Help

California Personal Auto

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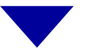

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INTRODUCTION

PURPOSE OF COURSE

The purpose of this course is to present comprehensive information about the field of personal automobile insurance within a framework that will tie facts to theory in such a manner that the reader will gain a thorough understanding of how all the various components that are involved in writing and issuing an automobile insurance policy work. The field of personal automobile insurance is one of the most interesting and challenging areas of study, primarily because it is in this field that we find such a variety of risks and insurance situations. For example, unlike policies which protect other personal property—jewelry, furniture, sports equipment, etc.—against fire, theft, or damage, and which do not consider the owner's age, physical condition, lifestyle, etc., in determining insurability, automobile insurance most definitely considers many facets about the owner, as well as about the vehicle itself, when policies are written and rated.

Further, because of the unique place an automobile holds in the minds of many owners—a status symbol, a means to personal mobility and freedom, an attention-getter—there is an emotional component in automobile insurance that can create problems for agents and owners alike. For example, a common problem many families must face as members grow older is that of taking the keys away from Mom or Dad when it is clear—to others, at least—that they should no longer drive. It is a rare individual who takes a suggestion that he or she should no longer drive easily, and far too many older drivers stay behind the wheel long after it is safe for them to do so. Yet another example is the young driver who drinks and drives. In all too many cases, even when such a driver is ticketed for driving under the influence, indulgent parents do not take the keys away, and thus encourage dangerous driving behavior.

Again, when the personal automobile is the sole means of transportation to a job, and when that job pays little, owners sometimes do not budget for automobile insurance, despite almost uniform state laws requiring them to have it. Uninsured or underinsured motorists present a problem not only to themselves, but to anyone involved in an accident with them, as well as presenting a problem to the industry. Insurance underwriting depends upon fine-tuned decisions made with full information about all the known potential risks involved in a particular situation. When two insured drivers are involved in an accident, depending upon the laws of the state in which it occurs, the cost of covering the loss will be distributed in an equitable manner. But where uninsured or underinsured motorists are involved, there is far less chance of an equitable distribution of the cost of loss, particularly since, as a rule, most uninsured or underinsured motorists have few assets which can be tapped to help cover the loss.

There are other examples of complexity in this field. For instance, a father allows his son, who does not have a driver's license, to use his car to drive two blocks to a friend's house. As luck would have it, the son is involved in a wreck. Not only does the father have liability for the wreck, but he will also, in many jurisdictions, be ticketed for allowing an unlicenced driver to drive a vehicle under his control.

An automobile is many things. It is, for most people, one of the most expensive purchases they will ever make. It is a symbol of freedom, or of status, or of a certain view of life. Just look at the advertisements

for automobiles in magazines and on television and you will see how many faces the automobile wears. But the automobile is also a lethal weapon, one that can maim and kill. It can destroy property, and ruin lives. And it is this aspect that creates the most emotional situation of all. When a fatal accident occurs, automobile insurance can replace the vehicle. It can pay for medical bills. But it cannot bring the dead back to life.

Thus, the basic premise of insurance—that of restoring the insured to the pre-loss condition—cannot always be fulfilled in this field. This grim knowledge explains many of the factors insurers look at when deciding whether to issue a policy, and also in setting rates. Conditions which statistics show increase the risk of accidents are considered very carefully: in many cases, it is the fear of what a violation or accident will do to their premiums that keeps drivers cautious, and moves them to look at the driving habits of others who drive the car.

While it is true that these cautious drivers will pay lower premiums than those who have a less perfect record, still, the cautious driver is still part of an insurance pool, and will still bear the higher ratings assigned if there are too many high-risk drivers in that pool.

Helping clients understand premiums is one of the most important—and sometimes frustrating—parts of an automobile insurance agent's job. Before helping clients understand, it is essential that agents understand how premiums are affected by all the elements of the risk. This course is designed to do just that.

