under a charterers liability policy.

36

36

Marine Policies for Oil & Gas Facilities

- Various coverages are available to insure property used in the exploration and production of oil and gas at offshore locations.
  - Types of property insured include drilling units, production platforms, and undersea pipelines.
- Limits of insurance needed can be so high that no single insurer provides them.
  - Offshore oil and gas facilities may be insured by multiple insurers.

37

37

Marine Policies for Oil & Gas Facilities

- Available coverages include:
  - Builders risk coverage.
  - Physical damage coverage after property becomes operational.
  - Loss of business income coverage.
  - Wreck removal coverage.
  - Coverage for the costs of controlling well blowouts.
  - P&I and other liability coverages.

38

38

Practice

- A retired Navy SEAL is starting a company that will build boats for sale to the general public. He is considering risk management options for the business, and would like to find a policy that would provide coverage for losses incurred during any point during the course of the boats' construction, including launch. The most appropriate policy for the business would be a:
  - A. Hull liability policy.
  - B. Ship repairers liability policy.
  - C. Marine builders risk policy.
  - D. Boat manufacturers policy.

39

39

Aviation Loss Exposures

Objective V

40

40

Aviation Industry Sectors

- Sectors of the aviation industry:
  - General aviation – all civil aviation that does not involve passenger airlines.
    - Charter flights, law enforcement, training.
  - Airlines – major and national airlines.
  - Aviation manufacturing and distribution – manufacturers of general aviation and airline aircraft, engines, and equipment.
  - Airports and fixed base operators – includes airports and repair operations.

41

41

Aviation Loss Exposures

- Most individual insurers lack the capacity to write aviation insurance.
  - Also lack underwriting expertise.
- A large share of commercial airline business is handled by two multi-company aviation pools.
  - Manage and underwrite business on behalf of its members.
  - A pool is a group of insurers that join together to insure loss exposures.

42

42

Aviation Loss Exposures

- Characteristics of aviation loss exposures:
  - Catastrophic loss potential – aircraft accidents can become major disasters.
  - Limited spread of risk – number of airplanes is small compared to exposure units (such as cars) covered by other types of insurance.
  - Legal foundations of aircraft liability – liability generally is determined according to the law of the state where accident occurs.
    - Some states require proof of negligence.

43

43

Criteria for Exposure Evaluation

- When selecting and rating applicants for aircraft insurance, insurers use the following criteria:
  - Aircraft type – loss can be influenced by factors related to age, construction, and general configuration.
  - Pilots – experience and ability are crucial because of potential effects of human error.
  - Geography – terrain and prevailing weather conditions can affect aviation loss exposures.
  - Purpose-of-use category.

44

44

Criteria for Exposure Evaluation

Purpose-of-Use Category	Description
Airline	Most definitive of all categories. Only class that provides statistics to insurers allowing them to make reasonably accurate loss projections.
Business and pleasure	Individually owned aircraft used for personal purposes. Includes exposures to hazards such as inexperienced pilots and low-value aircraft.
Industrial aid	Corporate owned aircraft used for transporting employees and executives. Flown by professional pilots. Lower premiums than business and pleasure due to favorable accident record.

45

45

Criteria for Exposure Evaluation

Purpose-of-Use Category	Description
Commercial use	Aircraft used to transport persons/cargo for a fee. Charter operators, air taxis, and high-altitude photography.
Special use	Exposure to unique hazards. Includes crop dusting, law enforcement, firefighting, banner towing, and low-altitude photography.
Instruction and rental	Flight schools that instruct potential pilots. High loss exposure due to inexperienced pilots.
Sales demonstration	Dealers and brokers who demonstrate planes to buyers.

46

46

Practice

- The aviation purpose-of-use category used to classify and rate exposures such as charter operators, high-altitude photography, and air taxis is:
  - A. Commercial use.
  - B. Special use.
  - C. Instruction and rental.
  - D. Airline.

47

47

Insurance for Manned Aircraft

Objective VI

48

48

Insurance for Manned Aircraft

- The general aviation sector includes all civil aviation not involving passenger airlines.
  - Private aircraft owners often have difficulty obtaining adequate liability limits.
- Typical coverages for general aviation:
  - Liability coverage on owned aircraft.
  - Coverage for use of nonowned aircraft.
  - Physical damage coverage on owned aircraft.
  - Medical expense coverage.
  - Passenger voluntary settlement coverage.

49

49

Liability Coverage on Owned Aircraft

- Aircraft insurance is specialized insurance with no standard policy.
  - Can be structured as one coverage with a single limit.
- May be structured with separate limits for:
  - Bodily injury (excluding passengers) liability.
    - Also covers mental anguish and death.
  - Passenger bodily injury liability coverage.
  - Property damage liability coverage.

50

50

Liability Coverage on Owned Aircraft

- Some of the exclusions applicable to aircraft liability coverage are similar to those found in other liability policies.
  - War, workers compensation, pollution, etc.
  - Most aircraft policies contain additional exclusions that pertain to the safe operation of the insured aircraft.
- A policy extends its liability provisions to cover another aircraft used as a substitute for an insured aircraft.

