

**TORTS AND INSURANCE—
GENERAL CONSIDERATIONS**

By Richard W. Laugesen

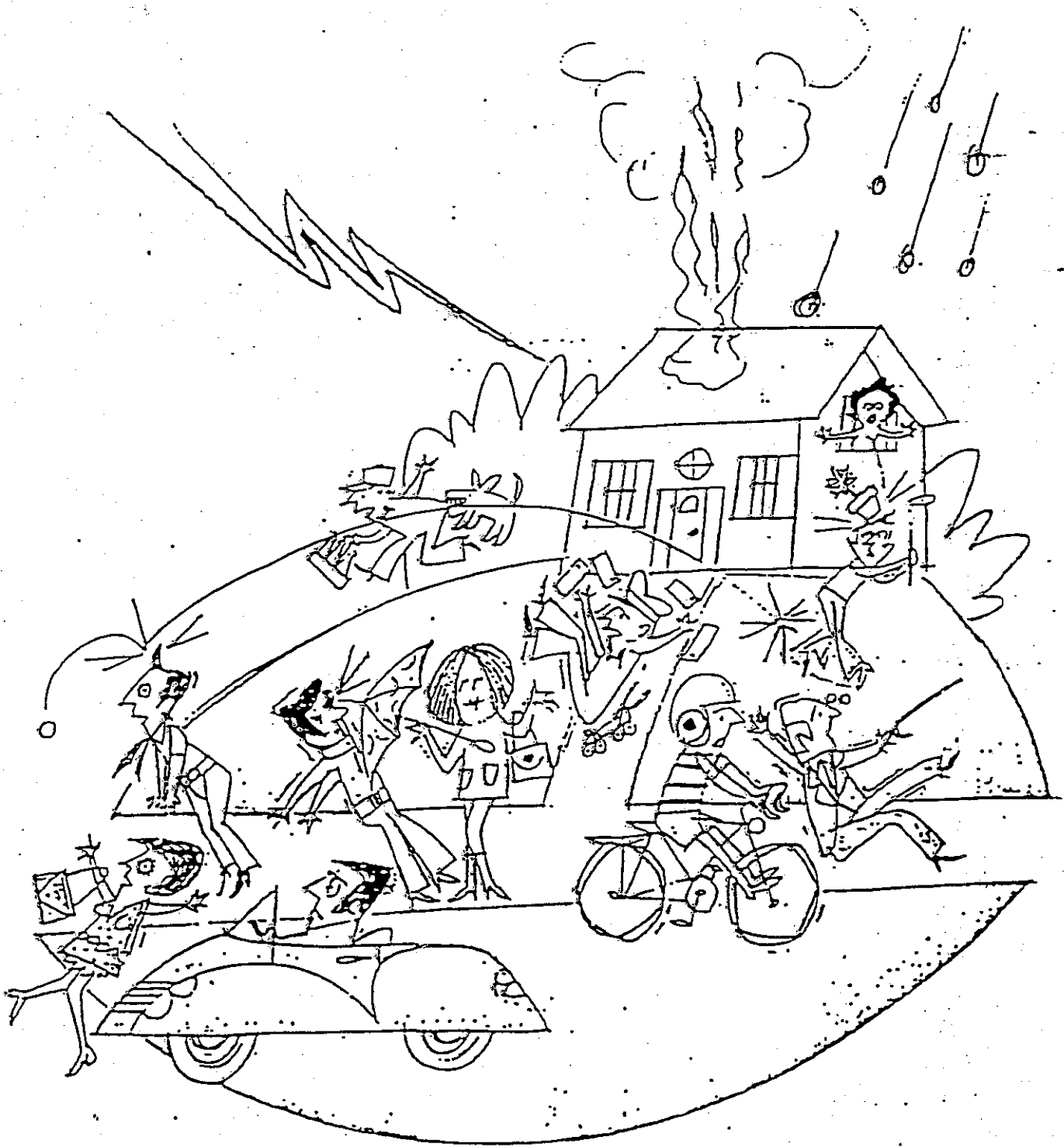


TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. TORTS	1
Negligence	1
Legal Duty Owed and Breach of That Duty	2
Proximate Cause	2
Damages	3
Defenses Against the Tort of Negligence	3
Contributory and Comparative Fault	3
Other Defenses Against Negligence	4
Absolute Liability	4
Strict Liability	4
Vicarious Liability	4
Other Torts [trespass, civil assault, civil battery, false imprisonment, defamation, fraud, conversion, wrongful judicial proceedings, invasion of privacy, nuisance, sexual harassment, wrongful eviction, interfering with contract or economic relations, and outrageous conduct]	5
Defenses to Intentional Torts	5
Types of Damages for Torts	5
II. INSURANCE	6
Kinds of Insurance	6
What "Insurance" is	6
What "Insurance" is not	6
Functions of an Insurer	7
Risk	7
Managing Risk	8
Pure Risk, Speculative Risk	8
Insurable Interest	9
Additional Rules of Insurance Suitability	9

	<u>Page</u>
Other Insurance Terms	10
Peril	10
Hazard	10
The Principle of "Indemnity"	10
The Doctrine of "Insurable Interest"	10
The Doctrine of "Adverse Selection"	11
The Anatomy of an Insurance Policy	11
A. Policies Within Policies	11
B. Organization of the Policy	11
C. Reading in Context	13
Why Policies Have Particular Provisions	13
Some Common Coverage Problems	14
A. Analytical Approach to a Coverage Problem	14
B. Illustrative Examples	14
Primacy [When There is Other Insurance]	17
Subrogation	17
Duty to Defend	18
Types of Coverage Litigation	18
A. Declaratory Judgment	18
B. Direct Action	18
C. Third-Party Action	18
D. Interpleader	18
E. Garnishment	18
F. Arbitration	18
Kinds of Insurance Related to Torts	18
CONCLUSION	20

	<u>Page</u>
Appendices:	
· Kinds of Torts	21
· Kinds of Insurance	22
· Guide to Personal Insurance Protection	24
· Auto Insurance Currently Available	25
· Recommendations on Auto Insurance After Repeal of No-Fault	26
GLOSSARY	Green Booklet

TORTS AND INSURANCE—GENERAL CONSIDERATIONS

By Richard W. Laugesen

INTRODUCTION

Injuries, damages and losses can occur in any number of ways. Sometimes the injury, damage or loss is the result of conduct of another. Sometimes there is no one else to blame.

When the injury, damage or loss is the result of another person's acts or failures to act, there may have been commission of a "tort." A "tort" is a civil wrong that violates the rights of another. Unlike the commission of a crime, for which the government prosecutes the wrongdoer, torts are a part of civil law and are concerned with the private relationships and remedies between people.

"Insurance" is a closely related and sometimes intertwined subject. Insurance often pays or helps pay for the consequences of tortious conduct. Insurance availability may ease the impact of injury, damage or loss in situations where the at-fault party has no insurance or there is no one else to blame. Availability of insurance protection can also often affect the risk-taking that is essential to scientific and industrial progress—an indirect effect of insurance availability.

This abbreviated course will hopefully provide an understanding of the tort and insurance concepts so that they can be considered and dealt with appropriately in the attendees' everyday lives.

A part of this course includes understanding the language of torts and insurance. To that end, a "Glossary" is provided as an appendix to allow looking-up of words that may not otherwise have a familiar meaning.

I. TORTS

As noted, a tort **IS A CIVIL WRONG THAT VIOLATES THE RIGHTS OF ANOTHER**. A tort can either be intentional or unintentional. Whether the injury, damage or loss was expected or intended from the standpoint of the person inflicting the harm can be important in determining types of damages recoverable and whether there will be insurance coverage for the particular conduct.

Another term for an unintentional tort is "negligence." "Negligence" is the failure to use reasonable care under the circumstances to protect others from injury, damage or loss. Some of the types of events that can give rise to a claim based on the tort of "negligence" would be:

- Motor vehicle accidents.
- Slip and fall or other premises-type accidents.
- Bicycle accidents.
- Accidental starting or escape of fire.
- Accidental failure to maintain the premises, e.g., hazardous walkways, broken tree limbs, dark or defective steps, etc.

Legal Duty Owed and Breach of That Duty

Generally, to establish a right of recovery for tortious conduct, the claiming party must establish:

- There was a legal duty;
- There was a breach of that legal duty;
- There were injuries, damages or losses; and
- The injuries, damages or losses were proximately caused by the breach of duty.

