Chapter 1
Insurance Principals & Concepts

I. The Concept of Insurance

The Purpose of Insurance

Insurance is a social device for spreading the chance of financial loss among a large number of people. By purchasing insurance, a "person" shares risk with a group of others, thereby reducing the individual potential for disastrous financial consequences. Transacting insurance includes soliciting insurance, collecting premiums and handling claims.

Insurance is based on the law of large numbers. By combining a large number of homogeneous units, the insurer is able to make predictions of possible loss. Using the law of large numbers, insurers are able to calculate their probable losses and to establish the rates for premiums that will cover their losses and their operating expenses.

II. Types of "Property & Casualty" Insurance

The terms used to describe insurance are vague. In this section we are going to use the term "property insurance" to describe insurance that pays the insured for loss of property that is named in an insurance policy. We will use the term "liability insurance" to describe insurance that pays a third party for a claim caused by the negligence of the insured. Keep in mind that a single policy can be written to cover both property and liability. The Personal Auto Policy is one example of such a policy.

In this section concepts and topics will be covered that are very important. A grasp of these concepts is necessary to give you, the student, a thorough understanding of the concepts covered in the remainder of the text.

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Parts of an Insurance Contract

All insurance policies may be divided into five sections. They are as follows:

1. **Declarations -** The declarations section of a policy includes the identity and address of the named insured, the policy term or period, the amount of insurance or limits of liability, the policy premium, and any applicable deductibles. The declarations will also include either a property description or a schedule of coverage parts, and a list of any endorsements.

2. **Insuring Agreement** - The insuring agreement describes the covered perils, or risks assumed, or nature of coverage, or makes some reference to the contractual agreement between insurer and insured. In package policies each different coverage form includes its own insuring agreement.

3. **Conditions** - Policy conditions set provisions, rules of conduct, duties, and obligations for the parties. A number of common insurance conditions describe such things as the policy period and territory, the insured's obligation to provide proof of loss, how settlements are handled when other insurance is involved, and the right of each party to cancel the policy. Depending on the kind of policy, conditions may be found in a "Conditions" section or scattered throughout the policy forms.

4. **Exclusions and Limitations** - Exclusions may describe property, perils, hazards, or losses arising from specific causes that are not covered by the policy. Exclusions may be found in an "Exclusions" section of a policy or may be scattered throughout the policy. In some cases, exclusions are built into the wording of insuring agreements and the definitions of perils.

   Some policies also include limitations that are less sweeping than true exclusions. A limitation may eliminate or reduce coverage, but only under certain circumstances or when specified conditions apply. For example, after a building has been vacant for 60 days, some types of commercial property losses will not be covered at all, while the amount payable for other types of losses will be reduced by 15%.

5. **Definitions** - Definitions define important terms used in the policy language. Some policies list definitions in a distinct section having that title. Some policies include definitions in the "Conditions" section, while others spread definitions throughout policy sections.

6. **Endorsements** - Some policies also contain endorsements that are used to add, delete, or change any of the policy parts. Endorsements may alter the content of the declarations and insuring agreement, and they may contain conditions, exclusions, and definitions.

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Standardized Policies

Standardized policies refer to forms that have been filed by Insurance Services Office, Inc. (ISO) to the individual insurance departments for approval. Many insurance companies use the approved ISO forms rather than filing their own forms in each individual state.

Important Insurance Terms

1. **Peril** – A potential cause of loss. Accident, fire, and theft are common perils.

2. **Hazard** – Anything that increases the seriousness of a loss or increases the likelihood that a loss will occur.

3. **Direct Loss** – A loss that is a direct consequence of a particular peril. Fire damage to an apartment building is an example of a direct loss.

4. **Indirect Loss** – A loss that is a result of a covered peril but is not caused directly and immediately by that peril. Loss of an apartment building by fire is a direct loss. The loss of rental income as a result of the fire is an indirect loss.