51

51

Coverage for Use of Nonowned Aircraft

- Many policies cover the named insured for an aircraft not owned.
  - Named insured must be an individual.
  - No coverage for liability for aircraft rented or chartered in the name of the organization.
  - No coverage for employees who rent or charter aircraft and fly on company business.
- If the named insured is an organization, coverage gap can be remedied with a nonownership liability coverage endorsement .

52

52

Physical Damage Coverage

- Aviation insurers use the "all-risks" approach for physical damage coverage.

All-Risks	Covered	Not Covered
Ground and flight	In flight (includes takeoff and landing); taxiing under its own power; pushed into a hangar; towed by tractor	N/A
Not in motion	Pushed into a hangar; towed by tractor	In flight; taxiing under its own power
Not in flight	Taxiing under its own power; pushed into a hangar; towed by tractor	In flight

53

53

Physical Damage Coverage

- Aircraft physical damage coverage is usually subject to only a limited number of exclusions.
  - War, strikes, hijacking, seizure, confiscation, and several other similar perils apply.
  - Most of the remaining exclusions are similar to auto physical damage exclusions.
- Approaches to valuation:
  - Agreed value – value shown in declarations.
  - Actual cash value – insurer pays lesser of the actual cash value or policy limit.

54

54

Physical Damage Coverage

- Aircraft physical damage coverage is usually subject to a deductible.
  - Expressed as either a dollar amount or as a percentage of the aircraft's insured value.
  - Some insurers apply a dollar deductible with respect to ground losses and a percentage deductible with respect to flight losses.
- Deductibles for aircraft in the commercial category are higher than those for aircraft in the business and pleasure category.

55

55

Medical Expense Coverage

- Medical expense coverage is normally available to noncommercial aircraft insureds.
  - Provides payment for all reasonable medical, surgical, hospital, and related expenses.
  - Resembles medical payments coverage in auto insurance policies.
- The insurer is obligated to pay medical expense claims regardless of whether the insured is legally liable.

56

56

Passenger Voluntary Settlement Coverage

- Passenger voluntary settlement coverage pays a sum if a passenger dies or is seriously injured.
  - Recipient must fully release insured from liability for all bodily injury.
  - Requires the named insured to ask the insurer to offer the settlement.
- Can be extended in some cases to include crew members as well.
  - Does not apply to crew members covered under a workers compensation law.

57

57

Practice

- Which one of the following statements is correct regarding admitted liability coverage?
  - A. It can be extended to include crew members including those who are covered under workers compensation law.
  - B. It requires the recipient to fully release the insured from liability for all bodily injury.
  - C. It requires passengers to use legal action to secure compensation for injury.
  - D. It requires the insurer to initiate the settlement offer.

58

58

Unmanned Aviation Risk Management and Insurance

Objective VII

59

59

Commercial Uses for Drones

- Drones enable quick access to remote areas without jeopardizing the safety of employees.
  - Claims representatives can use drones to inspect roofs and other damage locations.
  - Engineers can use drones to inspect pipelines and develop infrastructure design.
  - Architects can use drone images to create 3-D models of structures.
  - Contractors can use drones to safely inspect cranes and monitor high-rise construction.

60

60

Regulation of Commercial Drones

- Small Unmanned Aircraft Systems Regulations.
  - Operations must take place in daylight only.
  - Flights near major airports require Air Traffic Services' approval.
  - Flights must occur within 3 miles of operator.
  - No flights may take place over persons not directly involved in the operation.
  - Operators must meet specific qualifications.
  - Ground speed may not exceed 100 mph.
  - Altitude may not exceed 400 feet.

61

61

Drone Insurance Challenges

- Challenges associated with insuring drones:
  - Commercial insurers have little data about drones with which to make loss predictions.
  - Many operators are inexperienced.
  - Many drones are new, so insurers may not fully understand their risks.
- Inexpensive risk management solutions:
  - Operator training
  - Safety management.
  - Respect for privacy.

62

62

Drone Insurance Market

- Current U.S. regulations do not require drone owners or operators to carry insurance.
  - Most owners choose to secure adequate liability and physical damage protection.
- Some insurers outside the aviation market have adopted endorsements.
  - Coverage may be available only to existing corporate customers.
  - Limits are typically around $1 million.

63

63

Commercial Drone Coverages

- Liability coverage for drone owners and operators.
  - Covers bodily injury and property damage.
- Coverage may be supplemented with:
  - Liability coverage for nonowned drones.
  - Personal and advertising injury liability coverage – protects against privacy claims.
  - Premises liability coverage.
  - War perils liability coverage.

64

64

Commercial Drone Coverages

- Physical damage coverage for drone owners and operators.
  - Hull coverage.
  - Covers loss of or damage to the drone and the drone's platform, payload, and equipment.
- Some drone insurers include value-added services as part of their drone programs.

65

65

Practice

- Spencer owns a ranch in western Wyoming and he checks on his livestock through the use of a drone that he purchased last year. Spencer's neighbor has complained that Spencer is spying on him with the drone. Which one of the following coverages should Spencer obtain to protect him in the event his neighbor sues him for invasion of privacy?
  - A. Liability coverage for nonowned drones.
  - B. Premises liability coverage.
  - C. Personal injury coverage.
  - D. Physical damage coverage.