The duty owed by one person to another is sometimes expressed as a "**standard of care**". For instance, a property owner owes a higher duty of care to an "**invitee**" [a person invited onto the premises for the owner's benefit]. A lesser responsibility is owed to a "**licensee**" [a person on the premises with the owner's consent, but for the benefit of the visitor]. The least degree of care is owed to a "**trespasser**" [one who is on the premises without permission, either expressed or implied].

The **standard of care for children** is different. Instead of the usual "reasonably prudent person" standard, a child below the age of seven is incapable of negligence. A child seven years of age or older is held to that degree of care which children of similar age, experience and intelligence would ordinarily use under the same or similar circumstances. Of course, a landowner would still owe a duty of reasonable care to a foreseeable child trespasser, particularly if the child is lured onto the property by something attractive to children.

Proximate Cause

To establish the fact that one person's actions toward another were negligent and that his negligence caused damage to another person or that person's property, the negligent act and damage must be tied together. That reasonable proximity in time and space is what is known as the "**proximate cause**" of the loss.

The proximate cause of the loss is an act or omission, which in natural and probable sequence, produced the injury, damage or loss. It is an act or omission without which the injury, damage or loss would not have been sustained.

When an independent act or omission breaks the chain of causation, and sets in motion a new chain of events, an "**intervening cause**" may become the proximate cause. Here, as an example:

A delivery truck negligently backs into Farmer Jones' silo and knocks it over, spilling out the grain that was in the silo. The silo was in a fenced enclosure that livestock could not enter. Farmer Jones allows the grain to remain on the ground, become water soaked and rancid. Five weeks later, he unlocks the gate and allows his cows to enter the enclosure and eat the rancid grain. The cows become sick and die.

The backing-into the silo was the proximate cause of the damage to the silo, but not the cattle. Farmer Jones' intervening negligent act (allowing the cattle to eat the rancid grain) was the proximate cause of the loss of cattle.

Sometimes, additional events may occur between the proximate cause of the loss and the loss itself, but those events occur as a foreseeable chain reaction, with no other causal element interrupting the sequence. Consider the following additional example:

Grandma Smith, driving her small car on I-25, sees that she is about to miss her exit. She jams on her brakes and steers abruptly into the traffic lane to her left immediately in front of a loaded semi-truck. To avoid Grandma Smith's car, the truck driver applies his brakes and attempts to steer to his left, which causes his trailer to jackknife and block both lanes of the highway. Vehicles behind the semi and behind Grandma Smith run into the side of the semi trailer, and vehicles behind them run into those vehicles.

In the example, Grandma Smith's actions were the proximate cause of the damage to the semi-truck, as well as the following vehicles because she negligently started the chain reaction and arguably there were no intervening causes.

The other drivers also have a duty of reasonable care. If one or more of them is driving too fast, is distracted or waits too long to put on his brakes, he too may have been negligent, and his negligence a cause of damages sustained by a motorist ahead.

Damages

The final factor used to establish tort responsibility is that another party has suffered **injury, damage or loss**. If no one was adversely affected by an at-fault party's actions, it is simply "**negligence in the air**" and there can be no finding of actionable negligence.

Defenses Against the Tort of Negligence

Contributory and Comparative Fault

In the old days [before July 1, 1971], if a claiming party was himself or herself negligent to the slightest degree and contributed to his or her own damage, even a predominantly negligent party could not be held liable for any of the damage. In a number of jurisdictions, including Colorado, this doctrine was softened by statute to create a somewhat different rule called "**comparative negligence**." Under that rule, if the claiming party's negligence is equal to or greater than the party against whom claim is made, there is no recovery allowed. But if the claiming party's negligence is less than the defending party's, recovery is allowed, but is reduced by the percentage of the claiming party's causal negligence. When there is more than one at-fault defending party, it is the defending parties' combined fault that is compared with the claiming party's.

Similarly, in 1986, the Colorado legislature enacted a rule called "**several liability**" based on "**comparative fault**." Under that statutory rule, no defending party is required to pay any more than that party's percentage of the fault that produced the claiming party's injury, damage or loss. As an example, if one of

several defending parties was only 1% at fault, that defending party is required to pay no more than 1% of the loss. The claiming party's contributory fault is also still a consideration in that setting, but the comparison is with the total of all the defending parties' fault.

Other Defenses Against Negligence

Another potential defense in a fault-based claim is the doctrine of "**assumption of risk**." It applies when the claiming party knowingly and voluntarily exposes himself or herself to the risk of injury. That doctrine is frequently associated with injuries sustained by spectators and participants at sporting events. It is built into special statutes for skiing and equine activities. Under Colorado's rule, however, like contributory negligence, assumption of risk is not absolute, but instead comparative, and treated as a form of contributory fault.

Immunity is sometimes a defense. A parent of an unemancipated child under the age of 18 is immune from claims by a minor child against his or her parent based on ordinary negligence. The child must plead and prove "willful and wanton" conduct to recover. There is similar immunity in some states [not Colorado] as between spouses. Subject to a few exceptions, governmental entities and governmental employees are immune from tort liability. If a matter fits a statutory exception, there can be liability but the total amount of damages is limited.

No causation or **no damage** can, in effect, be a defense against liability. Similarly, an **intervening cause** can operate as a defense as to some parties.

Another type of defense can be found in **statutes of limitation**, which provide that certain types of lawsuits must be filed within a specified time of the event to be actionable under the law [3 years for motor vehicle related torts; 2 years for non-motor vehicle negligence; and 1 year for intentional torts].

Absolute Liability

It was earlier noted that there needed to be negligence or fault to hold another legally liable. There are some exceptions, however. **Absolute liability** is imposed by law on those participating in certain activities that are considered especially hazardous. Individuals involved in such activities may be held liable for the damages of another, even though the individual was not negligent or at fault. Absolute liability is most frequently applied to activities involving dangerous materials, hazardous operations and dangerous animals. Another term that is sometimes used for absolute liability is "**strict liability**." Strict liability is usually used in the context of product liability when the product is unreasonably dangerous to a user or consumer and causes injury, damage or loss.

Vicarious Liability

There are times when a person may be held responsible for the acts of another person. This is called "**vicarious liability**" or "**imputed liability**."

A very common form of vicarious liability involves a relationship between an employer and employee. Often, the negligence of an employee can be imputed (charged) to an employer because the employer has right of control over the

employee. For example, a pizza delivery driver may negligently cause an accident that injures a pedestrian. The employer becomes responsible for the employee's negligence because the employee was acting within the course and scope of his employment at the time and place of the accident.

Other Torts

Other types of torts may involve a degree of intent, and yet the party may not have intended to inflict the harm or cause the damage that results. These torts that involve an element of intention include **"trespass," "civil assault," "civil battery," "false imprisonment," "defamation," "fraud," "conversion," "wrongful judicial proceedings," "invasion of privacy," "nuisance," "sexual harassment," "wrongful eviction," "interfering with contract or economic relations," and "outrageous conduct"** [see **Glossary** for the definitions of these torts]. There can be mixtures and variations of torts. Some torts, because of their intent component, may be more egregious in their nature than others.

Defenses to Intentional Torts

Defenses to torts involving intent are: **"consent," "self-defense," "defense of others," "defense of property,"** and again, **"failure to prove elements"** and **"statutes of limitation."**

Types of Damages

The financial consequences of **tort liability** can be substantial. If an individual is liable for the loss suffered by another, courts may require the individual or those vicariously responsible for the conduct to pay **"damages"** [monetary compensation] to the injured party. A number of different types of damages can be awarded.

"Compensatory damages" reimburse the harmed party only for injuries and losses that are actually sustained. The types of compensatory damages are **"special damages"** and **"general damages."** "Special damages" include expenses and economic losses involved in a particular injury, such as medical expenses, rehabilitation expenses, wage loss, funeral expense, and the cost to repair or replace damaged property. "General damages" would include **non-economic** damages such as "pain and suffering," "loss of enjoyment of life," "disfigurement," "physical impairment," and "loss of earning capacity for the future."

