

# Commercial P&C

## Kurt's notes

Property and Casualty pre-licensing course

# Commercial Property

## Insurance p103

In 1986 the Insurance Services Office (ISO) overhauled most commercial insurance forms to introduce the modularized commercial lines program titled **The Commercial Package Policy (CPP)**.

A uniform policy format eliminates duplicate information in the event of multiple coverage parts are written in a single package (**in order to form a package policy it must include property and liability coverage as a minimum**).

In addition endorsements are used to eliminate gaps in coverage parts.

- ❖ ISO recommends forms
- ❖ ISO inspects buildings
- ❖ ISO recommends rates, subject to prior approval
- ❖ Insurance companies use ISO on a voluntary basis

## Elements of a Commercial Package Policy (CPP) p104

Pick and choose roll your own, as opposed to BOP

The commercial package policy comprises 4 key parts which are related to policy structure

- ❖ **1 Common policy Declarations page**—includes information about
  - **Who:** The insured and insurer;
  - **When:** Inception and expiration dates (policy term and policy period),
  - **What, Where:** Description of the business, (such as
    - Mercantile,
    - Warehouse,
    - Apartment building, etc.) and
  - **How much:** Premium
- ❖ **2 Common policy Conditions page**—includes the rights, duties and responsibilities of the insured and insurer
- ❖ **3 Interline endorsements**—to prevent duplication these endorsements coordinate coverage parts contained in the policy (property, liability, and crime all put together)
- ❖ **4 Coverage parts**—which include one or more of the following (as monoline policies):
  - **Commercial property coverage part** (this list here and below can be mono-line or combined into CPP)
    - **Building and personal property coverage form** (primary monoline form)

- **Commercial builders' risk form** (for contractors while building, then converted to Personal Property)
- **Condominium association form** (building owners)
- **Condominium commercial unit owners form** (usually medical)
- **Business income coverage form**
- **Extra expense coverage form**
- **Legal liability coverage form**
- **Commercial inland marine coverage part**
- **Boiler and machinery aka mechanical breakdown coverage part**
- **Farm property and liability coverage part**
- **Commercial general liability (CGL) coverage part** (§ 2 of CPP or BOP)
- **Commercial crime coverage part**
- **Commercial automobile coverage part**

## Causes of Loss Forms

4 causes of loss forms which specify perils insured against. **If there are multiple locations or classes of property more than one cause of loss form may be included.** Each building has its own form: scheduled as opposed to blanket)

## Basic Form Causes Of Loss

### Perils:

- ❖ **Fire,**
- ❖ **Lightning,**
- ❖ **Windstorm,**
- ❖ **Hail,**
- ❖ **Aircraft,**
- ❖ **Riot** (note: looting which occurs during a riot is covered due to proximate cause)
- ❖ **Civil commotion,**
- ❖ **Vehicles,**
- ❖ **Explosion,**
- ❖ **Smoke**
  - Which causes accidental and sudden loss or damage but
  - Not smoke from agricultural smudging [burning smudge pots to keep frost from crops]
  - Not industrial operations
- ❖ **VMM**
- ❖ **Sprinkler leakage**
  - Covers loss caused by accidental discharge of a substance from an automatic sprinkler system,
  - Including damage caused by **collapse of a water storage tank**
- ❖ **Sink hole collapse**
  - Covers damage by sudden sinking of land but
  - No coverage for land replacement
  - No coverage if the cavity was manmade such as a coalmine shaft
- ❖ **Volcanic action** (not including earth movement or dust or ash removal that did not damage the insured property)

- ❖ **Fungus, wet and dry rot and bacterial** limited coverage up to **\$15k in a 12M** (12M= aggregate limit)

### Exclusions:

- ❖ Flood
- ❖ Power failure off insured's premises,
- ❖ Government action
- ❖ **Steam boiler explosion** (Need for mechanical breakdown)
- ❖ Ordinance or law
- ❖ Nuclear hazard
- ❖ War or military action
- ❖ Fungus, wet or dry rot, and bacteria other than limited coverage

### Broad form causes of loss p105

#### Perils

Includes perils under basic form plus:

- ❖ **Falling objects**—covers damage to insured property but not to the object
- ❖ **Weight of ice, snow and sleet**
- ❖ **Accidental discharge of water**—but not coverage for the system However includes the cost to tear out and repair a part of the building

Note: Collapse is covered under additional Coverages as well as the fungus, wet or dry rot and bacteria covered under the basic form

#### No coverage for sewer backup

**Vacancy, glass and water damage is suspended after 60 days vacancy**

### Special form causes of loss p106

Covers **risk of Direct Physical Loss**, aka **open perils** aka **all risk** subject to exclusions and limitations

**Note: This is the only form which would cover loss to merchandise caused by burglary**

Note: there is no coverage for any cash taken by burglars during the night.

### Earthquake Endorsement p115

Must have other form (Basic, Broad, Special)

Covers loss caused by earthquake or volcanic eruption occurring during the policy period, occurring within a 168-hour period after the expiration date providing the loss began prior to policy expiration. A percentage deductible applies to the limit of insurance.

## Building and Personal Property

### Coverage Form p106

Coverage pays direct physical damage to covered property at the premises subject to the causes of loss form attached

### Coverage A: Building or Structure p106

### Described in the Declarations

- ❖ **Completed additions**, indoor and outdoor fixtures, as well as permanently installed machinery and equipment
- ❖ **Personal property used to maintain and service the building** such as floor coverings, (common wall to wall not area rugs) outdoor furniture
  - Refrigerating, ventilating and fire extinguishing equipment
- ❖ **Additions, alterations and repairs** in progress as well as materials, supplies and temporary structures (such as office trailer) **within 100' of the described premises**

### Coverage B: Business Personal Property p107

- ❖ Furniture, fixtures, machinery, equipment
- ❖ Stock in trade as well as raw materials owned by the insured used in the building or **within 100' of the described premises**
- ❖ Tenants' improvements and betterments not legally removable at lease end such as walls, ceilings, storefronts, etc.

### Coverage C: Personal Property of Others p107

- ❖ In the care custody and control of the insured
- ❖ Property located in or on the covered building, in the open, or in a vehicle **within 100' of the described premises**

### Property Not Covered p107

Included but not limited to:

- ❖ **Money, securities**, food stamps, notes however lottery tickets held for sale are covered as they are not considered securities
- ❖ Animals unless they are held for sale or boarded
- ❖ **Growing crops and lawns for business purposes** (farm coverage)
- ❖ Property under another policy in which it is more specifically indicated
- ❖ Electronic data, including information, facts, computer programs and the cost to replace or restore such information.

### Additional Coverages p108

Automatically included at no extra cost

- ❖ **Debris removal**—pays for expenses to remove debris of covered property caused by or resulting from direct damage to the property insured. No coverage for extraction of pollutants from land or water.
  - **Limit: 25% of the direct damage** to the insured property plus deductible.
- ❖ **Preservation of property**—coverage applies if property is removed from the insured location to protect against further loss or damage from a covered peril, within 30 days.
- ❖ **Fire Department service charge**—Limit \$1000, paid in addition to limit of insurance. No deductible applies.

- ❖ **Pollutant cleanup and removal**—covers the expense to remove pollutants from land or water at the insured's premises if the pollution is caused by a covered peril. Expenses must be reported to the carrier within 180 days of the loss.
  - Limit is \$10,000 per policy period, and is additional insurance

## Coverage Extensions p108

Subject to meeting an 80% or higher coinsurance clause the following extensions provide additional coverage limits

- ❖ **Newly acquired or constructed property**
  - **Buildings** under Coverage A are covered for up to **\$250k for each new building for up to 30 days**. This is for buildings at the same location or newly acquired buildings at new locations if the use will be as a warehouse or a similar use of the existing building
  - **Business personal property limit is \$100k also for 30 days** at newly acquired locations or at newly acquired or constructed buildings at the location described in the Declarations. There is no coverage for the personal property located at exhibitions, trade shows, or fairs.
- ❖ **Personal effects and property of others** is covered for up to \$2500 total for personal effects of the named insured, partners, or employees, excluding loss from theft

## Vacancy p110

**A building is considered vacant unless at least 31% of the total square footage is in use. If the building is vacant for more than 60 days before a loss the following losses will not be paid**

- **VMM**
- **Sprinkler leakage (unless the insured protected the system against freezing)**
- **Glass breakage**
- **Water damage**
- **Theft or attempted theft**

**For covered losses other than the above the company will reduce payment by 15%.**

## Inflation Guard Endorsement p111

This optional coverage is an agreement between the insured and insurer that a specific percentage will apply annually to the limits of insurance such as 4%. Based on the percentage selected the limit of insurance gradually increases on a pro rata basis so at the end of the policy period the available limit has increased by the selected percentage.

## Business Income Coverage forms p113

Pays for loss of income incurred by the insured because of a direct physical loss to covered property. It does for the insured what the business would have done had there been no direct loss.

## Business Income Coverage p113

aka **Time Element** or **Consequential Loss Coverage**

Coverage begins on the date of the direct loss and ends when the property can be repaired, rebuilt or replaced with reasonable speed

## Extra Expense Coverage p114

Reimburses the insured in order to keep the business in business after a loss.

Expenses would include temporary premises, equipment, etc.

Businesses that would benefit from this coverage would include banks, hospitals, **nursing homes**, newspapers, etc.