Background and History of Auto/Liability Insurance

It is not necessary for the purposes of this course to review the history of insurance, which began, as you are aware, when Lloyd's of London insured the cargoes of ships at sea. Indeed, the title "marine" was kept by many lines which had nothing to do with ships or the sea, but with protecting certain designated property against certain defined perils. As societies and economies became more complex, other types of risks became evident, and thus, casualty insurance made its appearance toward the end of the nineteenth century. Such insurance lines as theft; automobile; worker's compensation; liability; glass, boiler and machinery coverage; and fidelity and surety bonds all came under the casualty umbrella.

While in some jurisdictions insurance is still grouped into the classic divisions of marine, fire, and life insurance, in others these traditional classes have been changed. Property insurance refers to marine, fire, and allied lines, while casualty insurance, reflecting the increasing importance of public liability; automobile; and worker's compensation insurance; refers primarily to liability insurance. The final classification is life and health insurance.

These changes resulted from a trend from mono-line companies to multiple line companies. In the late eighteenth and early nineteenth centuries, mono-line companies dominated the American insurance scene. Specialization characterized these companies, which often were small in size, did not have the capital necessary to underwrite other lines, and were also limited by other economic and even geographic

considerations. When state legislatures began to supervise and regulate insurance in the second half of the nineteenth century, they found it more efficient and effective to devise licensing and taxation laws for individual lines, thus encouraging an already established practice.

And, when the Appleton Rule went into effect in the state of New York at the turn of the 20th century, it further discouraged multi-line companies. This rule stated that out-of-state companies wishing to operate in New York must follow the laws governing its domestic insurers. Since New York did not permit multi-line insurers, and since many companies wanted to do business in New York, the Appleton Rule was a strong impediment to the growth of multiple lines. Only when New York state allowed multi-line companies in 1949 did the climate encourage multi-lines. Still, even before this, certain states did allow companies to form a group which would then write several lines of insurance, and nine years before New York legalized multi-lines, there were nearly 100 such groups around the nation. And, six years afterwards, multiple line insurance companies were allowed in all states.

There are economic and social reasons why multi-line companies make good sense. Economically, the larger the company, the larger its reserves and ability to stay solvent. Socially, the stability of insurance companies has become a highly significant factor as more and more laws provide remedies for losses caused by an increasing number of risks.

For example, would anyone have believed, even a decade ago, that airline staff would be able to sue their employers because of damage suffered as a result of second-hand smoke from passengers' cigarettes?

Were it not for the legal concept of liability, automobile insurance would be a far simpler thing. Policies would cover only the damage to the insured's car, with no regard as to how it occurred. But once laws define liability, and set the parameters under which it may be determined, then the plot thickens. Human beings, with all their varying moods, conditions, and skills, enter the picture, and the possibility arises that damages will have to be paid to another for injury to their person, their property, or other quantifiable interests.

As a legal concept, liability is part of tort law, which, because it is determined more by the states than by the federal government, is different within the various states. Tort law is the result of both court decisions and legislative acts, with courts playing a larger role. Even though tort law differs in some details from state to state, at heart, the basic premises are the same. We will look at these briefly now.

Tort law involves payment for loss: its basis is that he who suffers a loss will bear the consequences UNLESS they can reasonably be transferred to another. Tort law lists three reasons for such a transfer: intentional harm; harm caused by negligence; harm resulting from an activity defined by law as so hazardous that anyone causing harm by doing it must pay the costs of all losses incurred, whether or not care has been exercised in carrying out said activity.

Damage caused by intentional harm will NOT be covered by a liability policy: for example, if Jack gets angry at Jane and rams his car into her living room, destroying her antique grand piano and maiming her prize-winning Persian cat, Jack's automobile insurance will not pay for the loss, although Jack most

certainly will.

Insurance policies do cover losses resulting from negligence, although in the field of automobile insurance, the whole question of negligence is still very much up in the air, with laws defining contributory negligence, comparative negligence, and no-fault attempting to resolve an issue that is at the heart of liability coverage.