5. **Salvage** – If the insurer pays a loss on behalf of the insured, the insurer is entitled to the salvage to reduce the claim.

6. **Abandonment** – The insured cannot simply abandon the property to the insurance company in exchange for the full-insured value.

7. **Pair or Set Clause** – This is a loss settlement condition that appears in many property insurance contracts including inland marine. It states that if part of a pair or set is lost or damaged, the loss will be valued as a fair proportion of the total value of the set, giving consideration to the importance of the damaged article to the set. The insurer is not required to pay for the value of the whole set. Example: A pair of earrings is worth and insured for $5,000. One is lost or destroyed. The company will not pay $5,000 for the set. They will pay a fair proportion of the pair's full value.

8. **Deductible** – This is the self-insured part of an insured loss. Usually applies to first party claims such as property claims or auto physical damage claims. The insured must bear this loss.

9. **Vacancy and Unoccupancy** – Vacancy means the building is void of contents and people. The building is simply not being used. Perils such as freezing, vandalism and malicious mischief are limited when a building is vacant. In most cases the insurance can purchase Vacancy Permit coverage to have some of the coverage restored for an additional premium.

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Unoccupancy means the premises are void of people. In most cases this will not affect the coverage provided by the policy.

10. **Assignment** – An insurance policy cannot be assigned to another party without the consent of the insurance company.

11. **Liberalization** – A clause in property/casualty insurance contracts which states that if policy or endorsement forms are broadened and no additional premium is required, then all existing similar policies or endorsements will be construed to include the broadened coverage.

12. **Binder** – Insurance binders serve as temporary evidence that coverage is in effect until the policy is issued. They usually are either oral or written. Some states such as California require that they must be in writing. Other states such as Minnesota, require that an oral binder is legal but must be transferred to a written binder within three days. Some states place restrictions on the length of time a binder can be in force. For example: 30, 60 or 90 days.

13. **Primary Insurance** – In cases where more than one policy is in force, the primary policy pays first.

14. **Excess Insurance** – An insurance policy that pays benefits only when coverage under other applicable insurance policies have become exhausted.

15. **Accident** – A sudden and unforeseen event resulting in a financial loss.

16. **Occurrence** – A sudden and unforeseen event resulting in financial loss. May also be a continuous or repeated exposure to an event that results in a financial loss.

17. **Appraisal and Arbitration** – Policies may contain one or both of these clauses to facilitate an agreement when the insured and the insurer cannot agree on the value of a claim.

    a. **Appraisal Clause** – When the dispute involves a property claim, both parties select an appraiser to determine the value of the loss. If the appraisers cannot agree, then an umpire is selected to make the decision. The insured and insurer each pay for their own appraiser and share the cost of the umpire.

    b. **Arbitration Clause** – This clause usually appears in automobile policies to resolve disputes for uninsured/underinsured motorist claims for bodily injury. It may also be used to settle disputes between insurance companies involving third party liability claims.

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18. **Subrogation Clause** – This clause is used when the insurer has paid a covered claim on behalf of the insured that is caused by another party. The insurance company is entitled to the insured's right of recovery from the negligent party. This clause is sometimes called "transfer of right of recovery against others to us".

19. **Other Insurance Clause** – If the insured has other sources of recovery for a covered claim, this clause is activated. This is also called "Other sources of recovery or insurance under two or more policies". Some policies are primary and some are excess depending on the wording in the insurance contract. The clause specifies the obligations of the insurance carrier when other coverage is in force. Some claims are paid based on a pro-rata approach. This means that each insurer will pay its percentage of the claim as limit bears to the total amount of coverage in force. For example: If an insurer is covering 20% of a property risk it will only pay 20% of a loss.

20. **Certificates of Insurance** – After a policy has been issued, it is not uncommon for the insured to be required to provide a certificate of insurance as evidence that coverage is in effect. Many states require evidence of automobile insurance be carried at all times. The certificate contains a general summary of the coverage. Contractors are often required to provide evidence of their auto, general liability and Workers' Compensation coverage to comply with the terms of a contract in the form of a certificate of insurance.