## Extended Business Income p114

**Pays for loss of income even after the business has restored operations but for no more than 30 days from the date business is resumed. This is to help the business get back on its feet.**

## Business Income from Dependent Properties not in book

Aka **Contingent Business Income Coverage**. Provides coverage for the following:

- ❖ **Lead location**—businesses frequently depend upon another business to attract business to their location (anchor tenants in a mall close). If the lead location is unable to continue operations due to a covered direct physical loss it would effect the insured's earnings. The peril that caused the lead location's loss must be a covered peril in the insured's policy.
- ❖ **Manufacturing location**—insured to depend upon a manufacturer to deliver products or components to the insured's customers under a sales contract when the manufacturing location is unable to fulfill the contract because of a direct covered physical loss (drop ship).
- ❖ **Recipient location**—insureds who depend upon another business as their primary buyer for their products would purchase this coverage. In the event the buyer is unable to continue operations due to a direct covered physical loss. (customer gone)
- ❖ **Contributing location**—insured to depend upon another business as their sole supplier of merchandise or raw materials when the other business is unable to continue operations due to a direct covered physical loss. (supplier gone)

## Note: business income coverage—coinsurance clause

Insured may select :

- 50%, 60%, 70%, 80%, up to 110% of their annual gross earnings. (Ka-ching)

## Business income formula

Gross Sales – Merchandise = Gross Earnings

Gross Earnings x Coinsurance% = Insurance to carry

1,000 - 400 = 600; 600 x 50% = 300

Gross Sales	1,000,000
- Merchandise	400,000
= Gross Earnings	600,000
* co-insurance %	50
= Amount of Insurance Necessary to Carry	300,000

**Indirect Loss Coverage + Liability + Building & Personal Property = Commercial Policy Package**

## **Builders Risk Coverage form p112**

Contractor or owner buys this. Used to cover residential, commercial, or farm buildings under construction.

Coverage is written for a maximum of 1Y but ceases when any of the following occurs:

- ❖ Property is accepted by the buyer
- ❖ 90 days after construction was completed
- ❖ The insured's interest in the property ceases to exist
- ❖ Construction is abandoned by the insured with no intention of completing the building

## **2 forms of Builders Risk policy**

### **Completed Value Form**

Purchased with a completed value limit. Never underinsured. No coinsurance. This form insures the structure and its foundation for the completed value from the inception date at greatly reduced rates. Also this is the safest form for the insured since it eliminates underinsurance at the time of loss.

### **Monthly Reporting Form**

This form permits the insured to make monthly reports of the increase in building value. There is automatic coverage between reports, provided previous reports are submitted correctly.

**Note: all of the following may be insured under a Builders Risk Coverage Form**

- ❖ **Temporary structures** at the site (such as a trailer being used as an office)
- ❖ **Machinery and equipment** that is made a permanent part of the building (such as central heating, AC equipment)
- ❖ **Lumber** and other **construction materials**

**However the builder's tool and equipment is not eligible for coverage (separate commercial inland marine policy known as the contractors equipment floater)**

# Business Owner's Policy

## BOP § 1 Property p176

Total package, cannot delete parts, but 4 optional additions

**This is a self-contained, complete package form** designed for **small to medium sized businesses** covering buildings and or business personal property. The BOP also provides **liability** coverage on an occurrence basis (as opposed to 'claims made') subject to limitations and restrictions the eligible categories are as follows:

### High Property Risk/ Low Liability Risk:

- ❖ **Apartment** buildings and **residential condominium** associations
- ❖ **Condominium commercial** unit owners
- ❖ Certain **mercantile** risks (Mom and Pop retail)
- ❖ **Motels** up to 3 stories
- ❖ **Offices** including commercial condominium associations
- ❖ **Processing and service risks** (E.G., bakery, beauty salon)
- ❖ **Self storage** facilities with a maximum of 2 stories.
  - No storage of pollutants, chemicals or waste and no cold storage.
- ❖ **Convenience store** food/gas stores

Not commonly sit down restaurants (high liability) but

BOP premium does not lend itself to high liability exposure

### Some eligible risks include

- ❖ Barber shops
- ❖ **Funeral homes**
- ❖ Financial planners
- ❖ Insurance licensees

### Some ineligible risks include

- ❖ Automobile repair or service stations
- ❖ Bars, grills, and restaurants
  - Limited cooking and fast food type restaurants are eligible subject to limitations
- ❖ Banks
- ❖ Places of amusement
- ❖ **Household personal property**

## Coverage A: Buildings p178

Same as **Building and Personal Property** form (BPP).

Note: remember the within 100' of the premises rule.

## Coverage B: Business Personal Property p178

Same as BPP

Note: Coverage C in the BPP is included in Coverage B of BOP

Business Owners Policy Form is offered in a Special Form only (open perils)

However, at the insured's option they may add a named perils endorsement, for cheaper.

### Named Perils Endorsement

- ❖ Fire
- ❖ Lightning
- ❖ EC perils
- ❖ VMM
- ❖ Sprinkler leakage
- ❖ Sinkhole collapse
- ❖ Volcanic eruption
- ❖ Falling objects
- ❖ Weight of ice, snow and sleet
- ❖ Water damage
- ❖ Accident to transporting conveyance

### Additional Coverages p179

- ❖ **Debris Removal** same as BPP coverage form
- ❖ **Preservation of Property** same 30 days as BPP
- ❖ **Business Income** up to 12 months from the date of the direct physical loss (Actual Loss Sustained (ALS))
- ❖ **Extended Business Income** max 30 days
- ❖ **Business Income from Dependent Properties** any of 4
- ❖ **Extra Expense**
- ❖ **Fire Department Service Form** \$2500 limit per occurrence
- ❖ **Forgery and Alteration** (Crime insurance) with \$2500 limit per occurrence
- ❖ **Electronic Data** including viruses limited to \$10k aggregate
- ❖ **Interruption of Computer Operations** limited to \$10k aggregate
- ❖ **Pollution cleanup** \$10k per occurrence
- ❖ **Counterfeit Money and Money Orders** \$1k limit per occurrence
- ❖ **Fire Extinguisher Systems Recharge Expense** up to \$5k limit
- ❖ **Outdoor Signs Attached to the Building** covered up to \$1k per occurrence

### Coverage Extensions p180

- ❖ **Newly Acquired of Constructed Buildings** under coverage A are covered automatically for up to **\$250k for 30 days**.
- ❖ **Business Personal Property** at newly acquired locations under coverage B is covered for up to **\$100k for 30 days**.
- ❖ **Valuable Papers and Records** (marine insurance) (cost of recreating books and records, or getting another deed copy)
  - \$10k limit on premises,
  - \$5k off premises
- ❖ **Accounts Receivable** (not only pays for recreation of the records, but if destroyed and insured cannot substantiate the receivables will be paid as well)

- \$10k on premises,
- \$5k off premises

## Optional Coverages p183

May be added to DOP for additional premium

- ❖ **Employee Dishonesty** covers business personal property and money and security resulting from dishonest acts of employees acting alone or in collusion with others
- ❖ **Mechanical Breakdown**—aka boiler and machinery. Refer to handout.
- ❖ **Outdoor Signs**—covers direct physical loss or damage to all outdoor signs owned or in the care, custody, or control of the insured. When this optional coverage applies all other reference to outdoor signs does not apply. The limit of coverage is stated in the policy Declarations.
- ❖ **Money and Securities**—covers theft, disappearance or destruction of money and securities used in the business. Coverage is provided on the insured's premises, at a bank, and in the custody of the insured, partner, or employee at their living quarters as well as in transit between these places (Coverage form C in commercial crime form)

## Standard Deductible p182

**\$500 deductible standard (applied separately to each loss) applying to Buildings Business Personal Property.**

**No Deductible for:**

- ❖ Business income,
- ❖ Extra expense,
- ❖ Fire department service charge,
- ❖ Fire extinguisher systems recharge

## BOP § 2 Business Liability p184

Provides comprehensive protection against 3<sup>rd</sup> party claims on an occurrence basis including coverage for the following:

- ❖ **Premises and Operations**
- ❖ **Products (defects) & Completed Operations** (construction type risks)
  - Defect is product liability, protection is covered
- ❖ **Personal & Advertising Injury**
  - Defamation, liable, slander
- ❖ **Tenants Fire Damage Legal Liability**
- ❖ **Medical Payments to Others (regardless of fault)**

Note: Not included in § 2 of BOP is **Professional Liability Insurance**—generally a **separate policy** (E.g., Errors & Omissions, Medical Malpractice, Directors & Officers)

Note: In BOP § 2 there is an occurrence limit and two aggregate limits; the aggregate limits are generally twice the occurrence limit

## Commercial Inland Marine p149

Nationwide Marine Definition; those risks that are underwritten by marine underwriters:

- ❖ Import/export
- ❖ Property in transit
- ❖ Instruments of communication and transportation
- ❖ Personal Property floaters
- ❖ Commercial Property floaters

## Block Policy p153

Furriers, camera dealers, musical instruments also fall in this category.

### Jeweler's example

Purchase by retail, wholesale and manufacturing jewelers and pawn brokers

**Note: provides coverage for precious stones, and metal, stock in trade, and all other articles incidental to the business.**

**Note: Also covers property of others in the insured's care custody and control.**

### Business insurance for

- ❖ Things held for sale (stock in trade)
- ❖ Incidental tools and metals to work on them, and
- ❖ Things held for other (consignment items)

The policy is based upon a completed and signed proposal, which will form part of the policy when issued. [Negotiated each time. Underwriters use judgment rating.]

The policy provides coverage for Risk of Direct Physical Loss (open perils, all risk) subject to exclusions. The coverage territory is the continental US, Hawaii, Canada, and Puerto Rico (Not Mexico)

### Exclusions:

- ❖ **WINWIG** (same as scheduled personal property endorsement (War, Insects and vermin, Nuclear, Wear and tear, Inherent vice, Gradual deterioration)
- ❖ Damage while being worked on
- ❖ **Infidelity of the insured or employees** (Insured may purchase a fidelity bond, which is commercial crime insurance, coverage form A Employee Dishonesty, to protect employee dishonesty)
- ❖ Unexplained loss, mysterious disappearance, or inventory shortages
- ❖ Theft from an unattended automobile

## Customer Policy p151

**Furrier example (Could be self storage policy) They have a bailment.**

- ❖ Purchased by furriers, storage companies, department stores, and dry cleaners (for wedding gown storage).
- ❖ **Note: Covers furs belonging to customers for which the furrier has issued a storage receipt.**

- ❖ **Note: The insurance company is not responsible for more than the amount set forth in the storage receipt.**
- ❖ Each fur is covered up to the amount of the storage receipt (individual) and there is a catastrophe limit (aggregate).
- ❖ This is an **All Risk form**, with a completed and signed proposal each year.
- ❖ The coverage territory is **US, Puerto Rico and Canada.**
- ❖ The policy provides coverage whether or not the insured is negligent.