If the particular conduct is purposefully hurtful, such as intentionally inflicted injury or injurious conduct committed with a "willful and wanton disregard" for the rights or safety of the victim, mere compensatory damages may not be sufficient. If the court finds that the individual acted "willfully and wantonly," "fraudulently," or "maliciously" in causing the injured party's damages, the court may award **"punitive"** [sometimes called **"exemplary"**] damages. Punitive/exemplary damages are intended to punish the offending party and make an example of him to discourage others from behaving the same way.

With this brief overview of Torts in mind, let's next turn to the topic of **"Insurance"** and the interrelationship of **Insurance with Torts.**

II. INSURANCE

As above noted, insurance is a fundamental component of our everyday lives. Our transportation, lodging, property, consumption, work, investment, leisure, illness, injury and death all have some degree of involvement of insurance.

There are many different **kinds of insurance**. A listing of types of insurance is attached as an **appendix** [see page 22].

"Insurance" is generally understood to be an arrangement for transferring and distributing risks. Unfortunately, this definition is neither very precise nor universally applicable because many other arrangements and relationships transfer or distribute risks, but are not insurance.

It is probably impossible to provide a definition that is applicable in all contexts. It is therefore preferable to view the arrangement from the standpoint of the nature of its components and the entity providing the protection.

Generally, an arrangement is considered to be "insurance" when it is characterized by three elements: (a) **risk distribution**; (b) **among a substantial number of members**; and (c) **through an underwriter engaged primarily in the business of insurance**.

While there is no way to transfer risks of pain, inconvenience or sorrow that accompany misfortune, the device of "insurance" serves to distribute the risk of "economic loss" among as many possible of those who are subject to the same kind of risk. By paying a pre-determined amount [premium] into a general fund out of which payment will be made for economic loss of a defined type, each member contributes to a small degree toward compensation for the losses suffered by any member of the group. A particular member has no way of knowing in advance whether he will receive in compensation more than he contributes or whether he will merely be paying for the losses of others in the group. The primary goal is, however, to exchange the gamble of "going it alone," whereby that member could either escape all loss whatsoever or suffer a loss that might be devastating, for the opportunity to pay a fixed and certain amount into the fund, knowing that the amount is the maximum that member will lose as a result of the particular risk insured against. This broad sharing of economic risk is the principle of **"risk distribution."** Insurance is a means of risk distribution.

There are other forms of risk distribution that are not insurance. The major difference between insurance and an arrangement in which one party simply assumes the liability of another [e.g., as co-signer of a note] is the substantial number of members among whom the risk is distributed under a plan of insurance. In fixing premium rates to be paid by each member to cover all losses for the period, as well as administrative, legal and other costs, the insurer is required to predict the number and size of losses that are likely to occur during that period. Just as in flipping a coin, the number of heads and tails will be more even and predictable as the number of flips is increased. The probability that the prediction of total losses will not be thrown off by an unanticipated number of losses increases as the number of insurance policies issued increases. This is simply the law of averages at work. It is this predictability that permits an insurer to fix rates that are low enough to make insurance saleable, and yet high enough for the insurance to weather all losses for the period and still cover administrative and other costs. If an insurer does not sell enough of a particular type of policy to reach this comfort level, the insurer can itself distribute its risk by "re-insuring" at a particular level with another insurer.

There are many different types of arrangements where risk is distributed but not treated as "insurance," [e.g., warranties on products, pre-paid service contracts, physical damage waivers, rental car agreements, etc.]. These arrangements are generally not subject to statutory and common law rules concerning insurance. The distinguishing feature is that the manufacturer, service entity or rental car company in the above examples are not engaged primarily in the business of insurance.

In the beginning, many of the original contracts of insurance took the form of mutual assessment associations where each member paid nothing but administrative costs in advance and merely agreed to be assessed his share of any loss that might occur to any member during the period. Such arrangements turned out to be unworkable because of the uncertainty that all members would be willing to pay when assessed, and cumbersome because of the repeated necessity for notification and collection. Out of these problems arose the system whereby the insurer assumed the position of "underwriter"--an entity that determines the risk, fixes and collects premiums for the period and assumes liability to pay proceeds on particular covered losses. Such functions today are performed almost exclusively by corporate entities functioning as an underwriter engaged primarily in the business of insurance.

Among the **functions of an insurer**, in addition to sale of its policy contracts, are the following: gathering and interpreting data necessary to fixing of premiums that will cover expenses and losses; collection of premiums; drafting of insurance contracts; investigation, adjustment and payment of covered claims as well as defense against claims for which there is no coverage; and financial management of the funds in the insurer's possession. In addition, most insurers engage in extensive loss prevention and educational programs to promote safety and reduce the incidence of loss.

Historically, insurance was classified according to risk covered in three primary categories: "**life**" insurance, "**fire and casualty**" insurance and "**marine**" and "**inland marine**" insurance. Originally, an insurer was limited by statute to writing insurance in only one of these three categories. As these restrictions were relaxed, some insurance companies began writing "**multiple-line**" insurance--insurance in every line except life insurance. The expansion ultimately reached a point where combinations of independent companies have added life insurance as well, and write what is now called "**all-line**" insurance. The separate categories of insurance according to risk are still preserved, however, in statutory and common law principles that apply uniquely to each category. It is therefore important to understand the distinctive characteristics of each.

Risk

To understand what insurance is and how it works, one must first understand about risk: "**Risk**" means the same thing in insurance as it does in everyday language. Risk is a chance or uncertainty of loss. For instance, the possibility that your house might be burglarized or that you might be hit by a car while crossing the street, represent uncertainty of loss. Both are risks.

One should notice that risk is not the loss itself, but the uncertainty of loss. There are some losses that are certain to occur eventually, such as when a rug finally wears out or a car runs out of gas. Such losses are not usually insurable risks because they represent a certainty instead of an uncertainty of loss.

Another term that means almost the same thing as risk is "**exposure.**" An exposure is a condition or situation that presents the possibility of loss. For example, a home that is built on a flood plain is exposed to the possibility of flood damage.

Managing Risk

We spend our entire lives coping with risk: crossing the street, going swimming, buying a new house, traveling by airplane. These risks sometimes result in small losses, like a stubbed toe or a lost pen, that we accept as a normal part of life. But risks may also result in serious financial losses, such as when a house burns down or a person is injured in a car accident. The consequences of such serious financial losses can be quite severe and far-reaching.

People have developed several different methods for managing the risk of serious financial loss. One method is to simply **avoid risk.** For example, one can avoid the risk of being in an auto accident by never getting into a car.

But it isn't practical to avoid all risks. Fortunately, that isn't the only method of managing risk. One can also control risk to some extent. For example, training workers in the safe use of welding tools can curtail the frequency of fires on the job. Risk control techniques that curtail loss frequency come under the heading of "**loss prevention.**" Or, installing a sprinkler system in a factory will not prevent a fire from occurring, but will limit the severity of any fire that does occur. This control technique that limits "**loss severity**" comes under the heading of "**risk reduction.**"

In some cases, people simply **retain a risk.** That is, if any loss occurs, they will pay for it themselves. Sometimes people retain only a portion of the risk—the portion that remains after other means of managing the risk have been employed. If people are aware of the risk and decide to retain it [or a portion of it], then they do so intentionally. If people are not aware of the risk, they may retain it unintentionally, and they may be surprised if a loss occurs.

The final method of managing risk is to "**transfer it.**" This option includes, but is not limited to, insurance. For example, a "**hold harmless agreement**" may shift liability from an owner or contractor to a tenant or subcontractor. However, for many risks, the best way to transfer them is through insurance. It is through insurance that the risk is "**distributed**" so as to bear less heavily on any one person or entity.

Pure Risk, Speculative Risk

Although theoretically almost anyone could purchase insurance to cover almost any risk, there are certain rules that establish a practical basis regarding who can be insured and for what.

For instance, insurance cannot be used to handle "**speculative risks.**" Speculative risks are risks in which there exist both a possibility of gain and a possibility of loss. A poker game is an example of a speculative risk. Insurance can only be used to manage "**pure risks,**" which involve only the possibility of loss. A person can buy insurance to protect against loss if a diamond ring is stolen (pure risk), but not to protect against loss at the casino.

Insurable Interest

A basic rule concerning who can be insured operates to the effect that before one can benefit from insurance, that person must have a chance of financial loss or a financial interest in the property. This is called an **"insurable interest."** You have an insurable interest in your own home and your own car, but not in your neighbor's home or car.