66

66

Module 11

Excess and Umbrella Liability Insurance

EXCESS OR UMBRELLA INSURANCE

NEED FOR COVERAGE

-MAXIMUM POSSIBLE LOSS
-LAYERING OF COVERAGE
-AGGREGATE LIMITS

EXCESS

-FOLLOWING-FORM
-SELF-CONTAINED
-COMBINATION
-SPECIFIC AND AGGREGATE

UMBRELLA

-CHARACTERISTICS
-DROP-DOWN COVERAGE
-UNDERLYING COVERAGES
-AGGREGATE LIMITS
-INSURING AGREEMENTS
-EXCLUSIONS
-CONDITIONS

Excess and Umbrella Liability Insurance

Module 11
Chapter 11

1

1

Objectives

- Obj I: Need for Excess or Umbrella Liability Coverage
- Obj II: Basic Differences: Excess and Umbrella Liability Policies
- Obj III: Excess Liability Insurance
- Obj IV: Umbrella Liability Insurance
- Obj V: Structuring a Liability Insurance Program

2

2

Need for Excess or Umbrella Liability Coverage

Objective I

3

3

Excess and Umbrella Coverage

- Excess and umbrella liability insurance are similar types of coverage.
  - Purchased for various reasons, including the need to increase CGL limits.
- Need for coverage is based on:
  - Difficulty in estimating the maximum possible loss for liability loss exposures.
  - Layering of liability coverages.
  - Effect of aggregate limits.

4

4

Estimating Maximum Possible Loss

- Most property loss exposures have a relatively clear maximum possible loss (MPL).
  - No way to estimate MPL for most liability loss exposures.
- Possibility of loss over $1,000,000 exists for almost every organization.
  - Multi-million dollar verdicts have become common.

5

5

Layering of Liability Coverages

- Insurers providing primary liability protection are often unwilling to provide a limit over $1,000,000 per occurrence.
  - A business may need to purchase excess or umbrella policies to achieve desired limits.
- A primary liability policy and excess policy are referred to as layers of insurance.
  - Multiple layers can exist.

6

6

Layering of Liability Coverages

- Underlying insurance is insurance that applies below an excess or umbrella liability policy.
  - Insurance in a lower layer.
- Typically, primary coverage must be exhausted before the next layer makes any payment.
  - Some organizations prefer to retain (self-insure) the first layer.

7

7

Effect of Aggregate Limits

- In addition to an each occurrence limit, one or more aggregate limits often apply to a policy.
  - Insured could have several liability losses during one policy year that exhaust an aggregate limit.
  - Would leave a subsequent claim uninsured or underinsured.

8

8

Practice

- Because of the difficulty in estimating the maximum possible loss for liability claims, many insureds should consider:
  - A. Purchasing an excess or umbrella liability policy.
  - B. Increasing their commercial general liability policy deductible.
  - C. Creation of separate business entities for each service offering.
  - D. Implementing a risk management program designed to eliminate hazardous conditions.

9

9

Basic Differences: Excess and Umbrella Liability Policies

Objective II

10

10

Excess Liability Policy

- An excess liability policy provides excess coverage above limits of underlying coverage.
  - Offers no broader protection than that provided by the underlying coverage.
- Coverage may be even more restrictive than the underlying coverage.
  - Excess liability policy may not provide defense coverage.

11

11

Umbrella Liability Policy

- An umbrella liability policy is a type of excess liability policy.
  - Provides additional limits, as excess liability policies do.
- Also provides coverage not available in the underlying coverages.
  - Subject to insured's assumption of a self-insured retention, or retained limit.
  - Most umbrella liability policies also provide defense coverage.

12

12

Excess vs. Umbrella

- In practice, the difference between excess and umbrella coverage can be unclear.
  - Courts and insurance professionals often use the terms interchangeably.
  - Many insurers providing these coverages do not use standardized policies.

13

13

Practice

- Which one of the following statements is correct regarding excess liability insurance and umbrella liability insurance?
  - A. Almost all insurers writing excess and umbrella liability policies use standardized policies.
  - B. From a practical standpoint, the distinction between excess and umbrella liability policies may be unclear.
  - C. Umbrella liability policies rarely provide coverage for defense costs.
  - D. An excess liability policy offers broader protection than that provided by the underlying coverage.

14

14

Excess Liability Insurance

Objective III

15

15

Excess Liability Insurance

- An excess liability policy covers liability claims in excess of the underlying policy's limits.
- May take any of the following basic forms:
  - Following-form – covers losses only if the loss is covered by the underlying insurance.
  - Self-contained – covers losses per the terms of the excess policy.
  - Combination form.
  - Specific and aggregate – when there is no underlying insurance.

16

16

Following-Form Policies

- A following-form policy covers a claim only if the loss is covered by the underlying insurance.
  - True following-form policy would contain no provisions conflicting with underlying policy.
- In practice, following-form policies differ from underlying policies to an extent.
  - Some losses covered by underlying policy may not be covered by excess policy.