### Exclusions:

Same as Block Policy, WINWIG, etc.

### Excess Legal Liability Endorsement

For additional premium, the insurance company will pay all amounts for which the furrier may be legally obligated to pay because of his negligence in excess of the amount shown on the storage receipt (E.G., loss of use).

## Bailee's Customer Policy p151

Usually written on a Named Perils basis (some companies will issue a policy on an Open Perils basis) covering property of customers left with the insured for cleaning and processing such as laundries, tailors, rug cleaners, etc.

**Policy provides coverage regardless of negligence or liability,**

**Note: this policy insures customer's property**

- ❖ **At the insured's premises**
- ❖ **In transit** (while being transported to and from customers, or between the insured's premises and branch stores, or agents of the insured, or a common carrier)
- ❖ **At a branch store of the insured**

### Exclusions:

- ❖ WINWIG
- ❖ Dishonesty of the insured, employees, or bailees (like an agent of insured)
- ❖ Errors in processing (human error)

## Parcel Post Policy

[UPS, Fed Ex, DHL, etc.]

Generally written on an Open Perils basis covering parcel post shipments but only while in the hands of postal authorities.

### Limitations:

- ❖ **By ordinary parcel post the limit is \$100/package**
- ❖ By Post Office insured or registered mail the limit is \$500/package if the insured insures it for at least \$50

## Transportation Insurance p154

The following 3 policies serve different purposes but they are usually similar as to named perils and exclusions.

### Usual named perils:

- ❖ Fire
- ❖ Lightning
- ❖ Windstorm
- ❖ Collision or overturn of transporting vehicle
- ❖ Collapse of bridge
- ❖ Flood
- ❖ Earthquake
- ❖ Theft but usually not pilferage

### Exclusions usually are:

- ❖ War
- ❖ Nuclear
- ❖ Inherent vice
- ❖ Strikes and riots
- ❖ Delay or loss of market
- ❖ Infidelity of the insured or employees
- ❖ Money
- ❖ Securities
- ❖ Jewelry

## Motor Truck Cargo (Carrier's Legal Liability Form) p154

Insures the trucking Common Carrier for legal liability arising out of loss or damage to the shipper's goods caused by the above perils.

However the carrier is generally responsible for All Losses except Acts of God and the neglect of the shipper (poorly packaged).

## Interstate Commerce Commission Endorsement

To comply with federal regulation this endorsement converts the policy to comply to **open perils** but only for the benefit of the shipper of the goods and then **up to \$5k/truck and \$10k/catastrophe**.

If the insurance company has to pay and the peril was not insured the insurance company gets reimbursed by the common carrier.

If this **policy is canceled** for any reason, the insurance company must **give 30 days advanced written notice to the ICC and the insured**.

[ABC trucking company comes to Licensee, asks for a policy. Licensee underwrites risk, asks prospect if they'll pay the premium now or when they get the policy. ABS says send the bill. Licensee puts policy in effect. ABS gets bill, doesn't pay. So Licensee gives 30 day notice. 20 days into notice there is a loss. Insurance company pays because the agent can bind the insurance company.]

## Motor Truck Cargo (Trip Transit/Transportation Form) p155

For trucking company

Trip transit: one time shipment; Transportation form: continuing shipments

Insures the shipper of the goods for loss or damage arising out of the above perils but only while the goods are in the hands of a common carrier

**Note: policy may be trip transit for a single shipment with a 100% coinsurance clause; or maybe an annual form subject to premium adjustment (audit) at expiration or cancelation.**

[Goods = \$30k, Insures for \$15k, loss = \$10k, settlement = \$5k]

## Motor Truck Cargo (Owners Form) p154

Insures the owner's goods on trucks owned or leased by the owner when no common carrier is involved and arising out of the above perils.

### Definitions:

- ❖ **Common carrier**—services available to the general public
- ❖ **Contract carrier**—usually limits services to specific customers
- ❖ **Bill of lading**—the contract of carriage between the trucking company and the shipper which establishes shipment values, etc.

## Contractors Equipment Floater

Either a named perils or all risk form covering tools and equipment of any size contractor such as cranes, portable cement mixers, scaffolding, bulldozers, etc. but excludes the contractor's conveyance used to transport mobile equipment.

### Excludes the following losses

- ❖ **Loss of market**, delay or loss of use, however caused [eliminates proximate cause]
- ❖ Damage caused to equipment by **exceeding its lifting capacity**
- ❖ **Wear and tear** of the equipment

## Installation Floater

Either a named perils or all risk policy covering the property of contractors

- ❖ During transit to the job,
- ❖ During installation, and
- ❖ Sometimes until paid for

**Note: windows broken during installation, by the installer, by accident is covered.**

End of commercial inland marine



# General Liability p118

Covers occurrences arising out of the premises and operation of commercial buildings, including elevators.

Can cover manufacturers, mercantiles, contractors or service operations (insurance broker) for which the insured is liable.

**Note: this is 3<sup>rd</sup> party claim coverage.**

## Components of the General Liability Policy:

- ❖ **Jacket**—contains provisions common to the coverage parts
- ❖ **Coverage part**—describes the coverages afforded and contains exclusions
- ❖ **Endorsements**—may change the jacket or coverage part

## Commercial General Liability Policy (CGL) handout & p120

This policy is offered in 2 versions as follows

- ❖ **Occurrence** Form
  - One trigger—occurrence during policy period
- ❖ **Claims Made** Form
  - 2 triggers—occurrence during policy period & Notice given during policy period.

The above 2 version are identical except for the provisions relating to coverage A (BI & PD) and coverage B (PI and Advertising Injury). The difference is in the trigger or triggers required for coverage to apply. Refer to handout (Difference Between Occurrence & Claims Made sheet).

Each has a **different trigger** for the insurance provided under coverage A

The **Occurrence** version covers claims for BI&PD when the claim is for injury or damage which **occurred during the policy period**. Notice of the occurrence can be reported years later and you are covered. One trigger.

The **Claims Made** version provides coverage if the claim for BI or PD is **first received and reported during the policy period** to either the insured or the company. [Claims Made is usually for professional liability.]

Due to the complexities of writing this type of Claims Made form, very few companies have adopted this format. The more common policy in use today is the Occurrence form. The Occurrence form is the form of choice.

One of the main problems of the occurrence type claim is the words "continued or repeated exposure" to conditions because some courts have decided that a loss may have occurred during two or more policy periods and, therefore, meant that two or more sets of policy limits could have been applied to a particular claim.

The primary purpose of the claims made form was to create a precise claim **Trigger** that would prevent **Stacking of Limits**.

The Claims Made form of policy states that the insurance does not apply to BI&PD which:

- ❖ Occurred **before** the retroactive date, shown in the declarations, **or**
- ❖ Occurs **after** the policy period

## Retroactive Date p121

A dividing line which separates the Occurrence Policy from the Claims Made Coverage and its purpose is to eliminate duplication of coverage. Normally, the retroactive date shown in the declarations would be the effective date of the Claims Made policy. Therefore, any claims occurring prior to the retroactive date would be covered under the former "Occurrence" policy.

## Claims Made Only

### § V- Extended Reporting Periods p121

This § is provided under the "Claims Made" form. It identifies the fact that coverage gaps could occur when a Claims Made policy is with an Occurrence policy or when an insured goes out of business and cancels its Claims Made policy or if the insured is unable to obtain replacement insurance after the Claims Made policy has been canceled.

In order to avoid any gaps in coverage in these situations, insured's would need "Tail" coverage. There are **3 types of extended reporting periods or "Tails"** available. The are

- ❖ **Mini Tail**—automatic, non-cancelable for 60 days. It provides that in the event of cancellations, non-renewal or converting to an Occurrence Form, this Mini Tail gives an additional 60 days for a claim to be made for injury or damage that occurred after the retroactive date but before the policy expiration date. **There is no charge for the Mini Tail.**
- ❖ **Midi Tail**—Provides for an automatic, no charge, 5Y extension of coverage. Applies only to claims as a result of occurrence which have been notified in accordance with the policy conditions and provides that notification of the occurrence must have happened between the policy retroactive date and within 60 days after the end of the policy period. This Midi Tail allows for the fact that after a known occurrence is reported, a claim might not actually be made until future years.
- ❖ **Extended Reporting Period Endorsement**—For an unlimited time starting with the policy Expiration Date. It is also referred to as the Supplement Extended Reporting Period. Coverage provided under this endorsement allows for claims to be made for an unlimited time period for injuries or damages that occurred before the end of the policy period, but not before the retroactive

date of the policy expires. **This extended period will have its own schedule of limits. Can only be purchased in Mini Tail.** To activate this extended reporting period, the named insured must:

- Make a written request which the insurer must receive within 60 days after the end of the policy period. The Carrier **Does Not** have a choice to offer or not offer this endorsement.
- Promptly pay the additional premium when due. The ERP Endorsement will not take effect unless the premium I paid when due, and if paid when due cannot be cancelled. The premium for this endorsement is determined in accordance with the Insurance Dept's rules and regulations and the additional premium cannot exceed 200% of the annual premium for the coverage to which the endorsement is attached.

### Laser Beam Endorsement

This endorsement may be applied to the "Claims Made" form which permits the insurer to exclude coverage for specific type accidents, products, work, or location.

Its purpose would be to remove n exposure so extreme that the insurer would not otherwise be willing to write the risk.

Due to the complexities if the writing this type of "Claims Made" form, very few companies ahe adopted this format. The more common policy in use today is the "Occurrence" form.

### Sections of the CGL Policy p121

- ❖ § 1—Indicates **Coverages** Afforded such as **BI & PD**
- ❖ § 2—Explains **who is an insured**
- ❖ § 3—Lists the **limits of liability** which are shown on the Declarations page
- ❖ § 4—**Contains policy Conditions (sets for the rights, duties, and responsibilities of the insured and insurer)**
- ❖ § 5—Definitions

Note: on a Claims Made Form § 5 is for the external reporting periods (aka tails). Definitions are contained in § 6.