Additional Rules of Insurance Suitability

There are additional rules that govern what risks are considered suitable subjects for insurance. Risks that do not meet these criteria are probably better handled using an alternative method of risk management.

- The risk of loss must be **"definite"** as to time and place, and difficult to counterfeit or falsify. Death is probably the best example of a definite risk of loss.
- The risk must be **"unexpected."** In fact, if the results are expected, it does not qualify as a risk. In fact, as previously noted, if the results are expected, it does not qualify as an insurable risk. The risk of a train wreck could be insured, while the risk that your suitcase will eventually wear out is really not a risk at all and, therefore, is not insurable. Also, one cannot insure his house against fire after the fire has started.
- The risk must be large enough to create a **"financial hardship"** for the individual involved. A financially insignificant risk, such as the chance that one might lose a pair of inexpensive sunglasses, is not practically insurable.
- The loss must be **"calculable."** In addition to requiring adequately **"large"** risks, only risks for which the cost of loss is calculable may be insured. Risks that involve loss that cannot be assigned a financial value are generally uninsurable or assigned a value in advance called a **"stated"** value or **"agreed value."**
- The cost of the insurance must be **"affordable"** to the insured. If the risk is so severe that it requires the insurance company to charge prohibitively high premiums to accumulate enough money to pay losses, it is not an insurable risk. Even if the person purchasing the insurance could afford to pay it, the cost should be only a fraction of the value of the item itself.
- There must be a **"large number"** of persons with similar potential loss available so that overall, losses become predictable. The law of large numbers applies here. To accumulate adequate funds to pay losses, the insurance company must be able to predict losses. Accurate predictions are possible only when there are sufficient numbers of potential insureds with a similar chance of loss.
- The loss must not happen to a large number of insureds at the same time. While insurance companies do want to insure a

large number of persons, if a great number of these insureds were to suffer a loss at the same time, it would be catastrophic for the insurance company, and ultimately its insureds. This is known as "**spread the risk**." The greater the spread of the risk, the less likely that there will be a single catastrophic loss for the insurer.

Other Insurance Terms

Peril

We have observed that "**risk**" is the uncertainty of loss. A "**peril**" is the cause of loss. Fire and collision are both examples of perils.

Hazard

We have noted the difference between "**risk**" and "**peril**." Another important term is "**hazard**." A hazard is anything that increases the chance of loss, for example, a furnace explodes as a result of a poorly tightened gas connection. The peril was the explosion. The hazard was the poorly tightened gas connection.

There are several types of hazards. A "**physical hazard**" is a hazard that arises from a condition, occupancy or use of the property itself [as an example—a skate board left on a front sidewalk]. A "**moral hazard**" is another type of hazard. A moral hazard means that a person might create a loss situation on purpose just to collect from insurance.

The Principle of "Indemnity"

One of the most important characteristics of an insurance contract is that it is a contract of "**indemnity**." The principle of indemnity operates to the effect that when a loss occurs, the insured should be monetarily restored to the extent of the insured's loss, but no more. Insurance does not allow the insured to make a profit, because to do so would encourage wagering or willful destruction of the life, well-being or property of the insured.

The Doctrine of "Insurable Interest"

The doctrine of "**insurable interest**" is closely related to the principle of "**indemnity**." Indemnity refers to the compensation necessary to reimburse the insured's loss [and no more]. The principle of indemnity is violated if the insured is paid a benefit greater than the loss. An "insurable interest" is, therefore, an interest which the law requires the owner of the insurance policy to have in the thing or the person insured. It is simply a test that attempts to identify those situations where the courts are concerned that the insurance contract might create an incentive for wagering or the intentional destruction of property, well-being or life. If the court concludes that no insurable interest exists, the contract of insurance is voidable. Where an insurance policy is invalidated because of lack of insurable interest, the premium is ordinarily returned to the owner of the policy.

The Doctrine of "Adverse Selection"

The doctrine of "**adverse selection**" is involved in all kinds of insurance and affects its availability and cost. It operates to the effect that, other things being equal, a party facing a high risk of loss is more likely to seek insurance than a party facing a lower risk. For example, those chronically ill are more likely to want health insurance than persons who are seldom sick. A disproportionate number of chronically ill insureds affects the premium cost and ultimately insurance availability for all insureds.

ANATOMY OF AN INSURANCE POLICY

While there are many different types of insurance, insurance agreements have certain format similarities, the understanding of which assists in comprehending and analyzing insurance coverage problems. Typical "**Auto**," "**Homeowner**," "**Dwelling**," "**Life**" and "**Commercial General Liability**" forms have been provided for illustration. Other policy forms can be obtained from an insurance broker or agent.

A. **Policies Within Policies.** Looking at the sample Auto form, it can be seen that it is divided into various component packages, e.g., Liability, Uninsured/Underinsured Motorist, Med Pay, Comprehensive, Collision and Towing and Road Service. Similar arrangements are found in Homeowner policies, Business Package policies, Watercraft and Aircraft Package policies, etc.

B. **Organization of the Policy.** Organization of an insurance policy contract is usually along familiar lines with specific identifiable parts. The parts of a policy [or a policy within a policy] are as follows:

1. **Declarations Page** [called "Dec. Sheet"]. This page identifies the named insured and his policy address; sets forth the policy number; sets forth the policy time period; reflects subject matter being insured, (i.e., the car, house, property, etc.); sets forth the monetary limits of coverage; indicates the identity of the agent or issuing agency; and, in the instance of a package policy, indicates which individual coverages within the package are covered. The declarations sheet is attached to the basic policy form or booklet and is the means by which the insurance is made to fit the particular risk.

2. **Insuring Agreement.** That part of the policy where the insurer sets forth its agreement to pay or perform under specified circumstances. As in Auto, Homeowner and other types of Liability coverage, the insurer also usually agrees to defend and make certain supplementary payments in addition to the main coverage obligation.

3. **Definitions.** A part of the policy contract where the insurer defines certain terms used within the policy [called "Defined Terms"]. Sometimes coverages are broadened by definition and other times restricted even to the point of exclusion. The definitions section is necessary and helpful to permit a shorter, less complicated policy contract form. An important part of the definitions section is definition of who is an insured under the policy.

4. **Exclusions.** The portion of a policy contract that "taketh away" or subtracts from relatively broad previous insuring language in certain specified instances. Sometimes policies are drawn on a "specified peril" basis and will have few exclusions. Others will be written on an extremely broad insuring

language basis with exclusions of those risks that the insurer does not wish to undertake for the premium being charged. Either way, exclusions are an important part of the insurance policy undertaking and are present to assist in tailoring the coverage to the particular insured's anticipated risk so that the premium cost can be kept as low as possible. Usually, each item excluded can be bought-back for a price. Exclusions can be eliminated by specific endorsements added to the policy.

5. **Limit(s) of Liability.** The "limit(s) of Liability" portion of the policy sets forth the insurer's statement of the maximum amount an insured under the policy can collect or have paid under the particular policy. The term "**amount of insurance**" is synonymous. The provision is read together with statement of amount limitation set forth on the Declarations Page. Said provisions will state whether the particular limitation is a "**split**" or "**combined**" limitation and whether an "**aggregate**" limitation is applicable.

6. **Conditions.** The conditions portion is a part of the policy contract that sets forth the details of the insurance undertaking. Provisions such as notice to the insurer of an accident or loss; whether and how changes to the policy can be made; whether the policy is assignable; how the policy is terminated; what happens if there is other insurance; requirements of cooperation; duties of the insured to fulfill the purposes of the coverage, etc., will be found in the "conditions" section of the policy. Conditions, as in any other contract, can be either "precedent" or "subsequent." If there is an occurrence within the policy, it is important that the insured and his or her attorney be familiar with the conditions pertinent to the particular loss so that claims-handling and final resolution can be facilitated.

7. **Special State Provisions.** Special state provisions simply conform the policy contract to the requirements of the particular state so that the form can be as uniform as possible throughout the entirety of the United States. Such provisions may appear either by endorsement or as part of the policy form or booklet [usually near the end].

8. **Endorsements.** Provisions which add to, subtract from or clarify the base policy, take place by way of "endorsement." As with other contracts, language of the contract can be changed by addendum. An endorsement is simply an addendum.