21. **Transacting Insurance** – The definition of this term may vary in individual states. In most states it means that any person who has contact with an insured involving insurance matters should be licensed. Personnel that quote, sell, service, offer advice, explain coverage or adjuster claims would normally be required to be licensed. Attorneys, appraisers and clerical personnel usually are not required to be licensed.

22. **Indemnity –** The principle of indemnity assumes that a claimant should only be restored to the approximate financial condition that existed prior to the loss, no better or no worse. If a claimant makes a profit from their loss, the principle of indemnity is violated. This principle applies to both first party property losses and third party liability claims.

23. **Proximate Cause of Loss** - An unbroken chain of events that causes a loss. An event that, in a natural and continuous sequence, produces a loss. If a fire should occur, followed by smoke and water damage, the entire loss is considered to have been caused by the peril of fire.

24. **Proof of Loss** – This is a form completed by the claimant listing the property that has been either lost or damaged due to a covered loss.

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Important Property Insurance Concepts

1. **Cause of Loss forms** – State the perils that are to be insured against.

2. **Named Peril vs. Open Peril** – A named peril form lists the specific perils to be covered in the policy. The open peril form does not list the perils but provides broader coverage. This means that all perils are covered except the perils listed in the Exclusions section of the policy.

3. **Basic Types of Construction** – Refers frame, masonry, metal, brick veneer, fire resistive, etc. The better the construction the lower the fire rate.

4. **Loss Evaluation Methods**

   These methods are used determine the value of the loss:

   a. **Actual cash value**: The cost of replacement minus depreciation.

   b. **Replacement cost**: The current cost to purchase new, the item that was lost, without depreciation.

   c. **Functional replacement cost**: As reasonably close to the replacement of the lost or damaged item as possible.

   d. **Market value**: Usually antiques claims are adjusted on the basis of market value – the price that the market will support.

   e. **Agreed value**: The value to be insured is agreed to by the insured and the insurer. This method is used when the true value cannot accurately be determined.

   f. **Stated amount:** An agreed amount of insurance which is shown on the policy, and that will be paid in the event of a total loss regardless of the actual value of the property.

   g. **Valued policy**: A policy that states that in the event of a total loss, a specific amount will be paid, and that is set as the limit of the policy. It is generally used to insure fine arts, jewelry and furs.

      This term also applies to some states that have a valued policy law. In case of a total loss the company cannot dispute the amount to be paid under most circumstances except for the normal exceptions such as fraud, etc.

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5. **Definition of an insured**:

   a. Those that have an insurable interest in the property who would suffer a financial loss if the property were damaged by an insured peril.

   b. In personal insurance this can include family members without listing their names on the declarations page of the policy.

   c. Additional insureds such as a lien holder.

6. **Basis for Insuring Property**:

   a. **Specific Basis** – A separate limit per insured item applies. Example: A separate limit on the building and/or one for the contents.

   b. **Blanket Basis** – One limit that applies to both building and contents. With blanket insurance, usually more than one location is insured under a single limit. Blanket insurance is more often written on contents coverage with one blanket limit applying to more than one building or location. This assists the insured in avoiding underinsurance at a particular location in case of loss.

   c. **Reporting Form** – This allows the insured to report values to the company (usually on a monthly basis) of the insured contents. This allows the insured to pay for coverage on what is actually reported to the company. This form requires a 100% coinsurance clause.

7. **Coinsurance Clause** - With commercial insurance the coinsurance clause is a method of requiring the insured to insure at least 80% of the value of the property in exchange for a premium discount. If the insured's policy contains this clause and the insured carries less that this amount, a penalty will occur in case of partial losses. The insured can always insure for more than 80% of the value of the property.

   As an example, if a person insures property with an actual cash value of $100,000 on a policy with an 80 percent coinsurance requirement, the insurance required is $80,000 (80 percent of $100,000). If the insured elects to carry a limit of only $60,000 (60 percent of the actual cash value), then he or she becomes a partner with the insurance company on partial losses.