#### Limits: Occurrence & 2 Aggregates

- ❖ **Premises and Operations Aggregate**, General = 2 x Occurrence
- ❖ **Products/Completed Operations Aggregate** = 2 x Occurrence

## Coverage Provided Under the CGL Policy

The insurance company agrees to pay all sums the insured becomes legally obligated to pay as a result of bodily injury to another person and/or damage to their property subject to the exclusions must be

- ❖ **Caused by an Occurrence**—occurrence means an accident including continuous or repeated exposure to substantially the same harmful conditions
- ❖ **Must take place in the coverage territory**—(means the USA, including its territories and possessions, Puerto Rico, and Canada. It also includes international waters or air space but only during travel to and from places directly included above. [almost same as PAP, airspace is new, territories too]). There is limited worldwide coverage

### § 1-A, B & C p121

#### Coverage A: BI&PD

Note: covers damage to other persons or other person's property such as (wiring in a shopping mall)

#### Coverages included in Coverage A

- ❖ **Premises and Operations**—covers at or away from the insured's premises within the coverage territory. **(Of the coverages provided under Coverage A this is 1 of the 2 major sub-lines of Coverage A).**
- ❖ **Independent Contractors Coverage**—Provides coverage when a contractor sub-lets work and because of this is sued.
- ❖ **Fire Damage Legal**—provides coverage for property damage to premises rented or leased to the named insured caused by fire subject to the limits shown on the policy. It is excess coverage over other collectable insurance
- ❖ **Host Liquor Liability**—covers the insured's liability from serving or selling liquor other than manufacturers, distributors, handlers, etc. who are in the liquor business. glug, glug, glug.
- ❖ **Incidental Medical Malpractice**—provides BI coverage arising out of rendering or failing to render medical, nursing services, etc. However, professional type services outside of employment are excluded.
- ❖ **Products and Completed Operations**—**(this is the 2<sup>nd</sup> of the 2 major sub-lines of Coverage A).**
  - **Products Liability**—pays for damages caused by the product (such as a defect in the product) but there is no coverage to the product itself. Also product recalls are not covered. Covers the insured's liability for goods

manufactured, sold, handled, or distributed to others causing injury or damage. Note: in order for a product claim to be evident the following 2 conditions must be present:

- **Physical possession of the product must be relinquished to others**
- **The accident must occur away from the insured's premises**
- **Limited worldwide coverage** if products liability coverage is included in the CGL policy it affords the insured coverage outside the coverage territory
  - if the suit is brought in the covered territory.
  - Coverage would also be provided if the insured reached a settlement with the claimant that the insurer approved.
- **Completed Operations**—relates to construction type risk. Refers to work that has been completed and put to its intended use.
  - **The same 2 requirements under products liability apply to completed operations.**
- ❖ **Contractual Liability**—(Note: covered in both the Occurrence and Claims Made CGL policies, as are others)
  - **Covers the assumption of liability as defined by the "insured contract" definition in the policy. It covers the act of indemnifying or holding harmless another party even though they are negligent.**
  - **Note: the following contracts are automatically included in the insured contracts definition**
    - Lease of Premises
    - Elevator Maintenance Agreement
    - Easement
    - Sidetrack agreement
    - **But not a construction contract unless approved by the insurer**
  - **Note: A Hold Harmless agreement is an example of risk avoidance.**

### Coverage A Exclusions

Some of the main exclusions are:

- ❖ Any injury or damage expected or **intended** by the insured unless protecting the person or property
- ❖ Statutory liability for **liquor** manufacture, distribution, or sales
- ❖ Liability to employees subject to **Workers Compensation** Law
- ❖ **Aircraft, watercraft, or autos except non-owned autos being parked on or next to the insured's property**
- ❖ Liability for injury or damage caused by **War**
- ❖ **Pollution**

Note: in addition to the declarations a nuclear energy liability exclusion endorsement is attached to all CGL policies.

## Coverage B: Personal and Advertising Injury p123

The company will pay on behalf of the insured all sums the insured becomes legally obligated to pay because of personal injury or advertising injury.

- ❖ Detaining someone against their will [security guard detaining suspected shoplifter]
- ❖ Wrongful entry or eviction of a person [landlord thought there was an emergency]
- ❖ Violating a person's right to privacy [HR snooping in a file]
- ❖ Liable (written) and Slander (spoken)

### Personal Injury Exclusions

- ❖ Oral or written publication of material knowing it is false or if it was published before the beginning of the policy period.
- ❖ Willful violation of a penal statute

### Advertising Injury

Pays for liability which may arise out of the following:

- ❖ Ads that slander or liable
- ❖ Violating the right or privacy of a person [shop owner who put camera in woman's room thinking they were stealing and hiding goods in clothes]
- ❖ Misusing others advertising ideas or business style
- ❖ Violating a copyright

### Advertising Exclusions

- ❖ Breach of contract
- ❖ Wrongful description of price of goods or quality
- ❖ An offense by an insured whose business is advertising, broadcasting, publishing, or telecasting

## Supplementary Payments (Coverages A&B) p124

In addition to the limits of liability the company agrees to pay the following

- ❖ **All expenses, including legal fees, court costs, and interest brought against the insured or the company**
- ❖ Premium cost of bail bonds up to \$250
- ❖ Premium cost of bonds to release attachments, etc.
  - **Note: the insurance company does not provide the bonds. It reimburses the insured the applicable premium.**
- ❖ Reasonable expense incurred by the insured **at the company's request** including loss of earnings **up to \$250/D** because of time off from work
  - **Note: any payments made under supplementary payments does not reduce the aggregate limit.**

## Coverage C: Medical Payments p124

Pays for medical expense due to bodily injury caused by an accident on or away from the insured's premises

within the coverage territory. The insurer will pay reasonable expense regardless of fault provided the expense is reported within 1Y of the date of accident. for expenses such as

- ❖ First aid at the time of the accident
- ❖ Medical, surgical, X-ray and Dental services
- ❖ Ambulance hospital if necessary

The basic limit is on a **\$5000 per person basis**.

## § 2: Who is an Insured under a CGL Policy p125

In connection with the conduct of a business the policy covers

- ❖ Individuals
- ❖ Spouses
- ❖ Partners
- ❖ Officers
- ❖ Directors
- ❖ Stockholders and
- ❖ Employees,

- Providing they were acting within the scope of their employment.

Other insureds include any person or organization acting as real estate manager or those having proper temporary custody of the insured's property should the insured die.

## § 3: Limits of Liability p125

Refer to handout (CGL page with boxes)

Note: the CGL policy has one occurrence limit and 2 separate aggregate limits.

**The aggregate limit is 2x the occurrence limit.**

## § 4: Conditions p126

This part of the policy contains the CGL conditions and also the common policy conditions which spell out certain **rights, duties and responsibilities** of the parties to the contract.

Including as common policy conditions are the following:

- ❖ Cancellation provisions
- ❖ Changes in policy terms
- ❖ Examination of books and records (audit)
- ❖ Inspections and surveys (optional based on the insurer's option)
- ❖ Premiums
- ❖ Transfer of rights and duties in the policy (assignment)

Note: provisions common to all CGL coverages are contained in the policy conditions section.

**Not included in this section are entitlements (coverages).**

## Important CGL Notes

Note: another name for umbrella liability insurance is Excess.

Note: professional liability of a lawyer, insurance brokers and agents, accountants, adjusters, etc. would be addressed by E&O insurance.

Note: if a CGL carrier decides to non-renew a CGL policy for any reason other than nonpayment of premium (10 days) they must give 30 days advanced written notice to the insured.

Note: another name for **liquor legal liability** is **dram shop liability**

Note: general liability insurance does not include medical malpractice (medical malpractice is professional liability insurance and generally a separate policy) not CGL coverage.

Refer to handout for miscellaneous liability coverages.

# Commercial Automobile Insurance p131

Commercial autos are vehicles of the truck type and include vehicles of the pickup, panel delivery types, sedans, also truck tractors, trailers and semi trailers all used for delivery or merchandise or for other business purposes

Primary classifications are determined according to the vehicles size, business use and operating radius

## Size classifications

Based upon the manufacturer's specified Gross Vehicle Weight (GVW), which is the maximum loaded weight for which the single vehicle is designed, or on the Gross Combination Weight (GCW), the maximum loaded weight for a combination truck tractor and semi trailer or trailers.

- ❖ **Light trucks**, GVW <10k lbs, virtually all **pickups**
- ❖ **Medium trucks**, 10k lbs <= GVW < 20k lbs
- ❖ **Heavy trucks**, 20k lbs <= GVW < 45k lbs

## Business use classification

If a commercial vehicle has more than one use the highest rated classification shall be used unless 80% of the use is in a lower rated activity. In that case use the lower rated classification

- ❖ **Service Use**—vehicles used to transport the insured's personnel, tools, equipment and incidental supplies to or from a job location. This classification is for vehicles principally parked at job locations or used for the transportation of supervisory personnel between job locations.
- ❖ **Retail Use**—vehicles used to pick up property from, or deliver property to, individual households, use for risks such as milk delivery, diaper service, parcel post and mail trucks which deliver to individual households
- ❖ **Commercial Use**—vehicles other than those defined as Service or Retail.

## Radius Classifications

Determined on a straight line from point of principle garaging. The radius classifications are

- ❖ **Local**—vehicles not frequently operated beyond a **radius of 50 mi**
- ❖ **Intermediate**—vehicles operated **beyond a 50 mi** radius, but not regularly or frequently beyond a radius of 200 mi\
- ❖ **Long Distance aka Long Haul**—vehicles frequently operated beyond a **radius of 200 mi**

Note: **fleet rates** apply when there are **5 or more self propelled vehicles** on one policy, in any combination of commercial vehicles (trucks) and private passenger type autos **but not trailers.**

Note: under **garage-keepers coverage**, coverage applies only if the insured is legally liable for vehicles in their care, custody and control is referred to as the **legal liability basis**

Note: under the truckers coverage form, **trailer interchange** covers the trucker when they need to borrow or hire a trailer from another business to use in their business provided the trucker is liable under a written interchange agreement and the damage is caused by a covered peril. This also applies when the named insured's own or hired trailers are in someone else's possession.