Negligence means carelessness; in legal terms it means that a certain standard of care has been violated. For example, when a driver enters a school zone, a clearly posted sign will announce speed limits, and the hours during which they are to be observed. Should a driver exceed these limits, he or she has not exercised the standard of care required, and, should he or she strike a child, or cause an accident, negligence will be found. The expected standard of care may be set by law, as in the case of speed limits and other traffic regulations. Or, case law, that is, law resulting from court decisions, may set up a standard of care for the jurisdiction over which the court rules. In British Common Law, the basis for law in every state except Louisiana, which bases its laws on the Napoleonic Code, the rule of the reasonable man helped determine negligence, and this test is used in courts in this country to this day.

This rule asks what a reasonable man would have done in a particular situation, and then determines the negligence or care actually exhibited by the person accused of being at fault. For example, Mary lives in a house at the top of a very steep hill. If one day Mary parks her car at the top of her drive and does not set the emergency brake, and the car rolls down the drive and causes an accident by smashing into the path of an oncoming vehicle, in all likelihood, Mary will be found negligent, as a reasonable person would have set the emergency brake.

There are cases, of course, in which negligence appears to be the only explanation for an accident. For example, a pharmacist mislabels a prescription and it is given to the wrong person, with resulting illness or even death. In such an incident, the thing speaks for itself—a legal concept known as res ipsa loquitur, and the pharmacist will have to show that although an accident certainly occurred, he or she was not negligent in the performance of professional duties.

Another important concept in tort law is that of duty—whether or not one person actually has a legal responsibility to exercise a reasonable standard of care in regard to others and to their property. For example, Anne is driving down an interstate highway when she sees that a car ahead of her, traveling at a high rate of speed, has just rolled over a large spike, which is protruding from a rear tire. Although in all probability, the spike may cause a flat, and the car, slowing suddenly at such a high rate of speed, may go out of the driver's control, Anne has no legal duty to signal the driver of the impending harm.

The Good Samaritan Law is an example of society's response to situations of liability created when people who have no legal duty to help others stop and help them anyway. As you know, this law absolves doctors and other trained personnel from liability when they stop and help people injured in an accident of some kind, so long as any services performed were done with the standard of care required by their profession.

In the case of automobile liability insurance, the duty to exercise reasonable care is determined in several ways. There are laws which deal with everything from speed limits to driver and automobile licensing requirements. Courts interpret the appropriate application of the duty to exercise reasonable care to particular situations. And, as the concept of liability expands in our society, people who seem far removed from the actual scene of an accident can find themselves held liable. For example, in recent years there has been an increase in the numbers of laws holding A BARTENDER OR PRIVATE HOST RESPONSIBLE FOR A CUSTOMER OR GUEST'S DRUNKENNESS, AND MAKING THEM PARTY TO THE LIABILITY RESULTING IF THAT PERSON IS INVOLVED IN AN ACCIDENT IN WHICH HE OR SHE IS DETERMINED TO BE THE CAUSE.

Determining the primary cause of an accident is not as simple as it might first appear, and this is an issue that is at the center of many liability cases. Courts require what they term a "proximate" cause, meaning that there is an unbroken chain of events that result in the harm; further, the negligence of the party deemed liable must be connected to the cause. It is easy enough to see proximate cause when an intoxicated driver drives sixty miles an hour in a school zone and kills a child crossing in his or her path. It is not so easy to see proximate cause in accidents involving icy roads, heavy rains, etc. Would the standard of reasonable care require that a driver get off the road when driving conditions become dangerous? Suppose the driver is trying to get a sick or injured person to the hospital? Determining cause is not, therefore, an automatic or mechanical task.

It is also important to remember that if the harm would have happened no matter what, there is no liability. For example, if every sailboat on a body of water is capsized by a sudden storm, the relative skill and experience of the various sailors is moot: clearly, the storm sank everything in its path.