17

17

Self-Contained Policies

- A self-contained policy does not depend on the provisions of the underlying policies.
  - Subject to its own provisions.
  - Applies to a loss only if the loss is covered under the self-contained policy.
  - Coverage gaps between self-contained policy and underlying policy can occur.

18

18

Combination Policies

- An excess policy may combine features of following-form and self-contained policies.
  - May incorporate provisions of underlying policy and modify those provisions.
- Some excess policies provide the broader coverages often found in an umbrella liability.
  - However, do not provide primary coverage when a claim is excluded by primary policy.
  - No self-insured retention.

19

19

Specific and Aggregate Insurance

- Specific excess and aggregate excess are used when there is no underlying primary insurance.
  - Specific policy – insured must retain a specified amount of loss from each occurrence.
  - Aggregate policy – insured must retain a specified amount of loss during a specified period of time, usually one year.
- Often used with self-insured workers compensation arrangements.

20

20

Practice

- Which one of the following statements is correct regarding a self-contained excess liability policy?
  - A. It is typically used in connection with self-insured workers compensation plans.
  - B. It is basically nothing more than an increase in limits to the underlying policy.
  - C. It requires a self-insured retention.
  - D. It generally does not depend on the provisions of the underlying policy.

21

21

Umbrella Liability Insurance

Objective IV

22

22

Umbrella Liability Insurance

- Umbrella liability is an excess policy that is broader than ordinary excess liability policies.
  - Provides limits above each occurrence limit of primary policy.
  - Takes the place of primary insurance when aggregate limits are exhausted.
  - Covers losses that are not covered by primary policy, subject to SIR.
- Almost all umbrella policies contain aggregate limits, similar to primary insurance.

23

23

Drop-Down Coverage

- Drop-down coverage is provided when underlying policies do not provide coverage.
  - Also provided when aggregate limits of underlying policy have been depleted.
- Drop-down coverage is usually subject to a self-insured retention.
  - Similar to a deductible.
  - Only applies when underlying policies do not provide coverage at all for a loss.

24

24

Required Underlying Coverages

- Each insurer has its own requirements for the types and amounts of underlying insurance the insured must have.
  - Umbrella limits apply in full in excess of each for the underlying coverages.
- For example, the insurer may require the following CGL coverage:
  - $1,000,000 each occurrence.
  - $2,000,000 general aggregate.
  - $2,000,000 products/completed op. aggregate.

25

25

Aggregate Umbrella Limits

- Most umbrella policies contain aggregate limits.
  - Operate like primary insurance aggregate limits.
- Aggregate limit can apply to:
  - All umbrella policy claims, or
  - Only to coverages that are subject to an aggregate in the underlying policies.

26

26

Coverage Triggers

- Umbrella policies typically have an occurrence coverage trigger.
  - However, underlying policies could have occurrence or claims-made triggers.
- Some insurers provide both occurrence and claims-made triggers in umbrella policies.
  - Avoids coverage gaps when the umbrella or excess policy has a different coverage trigger than the underlying coverage.

27

27

Exclusions

- Exclusions in umbrella policy are similar to those in underlying policy.
  - Exclusions in umbrella policy may have narrower application than underlying policies.
- Umbrella policy may contain an exclusion that does not exist in the underlying policies.
  - Example – umbrella policy excludes injury due to exposure to lead.

28

28

Conditions

- There are differences between the general conditions of primary and umbrella policies.
  - Maintenance of underlying insurance – obligates insured to maintain all required underlying coverages.
    - If underlying insurance is not maintained, the umbrella policy will apply, but will not drop down.
  - Coverage territory – most umbrella policies provide worldwide coverage.

29

29

Practice

- With respect to a commercial umbrella liability policy, a self-insured retention would apply when:
  - A. Supplementary payments are incurred under the claim.
  - B. The claim is covered under the umbrella policy but not covered under the primary policy.
  - C. The primary policy provides inadequate coverage to satisfy the claim.
  - D. The insured has not satisfied the coinsurance requirement of the primary policy.

30

30

Structuring a Liability Insurance Program

Objective V

31

31

Layering of Coverage

- Liability insurance is often arranged in layers.
  - First layer consists of primary coverage.
    - Includes CGL and business auto coverage.
    - Typically has each occurrence limit ranging from $500,000-$2,000,000.
    - May be self-insured.
  - Second layer is often umbrella or excess layer.
    - May be a buffer layer.

32

32

Working Layers

- The primary and umbrella layers are generally referred to as the working layers.
  - Layers most often called on to pay claims.
  - Many organizations have only one layer in excess of the primary.
- An organization in this category has an umbrella policy above its primary CGL, auto, and employers liability coverage.
  - Organization may also have separate excess liability policies.

33

33

Buffer Layers

- Insured may be required to purchase a buffer layer of excess insurance.
  - Between primary layer and umbrella policy.
- Umbrella insurer requires insured to have underlying coverage limits higher than those the primary insurer is willing to provide.
  - Insureds should try to obtain a policy that follows provisions of the underlying policy.