## Drive Other Car (DOC) Coverage for Named Individuals

Coverage for named individuals extends the definition of covered auto to autos the named insured does not own, hire or borrow when used by the person named in the endorsement or a family member.

Applies if the named insured under a business auto policy is providing an auto to an employee who has no personal auto insurance. **This endorsement is used to cover the non business exposures of the named individuals.**

Read pages 131 to 141 in the book of ~~torture~~ fun.

Many tests have no commercial auto at all. Some do.

Farm handout, yee-ha, p164

Aviation handout, zooomm, p168

# Crime Insurance p143

[Strictly commercial, can be monoline, or included in CPP, part is in BOP]

## Definitions:

### Perils

Robbery, burglary, larceny and sometime mysterious disappearance, all part of theft

### Burglary

The taking of property from inside the insured's premises by a person unlawfully entering or leaving the premises as evidenced by marks of **forcible entry or exit**.

### Robbery

The taking of property from the care and custody of a person by one who has:

- ❖ **Caused or threatened to cause that person bodily harm (fear) or**
- ❖ **Committed an obviously unlawful act witnessed by that person**

### Theft

**Any act of stealing** including robbery, burglary, and larceny but usually not mysterious disappearance.

### Premises

The interior of that portion of any building occupied by the insured in conducting the insured business.

- ❖ Premises may be amended by endorsement to include show cases and show windows outside the premise but inside the building line
- ❖ Premises may be amended by endorsement to include that portion of the grounds that is entirely enclosed by a fence or wall.

### Custodian

The **insured**, any partner or employee having **care and custody** of the property inside the premises

- ❖ Excluding any person while acting as a watch person or janitor.

### Messenger

The insured, any partner or employee having **care and custody** of the property outside the premises

### Watchperson

Any person the insured retains to have **care and custody** of the property inside the premises and who has no other duties.

### Premises Damaged Coverage Extension

The insurance company will pay for loss from damage to the premises or its exterior resulting directly from the covered cause of loss, if the insured is owner of the property or liable for damage to it

## Larceny

Theft by stealth

## Crime: Declarations and Common Policy Conditions

A crime policy consist of

- ❖ **Declarations** page,
- ❖ **Common Policy Conditions form**,
- ❖ **Crime General Provisions form**,
  - General Exclusions and general conditions of crime policy
- ❖ **Individual Coverage Forms indicated**

## Crime: Declarations Form

- ❖ Name and mailing address of the insured,
- ❖ Policy period,
- ❖ Coverage
- ❖ Limits of insurance
- ❖ Deductible
- ❖ Premium
- ❖ Endorsements attached at issuance
- ❖ Notice of cancellation of prior insurance
  - (this is unique because there is the 'discovery period' where insured can go back and claim loss

## Crime: Common Policy Conditions Form

Refer to handout during General Liability section

- ❖ Inspection
- ❖ Survey
- ❖ Premium
- ❖ Audits, etc.

### Note: cancelation by the insurer requires

- ❖ **10 days** advance written notice if cancelled for **nonpayment of premium** or
- ❖ **30 days** if cancelled for any other reason

## Crime General Provisions Form

### General Exclusions

- ❖ Loss resulting from any **dishonest** or criminal act committed by the insured or any partner
- ❖ Loss resulting from **seizure** or destruction of property by order of governmental authority
- ❖ Loss that is an **indirect result** of any act covered by the policy,
  - Including unrealized income (only COGS covered)
  - Payment of damages for which the insured is legally liable or
  - Payment of expenses incurred in establishing the existence or the amount of loss
  - See handout

## General Conditions

- ❖ **Discovery Period—loss must be discovered no later than 1Y from the end of the policy period**
- ❖ If 2 or more coverages of this insurance apply to the same loss the company will pay the lesser of
  - The actual amount of loss, or
  - The sum of the limits of insurance applicable to those coverages
- ❖ **In the event of loss the insured must notify the company as soon as possible and give the company a detailed, sworn proof of loss within 120 days**
- ❖ Refer to handout

- Safe or vaults are blown open
- 'however caused' voids proximate cause for smoking burglar

## Crime Form: Protective Devices or Services Provision

Refer to handout of same name

## Crime Form: Robbery and Safe Burglary Coverage Form D

**Note: the unendorsed form D excludes coverage for money and securities.**

**Safe burglary means the taking of:**

- ❖ Property from **within a locked safe** or vault by a person unlawfully entering the safe or vault as evidenced by marks of **forcible entry upon its exterior** (only exterior marks matter to make sure it was locked)
- ❖ A safe or vault from inside the premises

### § 1 Safe Burglary

Covers loss of property **other than money and securities inside the premises** in a safe or vault by actual or attempted safe burglary. The usual premises damage coverage extension applies.

### § 1A Robbery on Premises

Covers loss of property other than money and securities inside the premises in the care and custody of a **custodian** by actual or attempted robbery

### § 2 Robbery off Premises

Covers loss of property other than money and securities **outside the premises** in the care and custody of a **messenger** by actual or attempted robbery

§ 2 also covers loss of, and loss from damage to, covered property resulting from actual or attempted robbery while outside the premises in the care and custody of an **armored motor vehicle company**. However this is only for the amount of loss the insured cannot recover under the contract with the armored motor vehicle company or from any insurance carried by or for the benefit of customer of the armored motor vehicle company.

### Additional Exclusions Form D

- ❖ Employee dishonesty
- ❖ Loss of or loss from damage to property after it has transferred or surrendered to a person or place outside the premises
  - On the basis of unauthorized instructions (Computer Fraud Coverage Form F)
  - As the result of a threat to do bodily harm to any person or damage to any property (Extortion Coverage Form G)

## Crime Form: Computer Fraud Coverage Form F

Covers of and loss from damage to **money, securities and other property** resulting directly from **theft of**

## Individual Crime Forms

This is a small sample of many bad boys

### Crime Form: Premises Burglary Coverage Form E

- ❖ **Covers loss of, or damage to, property other than money and securities inside the premises** caused by
  - **Actual or attempted robbery** of a watchperson or
  - **Actual or attempted burglary**
- ❖ The usual premises damage coverage extension applies
- ❖ **Coverage limitation**—coverage is limited to **\$1k** per occurrence for loss of or damage to
  - Precious metals
  - Precious or semi precious stones
  - Pearls
  - Furs or
  - Articles containing such materials when such materials constitute the principle value of such articles
    - **Block policy would boost the limit for the above (Goods for sale)**
  - Manuscripts,
  - Drawings or records of any kind, or
  - The cost of reconstructing them or reproducing any information
    - **BOP or valuable papers and records**
- ❖ **Additional Exclusions**
  - **Employee Dishonesty**—Loss resulting from any dishonest or criminal act committed by any employee, director, trustee, or authorized representative acting alone or in collusion with others while performing services for you or otherwise. (Covered in Crime Form A Fidelity)
  - **Hazard**—Loss occurring while there is any change in the condition of the risk within the insured's control that increases the possibility of loss
    - Don't scrap the alarm system, that breaks the warrantee
  - Loss by fire however caused except damage to a safe or vault
    - Fire is covered under property

property following and directly related to the use of any computer to fraudulently cause a transfer of that property from inside the insured's premises to a person (other than a messenger) outside the premises or to a place outside the premises

Note: the company will pay only up to **\$1k** for any one occurrence of loss of and loss from damage to manuscripts, drawings, or records of any kind or the cost of reconstructing them or reproducing any information contained in them. [Valuable

Note: computer fraud coverage does not cover loss of or damage to any computer. [Need Marine Floater: Automated Data Processing Floater]

#### Additional Exclusions Form F

- ❖ Employee dishonesty
- ❖ Inventory shortages

#### Crime Form: Extortion Coverage Form G

Covers loss due to the surrender of money, securities, or other property away from the insured's premises as a result of a threat to the insured to do bodily harm to the insured, an employee, or to a relative or invitee of either who is or allegedly is being held captive.

#### Additional Exclusions Form G

- ❖ Employee dishonesty
- ❖ Loss of property surrendered before a reasonable effort has been made to report an extortionist's demands to all of the following
  - An associate
  - Local law enforcement authorities
  - FBI
- ❖ Territory—covers only if captivity or alleged captivity takes place in the USA, US Virgin Islands, Puerto Rico, Canal Zone, or Canada but not Mexico.

Note: Extortion Form G is not automatically included in the commercial crime insuring agreements but can be added by endorsement

#### Crime Form: Theft Disappearance and Destruction Coverage Form C

##### § 1 inside the premises

Covers loss of money and securities resulting directly from loss by theft, disappearance and destruction inside the premises or a banking premises (**definition of premises includes banks**)

Form C also covers loss of and loss from damage to a locked safe or vault, cash register, cash box, or cash drawer located in the premises resulting directly from an actual or attempted theft by the unlawful entry into these containers. The usual premises damage coverage extension applies.

##### § 2 outside the premises

Covers loss of money and securities outside the premises in the care and custody of a messenger caused by theft, disappearance and destruction.

§2 also provides coverage in the care, custody and control of an armored motor vehicle company on the same condition as robbery and safe burglary form D.

#### Additional Exclusions Form C

- ❖ Employee dishonesty
- ❖ Inventory shortages, as well as accounting or arithmetical errors or omissions
- ❖ Loss from damage to the premises from fire however caused
- ❖ Loss of property contained in any money operated device unless the amount deposited in it is recorded by a continuous recording instrument in the device.

#### Federal Crime Insurance Program

(Bogus law from late '70s now expired) Was established under Title 6 of the Housing and Urban Development Act of 1970 which made crime insurance available after August 1<sup>st</sup>. 1971 in any state having a critical crime insurance availability problem and no state program to provide a solution.

**The program covered both residential and commercial policies.**

- ❖ For **residential** the limit was **\$10k** of a combination robbery and burglary coverage.
- ❖ For **commercial** the limit was **\$15k** but could be purchased for robbery only, burglary only or both.

#### Plate Glass Policy

Covers replacement of the glass if it is broken or damaged by acids or chemicals applied accidentally or maliciously.