There is yet another factor we must consider when discussing negligence, and that is the concept of contributory negligence, a concept important in the auto insurance field. **Contributory negligence** of course refers to a situation in which the party harmed through the negligence of someone else did, through his or her own negligence, increase the risk that harm would occur. For example, a driver neglects to signal that he or she is coming to a stop, and is rear-ended by a car driving within the speed limit, but still too close to come to a sudden stop.

Yet again, some jurisdictions use a concept termed **comparative negligence**. Under this concept, if the negligence of the injured party is deemed minor compared to the negligence of the liable party, then the amount of loss recovered will be lowered, but the injured party may still recover some.

UNIT ONE: APPLYING THE PRINCIPLE OF INSURANCE TO PERSONAL AUTOMOBILE INSURANCE

The principle underlying all insurance is the principle of indemnity, which states that the purpose of insurance is to return a policy-holder to the pre-loss condition. When Lloyd's of London began insuring ships and their cargoes for England's shipowners and import/export firms, a long tradition of quantifying losses in monetary terms and paying out the amount determined began. Only tangible goods that could be assigned a monetary value were considered insurable in these early days. Even before Lloyd's initiated this type of insurance, tontines had been used as ways to insure something that at the time they began was viewed as non-quantifiable—the anticipated length of a human life. Tontines operated very simply. Each member put up an agreed upon amount, and the member living the longest collected the entire sum.

Today, of course, the actuarial departments of life insurance companies use complex statistical models to project the life expectancy of an applicant for insurance: the result dictates, to a large degree, the rates. A person's own health record, life style and habits can and do affect premiums for both life and health insurance, but what other people do or don't do has no such affect, except, of course, in cases where there is exposure to certain chemicals and other substances at both the workplace and the home which have a proved deleterious effect. And, even then, the possible and probable effect can be quantified and figured into the premium.

In various fields of insurance that go by the collective name of property insurance, the nature of the risk as well as ways to prevent losses or at least reduce the possibility of their occurring are known. For example, in theft coverage, the appraised value of the item is provided at the time insurance coverage is purchased, through figures provided by certified appraisers in the case of jewelry, artwork, and other such valuables, or through such proofs as sales slips and other records. Owners of valuable jewelry can be cautioned to keep it in a safe, to wear it discreetly, and so on. Smoke detectors and low-combustible materials help prevent fires. Protective measures such as fences, alarm systems, patrol dogs and watchmen reduce the possibility of theft from commercial premises.

Should a fire destroy a warehouse, the equipment and inventory can be replaced. Even if an extremely rare and valuable piece of jewelry is stolen, its monetary value can be quantified, and the financial loss, at least, is redeemed. But in automobile insurance, the principle of indemnity breaks down, for it is only in the case of a minor accident in which no injury or loss of life occurred in that those involved can be restored to their pre-loss condition. And even then, if one or more of the drivers has been cited for a violation, the violation will affect their future ability to purchase insurance, and will also affect the price they must pay.

Why do we say that in many, many cases where an automobile policy covers a loss, the person sustaining the loss is not fully restored? Because a vehicle that has been in an accident loses value, even if repairs are made, and its utility is restored. And, in the case of an auto that is totaled, very often the amount given to cover the loss will not purchase equivalent transportation, particularly when older vehicles are involved. Again, when there are injuries and fatalities, no amount of money covering medical bills, therapy, funeral expenses and the like will actually restore those injured or bereaved to their pre-loss state.

Does this mean that automobile insurance does not then carry out the principle of insurance, and is thus in some way promising insureds something it cannot deliver? Not at all. It would be interesting to see the results of a poll in which ordinary people were asked to name the most hazardous activity they perform. How many would answer—driving a car. And yet, it is true that for the greater majority of people driving personal vehicles, that is the riskiest activity they routinely perform. Driving instructors often caution novice drivers that they are taking their lives in their hands every time they get into a car. And if every driver did indeed believe that, and drove accordingly, we would see a dramatic drop in accident rates.