34

34

Adequacy of Excess Liability Limits

- Layering of coverage allows many insureds the opportunity to secure high levels of protection.
  - However, limits may still be inadequate.
- Risk managers of large corporations commonly purchase the highest limits they can obtain.
  - Organization can get most risk management value from insurance only when it is properly combined with noninsurance techniques.

35

35

Practice

- ABC Company purchased a commercial general liability policy with the following limits:
  - $1,000,000 per occurrence limit.
  - $2,000,000 general aggregate limit.
- The company also carries an umbrella liability policy with the following limits:
  - $2,000,000 per occurrence limit.
  - $2,000,000 general aggregate limit.
  - $25,000 self-insured retention.
- A covered claim arises, resulting in a judgment of $2,400,000 against the company. How much of the judgment will be paid by the umbrella liability policy?
  - A. $1,375,000.
  - B. $1,400,000.
  - C. $2,375,000.
  - D. $2,400,000.

36

36

Module 12

Cyber Risk, Terrorism, and International Insurance

CYBER RISK

LOSS EXPOSURES

- PROPERTY:
  - TANGIBLE
  - INTANGIBLE
- NET INCOME:
  - BUSINESS INCOME
  - EXTRA EXPENSES
- LIABILITY

RISK CONTROL AND FINANCING

- RISK CONTROL:
  - PHYSICAL CONTROLS
  - PROCEDURAL CONTROLS
  - PERSONNEL CONTROLS
  - MANAGERIAL CONTROLS
  - INVESTIGATION OF CRIMES
  - RAPID RECOVERY PROGRAM
- RISK FINANCING
  - INSURANCE
  - NONINSURANCE
  - RETENTION

INSURANCE

- COVERAGES:
  - ELECTRONIC DATA PROTECTION
  - CYBER EXTORTION
  - CYBER CRIME
  - REMEDIATION
  - BUSINESS INTERRUPTION
  - NETWORK SECURITY LIABILITY
  - PRIVACY LIABILITY
  - ELECTRONIC MEDIA LIABILITY
  - TECHNOLOGY E&O
  - INTELLECTUAL PROPERTY
- COVERAGE TRIGGERS
- EXCLUSIONS
- LIMITS OF INSURANCE
- COVERAGE TERRITORY

OTHER INSURANCE

TERRORISM

- TERRORISM RISK INSURANCE ACT
- TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT
- DISCLOSURE ENDORSEMENTS
- ISO ENDORSEMENTS:
  - CAP ENDORSEMENT
  - CERTIFIED ACTS EXCLUSION ENDORSEMENT
  - AGGREGATE LIMIT ENDORSEMENT
  - OTHER ACTS EXCLUSION ENDORSEMENT
  - AUTOMOBILE ENDORSEMENT
  - NUCLEAR ENDORSEMENT
- NCCI ENDORSEMENTS

INTERNATIONAL

- TERRITORIAL ENDORSEMENTS
- INTERNATIONAL PACKAGE POLICIES
- LOCAL PLACEMENTS
- CONTROLLED MASTER PROGRAMS

Cyber Risk, Terrorism, and International Insurance

Module 12
Chapter 12

1

1

Objectives

- Obj I: Cyber Risk Loss Exposures
- Obj II: Controlling and Financing Cyber Risk Loss Exposures
- Obj III: Cyber Risk Insurance Policies
- Obj IV: Terrorism Insurance
- Obj V: International Insurance Solutions

2

2

Cyber Risk Loss Exposures

Objective I

3

3

Cyber Risk Loss Exposures

- An organization may rely on a computer network, digital devices, and a website.
  - These systems can be compromised or damaged.
- The use of such systems increases the exposure to:
  - Property loss.
  - Net income loss.
  - Liability loss.

4

4

Property Loss

- Property exposed to loss:
  - Tangible property – has a physical form.
  - Intangible property – no physical form.
    - Electronic data is an especially valuable and vulnerable type of intangible property.
- Commercial property forms usually limit electronic data coverage to a small amount.
  - Commercial liability forms often only cover tangible property, which excludes electronic data.

5

5

Net Income Loss

- Organizations can suffer a reduction in or cessation of normal business operations due to a computer network security breach.
  - Reductions in business operations are commonly known as business interruptions.
- Any possible business interruption that decreases revenues and/or increases expenses should be considered by an organization.

6

6

Net Income Loss

- Net income exposed to loss can be evaluated in terms of loss of business income and extra expenses.
  - Extra expenses could include cost of hiring a contractor to restore a computer network.
- Contingent business income loss exposures relate to income dependent on a network not owned or operated by the organization.
  - Can also result from events affecting the networks of suppliers, utilities, or vendors.

7

7

Liability Loss

- Organizations must guard against bodily injury and property damage exposures generated by technology-related activities.
  - Bodily injury liability can occur because of software development.
  - Property damage loss exposures can occur because of overall technology operations.

8

8

Liability Loss

- Coverage B of the CGL covers liability for personal and advertising injury.
  - Excludes coverage for activities such as designing websites, internet searches, and providing internet service.
  - Also excludes injury arising out of an electronic chat room or bulletin board the insured owns, hosts, or controls.
- Organizations face liability exposures for product advertising on their website.