9. **Binder.** A "binder" is usually an interim agreement to insure a particular risk until the policy can issue or until coverage can be declined by the insurer. A binder can be written or oral, but obviously, problems of proof are presented if there is disagreement as to the terms of any oral agreement to insure. Ordinarily, a binder simply provides temporary insurance on the same basis as the policy that will ultimately be issued and incorporates that policy by reference. It is usually necessary to make a deposit payment toward premium to obtain a binder, and if the binder is oral, one is in a better position if he has a receipt or canceled check to show that coverage was to go into effect immediately as distinguished from a promise to insure in the future.

10. **Application.** The application is usually not part of the policy form itself [except Life and Disability insurance], but is an important part of the insurance undertaking. The application is completed when insurance is ordered and contains representations used by the insurer to decide on accepting the risk and its cost. A misrepresentation here can constitute grounds for voiding of coverage.

11. Premium Due and Cancellation Notices. While not part of the policy contract itself, premium due notices and cancellation notices may be an important part of the contractual understanding between the parties. Typically, insurers forward a premium-due notice prior to expiration of the policy contract. It is the duty of the policyholder to pay the premium to be entitled to renewal of the coverage. Failure to timely pay the premium can result in loss of or a gap in coverage. These various notices, including cancellation notices, should be kept with and read together with the policy in the event of a problem concerning lapsed or canceled coverage.

C. Reading in Context. In any situation where coverage for a particular occurrence or loss is claimed, it is initially the burden of the person claiming insurance protection to bring himself, herself or itself within the terms of the policy: (1) He, she or it must either be the "named insured" or within the policy's definition of "insured;" (2) the particular matter must be within insuring language of the policy and not excluded; (3) he, she or it must comply with conditions precedent and perform the duties that the conditions of the policy require; (4) sometimes the particular state will have requirements that operate to amend standard contract language so that special state provisions should be ascertained; (5) sometimes basic policy language will have been changed by endorsement so that the effect of any endorsement should also be considered; (6) certainly [unless the particular coverage is a "claims-made" form], the incident must have taken place within the policy period; and (7) to be entitled to insurance coverage for the policy period, the policyholder is expected to have paid the premium.

The policy should be read in connection with the particular problem posed. It can be seen how each part of the insurance policy (or policy within a policy) has significance, and if considered logically and objectively as parts of a whole, a policy form will usually not be difficult to understand.

Why Policy Contracts Have Particular Provisions

The insurance industry has been under criticism for a number of years for seemingly unnecessarily complicated policy contract language. Some of that criticism is justified, and there has been definite effort in recent years to make policies more readable, logical and understandable. It should be understood, however, that policy forms have developed over a number of years and it is desirable that an insurer have as nearly a uniform policy form throughout the country as is possible.

It should also be understood that package coverages such as Auto and Homeowners are lengthy because of the numbers of different coverages contained within the policy booklet. While in some instances language should be simpler, and effort is being made to make language more simple and readable, there is a limit to the simplification process. If every word were defined and exhaustively explained, the policy contract [particularly a package form] would have to be quite lengthy. Further, the language is basically a product of interpretation by a number of courts over a number of years so that there is a natural reluctance to change language for fear of the uncertainty that may result.

The objective of the insurer is to cover the particular risk for the least possible cost. It should be recognized that some people and types of risks are simply not insurable through usual channels [e.g., the cost of motorcycle PIP would have been prohibitive; bad drivers should pay more for insurance than good drivers; the greater

the risk--the greater the premium cost should be if coverage is going to be extended for a particular aspect of that risk].

We ordinarily become involved in insurance controversies after the loss or exposure occurs. We attempt to find coverage where possible and many times are unhappy with the insurer if we are frustrated in that effort by an exclusion, a condition that was not complied with, or a situation where a person does not quite fit the definition of "insured." There is, however, usually a reason for a particular provision or limitation in the policy contract. Understanding the reason for a provision makes us better informed consumers when we purchase our protection and when we make a claim.

Some Common Coverage Problems

Because of the myriad of types of coverages and the infinite situations under which any of those types of coverage can develop into a coverage dispute, no comprehensive listing of coverage questions is possible here. Instead, some illustrative situations have been selected to assist in understanding the **analytical approach** to a coverage problem. First is a suggested general approach to be taken in analyzing coverage problem matters. Following that are some examples illustrating the reasoning process.

A. Analytical Approach to a Coverage Problem.

- (1) What activity or thing is insured?
- (2) Who is insured?
- (3) During what period is the coverage in force?
- (4) What is the amount of insurance?
- (5) Is there coverage for the person and activity in all contexts or are particular situations excluded [may be by specific exclusion or exclusion by definition]?
- (6) Is there a condition that must be complied with before or after coverage attaches?
- (7) How is the claim filed or insurance protection sought under the policy contract?
- (8) Is there a statute or an announced public policy consideration with which the policy provision conflicts?

B. Illustrative Examples.

(1) Does the insuring language cover the activity, thing and person?

Example: Insured agrees to sell his car to Friend. Friend is going to make payments over a period of six months. Insured delivers possession of the car to Friend, but will not sign-over the title until payments are fully made. The day following delivery of the

car to Friend's possession, Friend is in a serious accident, severely injuring three people. Friend did not have any insurance of his own and Insured had not yet cancelled his insurance on the car.

Analysis: "Ownership" had changed to Friend upon delivery of possession pursuant to the conditional sale. Friend was thereupon using the vehicle as his own rather than by virtue of permission conferred by Insured. Friend would not be entitled to liability insurance on the car under Insured's policy. The reason Friend did not have coverage from Insured's policy was that he was neither the "Named Insured" under the policy nor within definition of "Insured" under the Insured's policy contract.

(2) During what period is coverage in force?

Example: Policyholder receives a premium due notice. Policyholder delays almost until the due date, then sends the premium by ordinary mail. As sometimes happens, the U. S. Mail Service loses the mailing so that it is never received by the Insurer. The policyholder has an accident after the expiration date.

Analysis: The policyholder was the named insured. The subject matter would have been within coverage. There would have been no exclusions from insuring language. The policyholder, nevertheless, failed to make a timely payment of premium to keep his coverage in force. Under Colorado law, unless the insurance contract otherwise provides, mere mailing of the premium check is not "payment." Risk of postal loss in making a premium payment is on the insured.

(3) What is the amount of insurance?

Example: Insured has a motor vehicle policy including \$25,000/\$50,000 UM/UIM. The Insured is involved in a serious accident with an uninsured motorist. His injury is worth \$100,000 and he receives \$10,000 from the uninsured motorist. The UM insurer takes the position that Insured has already received \$10,000 so that he is entitled only to \$15,000 from his UM policy.

Analysis: The maximum liability of the Insurer is specified by statute. C.R.S. 10-4-609(5) provides that the UM Insurer's maximum liability is the lesser of the difference between the limit of uninsured motorist coverage and the amount paid to the Insured by or for any person or organization who may be held liable for the bodily injury or the amount of damages sustained but not recovered. Where the uninsured motorist has paid \$10,000 toward Insured's damages, the UM Insurer is obligated only to make up the difference between what is paid on behalf of the uninsured/underinsured motorist and the UM limit.

(4) Was the activity and person otherwise within insuring language excluded?

Example: Insured under a Homeowner policy becomes irate at Neighbor. After some cross words between them, Insured strikes the Neighbor with a piece of pipe intending to hit him on the arm but missing and hitting the Neighbor in the head, seriously injuring Neighbor. When Neighbor sues, Insured claims coverage under the liability portion of his Homeowner policy. The Insurer denies liability coverage for the incident because the incident was not "an accident," and because of an "expected or intended injury" exclusion.

Analysis: The Insured was the person named in the policy. The injury happened during the policy period. Insurance language, however, provided coverage for "accidents," not intentional battery, and excluded injury that was "expected or intended" by the insured person.

(5) Are there conditions that must be complied with before or after coverage attaches?

Example: Named Insured purchases liability coverage on his car. Within the policy period he is involved in an accident with Pedestrian in a crosswalk. Pedestrian is seriously injured and Insured receives a traffic citation. Pedestrian sues Insured a year later. Insured goes to his personal attorney who files an Answer on his behalf. On the eve of trial (nine months later), the insurance company is notified for the first time of both the accident and the pendency of suit. The insurance company denies coverage based on breach of policy conditions to give notice of accident as soon as practicable and also on the basis of failure to immediately forward a demand or suit.