But driving becomes routine, just like any other activity performed frequently, and without thought. We say without thought, because, for most drivers, especially when driving familiar routes, driving is automatic, and our response to traffic signals, speed limit signs, and so on, done almost by reflex, and certainly without conscious thought. Which makes an already hazardous activity even more hazardous, for there are large numbers of drivers out there driving with their minds on everything but their moving car.

Is the teen-ager with boom box blaring, hands beating out a rhythm on the steering wheel, really taking in the changes in traffic movement just ahead? Or is he depending on youth's quick reflexes and his pride in his skill to get him through any potentially dangerous situation? Is that mother who keeps turning her attention away from the road to her squabbling children in the back seat alert enough to stop quickly if the car ahead of her does? Is the businessperson preoccupied with a difficult meeting, or the loss of a project to a competitor's bid, really noticing that his or her car is drifting into another lane?

All drivers have many narrow escapes during the course of a year of driving, and having a good driving record and a safe and well-maintained automobile are not proofs against accidents caused by a drunk driver, a careless driver, or some accident caused by physical or climatic conditions on the road. This is the facet of personal automobile insurance that can never be fully predicted, or controlled—what the other fellow does. State legislatures try to address this problem by making liability insurance compulsory if people are to be allowed to drive, thus insuring that there will be funds to pay for any harm they may cause. Still, probably a great deal of client frustration after a loss that he or she did not cause comes from the fact that—"There I was minding my own business, observing all traffic laws, and this jerk comes out of nowhere and broadsides my car." It is not possible to be involved in a vehicular accident, even a minor one, and not be subjected to some bother. The car must be put in the shop, and even if a rental car is provided, still, it is not the same as the personal car. Vacations may have to be rescheduled, and other plans changed. There are probably very few insureds who feel perfectly happy even after a claim has been fully settled when the accident is clearly the fault of somebody else.

The cause of loss in many other forms of insurance is, normally, relatively simple to determine—fire, theft, windstorm, and other such risks are usually easy to identify. While there are cases where a flood insurer and a windstorm insurer must attempt to determine how much of the water damage to a structure was caused by flood, and how much by a windstorm, still, there are parameters which have been determined by their relevant industries which must be applied.

Determining cause of loss in a vehicular accident is not always so simple, and this is where the concept of varying degrees of negligence comes in. First of all, there is the form a vehicular accident usually takes, that of a collision with something else. The something else may be one or more other vehicles, a stationery object such as a lamp-post or culvert, or even with an animal or human being. (Over 500 people died in accidents caused when their automobiles collided with deer crossing the road in 1996.) But what caused the collision? Was only one driver at fault, or do all share the blame? Was there something about the physical conditions of the accident scene that might have caused or contributed to the cause of the accident? Physical conditions such as rain, snow, sleet or ice usually heighten the risk of vehicular accidents, as do situations in which road construction is going on while traffic flow is being maintained. Was a traffic light not working? Did a new sign-board obstruct a previously clear view?
All of these questions must be answered to determine who ultimately pays for the loss. Note that collision insurance is not compulsory, and that owners of older or well-used vehicles often choose not to carry it. Thus, if they are involved in an accident, they have a greater motivation for establishing that the other driver was at fault, because then and only then will any damage to their automobile be paid.

For example, Mary Wood had gone into a quick stop market to pick up some milk. As she got into her car, a woman driving a van backed into her Lincoln Town Car, causing damage to the left rear door and fender. Mary and the woman exchanged insurance information, and, because the woman admitted it was her fault, Mary did not call the police. Mary then called her insurance agent to report the accident, and to relay the other driver's agent's name. Some time later, Mary's agent informed her that the other driver's agent said her client claimed that Mary had backed into her, but that since no damage was done to her van, she would not file a claim. Mary then called the other driver's agent, and told her what had occurred. The agent questioned Mary as to the type of and extent of damage to the Lincoln, and agreed that such damage could not have been caused by Mary backing into the van. The agent promised to call her client, and to report back to Mary what she said. Then the truth came out. The other driver had returned home, told her husband about the accident, and that the police had not been called. The husband then pointed out that Mary could not prove his wife was at fault, and told her to lie to the agent.