9

9

Liability Loss

- Organizations also are subject to cyber risk intellectual property liability loss exposures.
  - Can affect an organization's copyrights, trademarks, patents, or trade secrets.
- Cyber risk errors and omissions (E&O) liability also exists.
  - Organizations should consider the scope of their daily business operations and how their actions could result in E&O liability.

10

10

Practice

- Which one of the following statements is correct regarding cyber risk loss exposures?
  - A. Net income exposed to cyber risk loss can be evaluated in terms of loss of operating systems and website functionality.
  - B. Cyber risk intellectual property loss exposures can affect a company's trademarks.
  - C. Bodily injury losses are not a concern with respect to cyber risk loss exposures.
  - D. Cyber risk property loss exposures only apply to tangible property.

11

11

Controlling and Financing Cyber Risk Loss Exposures

Objective II

12

12

Risk Control Measures

- Specialized risk control measures are usually necessary to control cyber risk loss exposures.
  - Physical controls.
  - Procedural controls.
  - Personnel controls.
  - Managerial controls.
  - Investigation and prosecution of cyber crimes.
  - Post-cyber incident rapid recovery program.

13

13

Physical Controls

- Physical controls place barriers between cyber criminals and their targets.
  - Organizations should provide physical protection such as alarms and locked doors.
- Access to sensitive areas should be controlled through ID badges or through biometrics.
  - Biometrics are methods of biological identification, such as fingerprints.

14

14

Procedural Controls

- Procedural controls specify tasks be performed in secure ways that prevent or reduce losses.
  - Apply to how a computer system and all of its associated data are protected.
- Protection from hackers is a critical reason for organizations to create, implement, and update procedural controls.
  - Controls include passwords, antivirus software, data encryption, and firewalls.

15

15

Personnel Controls

- Some employees are inadvertently the source of cyber losses.
  - Controls include preemployment screening, training, outlining unacceptable behavior, and termination procedures.
  - Personnel controls can also extend to how the organization deals with its customers, suppliers, and neighbors.

16

16

Managerial Controls

- Managerial controls establish an environment that detects or prevents cyber losses.
  - Include centralizing responsibility for cyber security.
  - Also involve ensuring systems are monitored and followed to control cyber loss exposures.
- An organization should continually evaluate and revise its risk control measures.

17

17

Prosecution of Cyber Crimes

- Organizations often do not report cyber crimes to authorities.
  - May fear negative publicity.
- Organization may experience PR benefit by releasing the news regarding a cyber crime.
  - Can describe the measures it is taking to prevent such an incident from recurring.
  - Restores consumer confidence.
- Reporting certain types of cyber crimes may not be optional for some organizations.

18

18

Rapid Recovery Program

- A post-cyber incident rapid recovery program aids in reducing the severity of cyber losses.
  - Restores operations as soon as possible.
  - Focuses on preservation of net income in the event of a cyber loss.
- Risk control measures include maintaining full backups of the computer system.
  - Also should include a public relations component.

19

19

Risk Financing Measures

- Risk financing measures include:
  - Insurance.
  - Noninsurance risk transfer.
  - Retention.
- Sources of risk financing can be secured before or after a loss occurs.

20

20

Noninsurance Risk Transfer

- A hold-harmless agreement, or indemnity agreement, is a type of noninsurance measure.
  - Organizations can receive reimbursement for cyber risk losses.
- Many software firms also use liability disclaimers.
  - Do not transfer risk or act as risk financing.
  - Can be used to limit the scope of liability.

21

21

Retention

- An organization may use retention to finance its cyber risk loss exposures.
  - Funds within the organization are used to pay for losses.
  - One advantage of retention is that it encourages risk control.
- An organization should limit its retention to a severity level at which it can tolerate the variability in the sum of its retained losses.

22

22

Practice

- At an amusement park in Florida, guests who exit the park often desire to return to the park later in the day. Upon returning to the park, the guests are asked to insert their finger into an electronic reader at the time of reentry so the park can ensure that a ticket is used by the same person from day to day. This is an example of which type of risk control measure?
  - A. Telematics.
  - B. Fintech.
  - C. Biometrics.
  - D. Procedural control.

23

23

Cyber Risk Insurance Policies

Objective III

24

24

Insuring Agreements

- Cyber risk insurance needs vary widely.
  - Some insurers allow their customers to supplement a basic product with the insuring agreements that are appropriate for them.
  - Others allow for full policy customization using insuring agreements.
  - Other insurers offer a standard package of insuring agreements.
- Insuring agreements apply to various coverage areas.

25

25

Insuring Agreements

Insuring Agreement	Covered Loss
Electronic Data Protection	Costs to recover or restore electronic data that have been altered, destroyed, deleted, or damaged.
Cyber Extortion	Expenses related to computer network kidnap or ransom events.
Cyber Crime	Theft of money and securities.
Notification or Remediation	Expenses related to crisis management during or after a loss (such as a security breach).
Business Interruption	Loss of business income resulting from network security breach or other cyber events.