Analysis: The example is a situation where there was clearly coverage at the time of the accident, but such coverage may have been voided because of non-compliance with mandatory "conditions precedent." Notice requirements have generally been held to be a reasonable requirement to entitlement to coverage. The "conditions" section can be a very important part of the insurance contract.

(6) When and how must the claim be presented?

Example: Insured has a Homeowner policy which provides "extended coverage" including damage caused by hail. Insured suffers hail damage to roof. The roof doesn't leak very much and the Insured is very busy on his job. Insured delays making a claim for more than a year. When he finally makes his claim, the insurance company denies the claim as not having been timely made within conditions of the policy. The policy conditions required submission of a proof of loss within sixty days and included a one-year limitation on the right to sue.

Analysis: It is always risky to delay notifying the Insurer of the accident or loss, and equally risky to delay asserting one's claim. Contractual limitations have been upheld in Colorado. Reference to the policy at the time of the loss would have informed the Insured of his duties of reasonable promptness.

(7) Where policy language does not comply with statute or public policy, can the Insurer enforce the policy contract?

Example: In 2006, the policyholder was involved in a one-vehicle rollover accident in which his wife was injured. Wife sues Insured for her injuries. Insured's Auto liability policy contained an "injury to insured" exclusion that provides there is no coverage for a bodily injury claim asserted by a person who is an insured under the policy. It also contains an exclusion for a bodily injury claim asserted by a person who is a resident of the insured's household.

Analysis: Statutory coverage must comply with the statute and whatever "public policy" is deemed to have been created by such legislation. Such "Household"/"Injury to an Insured" exclusions were valid and enforceable before the Motor Vehicle Reparations Act, but held to be in conflict and not enforceable because of requirements of the Reparations Act. So-called household exclusions were validated by special legislation in 1996. Where there is conflict between a statute and policy language, the statute controls. Here, the "injury to an insured" exclusion would be void but the "household exclusion" would be valid and enforceable.

Primacy

"**Primacy**" is the consideration that obtains when there are two or more policies [of the same kind of coverage] available and a choice must be made between them. Each type of coverage has its own peculiar primacy considerations. Generally, primacy is contractual and determination is made by looking to and applying the "other insurance" provisions of each of the involved policy contracts.

Subrogation

"**Subrogation**" [sometimes referred to as "**reimbursement**"] is generally defined as the right of an insurer to be paid back or the entitlement to credit against otherwise owed future benefits. The right is generally contractual, but not always. Some entities have statutory subrogation/reimbursement rights [such as Medicare, Medicaid, Workers' Compensation insurers, ERISA Plans, and hospitals]. Where there is statutory subrogation, the subrogated entity also probably has priority to limited Liability insurance and tort-feasor assets. Where the claimed subrogation/reimbursement right is other than contractual, it must be set forth by a provision in the policy or plan, or it arguably does not exist.

Duty to Defend

Defense of a liability insured is a valuable part of the liability insurance undertaken by a liability insurer. The duty to defend in Colorado is co-extensive with coverage but is sometimes considered to be broader than coverage. Because defense is one of the benefits provided under a Liability policy contract, if there is no coverage, there is usually no duty to defend regardless of the merits of the underlying lawsuit.

Types of Coverage Litigation

When litigation concerning coverage becomes a necessity, it usually takes one of five forms:

A. **Declaratory Judgment** [Insurer versus Insured or Insured versus Insurer to have rights and obligations declared under the policy contract].

B. **Direct Action** [Insured versus Insurer to enforce contract rights and/or to seek damages for the insurer's non-payment].

C. **Third-Party Action** [Insured versus Insurer as an ancillary proceeding to an action brought by a claimant against the person claiming to be a liability insured].

D. **Interpleader** [Insurer versus all potential claimants to determine rights to a limited fund].

E. **Garnishment** [Judgment Creditor versus Insurer after judgment against Liability Insured].

F. **Arbitration** [An out-of-court dispute resolution arrangement that is quicker and less formal than court proceedings--arranged by contract or agreement, with procedures sometimes called-for by statute--Insured versus Insurer or Insurer versus Insured for determination of benefits or a coverage question].

Kinds of Insurance Related to Torts

While there is some potential for tort responsibility for an insurer's failing to perform under any of the above-listed types of policies [called "**tortious breach of an insurance contract**" or "**insurance bad faith**"], and instances with many of the above-listed types of insurance where there is a right of "**subrogation**" [meaning the insurer's right to be paid back based on fault], the interrelationship between torts and insurance usually concerns some form of "**liability insurance**."

"**Liability insurance**" is insurance protection against liability to others and usually includes the insurer's defending the insured person or entity against liability claims by others. The more common forms of "liability" insurance are:

- Motor Vehicle;
- Homeowner;
- Renter's;
- Condominium;
- Owner's, Landlord and Tenant ["OL&T"];

- General Liability [Commercial General Liability ["CGL"]];
- Personal Injury Liability;
- Advertising Liability;
- Directors and Officers Liability ["D&O"];
- Professional Liability;
- Errors and Omissions ["E&O"];
- Watercraft Liability;
- Aircraft Liability;
- Builder's Risk.

"**Liability insurance**" is written either on an "**occurrence**" or "**claims-made**" basis. An "occurrence" policy means that coverage is oriented to a specific period of time, regardless of when the claim is made. A "claims-made" policy orients to when the claim is made, regardless of when the negligence or other wrongful act occurred. Usually, only Professional Liability policies are written on a "claims-made" basis.

Liability policies of whatever kind generally operate the same. If a particular allegedly tortious conduct is within insuring language of the policy, is not excluded and occurred during the period of time insured in the policy, the insurer will protect the person or entity within definition of "**insured**" up to the limit of the policy and defend against lawsuits brought against the protected person, even if the allegations of the lawsuit are false or fraudulent.

The Liability insurance component in Homeowner, Renter, Condominium, and Auto policies cover most of the non-business tort risks previously described.

Some states have statutory reparations systems that are founded upon particular types of interrelated insurance. As an example, some Motor Vehicle Reparations systems include a combination of "**No-Fault**" insurance, **Liability** insurance and "**Uninsured/Underinsured Motorist**" insurance coverage. Under a No-Fault Reparations system [found in 24 states—no longer Colorado since July 1, 2003], a person injured in a motor vehicle accident is entitled to replacement of certain economic losses from his or her own insurer without regard to fault [called "Personal Injury Protection ("PIP")"]. Such first-party benefits are coupled with a tort-modification feature that prevents lawsuits against the at-fault motorist unless the injured person meets a statutorily prescribed "threshold." If the injured person meets the threshold, he or she not only is entitled to PIP, but may re-enter the tort system and sue for non-economic losses (such as pain and suffering, disability, disfigurement, loss of enjoyment of life, etc.) on a fault basis. A second form of tort modification is also involved in the system in that the person who meets the threshold and becomes entitled to sue in tort cannot recover from the at-fault motorist any amount within PIP eligibility. Because lawsuits are contemplated in more serious injury cases, each motorist also needs liability insurance for protection against such liability. Liability insurance is therefore a compulsory part of the complying Reparations Act-required policy of insurance.

Even when insurance is compulsory, many people still do not have complying Liability insurance. As a result, a form of insurance that protects against the situation of the other motorist not having liability insurance or not having enough was developed—called "**Underinsured/Underinsured Motorist Coverage** ["UM/UIM"]. Such coverage operates as a first-party insurance substitute for the liability insurance the at-fault party should have had, but didn't, or did not have enough of. It makes up the difference between what is paid by or on behalf of the uninsured/underinsured at-fault party and the lesser of either the UM/UIM limit or value of the

claim. After payment, the UM/UIM insurer has a right of subrogation (the right to be paid back) as against the uninsured/underinsured at-fault party based on fault.

Another form of a statutory reparations system based on underlying insurance is "**Workers' Compensation.**" That too is a modification of rights in tort for guaranteed prompt payment of certain economic losses without regard to fault. Other than the Workers' Compensation remedy, a complying employer is not liable in tort. The employer or Workers' Compensation insurer then has a right of subrogation after having paid benefits.