Is this unusual? Unfortunately, no. Just as most of the general public think corporations are "deep pockets" with unlimited amounts of money to pay damages, so does the general public think of insurance companies in the same way. Add this belief that insurers have so much money to the fact that premiums increase when claims rise, throw in the ambiguity of many conditions surrounding vehicular accidents, and you can see why personal automobile insurance can be as emotionally-loaded as, say, health insurance.

Of course, all automobile insurers are bound by law to have loss reserves sufficient to pay anticipated losses that may by caused by the risks they have insured. But note that while an insurer may be able to predict with fair accuracy the NUMBER of losses a particular pool of insureds will likely incur, it cannot predict WHO AMONG THE POOL will sustain those losses, or the impact drivers in another pool with a higher loss expectation will have on those in a pool of lesser risk insureds.

For example, Drivers A, B, and C all belong to a pool of drivers in their thirties with no traffic violations in the past three years, who live in suburban areas, have no physical impairments which could affect their

driving, and do all of their driving in low-traffic areas. Their annual premiums will certainly be less than those of Drivers D, E, and F, who belong to a pool of drivers in their late sixties with two traffic violations in the last three years, who drive in heavily-traveled areas, who wear both glasses and hearing aids. Drivers A, B, and C pose little danger to themselves or to other drivers like themselves, but this does not mean that Driver D, E, or F will not cause an accident in which they sustain serious loss.

Any time people feel out of control of something which affects their welfare, they will be uncomfortable. And since careful driving and adequate personal automobile insurance alone does not and can not guarantee that there will be no loss through a vehicular accident, insureds very often have a quite different attitude about their auto insurance.

Complicating the issue even more is that in states where liability insurance is required by law if a person is to obtain a driver's license, automobile insurers must offer insurance to even the worst risks. Normally, all automobile insurers operating within a state will form a pool and spread the risk of these high-risk drivers among themselves. Thus, the public has some hope of recovering monetary damages from these drivers should they be at fault in a vehicular accident. However, the mere fact that they are insured cannot be counted upon to lessen the danger to others these high-risk drivers create. Once insured, they may legally drive, and anyone who has had the misfortune to spend any time in a lane adjacent to a young, reckless driver, a drunk driver, or a highly aggressive driver takes little comfort in the fact that if an accident occurs, and they are harmed, their claim will be honored and paid.

Just because state laws require drivers to have insurance does not mean that they will: many uninsured motorists travel our streets and highways every day, and so uninsured motorists endorsements are common in personal automobile insurance. Again, since it is the insured person who pays the premium, he or she is paying to cover a risk posed by someone else. While legal action may be taken against an uninsured motorist who causes an accident, in all too many cases there are no assets which can be used to pay for the harm/damage caused.

Such questions come from the social aspect of insurance. By social aspect, we mean those elements of the principle of insurance which are based, not on quantifiable fact, such as the appraised value of an automobile, or the actual cost of medical bills, but on the intangibles such as the limits of personal rights. Normally, when an uninsured motorist causes an accident, the legal charges relate to the harm or damages, and the suit is calculated to recover the cost of the loss. Suspension or revocation of the driver's license is a usual legal consequence when an uninsured motorist causes an accident. But is there not a question here of another breach besides the one of driving without legally-required insurance? Is there not a breach here of the social contract all members of a society have with one another not to act in any way that might cause harm?

Legislatures are still wrestling with such concepts as no-fault insurance, contributory negligence and comparative negligence. Whether or not they will ever look at the problem of uninsured motorists is moot. Certainly, with computer technology, it would be possible to have a national center similar to national theft reporting associations and national medical information centers which could keep track of motorists who allow automobile insurance to lapse, or who cancel it, and who do not then replace it with

other insurance. Conceivably, this information could be transmitted to local law enforcement agencies who could then notify the driver that he/she is in violation of the law, and may not drive until insurance is once again in place.