26

26

Insuring Agreements

Liability Insuring Agreement	Covers Liability Arising From
Network Security Liability	Security breaches to insured's computer network.
Privacy Liability	Unauthorized disclosure or use of the private information of others.
Electronic Media Liability	Insured's electronic content.
Technology Errors & Omissions Liability	Any negligent act, error, or omission relating to an insured's products or services.
Intellectual property liability	Copyright or patent infringement claims.

27

27

Coverage Triggers

- Policies are usually subject to a claims-made or discovery coverage trigger.
  - Coverage is usually available for prior acts, subject to a retroactive date.
- Claim is typically made when the insured first becomes aware of facts that could cause a reasonable person to assume that a loss has occurred.

28

28

Exclusions

- Cyber risk policy exclusion categories:
  - General exclusions – exclusions that may also be found in other types of policies.
    - Intentional acts, fraud, SEC violations.
  - Product-related exclusions – apply to products produced by the insured and/or serviced and supported by the insured.
    - Product recall, defects in design, bodily injury, and breach of warranty.

29

29

Exclusions

- Cyber risk policy exclusion categories:
  - Service-related and security-related exclusions – found in policies purchased by technology services and support providers.
    - Performance delay, security breach.
  - Cyber risk-related exclusions – found in policies typically purchased by technology-oriented organizations with a website.
    - Advertising injury, copyright infringement.

30

30

Limits of Insurance

- Several types of limits of insurance are available for cyber risk policies.
- The limits offered depend on whether the policy has an annual aggregate limit of insurance.
  - No aggregate limit – insuring agreements work independently, each with its own limit.
    - Most package or modular policies.
  - Aggregate limit – each insuring agreement will have an insuring agreement aggregate limit of insurance.

31

31

Coverage Territory

- Virtually all cyber risk insurers provide worldwide coverage.
  - May be contingent on whether a loss is a first-party loss or a third-party loss.
  - May be contingent on what geographic location a suit for damages is brought.

32

32

Practice

- A company that needs coverage for expenses related to computer network kidnap and/or ransom events should choose which one of the following insuring agreements in a cyber risk insurance policy?
  - A. Electronic data protection.
  - B. Electronic media liability.
  - C. Cyber extortion.
  - D. Cyber crime.

33

33

Terrorism Insurance

Objective IV

34

34

TRIA

- Under the Terrorism Risk Insurance Act (TRIA), the federal government shares responsibility for terrorism losses with the insurance industry.
  - Insurers writing lines of business subject to TRIA are required to make coverage available for certified acts of terrorism on the same terms as coverages applicable to non-terrorism events.
  - ISO has developed terrorism endorsements to help insurers comply with TRIA.

35

35

TRIPRA

- The Terrorism Risk Insurance Program Reauthorization Act reauthorized TRIA.
  - Designed to provide stability in the insurance market regarding terrorism coverage.
- The Act gradually increases the insurance industry's participation in payment of losses.
  - Reduces federal government's participation.
- The Act retains many provisions of TRIA.

36

36

TRIPRA

- TRIPRA requires all commercial property insurers to make coverage available for terrorism losses.
  - Secretary of the Treasury certifies acts of terrorism.
  - Acts of a war declared by Congress are not acts of terrorism.
  - Acts with aggregate losses less than or equal to $5,000,000 are not acts of terrorism.

37

37

TRIPRA

- The federal government only participates in losses if act results in aggregate insured losses greater than program trigger.
  - TRIPRA trigger starts and $100,000,000.
  - Increased in increments of $20,000,000 per year until cap of $200,000,000 is reached.
- Not all commercial lines of insurance are eligible for loss-sharing program.
  - Personal lines are never eligible.

38

38

TRIPRA

- TRIPRA requires property insurers to offer terrorism coverage without terrorism-specific exclusions or limitations.
  - Coverage cannot be materially different than non-terrorism coverage.
- Insurer is responsible for all terrorism losses until losses exceed 20% of direct premiums.
  - Federal government enters into cost sharing for excess losses.
- Overall cap on covered losses is $100 billion.

39

39

Disclosure Endorsements

- TRIA requires insurers to disclose to insureds:
  - Portion of premium attributed to certified acts of terrorism.
  - Federal share of compensation for certified acts of terrorism.
  - Amount of program cap ($100 billion).
    - Must explain if program cap is exceeded, coverage for losses may be reduced at discretion of the Secretary of the Treasury.

40

40

ISO Endorsements

- ISO contains the following endorsements:
  - Cap endorsement – insurer must attach a cap endorsement when policyholder accepts certified acts of terrorism coverage.
    - Describes certified acts of terrorism.
  - Certified Acts Exclusion endorsement – excludes coverage for acts of terrorism.
    - Applies when insured declines insurer's offer of coverage.

41

41

ISO Endorsements

- ISO contains the following endorsements:
  - Aggregate Limit Endorsement – limits the insurer's exposure and provides limited liability coverage for certified acts.
  - Other Acts Exclusion Endorsement – excludes acts committed outside the U.S.
  - Automobile endorsement – excludes coverage for commercial auto policies.
  - Nuclear, biological, chemical, or radiological endorsement – excludes NBCR acts.