In the future, a distinct possibility exists for other areas of tort responsibility becoming transformed into statutory reparations systems. Malpractice and product liability are prime candidates.

CONCLUSION

There you have it--an overview of **Torts and Insurance.** Both are subjects that affect our everyday lives. Both are subjects we may not know enough about. Hopefully, this basic overview of these very broad and sometimes complicated subject areas will make us better consumers and better informed citizens in the communities in which we live.

KINDS OF TORTS*

Absolute Liability
Assault (Civil)
Battery (Civil)
Contribution
Conversion
Defamation
Disparagement
False Arrest
False Imprisonment
Food Supplier Liability
Fraud
Indemnity (as a tort remedy)
Insurer Bad Faith
Interference With Contract or Economic Advantage
Invasion of Privacy
Landowner/Occupier Liability
Misrepresentation
Motor Vehicle Liability
Negligence
Negligence Per Se
Negligent Infliction of Emotional Distress
Nuisance
Outrageous Conduct
Product Liability
Professional Liability [Malpractice]
Several Liability
Sexual Harassment
Statutory Torts
Strict Liability
Trespass
Vicarious Liability
Wrongful Eviction
Wrongful Judicial Proceedings [Malicious Prosecution–Abuse of Process]

* See Definitions in the **GLOSSARY**.

KINDS OF COVERAGE

The following is a brief description of kinds of insurance coverage in use today. Sample forms are contained in the back of your case book or separately provided. Simply looking through a policy form is helpful to an understanding of types of coverage, limitations on coverage, the organization of a policy and knowing where to look in resolving coverage questions.

Some coverages are "**compulsory**." Some are merely required by a statute "**to be offered**." Most are purely "**voluntary**" or "**voluntary but regulated**." As will later be discussed, the type of insurance and its degree of public regulation often determines how the insurance contract will be interpreted.

The trend in insurance marketing has been to package various types of related coverages together. There has also been a trend to attempt to simplify policy language, to specialize and to attempt to more accurately determine premium cost as it relates to a particular undertaken risk.

Kinds of Insurance:

A. **Motor Vehicle.** ["Auto"] (A package of coverages which usually includes Liability, Uninsured/Underinsured Motorist ["UM"/"UIM"] coverage, Comprehensive, Collision, Med Pay, Towing & Labor, and before change-over following sunset repeal of the No-Fault Act (July 1, 2003), Personal Injury Protection ["PIP"].)

B. **Homeowner.** ["HO"] (A package of coverages usually including Fire and Extended coverage, General Liability (excluding Auto) and Med Pay.)

C. **Apartment Dwellers.** ["Renters"]. (A package of coverages similar to Homeowners, but oriented to the apartment dweller who does not own his place of lodging.)

D. **Owner's, Landlord and Tenant.** ["OL&T"] (A package of coverages written to the owner/occupier of property as other than a homeowner. This commercial coverage is a package of Fire and Extended coverages, General Liability and Med Pay.)

E. **Business Package.** ["Commercial"] (This is a commercial packaging of Fire and Extended coverages, General Liability with Products and Completed Operations coverages availability, Business Interruption, Theft, Employee Dishonesty and other similar types of related business risks.)

F. **General Liability.** ["CGL"] (A basic commercial policy that can be added to by endorsement to include Products, Completed Operations, Contractual, Dram, and non-owned Motor Vehicle coverages.)

G. **Personal Injury Liability.** (A specialized liability coverage written on a specified peril basis such as: False Arrest; Malicious Prosecution; Wrongful Entry or Eviction; Defamation; and Violation of Another's Right of Privacy.)

H. **Advertising Liability.** (A specialized liability coverage written on a specified peril basis such as: Defamation; Violation of Privacy; Misappropriation of Ideas; and Infringement of Copyright, Title or Slogan.)

I. **Directors and Officers Liability.** ["D&O"] (A specialized liability coverage that protects against liability of corporate officers and directors separate from the corporate entity but may also include Corporate Indemnification for officer or director wrongful acts, errors and omissions.)

J. **Workers' Compensation.** ["W/C"] (A policy that usually is outlined in scope by statute to cover on-the-job injuries to employees. Coverage is obtainable in Colorado either through the State Compensation Insurance Authority called "Pinnacle Assurance" or by a private insurer.)

K. **Professional Liability.** (A specialized Liability coverage to fit the needs of a particular profession or occupation such as physician, lawyer, dentist, therapist, accountant, engineer, insurance agent errors and omissions, etc.)

L. **Title.** (A specialized coverage to protect and indemnify against defects in real estate titles.)

M. **Life.** (A fixed sum payable upon death. Types of life insurance are Whole Life, Term, Creditor, Trip, etc.)

N. **Health and Accident.** ["H&A"] (A specialized coverage for protection against medical, hospital and surgical expenses. There are specialties within categories such as Major Medical, Cancer Protection, etc.)

O. **Disability.** (A specialized coverage to protect against loss of income in the event of work disability by either illness or injury.)

P. **Crop.** (A specialized protection against hail, fire, insect infestation, etc.)

Q. **Cargo.** (A coverage available against risk of loss of property or goods being transported.)

R. **Flood.** (A coverage available through U. S. Government subsidization to protect against losses by flood and rising water from external origins, which risk is usually excluded under standard Homeowner and Commercial Property policies.)

S. **Aircraft.** (A package of coverages available to owners and operators of aircraft covering Liability, Physical Damage to the aircraft itself, Med Pay and other similar related coverages.)

T. **Watercraft.** (A package of coverages available for boating such as Liability, Physical Damage, Med Pay, etc.)

U. **Builder's Risk.** (A package of coverages available to protect against risks during construction, such as Fire and Extended Coverages, Liability, Med Pay, etc.)

V. **Surety Bonds.** (A commitment by a bonding company to guarantee performance by the principal in certain matters such as completion of construction, lien avoidance, honesty, appearance at a time certain, etc.--not really "insurance").

W. **Inland Marine.** (Personal property protection when the property is not at a fixed location--also called "Personal Property Floater".)

X. **Specialized.** [Called "Surplus Lines"] (Insurance is available at a price for any risk, e.g., Celine Dion's voice, Jake Plummer's throwing arm, placing a satellite in space, etc.)

• A GUIDE TO PERSONAL

INSURANCE PROTECTION

The true measure of your need for insurance should not be based upon the probability of loss, but rather upon the amount of loss you might suffer.



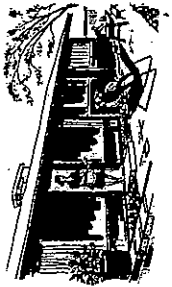
ESSENTIAL PROTECTION
These coverages are basic to every insurance program. They protect you against losses that might be very serious but could be disastrous or financially crippling for your family.



IMPORTANT PROTECTION
These coverages protect you against losses that might be very serious but could possibly be met out of savings.



DESIRABLE PROTECTION
These coverages are desirable because they convert possible losses into a small annual expense.



YOUR HOME

HOMEOWNERS "package" policy insuring your home (at least 80% to value) or mobile home against most perils, plus coverage for personal property and protection against crime and liability risks. (Mandatory deductibles apply in most states.)

OR

Fire and Extended Coverage insurance (including wind, hail, riot, explosion, aircraft, vehicle damage and smoke) to cover: • YOUR HOME • GARAGE • OTHER BUILDINGS

Vandalism insurance.

Additional Living Expense insurance to pay you extra living costs while your home is untenable after disaster such as living in hotels or motels. (Automatically included in Homeowners package policy).

Earthquake insurance, if applicable.

Flood insurance, if eligible.

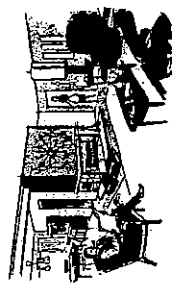
Broad Perils insurance including coverage (briefly) for loss by falling objects, weight of snow, overflow of water, bursting of water heating or air conditioning system, freezing of system, electrical current.

Special Perils insurance to cover home against All Physical Losses, except those excluded.

Glass insurance to cover breakage of windows or panes from any cause. Trees, Shrubs, Plants insurance to cover your lawn and shrubbery.

Fire Department Service Charges insurance to pay charges of fire departments, if applicable.

Coverage is included in most Homeowners Policies for these exposures.