#### Additional coverages for Plate Glass

- ❖ Up to \$75 to board up the window or install temporary glass if permanent glass is not immediately available
- ❖ Up to \$75 to repair or replace frames or sashes damaged in connection with the break
- ❖ Up to **\$75 to remove obstructions** and remove and replace fixtures (**excluding window displays**) as necessary to repair the break
- ❖ Up to \$75 to
- ❖ **Cracked Glass Clause**—the insurer may insure a glass, which is cracked but its liability shall be limited to breakage from causes other than the crack or the extension of the crack.
- ❖ **2 glass rider**—aka large plates endorsement—this endorsement provides that the insured may receive a reduction in premium if the company is permitted to replace one large piece of glass containing 100' sq with 2 or more smaller pieces. This must be agreed to at policy inception.
- ❖ **Safety Glazing Material Endorsement**—provides for replacement of regular glass with safety glass if required by law.



# Workers Compensation and Employer's Liability Insurance

p192

*Lots of Workers Comp on state exam. Study hard..., harder, forget those jokes about Bert's wife and study*

The insured is the employer. [Sole proprietors, golf caddies, real estate brokers are not required to be covered.]

[NY requires employers to pay for DBL (disability) too. DBL is non occupational. WC is on the job. Employee can't collect both.]

In NYS prior to July 1, 1914, **occupational injuries and sickness** required the employee to sue their employer for benefits

- ❖ **Medical,**
- ❖ **Including funeral expense,**
- ❖ **Loss of income,** and
- ❖ **Rehabilitation**

and prove that the employer was negligent in order to be compensated.

Because employers used **English common laws (contributory negligence, assumption of risk, and fellow servant rule)** it was difficult for employees, or their survivors, to obtain benefits.

In NYS the WC law gives employees the right to collect benefits from their employer without having to prove legal liability, and if applicable, without any limit as to time and amount. However since benefits would be automatic subject to exclusions and exceptions employees gave up their right to sue the employer and the law became their **exclusive remedy**. Since the employer no longer had to spend funds on attorney fees it was determined that the employer should pay the premium which then could be passed along to the consumer.

In the beginning only the most hazardous occupations were covered such as iron workers. However over time more and more occupations were included. Also while all occupations are not covered, the employer may voluntarily provide coverage to avoid legal action being taken against him or her. If a particular occupation is not covered, and therefore the employee has the right to sue, the employer's liability section of the policy would provide protection for the employer.

Employer's liability would also protect against 3<sup>rd</sup> party actions against an employer.

In most states like NY, WC laws are **compulsory**, which means the employer must accept and comply with the provisions of the law. (Or face serious fines and personal liability both of which are not dischargeable in bankruptcy). In some states, the employer may choose

not to be subject to the law however in that case they also may not use the English common laws to defend, as well as any rights under the law.

In some states **including NY**, **workers compensation insurance may be purchased from a private insurance company** or from the **state insurance fund aka state fund** making this a **competitive state**. In NY an employer may also **self insure** subject to meeting all requirements of the insurance department or **provide benefits through a union benefit plan or similar program**.

In other states insurance can be purchased **only from state funds**, making that type of state a **monopolistic state**.

Some occupations such as interstate railroad workers and workers whose occupation is on or around the waters both inland and high seas are not covered by state workers comp laws but by federal workers comp laws:

- ❖ **Federal Employers Liability Act (FELA)**—applies to interstate **railroad** workers
- ❖ **Federal Employees Compensation Act (FECA)**—applies to all US civilian **government employees**
- ❖ **The US Longshoremen and Harbor WC Act**—applies to workers who load, unload, build or repair ships (but not to the crew of the ship)
- ❖ **The Jones Act**—applies to the **crews of ocean vessels**

## Volunteer Firefighters and Volunteer Ambulance Workers Workers Comp Law

Provides cash benefits and or medical care for volunteer members who are injured or **become ill in the line of duty**.

The local political subdivision pays for this insurance. Weekly cash benefits and medical care are paid by the subdivision's insurance carrier in accordance with the applicable law.

## Part 1 of the WC and EL policy

The agreement on the part of the carrier to perform on behalf of the insured/employer all obligations of the WC law in those states designated in the declarations.

## Part 2 Employers Liability Section

Obligates the insurer to defend any common law action instituted by an employee

## NYS Amendatory Endorsement aka NY Limit of Liability Endorsement

This endorsement **must** be attached to every WC policy in this state, which removes any liability for part 2 for those employees subject to the WC law. For those employees not subject to the WC law the standard limits are

- ❖ \$100k BI each accident
- ❖ \$100k for disease each employee
- ❖ \$500k by disease aggregate limit

[These limits are for foreign businesses coming to NY]

For NY business with NY employees the **limits do not apply. There is no limit in NYS.**

**Note: WC benefits are available even if:**

- ❖ **The risk of injury was known to the worker**  
(think ironworker)
- ❖ **Due to the carelessness of a fellow worker** (fellow servant)
- ❖ **The injured worker were guilty of contributory negligence**

Basically this is an **All Risk coverage** [These used to be the defenses to cases, now they are covered]

## Premium Compensation

Aka Deposit Premium, or Advanced Premium is an estimated premium paid by the insured at the inception of the policy. The insurer charges an authorized rate to an estimated payroll aka remuneration per \$100 (Premium is primarily based on payroll) to each classification of the operation.

Estimated payroll x rate = premium

\$50k x \$0.50 = \$250 premium

## Audit

The insurance company generally audits each policy at expiration or cancelation to verify earned premiums. Other audit periods may be available on a monthly, quarterly, or semi-annual basis in which event the insured will pay 25%, 50%, and 75% of the annual premium at policy inception.

Refer to handout for example of Workers Comp Policy Advance Premium

## Expense Constant

To encourage insurance companies to write and service small premium risks the companies added a loading charge called the expense constant. However this charge is applied to all policies regardless of premium size.

## Record and Report of Loss

The employer is required to make a **record of all losses** and **report them to the WC board** within **10 days of being notified.**

## Medical Benefits

An **injured employee** receives **free medical, hospital, nursing, funeral benefits, etc., rehabilitation** and fares with **no limit in time or amount.** There is **no waiting period for medical benefits.**

## Wage Benefits aka Loss of Income

Waiting period aka elimination period

There is a waiting period of **7 days** unless the disability lasts for more than **14 days** in which event benefits are payable from the first day of disability

## Money Benefits

To determine the money benefits to which the employee is entitled, the referee of the WC board determines the employee's **average weekly wage (AWW)**. Employees will be paid **2/3rd's of their AWW** subject to a **max of \$808.65/week** for all types of disability

## Types of disabilities

- ❖ **Temporary Total** – not able to work currently but expected to recover and return
- ❖ **Permanent Total** – not able to work for the rest of life
- ❖ **Temporary Partial** – partially disabled but can do some work
- ❖ **Permanent Partial** – involves loss of use of an organ or body member

## Scheduled Awards

for certain injuries usually of the permanent partial types and listed by law. They are scheduled or lump sum awards where wage loss is presumed due to the nature of the injury.

## Death Cases

funeral expense will be paid to a maximum of \$5,000 for upstate NY and \$6,000 for down state NY

**Dependents** of the employee will receive the same money award the employee would have received using the same money formula.

**Children** collect to age 18 or 23 if there a full-time student

**Spouse** may receive the money award for life un-less they re-marry in which event a 2 year lump sum would be paid and then nothing further

**No dependents** – in the event an employee is killed having no dependents, the insurance company is required to make a contribution of \$5,000. Of this amount \$3,000 goes to the Reopened Case Fund, which is a case that has been closed and reopened after 7 years. \$2,000 is paid to the Vocational Rehabilitation Fund.

## Obligation of Employee and Doctor

Employee must give **notice** to the employer of any **injury** with in **30 days**; if occupational **disease 90 days.**

**Doctor** must send their **1st medical report** to the WC board with in **48 hours of 1st treatment.** With in **15 days** after the 1st treatment, a **complete report** must be submitted. Progress reports are made at no less then **3 week intervals.**

**Minors** – the employment of a minor in violation of the law entitles the minor to **double compensation.** The punitive penalty portion is paid for personally by the employer since it is an exclusion in the WC policy.

## Rules Regarding Sub-contractors

a contractor that sub-contracts any part of a job is **legally responsible** to see that the sub-contractor carries WC coverage for the sub-contractors employees. Failing to do so the contractor will be considered the employer of the sub-contractor and will be charged the premiums and for loses.

### Payroll = remuneration

#### Exceptions to the pay roll rule

- ❖ Executive officers are included in the WC policy but payrolls are computed on a maximum per week and a minimum per week amount. However if the corporation has **no other employees** and only 1 or 2 executive officer stockholders they are not required to be covered by law. More than 2 executive officer stockholders, all are required to be covered
- ❖ **Sole proprietors** or partners are **not required to be covered** by law. However they may elect to be covered voluntarily and their pay rolls would be limited to same maximum and minimum as executive officer stockholders.