42

42

NCCI Endorsements

- Insurers must include coverage for certified acts of terrorism in any workers compensation policies they write.
  - Therefore, few terrorism endorsements are needed for workers compensation insurance.
- NCCI endorsement discloses the portion of workers compensation premium attributed to certified acts.
  - Acts of war are covered under the endorsement.

43

43

Practice

- Which one of the following statements is correct regarding terrorism endorsements?
  - A. The workers compensation endorsement developed by NCCI includes acts of war among the losses that are covered.
  - B. Acts of terrorism that are not certified under the federal program are specifically excluded from coverage under the certified acts exclusion endorsement.
  - C. The main purpose of the aggregate limit endorsement is to provide a different means of marketing terrorism insurance coverage.
  - D. A $50,000,000 cap is placed on annual aggregate losses paid by the federal government and all insurers for certified acts of terrorism.

44

44

International Insurance Solutions

Objective V

45

45

International Exposures

- As an organization's international operations grow, new loss exposures are faced.
  - Insurance solutions change as organization's international exposures change.
- Common methods of addressing exposures:
  - Territorial endorsements to U.S. policies.
  - International package policies.
  - Local placements.
  - Controlled master programs (CMPs).

46

46

Territorial Endorsements

- CGL Coverage Form provides international coverage for a limited number of exposures.
  - Persons making short foreign trips.
  - Products liability coverage for goods made or sold in U.S. or Canada.
    - Not completed operations coverage.
  - Personal and advertising injury claims related to the Internet.
- CGL coverage only applies to a settlement, or suit brought about in the U.S. or Canada.

47

47

Territorial Endorsements

- Amendment of Coverage Territory-Worldwide Coverage endorsement extends CGL coverage.
  - Coverage applies anywhere in the world.
  - Covers suits brought in foreign courts.
  - Exception for country subject to trade sanctions by U.S.

48

48

Territorial Endorsements

- Commercial umbrella liability policies typically cover losses occurring anywhere in the world, if suit is brought in U.S. or Canada.
  - By endorsement, policies can be extended to handle overseas claims.
- Commercial property policies generally do not cover losses outside the U.S. or Canada.
  - Endorsements can provide limited international coverage for property losses or business income losses.

49

49

Territorial Endorsements

- Standard workers compensation policy covers employee injured while working temporarily overseas.
  - Voluntary Compensation Endorsement – covers injuries outside U.S. or Canada.
  - Repatriation expense coverage – pays expenses to bring injured employees to U.S. hospitals.

50

50

Territorial Endorsements

- Advantages of territorial endorsements:
  - Adequate coverage for minimal exposures.
  - Low premiums and convenience.
- Disadvantages of territorial endorsements:
  - Nonadmitted coverage issues – local courts and governments do not recognize coverage provided by these endorsements.
  - Coverage differences.
  - Deficient claim services – many U.S. insurers have little experience with international claims.

51

51

International Package Policies

- International package policies bundle property and casualty coverages.
  - Cover only overseas exposures.
  - Typically issued by U.S. insurers.
  - Nonadmitted insurance in other countries.
- Advantages:
  - Broad coverages at low prices.
  - Flexibility – can be easily modified.
  - International expertise.

52

52

Local Placements

- Local policies are most often purchased from insurers based in the host country.
- Advantages:
  - Compliance with local laws.
  - Coverage match.
  - Claim services – local insurers can provide knowledgeable in-country claims support.
  - Image – working with local insurers maintains a "good citizen" image.
  - Familiarity with coverages.

53

53

Local Placements

- Disadvantages:
  - Solvency issues.
  - Home office unfamiliarity – policies may be written in a foreign language, making it difficult for home office managers to determine the adequacy of protection.
  - Lack of economies-of-scale – policies in individual markets do not offer economies of scale & provide no leverage during disputes.
  - Lack of control.

54

54

Controlled Master Program

- A controlled master program (CMP) links policies in an organization's home country with foreign policies where they do business.
  - Managers work with a global broker and a global insurance provider.
  - Premiums paid to purchase policies overseas reduce premium under master policy.
- CMP fully covers all international exposures.
  - Claims are adjusted in the countries where they occur.

55

55

Controlled Master Program

- Property losses not covered by the local policy can be covered under the master policy.
  - Master policy also acts as excess policy if claim exceeds local policy limits.
- Master policies usually contain additional coverages that cannot be included in local policies.
  - Can include political risk coverage and workers compensation coverage for employees working overseas.

56

56

Controlled Master Program

- Advantages of writing a CMP:
  - Economies of scale – results in better prices.
  - Admitted coverage.
  - Claim services.
  - Centralized control.
  - Seamless coverages – local coverage plus master program that fills coverage gaps.
  - Tax coordination.

57

57

Practice

- Which one of the following statements is correct regarding international package policies as an international insurance solution?
  - A. They cover both the insured's domestic and international loss exposures.
  - B. Coverage is provided on an admitted basis, thus satisfying local regulations.
  - C. They are typically sold to companies headquartered in the United States.
  - D. They link master policies written in the insured's home country with local policies written in countries where the insured does business.

58

58