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8. **Third party provisions** found in property insurance policies:

    a. **Standard mortgage clause**: Protects the interest of the financial institution against loss to real property caused by perils insured against. It also grants coverage even if the insured intentionally caused the loss. The institution can also provide a proof of loss or pay premiums in case the insured cannot or refuses to do so. They must also be advised if the contract has been cancelled or non-renewed by the insurer.

    b. **Loss payable clause**: Similar to the mortgagee clause but applies to chattel property.

    c. **No benefit to bailee**: An insured's property insurance policy protects the insured and not a bailee of the insured's property. If the insured's property were destroyed by fire while at the dry cleaners, the insurance company would only protect the insured. If the dry cleaners are negligent the insurance company could pay the insured and subrogate against the dry cleaners.

Important Liability Insurance Concepts

1. **Liability Losses** - A liability loss occurs when a person or entity is determined to have been responsible, or legally liable, for injury or loss to another person or liable for damage to another's property and the law requires them to make financial restitution. These are called third party losses. Liability losses are paid by casualty insurance type policies. These include:

    - Personal auto policies
    - Commercial auto policies
    - General liability policies
    - Professional Liability policies
    - Umbrella policies
    - Personal liability (including boats and yachts)

2. **Negligence** - For a liability policy to respond the insured must be guilty of "negligence" and coverage must be granted by the policy. Intentional acts are never covered by liability policies. Negligence is defined as the lack of reasonable care that is required to protect others and/or their property from the unreasonable chance of harm. This could also be a failure to act or not to act as a reasonable person under the same set of circumstances.

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3. **Tort** - A tort is a civil wrong that violates the rights of others. A person becomes legally liable by committing a tort. Generally (but not always), a court of law must determine negligence. There are usually four factors involved to establish negligence.

    - Legal duty is owed.
    - Breach of legal duty owed.
    - Proximate cause
    - Damages

4. **Punitive Damages** – Casualty policies cover bodily injury and property damage caused by the insured as a result of his/her negligence. Punitive damages (sometimes referred to as "exemplary damages") are often awarded by the court and intended to punish the defendant. An example would be "gross misconduct" and the court wants to make an example of the defendant to discourage others from behaving in a like manner. In some states, the insurance company is prevented from paying punitive damages because payment by the insurance company would fail to penalize the defendant and defeats the purpose of the penalty imposed by the court.

5. **Defenses Against Negligence:**

    a. Contributory Negligence – Common law defense against negligence that states that if an individual contributes to his or her own loss in anyway, then another cannot be held liable for the loss.

    b. Comparative Negligence – Law that allows an injured party to collect from another party for a loss, even when the injured party contributed to his or her own loss. Damages are reduced to the extent of the injured party's negligence.

    c. Absolute Liability – Type of liability imposed by law on those participating in certain activities that are considered especially hazardous. Blasting operations, dangerous animals and hazardous materials would be examples.

    d. Vicarious Liability – Liability that a person or business incurs because of actions of others, such as family members or employees. This is also called imputed liability.

    e. Strict Liability – Usually used when referring to products coverage. The liability that manufacturers and merchandisers may be subject to for defective products sold by them, regardless of fault or negligence. A claimant must prove that the product is defective and, therefore, unreasonably dangerous.

    f. Assumption of Risk – In some states, a doctrine known as assumption of risk may apply. Assumption of risk applies when a person knowingly exposes himself or herself to danger or injury. When a person assumes this risk, he or she may be

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prevented from recovering from a negligent party. This doctrine is frequently associated with injuries incurred by spectators at sporting events.

g. Intervening Cause – An independent action that breaks the chain of causation and sets in motion a new chain of events. When this occurs, the intervening cause becomes the proximate cause of loss. This can serve as a common law defense.

h. Statute of Limitations – States have enacted laws as to when certain types of lawsuits must be filed.