## Part 2 – Employers Liability – employees suit against 3rd parties

- ❖ When an injury or death is caused by the negligence of a party not in the same employ, an **injured employee may accept WC benefits or sue the 3rd party for damages**
- ❖ **If recovery is made by the employee the WC carrier has a lean on the proceeds to the extent of the benefits received.**
- ❖ Pain and suffering is not covered under WC
- ❖ Should the employee begin no action the WC carrier may sue the 3rd party and usually does so to the extent of the WC benefits paid. (Subrogation)

## NYS Disability Benefits Law – aka DBL

### Non-Occupational Accident or Sickness

This law is administered by the WC board and complements the WC insurance law by providing for payment of **cash benefits only** to employees that become disabled by reason of injuries or sickness which have no connection with their employment

**Covered Employer** – is one who has employed one or more employees and must obtain DBL coverage with in **10 days** of first hiring

### Eligibility for Benefits

an employee must work for a covered employer for at least **4 consecutive weeks** immediately preceding the disability

**Cash Benefits** – the weekly benefit is **50% of the employees weeks wage** not to exceed **\$170 weekly**. There is a 7 day waiting period/**elimination period**

**Premium Contributors** – an employee can be required to contribute **½ of 1% (.5%)** of their weekly wage subject to a **max of \$.60** per week

## Methods of Compliance

- ❖ **Obtain DBL policy from a private insurer**
- ❖ **Obtain a DBL policy from a state insurance fund aka State Fund**
- ❖ **Self-insured**
- ❖ **By any accepted plan such as a union welfare plan**

## Maternity Benefits

benefits will be paid for normal pregnancies with some type of disability certified by the doctor for up to 8 weeks

In the event of complications the women could receive **up to the maximum of 26 weeks**

# Accident and Health Insurance

**Note: The purpose of individual accident and health insurance is to protect the insured from economic losses sustained as a result of an accident or sickness**

**Types of Health Insurance** – in general individual health insurance contracts can be classified into the following 5 categories:

- ❖ Hospital Expense Insurance
- ❖ Surgical Health Insurance
- ❖ Major Medical Insurance
- ❖ Disability Income Insurance
- ❖ Group Health Insurance
  - Social security
  - Medicare
  - Medicare Supplements
  - Long term Care Insurance

(All these would be found in the insuring agreement)

## 1 Hospital Expense Insurance

Pays for medical expenses incurred while in a hospital

A typical hospital policy provides to basic benefits as follows:

- ❖ **Daily Hospital Room and Board Benefit** – pay a daily amount for room and board charges for each day in the hospital, up to some maximum number of days such as \$400/day for 360 days.
- ❖ **Miscellaneous Expense Benefit** – which provides a lump sum amount for miscellaneous expenses such as laboratory charges, use of operating room, durable medical goods, x-rays, prescription drugs etc.

## 2 Surgical Expense Insurance

Often included in the same policy as hospital insurance. It provides for payment of physicians fees and related cost for surgical operations performed in a hospital or else where

The benefits paid are usually determined by a schedule of surgical operations which is generally contained in the policy

## 3 Major Medical Insurance

Designed to pay a large proportion of the covered expenses of a catastrophic illness or injury

- ❖ **Broad Coverage** – provides coverage for all reasonable and necessary expenses from a covered illness or injury while in the hospital, doctors office or at home, covering similar expenses as covered by the hospital and surgical policies
- ❖ **Few exclusions**
  - Expenses related to war or military action
  - Elective cosmetic surgery
  - Dental care except as a result of an accident

- Eye and hearing examinations, eye glasses and hearing aids
- ❖ **High Maximum Limits** – major medical policies are generally written with limits of \$100,000, \$250,000 or higher. However these are generally life time limits
- ❖ **Deductible** – a major medical policy usually contains a **deductible that must be satisfied before any benefits are paid**. The purpose of the deductible is to eliminate payment of small claims
- ❖ **Percentage Participation Co-insurance clause** – contained in most major medical policies which requires the insured to pay certain percentage of covered medical expenses in excess of the deductible
  - 1. A typical percentage would be 80% paid by the insurer, 20% paid by the insured
  - 2. Many major medical policies contain a stop limit aka stop loss clause where by the insured is reimbursed 100% of covered expenses after the insured has incurred out of pocket expenses of a certain dollar amount

## 4 Disability Income Insurance

(indirect loss coverage)

Provides **income payments** when the insured is unable to work because of a covered illness or injury.

The income payments are designed to restore at least part of the work earnings lost during a period of disability

**These policies typically have the following characteristics:**

- ❖ **Periodic income payments** – weekly or monthly DI are paid to a person who is **totally disabled**, as indicated by the definition of total disability contained in the policy, because of a covered accident or sickness the amount of disability benefit is related to the insured's work earnings and most companies limit the amount of disability income to no more than 50-70% of the persons earned income.
  - The length of time an insured will receive payments depends on the duration of the benefits period.
- ❖ **Waiting/elimination period** – most policies are written with elimination periods during which time benefits are not paid. They vary in time such as 7-90 days, 6 months or even a 1 year. Elimination periods reduce moral/morale hazard.
- ❖ **Total disability** – most disability income contracts require the insured to be totally disabled from a covered accident or illness. The definition of total disability is contained in the policy but there are 3 definitions currently in use as follows:
  - Inability to perform all duties of insured's own occupation (1-5 years)
  - Inability to perform the duties of any occupation for which the insured is reasonable fitted by education, training and experience

- Inability to perform the duties of any gainful occupation
- ❖ **Partial disability** – is defined as inability to perform one or more important duties of the insured's occupation, which generally begins after a period of total disability.
  - Partial disability benefits are paid at a reduced rate for a shorter period.

### Accidental Death and Dismemberment

Another benefit available in DI policies is the **principle sum benefit**. This is a lump sum amount payable if the insured dies accidentally. However this coverage requires that death be caused directly and independently by injury and that death takes place within a specified number of days usually 90 days following the date of injury.

Similar provisions pay the principal sum not only if the insured dies but also if they should suffer a double dismemberment such as loss of sight in both eyes or loss by actual severance of 2 limbs. (Severance in most cases and policies must be at or above the wrist or ankle joint). In addition payment of some fraction of the principal sum may be paid usually 50% for loss of 1 hand or 1 foot.

AD&D coverage sometimes is included automatically in the DI policy and at other times as an optional benefit

### Overhead Expense Insurance

This type of disability insurance is designed to cover expenses of a business or profession that depends on the skill of 1 or 2 persons for the income to meet those expenses. Overhead expenses are defined as the usual and necessary expenses in the operation of the business or profession such as rent, utilities, employee salaries, taxes, etc.

Over head expense contracts are usually for a **short benefit period** with a **short elimination period such as 30 days or less.**

### Individual Common Health Insurance Provisions

There are 23 uniform policy provisions. Of this number, 13 are mandatory, 10 are optional. Some health insurance provisions are

- 1. Notice of claim** – is a **timed limit for sending claim forms** to the insurance company; **usually 20 days**
- 2. Misstatement of age provision** – gives the insurance company the right to adjust the benefits payable
- 3. Claim forms** – the **insurance company is to provide the insured with claim forms** within **15 days** including but not limited to proof of loss forms after notice of the claim by the insured

**4. Pay of Claim** – the insurance company is to pay only death benefit to the designated beneficiaries if any or to the insured's estate.

**5. Free look provision** – provides a **new insured** with a specific period of time, **usually 10 days or 20 days after delivery** or receipt of the policy to look it over and determine its value.

- ❖ During this period full coverage is in effect
- ❖ Further more during this period the insured may return the policy to the insurer for a full refund of the premium paid

**6. Pre-existing condition** – a preexisting condition in health insurance terms is a physical condition of an insured or prospective insured, which exists prior to the effective date of the health insurance contract.

- ❖ Typically health insurers insert preexisting condition provisions in policies to do one of the following
  - Exclude coverage for the particular condition
  - Exclude coverage for the particular condition for a set period such as 1 or 2 years after which it can be covered
- ❖ **Pre-existing condition clauses are used to preclude adverse selection**

**7. Elimination Periods/waiting periods** – are periods of time at the beginning of a total disability during which **no disability income benefits are paid.**

## 5 Group Health Insurance

### 5A Social Security Disability

Provides a Death Benefit of \$255 for survivors (one-time lump sum)

Also provides a disability benefit to people who meet the following requirements

- ❖ Totally and permanently disabled for at least **5 months**
- ❖ Expected to be disabled for **12 months** or longer or the disability will end in death
- ❖ "**Fully insured**" and "**Disability insured**" as defined under Social Security regulations
  - **Fully insured** means the individual has been credited with the appropriate number of quarters of coverage required by Social Security laws
  - **Disability insured** means the individual is fully insured (qualified with 10Y earnings) and meets the first 2 requirements noted above

Retirement benefit is based on highest 10Y of employment wages

### 5B Medicare

Health insurance for seniors

The US version of national health insurance relative to the elderly (age 65) and disabled.

Originally enacted by Congress in 1965 and modified a number of times since.

Federal program

## Medicare is divided into 4 parts

### Part A Hospital insurance

- ❖ **Inpatient hospital care**—helps pay the reasonable charges that result from hospitalization in a semi-private room for medically necessary care including meals, regular nursing services, special care units, drugs taken in the hospital, etc.
  - **A benefit period is 90 days**—subject to deductible and copayments depending upon the number of days in the hospital. Benefit period begins upon admission and ends 60 days after hospital or extended care facility discharge. Zero benefit for observation without admission. Re-admission during the 60 days is considered a readmission and therefore part of the 90 day period, even for a new period.
  - For stays over 90 days, the patient may draw up 60 lifetime reserve days once in a lifetime (higher deductible). The patient's daily copayment increases substantially when these days are used.
  - There is a **3 pint blood deductible**. Additional amounts are paid in full.
- ❖ **Skilled nursing facility care**—(rehab) requires the individual to be in a hospital for at least 3 days and enter a Medicare approved facility within 30 days after discharge from the hospital. The benefit period is up to 100 days for medically necessary services by a highly skilled staff under the supervision of licensed nursing personnel but only as the result of a doctors order.
- ❖ **Home health care**—(scam) is provided a participating public or private home health agency for skilled nursing or therapeutic services at home such as intermittent part-time nursing care, physical, occupational or speech therapy, home health aids, etc.
- ❖ **Hospice care**—available for as long as the doctor certifies that the individual is terminally ill and services are elected.

### Part B Medical insurance

- ❖ Provides coverage of medical expenses in or out of the hospital and outpatient hospital treatment such as doctor's services, supplies, diagnostic tests, durable medical equipment, etc. subject to a calendar year deductible.
- ❖ After the calendar year deductible reimbursement is subject to an **80%/20% coinsurance clause**.

### Part C Medicare Plus (Medicare Advantage) (eyes, ears)

Never had a question on the test

### Part D Prescription drug program (started by W)

Never had a question on the test

## 5C Coverage to Supplement Medicare

- ❖ **Medicare wraparound**—aka Medi-gap insurance wraparound. Basically provides benefits that correspond directly to the deductibles and copayments that are imposed upon the insured by Medicare provisions.
- ❖ **Comprehensive Medicare Supplement**—can be loosely compared to a major medical policy in that it provides coverage to correspond directly to the deductibles and copayments imposed by Medicare. However, in addition it provides benefits similar to parts A and B when Medicare benefits are exhausted.