In a social climate where legislatures are passing laws requiring that the communities into which released child molesters or sex criminals are going to live be notified so that the public at large may be warned, it is not beyond the realm of possibility that strong measures to enforce laws relating a driver's license to automobile insurance would be enacted.

Note the effect on sentences given to drivers convicted of driving while intoxicated MADD (Mothers Against Drunk Driving) has had. Before this organization became active, and a force to be reckoned with, in many jurisdictions it was not unusual or a driver to have as many as fourteen DWI convictions with nothing more serious than a fine being levied. Now, licenses are revoked or suspended, and some offenders end up in jail. As the public demands that people who cause harm or damage to others should be held fully accountable and responsible for it, we might see a tightening of laws regulating the use of personal automobiles, and making it more difficult for those who have demonstrated their irresponsibility to drive.

Certainly, it is a hardship not to be able to drive to work, to the doctor, to the grocery, or any of the myriad places human beings need and want to go. But the hardship created for the law-abiding public by those who ignore the laws they prefer not to obey is even greater. It is this hardship that personal automobile insurance seeks to relieve.

Legislation Regulating Automobile Insurance

We have already mentioned several types of regulation legislatures impose on the automobile insurance industry. Let us now list them and discuss each one briefly. First of all are the state regulations relating to the solvency and fiscal responsibility of the insurer. Insurers wishing to do business in a state will have to provide the necessary proofs that they have sufficient reserves, that their rates are equitable, reasonable, and non-discriminatory, and that all of their financial dealings are performed according to sound fiscal policy and the law. Further, there are requirements relating to the nature of the reports which must be submitted to the insurance commission for review, and the manner in which and time by which they are submitted.

Second, there are regulations regarding the licensing and activities of agents, as well as regulations setting forth avenues of appeal for clients who may wish to file a complaint concerning an agent or insurer.

Third, there are regulations concerning the rates the insurers may charge.

Fourth, there are regulations which detail who must have automobile insurance, the required limits (for liability insurance); and the penalties for failure to obey the law.

Fifth, there may be regulations which endeavor to deal with negligence or fault, and which not only lay

down guidelines as to how to resolve this issue, but which also limit damages which may be paid for such things as suffering and pain.

Since laws in the fourth and fifth classifications are of more interest to us in this particular course, let us look briefly at the various sorts of laws which address problems of liability and fiscal responsibility.

First are the laws which deal with FINANCIAL RESPONSIBILITY. Such laws set limits of liability which a person who has been involved in a vehicular accident which caused either property damage or bodily harm or both must meet. Persons who cannot pay judgments which result from lawsuits arising from vehicular accidents must also meet these limits, as well as persons who have been convicted of traffic violations considered serious. There are several ways in which financial responsibility may be demonstrated: (1)a bond in a specific amount may be posted; (2)cash or securities in the required amount may be deposited with the court; (3)or the person may buy automobile liability coverage. Of course, the insurance policy is of little use after an accident has occurred, and a person has been found legally liable for the damages/harm caused. Financial responsibility laws usually carry certain penalties for failure to establish financial responsibility: among these are suspension of the driver's license and/or the vehicle's registration.

Compulsory insurance laws are intended to make certain that vehicle owners have means of establish financial responsibility BEFORE an accident occurs by requiring all persons who operate a vehicle have liability insurance which meets the legally-specified minimum amounts OR must post a bond OR must deposit cash/securities as proof of ability to pay for any damages/harm he/she may cause. Normally, owners/operators of vehicles purchase automobile liability insurance.

We will examine no-fault insurance in more depth later in this course. Suffice it to say now that no-fault insurance establishes a system under which each insured collects from his/her auto insurer for financial losses resulting from a vehicular accident: such losses include medical and hospital expenses as well as loss of income.