Liability Policy Limits

There are three ways in which the limits of a liability policy insuring agreement may be expressed: single limit, split limits, and/or aggregate limits.

The single limit pays a single amount as the maximum liability of the insurer with respect to any one accident occurrence. There may also be one single limit for all persons injured, and another for all property damage arising from the accident or occurrence.

Split limits are expressed by two figures. There may be a limit representing the maximum payable for each person injured per occurrence for bodily injury and another limit applicable to the claims of all persons injured in the accident or occurrence.

The aggregate limit is the limit stated in the policy represents the total amount for all claims paid during the policy period. The aggregate limit provision is found in the general liability and garage liability policies. Once the aggregate has been met the insured is without coverage.
For example: If the insured had an aggregate limit of $1,000,000 and a per accident limit of $500,000, after two claims of $500,000 are paid, the insured has exhausted the coverage until the policy is renewed.

Insuring Agreement

All liability policies contain an insuring agreement. This clause outlines the promises made by the insurance company to the insured. These will vary by type of liability policy.

Exclusions

All liability policies contain exclusions. These are exposures for which the insurer is unwilling to provide coverage. We will discuss these in our review of the various liability forms.

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Conditions

The conditions outline the duties of each party in case of a loss as well as other items that require clarification.

Policy Territory

Most property and casualty policies contain a policy territory limitation. If a claim occurs outside the covered territory then the claim will be denied. Usually coverage is limited to the United States, its possessions, Canada and Puerto Rico. There are some policies that provide coverage on a "world-wide basis" such as certain types of inland marine policies and personal property covered in a Homeowners policy.

Cancellation and Nonrenewal

All property and casualty policies contain cancellation and nonrenewal provisions. A cancellation occurs before a policy has expired, in other words "mid-term". A nonrenewal notice is sent prior to the expiration date of the policy advising the insured that the policy will not be renewed. Most states have insurance laws that govern the permissible reasons for both cancellation and nonrenewal and the time-frame in which notice must be given to the insured in advance of these actions.

If the insurer cancels a policy, the unearned policy premium will be returned to the insured on a pro-rata basis. If the insured cancels the policy, the premium is returned on a short-rate basis. There is a small penalty when the policy is cancelled by the insured. The insured can cancel a policy at any time whereas the insurer is bound by the legal cancellation provisions in any given state and by the policy provisions.

III. The Principal of Risk

Risk is the possibility (uncertainty) that a loss might occur and is the reason that people buy insurance. If a certain event happens, - accident, sickness, or death – loss occurs. The loss can be of life, or the loss of a loved one, in the event of death, or the loss of income due to accident or sickness. In the case of property & casualty, a structure may burn; a commercial truck may be involved in an accident.

Peril vs. Hazard

A peril is the actual cause of a loss (fire, windstorm, hail). A hazard is any condition that increases the possibility of a loss. The underlying cause of a loss may result from physical hazards, moral hazards or morale hazards. These are defined as:

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1. Physical Hazard - Any hazard arising from the material, structural, or operational features of the risk itself apart from the persons owning or managing it.

2. Moral Hazard - A condition of morals or habits that increases the probability of a loss from a peril.

3. Morale Hazard - Hazard arising out of an insured's indifference to loss because of the existence of insurance.

Categories of Risk

1. **Pure Risk** - A situation where there is only the possibility of loss. (Ex. Catastrophic medical expenses, liability loss suit, damage by fire, lightning, etc.) This is an insurable risk.

2. **Speculative Risk** - A situation where either profit or loss is possible. (Ex. Betting on a horse race, investing in real estate) Usually not insurable.

3. **Static Risk** - These are connected with losses caused by the irregular action of nature, by the mistakes and misdeeds of human beings. Similar to pure risk. This is insurable.

4. **Dynamic Risk** - Associated with a changing economy. Examples are the change in taste of consumers, technological changes, etc. Not insurable.