## 5D Long Term Care Insurance

Average duration: 2.5-3 years

A type of insurance policy that provides a daily amount of money to pay for care in a nursing home assisted living facility or in home care.

**Long-term care**—care needed to perform certain Activities of Daily Living (ADL's).

**The 6 ADLs are:**

- ❖ Bathing
- ❖ Eating
- ❖ Dressing
- ❖ Transferring (getting out of bed)
- ❖ Toileting
- ❖ Maintaining continence
- ❖ But **Not** driving

**Note: Long term care insurance provides all of the following coverages:**

- ❖ Skilled nursing care
- ❖ Intermediate care
- ❖ Custodial care
- ❖ But not private surgical expense

# Bonds

## Fidelity bonds

**Employee dishonesty, such as embezzlement, fraud, or theft of money.** Commercial crime form A.

It is a contract whereby an employer is insured against loss as a result of a dishonest or fraudulent act of his or her employees.

**Note: banks would be best protected against employee thefts under a fidelity bond.**

## Surety bonds

**One person guaranteeing the obligations of another person to a third person**

Guarantee of an obligation such as payment of a debt, performing certain duties, meeting contractual commitments,

### 3 parties to surety bond

- ❖ **Principal**—party who **wants to perform** certain acts and/or fulfill certain obligations under a contract
- ❖ **Obligee**—party who **expects the principal to perform** on the contract or agreement in question
- ❖ **Surety/Guarantor**—party who **guarantees the performance** of the obligation of the principal to the obligee, usually an insurance company or bonding organization.

## Differences between Insurance and Suretyship

Refer to handout

### Things common to all surety bonds

- ❖ **Obligation**—a surety bond is joint and several obligation
- ❖ **Sureties liability**—the liability of a surety is determined by loss to the obligee through failure of a principal
- ❖ **Bond term**—the term of a surety bond is the time required to **complete the obligation**
- ❖ **Payment if Premium**—since the principal wants to do the obligation for the obligee, usually the **principal pays** the premium. [Then the principal may get reimbursement from the obligee. Sometimes the obligee pays]
- ❖ **Salvage**—term used to describe any recovery of loss (\$) by the Surety/Guarantor caused by the principal's failure to complete the underlying obligation
- ❖ **Default**—a term used to describe a bond in claim (Note: while an insurance contract has many conditions, and is why an insurance policy is referred to as a conditional contract, a **surety bond has only one condition**, which is default)

## Underwriting of Surety Bonds

**Commonly known as the 3 Cs of surety underwriting:**

- ❖ **Character**—integrity of the principal is absolutely necessary before any bond can be written
- ❖ **Capacity/Capability**—principal's capability to perform the obligation
- ❖ **Capital**—especially necessary in those cases where the underlying obligation requires the principal to advance their own funds before any payment is received

## Precautions and Guarantees Available to the Surety

- ❖ **Indemnity**—assets of an outside party are made available to the principal to complete the bonded obligation
- ❖ **Collateral**—funds or securities deposited with the surety to meet the obligation if and when called upon [cash, marketable securities, gold are preferred]
- ❖ **Joint control**—the surety must approve spending of money or property covered by its bonds [dual signature account]

## Spreading of Risk

- ❖ **Reinsurance**—transfer of portions of risk to other sureties
- ❖ **Cosurety**—
  - **Unlimited Cosurety**—each surety is liable for the total bond amount
  - **Limited Cosurety**—the sureties signing the bond specify the amount of liability each assumes of the total bond amount

## Types of Surety Bonds

- ❖ **Court**—aka Judicial Bonds are required in court proceedings and fall into the following 2 categories:
  - **Fiduciary**—someone put in a position of trust by the court
  - **Litigant bonds**—may be required of a plaintiff or defendant in a court case to guarantee the payment of damages that might be awarded to the other party, or for court costs [appeal bonds]
- ❖ **Contract bonds**—are used to guarantee performance detailed in a wide variety of contracts involving construction, repair, maintenance, material supply, etc. Some contract bonds are
  - **Bid bonds**—a preliminary bond filed with the bid to guarantee the owner that if the bidder is awarded the contract they will
    - Sign the contract,
    - Provide a performance bond and
    - Undertake the work awarded
  - **Performance bonds**—a guarantee to an owner that the contractor will complete the work awarded to him in accordance with the contract, which is made a part of the bond, at an agreed price

- **Note: if a performance bonded contractor defaults on a construction performance contract the obligee may engage another contractor and then seek reimbursement from the surety.**
- ❖ **License and Permit bonds**—required by local state agencies before individuals can engage in certain business or professional activities. The bond is to indemnify the governmental agency against liability arising out of the issuance of the license. They guarantee compliance with statutes, ordinances, or laws. [Liquor bond guarantees that the licensee won't misuse the liquor, (E.G., give to kids)]
- ❖ **Federal bonds**—to guarantee faithful performance in compliance with federal laws and regulations
- ❖ **Public official bonds**—designed to guarantee the performance of public officials for the protection of the public they serve

### Things Common to All Fidelity Bonds

- ❖ Policies contain **conditions** and **limitations** under which it is liable
- ❖ Under most fidelity bonds coverage is automatically void when the employer has knowledge of a previous dishonest act of an employee. It is also void as to future acts of an employee immediately upon discovery of a loss covered by the bond.
- ❖ The policy contains a **discovery period**, (usually 1Y look back period) which is a period allowed the insured after the policy ceases to exist within which to discover a loss which occurred while the policy was in effect
- ❖ Policy contains a **superseded suretyship clause** which agrees to indemnify the insured against loss under a prior bond which would have been paid under an earlier bond except that the discovery period had passed
- ❖ Fidelity bonds do anticipate losses

### Classes of Fidelity Bonds

- ❖ **Individual Fidelity bond**—covers one person
- ❖ **Schedule Fidelity bond**—
  - **Name Schedule fidelity bond**—list the names of individuals to be bonded
  - **Position Schedule fidelity bond**—lists the positions to be bonded E.G., tellers in a bank
  - **Note:** in both the name and position schedule bond and individual bond the insured would have to prove not only that the loss occurred but that it was one of the people applicable to the bond
- ❖ **Blanket fidelity bond**—provides blanket protection for an employer **covering all employees without exception**
  - **Commercial Blanket bond**—the bond's **limit aka penalty** is the maximum amount applicable to any single loss regardless of the number of employees involved

- **Blanket Position bond**—the bond's **limit aka penalty** applies to each employee involved. This bond covers collusionary losses
- **Note: with regard to the Commercial Blanket and Blanket Position bonds they automatically cover all employees without exception**

## Ocean Marine Insurance

Aka 'Wet Marine Insurance' (inland marine is 'dry')

One of the oldest forms of insurance.

No standard policy forms. All judgment rating.

Everything is subject to negotiation

The first type of policy, **hull policy**, covered only the ship

Next came the **cargo policy** after which came **policy extensions** covering cargo on docks and then cargo on land from point of origination to point of destination.

### Hull policy

Covers loss or damage to the ship. A hull policy can be written on a single vessel or fleet basis. The hull policy can be written on an **all risk** basis or **named perils** (such as **perils of the seas**, which includes wind, wave action, collision, stranding, sinking, or capsizing; or **perils on the seas** which include fire, lightning, earthquake, pirates, jettison, barratry, etc.)

### Implied Warrantees

(Condition that does exist and will continue to exist)

- ❖ **Sea worthiness**—the vessel must be sea worthy, fit for voyage, not overloaded and manned by a competent captain and crew.
- ❖ **Condition of cargo**—the cargo owner is obligated to guarantee that the cargo is sound and packaged properly
- ❖ **Legality**—venture must be lawful and not involve contraband, smuggling or other illegal activity
- ❖ **No deviation in voyage**—the voyage must follow an agreed route without change or unnecessary delays
- ❖ **Collision**—aka **running down clause** can be included in the hull policy and covers collision damage to another vessel or its cargo

### Protection and Indemnity (P&I)

Provides marine liability insurance and

Can be attached to the hull policy or

Written on a monoline basis

Covers payment for liability legally imposed on the insured out of the operation of the vessel

### Cargo Policy



May be purchased by the owner of ocean cargo on a single trip or the open cargo basis.

When a **warehouse to warehouse clause** is attached to the policy it not only covers cargo on the sea but on land as well from its point of origination to its point of destination

## Freight Insurance

Indirect loss coverage

Can be attached to the hull or cargo policy.

Depending on the contract of carriage if the ship owner risks the loss of the fee to transport the cargo this coverage would be added to the hull policy. If the cargo owner risks the loss of the fee this coverage can be added to the cargo policy.

[Ship owner transporting cargo owner's goods. In the event the ship is lost or damaged the cargo owner gets the fee for shipping back.]

## General average

Intentional partial loss to avoid a total loss.

A General Loss, which is a partial loss, and to be **shared between the ship owner and cargo owners.**

### Requirements for General Average

- ❖ Must have an **impending peril** (such as the destruction of the entire venture due to high waves, think Poseidon Adventure)
- ❖ Must have a **sacrifice** (such as cargo thrown overboard; jettison)
- ❖ The **sacrifice must be successful.**
- ❖ The ship owner is not lacking **due diligence/responsibility**

## Inch Maree Clause

Named after a vessel that was the subject of an English court case in which the traditional perils clause was held not to cover certain types of losses (exploding boilers). To provide coverage for similar losses this clause was developed and includes the following perils:

- ❖ **Bursting of boilers and explosions on shipboard or elsewhere**
- ❖ **Breakage of shafts**
- ❖ **Latent defects in machinery hull or appurtenances (things that are attached) of the vessel**
- ❖ **Faults or errors in the navigation or management of the vessel as well as**
- ❖ **Negligence of the master (captain), mariner (crew), pilot (1<sup>st</sup> mate), engineer, or charterer as well as accidents in loading, discharging, or handling cargo**

**Note: inherent vice is not covered in the Inch Maree clause**

**Barratry** is an intentional criminal act willfully committed by the captain or crew to the prejudice of the ship owner, such as high jacking or malicious destruction