PERSONAL PROPERTY

HOMEOWNERS insurance, covering your personal property in your home, condominium, mobile home or apartment against most perils. (Mandatory deductibles apply in most states.)

OR

Fire and Extended Coverage insurance to cover personal property:

- AT YOUR RESIDENCE
- AWAY FROM YOUR HOME

Vandalism insurance.

Earthquake insurance, if applicable.

Flood insurance, if eligible.

NOTE: Apartment, cooperative and condominium dwellers and renters of homes may enjoy the advantage of Homeowners insurance with a comparable Package policy, which includes theft coverage and liability insurance.

Crime insurance covering loss by:

- BURGLARY, ROBBERY, THEFT.

Broad Perils insurance.

Replacement Cost insurance.

All Risks insurance on specific valuable property:

- JEWELRY • FURS • CAMERAS
- FINE ARTS • SILVERWARE
- MUSICAL INSTRUMENTS • GUNS
- COIN OR STAMP COLLECTIONS

Motorboat or Yacht insurance protecting your boat, motor and equipment.

All Risks insurance covering unscheduled personal property against All Physical Damage losses except those specifically excluded.

Safe Deposit Box insurance.



LIABILITY HAZARDS

HOMEOWNERS insurance.

OR

Personal Liability insurance (high limits) to cover bodily injury or property damage claims arising from:

- YOUR RESIDENCE • ACTIVITIES
- PETS • USE OF SMALL BOATS
- BICYCLES • PERSONAL ACTS

Workers Compensation or Employer's Liability insurance to cover injuries to servants in accordance with law, if applicable.

Boat Liability insurance for large and/or powerful watercraft.

Excess Liability or Personal Umbrella Liability insurance to cover catastrophic liability claims.

Medical Payments insurance (high limits) to pay medical, hospital and doctor bills for injury to your guests, friends or neighbors, liable or not.

Damage to Property of Others insurance to cover property damage caused by anyone in your family, liable or not.



AUTOMOTIVE HAZARDS

Auto Liability insurance (high limits) to cover your liability for Bodily Injury or Property Damage arising out of:

- YOUR AUTOS
- OTHER AUTOS DRIVEN BY MEMBERS OF YOUR FAMILY • TRAILERS

and other types of recreational motor vehicles (except golf carts on golf courses) away from your premises.

Uninsured Motorist insurance to pay judgments for bodily injury which members of your family are unable to collect from uninsured motorists or hit-and-run drivers.

Aircraft Liability, if applicable.

Auto Medical Payments insurance (high limits) to pay medical bills of persons injured in your autos or members of your family in traffic accidents.

Vehicle Physical Damage insurance to cover loss or damage to private passenger cars, recreational vehicles and trailers by:

- COLLISION OR UFSSET
- COMPREHENSIVE PERILS (all physical losses including theft, except loss by collision).

Aircraft Hull insurance, if applicable.

Underinsured Motorist insurance (where available) pays when bodily injury liability insurance carried by a liable third party is exhausted.

Auto Death, Disability insurance for death or disability resulting from traffic accidents.

Towing, Labor Charges insurance.



PERSONAL PROTECTION

Life insurance for head of family to meet the financial hardships brought on by death or retirement:

- LIFE INSURANCE FOR ESTATE PLANNING • RETIREMENT INCOME

Health insurance to cover:

- LOSS OF INCOME resulting from injury or sickness to head of family.

Hospitalization and Major Medical insurance to cover hospital and surgical bills for all members of your family.

Life insurance for head of family to cover specific needs such as:

- MORTGAGE CANCELLATION
- EDUCATION OF YOUR CHILDREN
- LIFETIME INCOME FOR YOUR SURVIVING SPOUSE

Life insurance on your spouse.

Life insurance for your children.

Life insurance to be paid to your family survivors.

COVERAGES AVAILABLE

[System After July 1, 2003]

TYPICAL LIMITS OF COVERAGE

Bodily Injury Liability

Protection against liability should your car injure others and you be held liable. Pays up to the first limit for any one person and up to the second limit for two or more persons injured or killed in one accident. The named insured and his resident relatives also have coverage on an excess basis when they operate non-owned vehicles. A person using your vehicle with your permission is an additional insured under your policy.

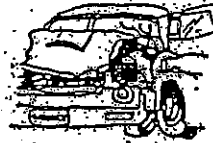


Compulsory by statute.

Statutory minimum BI limits are \$25,000/\$50,000. Most insurers will write up to \$100,000/\$300,000. A few will write more than \$100,000/\$300,000. Commercial vehicle insurers will typically write up to \$1 million CSL. Umbrella Liability coverage is also available.

Property Damage Liability

Protection against liability should your car damage the property of others and you, your resident relatives or persons using your car with permission, be held liable. Pays for damages caused by your car to the property of others up to the stated limit.



Compulsory by statute.

The statutory minimum PD limit is \$15,000. Most insurers will write up to \$100,000 or more. Part of an Umbrella when Umbrella coverage is purchased.

Medical Payments (Med Pay)

Protects everyone in your automobile. Pays expenses for medical, dental, surgical, hospital, funeral, etc., to each person for death or injury caused by accident. Also protects you and household members in other automobiles or if you are struck by an automobile as a pedestrian.



A voluntary coverage. Insurers are not obligated to write it. Most insurers will write Med Pay in increments of \$5,000 up to \$100,000 or more. Some do not, however. There may be restrictions on kinds of vehicles within coverage.

Uninsured/Underinsured (UM/UIM)

Pays damages that you, relatives living in your household and passengers in the insured automobile are legally entitled to recover because of bodily injury or death caused by uninsured/underinsured or hit-and-run/miss-and-run automobiles. In uninsured motorist situations, it pays up to the first limit stated for one person and up to the second limit for two or more persons injured or killed in one accident. In underinsured motorist situations, it makes up the difference between what is paid by or on behalf of the underinsured motorist and the UIM limit or the value of the claim, whichever is less.



A statutory must-offer type coverage. By statute insurers are required to offer UM/UIM coverage up to the limits of the policyholder's liability coverage or \$100,000/\$300,000, whichever is less. Many insurers will provide higher than \$100/\$300 limits either in their Auto policies or as part of an Umbrella policy.

Uninsured Motorist Property Damage (UMPD)

Pays for damage to or destruction of your car on an "actual cash value" basis if in a collision with a motorist who had no liability insurance. It is a fault-oriented coverage that is not needed if you have collision coverage. Miss-and-run accidents are not covered.



A statutory, but voluntary coverage, however, by statute insurers are required to make such coverage available on request of an insured. Written on an "actual cash value" basis. Deductibles to reduce cost are permitted. Not written when there is collision coverage.

Collision

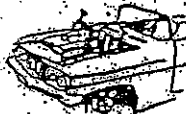
Protection for loss or damage to your car caused by collision with another object or upset of your car. Pays the amount of each loss in excess of the stated deductible. May also be available for the insured's use of non-owned vehicles.



A statutory must-offer type coverage. Written on an "actual cash value" basis subject to various choices of deductible.

Comprehensive

A broad form of protection for loss caused by other than collision. After the deductible, it pays for the loss due to fire, theft, hail, windstorm, flood, vandalism, glass breakage, falling objects, striking animals or birds, etc.



A voluntary coverage.

Pays "actual cash value" subject to various choices of deductible.

Towing and Labor Costs

Pays for the towing and labor costs at the place of disablement, up to the limit stated.



A voluntary coverage. Pays the amount stated in the policy.

RECOMMENDATIONS ON AUTO COVERAGE AFTER JULY 1, 2003

- Continue PIP coverage as long as possible [including Enhanced PIP].
- Purchase as much Med Pay as possible.
- Increase Liability limits to at least \$100,000 per person/\$300,000 for two or more persons/\$50,000 for property damage. Purchase higher limits if possible.
- Increase UM/UIM to at least \$100,000 per person/\$300,000 for two or more persons in one accident. Even more would be better.
- Purchase Umbrella coverage [excess Liability protection over Auto and Homeowner Liability], and try to find an insurer that will also include UM/UIM in its Umbrella.
- Unless your vehicle is old and/or worn out, purchase Collision/Comprehensive coverage subject to a deductible you can afford [i.e., \$500/\$1000/\$1500, etc.].
- Purchase Roadside Assistance [inexpensive and very practical]
- Consider Purchase of Disability Income Coverage.