5. **Fundamental Risk** - Defined as a risk that affects the entire economy or large number of persons or groups within the economy. Example: Double digit inflation, foreign competition. Not insurable.

6. **Particular Risk** - A risk that affects only the individual and not the entire community or country. Example: Theft of a stereo set. Insurable.

Risk Management

There are five methods of managing or handling risk:

1. **Avoidance** - Risk avoidance simply means avoiding the hazard. For example, if you don't want the risk of owning a car or a home, you avoid owning a car or home.

2. **Sharing a Risk** - This is a common method of risk management by members of insurance pools.

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3. **Transfer of Risk** - This is the most common method of handling risk. It involves transferring the risk to an insurance company in return for a premium charge.

4. **Assumption of Risk** - (also known as risk retention) An individual decides to do what creates a risk (buys a car or home) and retain the uncertainty of loss. If the car is wrecked or the house burns, the individual will replace the car, rebuild the home or do whatever he deems appropriate at his own expense.

5. **Risk Reduction or Risk Control** - Risk may be reduced via loss prevention methods. Examples are installing a sprinkler system in a building, a person stopping smoking or a planned weight loss program.

IV. Elements of Insurability

Insurable Interest

Before person can obtain an insurance policy, they must have an insurable interest. A "person" is deemed to have an insurable interest in property when he has a lawful, substantial, economic interest in the preservation of that property. The term "person" includes an individual, company, insurer, association, organization, reciprocal, partnership or any other legal entity.

Characteristics of an Insurable Risk

Not all pure risks of loss are insurable. In the absence of certain conditions, insurance companies may be unwilling to accept risks or individuals may be unwilling to buy insurance. The following characteristics create an insurable risk:

- The loss must be definite and definable;
- The loss must be accidental;
- The insurance company should be able to calculate the chance of loss;
- The law of large numbers should apply;
- The loss must be great enough to create economic hardship;
- The insurance must be offered at a reasonable cost;
- The loss must not be catastrophic in nature.

All of these elements might not be present for every insured risk but most of them should exist whenever possible.

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V. The Insurance Contract

We have already discussed the five parts of the insurance contract. Here we will cover the elements and characteristics of the contract and the legal interpretations that affect them.

Elements of a Contract

A contract comes into existence when the parties to a contract have established all the elements to make it enforceable. If necessary, courts will enforce the terms of a contract.

To be considered valid by a court of law, there must be intent on the part of both parties to enter into a legal relationship and the insurance contract must possess the following elements:

1. **Capacity to Contract:** In order for the contract to be binding, all parties must have the necessary capacity to enter into the contract. Cases where capacity has been deemed insufficient include: minors, mental incompetents and those who sign a contract while under the influence of drugs or alcohol. An exception to the status of minors and contracts exists in life insurance. For a minor to contract for life insurance, he/she needs to be at least 15 years old.

2. **Legal Purposes / Object:** An insurance contract must not be written to cover an illegal activity or immoral purposes.

3. **Offer and Acceptance** - An applicant completes an application for coverage and the insurance company accepts it and returns a policy or a binder. If the insurance company issues an altered policy, the altered policy becomes a counter-offer.

4. **Consideration** – Something that has value in the eyes of the law in which a promisee receives something in return for a promise. The insured (the promisee) gives the application and premium to the agent and/or company in return for their promise to pay in the future.

Characteristics of an Insurance Contract (Policy)

1. **Aleatory** - A mutual agreement to which the effects with respect to the advantages and the losses depend on an uncertain event. These are contracts in which a promise by one party is conditioned on a fortuitous event. Another characteristic is that the values given by the parties are unequal - the insured, a premium; the insurer, future benefits.

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2. **Contract of Adhesion** - The insurance company is the author of the contract and the insured must accept it "as is". There is unequal bargaining strength between the parties; therefore, any ambiguous language will bring a court decision in favor of the insured.

3. **Executory** – Both sides must perform certain acts to make the contract legally enforceable.

4. **Conditional** – Promises action in the event of a future occurrence.

5. **Utmost Good Faith** - Both parties bargain in good faith.

6. **Personal Aspect** – The insurance contract is bound to the insurable interest of the insured person. For instance, with the sale of a house, the policy does not automatically pass to the new purchaser.

7. **Principle of Indemnity** – The contract must restore the insured to the financial position previously held before the loss. This is also known as indemnification.

8. **Valued Contract** - Pays stated amount in the event of a claim.

9. **Reimbursement Contract** - Pays only the amount of the loss.

10. **Unilateral** – The insured has agreed to pay a premium in exchange for the insurers promise to act in the future.

Legal Interpretations Affecting the Insurance Contract (Policy)

If an insured is guilty of a breach of warranty, misrepresentation or concealment, the insurer may not have to perform in case of a loss.

1. **Breach of Warranty** – A warranty is a policy condition, based either on information given by the insured in an application or inserted by the insurer in the policy. For example, in an ocean marine policy a clause warrants that the ship is in good condition, the condition of the cargo is satisfactory and that there will be no deviation in the voyage. An incorrect statement by the insured (a breach of warranty) may void coverage.

2. **Misrepresentation** – Misrepresentations are an untrue statement or statements made by the insured, usually at the time when application is made. For example, the insured may state on an application for auto insurance that they have not been involved in any

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automobile accidents or moving violations when, in fact, they have. Some misrepresentations, such as the ones above, are material because the insurer may have declined the application for insurance had the information been known. Other misstatements may not be material to the acceptance or rejection of the risk.

3. **Concealment** – Concealment is the failure of the insured to reveal relevant facts known to the insured when applying for insurance. Perhaps the insured is concealing a criminal record of arson and if this information was known by the insurer the coverage would be denied.

4. **Fraud** – An intentional act designed to deceive and induce another party to part with something of value. Fraud may occur before or after a policy has been issued. Fraud may also involve misrepresentation and/or concealment but not all acts of misrepresentation or concealment are acts of fraud.

5. **Warranty** – Something that becomes part of the contract and is a statement that is considered to be a guarantee.

Doctrines of Waiver and Estoppel

The courts have given great prominence to the doctrines of waiver and estoppel when deciding insurance cases.

Waiver – Generally defined as the voluntary or intentional relinquishment of a known right. An example would be an insured who fails to report a claim in a timely manner. He/she could give up their rights of coverage under the policy. Another example would be when a policy provides for the insurer's right to demand an appraisal of the damaged property within a specified period of time. If the insurer fails to demand the appraisal, the right is waived. There are two types of waivers; expressed and implied. An expressed waiver occurs when the insurer or its representatives purposely gives up a known right under the contract. An implied waiver may result from some kind of neglect on the part of the agent or adjuster.

Estoppel – If someone intentionally or unintentionally creates the impression that a certain fact exists, and an innocent party relies on that impression and is damaged as a result, the guilty party may be legally prohibited (estopped) from asserting that the fact does not exist. For example, an agent has advised an insured that a certain peril is covered under their Homeowner policy when it is actually excluded. The insured suffers a loss from the excluded peril. In most cases the loss must be paid because the insured relied on the statements of the agent.

Fair Credit Reporting Act

When an applicant applies for insurance it is not uncommon for an insurance carrier to order some type of report to gain information concerning the personal habits or financial condition of the insured. These are called "credit reports" or sometimes "consumer reports". Public

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reactions to the misuse of this information lead to the creation of the Fair Credit Reporting Act. The act protects the consumer by requiring that the consumer be notified in writing that a report has been ordered and allowing provisions for the removal of outdated and/or incorrect information that may be contained in the report.

Under the Fair Credit Reporting Act, reporting agencies may provide reports for specific purposes that are specified under the law. If an insured is rejected because of information contained in the report, the consumer can request the name of the reporting agency and contact them directly. An insurance company is not required to provide a copy of the source to the insured, but can divulge the name of the source.

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