Some few jurisdictions have funds which provide victims of damage/harm from a vehicular accident with some recourse when the person at fault cannot pay. These unsatisfied judgment funds, as they are termed, are available to victims whether the person at fault cannot be identified, as in a hit-and-run; is uninsured; or is not able to pay for the harm he/she caused. Often, the person at fault will suffer some penalty such as suspension or revocation of his/her driver's license until such time as restitution to the fund for sums paid out to his/her victim is made. Unsatisfied judgment funds normally have deductibles as well as minimum limits and maximum coverage.

State laws also establish pools for high risk drivers called ASSIGNED RISK PLANS. Through these plans, those drivers who would not be able to obtain insurance otherwise because of poor loss records are insured. Risks are assigned to insurers operating within the state in accordance with the percentage of automobile liability insurance they write in the state. Applicants for insurance through an assigned risk plan must prove that they have not been able to obtain insurance in the normal way. They must also expect to pay the higher premiums associated with their high risk status. **Note that persons**

convicted of a felony within the past three years or those engaging in illegal businesses may not obtain automobile liability insurance from any plan.

Since state insurance regulations vary widely, it is incumbent on each agent acting within a state to become knowledgeable about the regulations in his/her state which are applicable to the agent/client relationship.

UNIT TWO: THE PERSONAL AUTOMOBILE INSURANCE POLICY

Although the name, Personal Automobile Insurance Policy, certainly describes what the policy insures, still, let us make it clear that such a policy is issued only to insure a privately-owned motor vehicle, including passenger cars, minivans, pickups, station wagons, and other such vehicles. The vehicle must be owned by the named insured, and it must be described in the policy Declarations. Also, a PAP can insure vehicles that are acquired to replace another vehicle, or as additional vehicles, and which are not described in the Declarations. However, as we shall see later on, the PAP will limit the length of time the replacement vehicle or additional vehicle will be covered without a proper description in the Declarations of another policy specifically covering it. PAP's may also insure a non-owned vehicle which serves as a temporary substitute for the insured's own car, such as, for example, a rental car or one borrowed from someone else.

COVERAGE

While PAP's can be adapted to the particular needs of an insured through endorsements—sections added to the basic policy which define certain specific coverages—the basic coverages in a Personal Auto Policy are these four: 1) Liability Coverage; 2) Medical Payments Coverage; 3) Uninsured Motorists Coverage; 4) Coverage for Damage to Your Auto. These are listed on the policy form as Part A; Part B; Part C; and Part D respectively. We will discuss each of these coverages in depth in later sections, giving only a brief description of each at this time.

Part A, Liability Coverage, protects the insured from economic loss which can result if he/she, through the operation, maintenance, or use of an insured automobile, is found liable for bodily injury to others or for damage to their property.
Note that this coverage is ALWAYS compulsory unless a driver has offered other proof of financial responsibility, such as posting a bond or depositing cash/securities in a certain amount.

Part B, Medical Payments Coverage, unlike Liability Coverage, does not require that the insured be

found negligent. Instead, Medical Payments Coverage will pay for medical, surgical, hospital, ambulance, professional nursing, funeral expenses and the like incurred by either the insured or his/her family members when injured getting in or out of an automobile, or while inside. Such payments are subject to certain limits which will be specified in the policy. Note that should a party other than the insured be found liable for these expenses, the victim's insurer may seek recompense from the other party's insurer. These deliberations will take place long after the incident which caused the loss, but in the meantime, expenses will be covered and medically-related bills paid.

Part C, Uninsured Motorists Coverage, protects insureds against economic losses incurred through an accident caused by a driver who is not insured. This coverage protects not only the named insured, but also resident family members and other passengers in the covered auto. However, the expenses covered are ONLY those which an insured driver would be legally liable to pay for—that is, those expenses related to bodily injury. Also, such losses as loss of income and those damages usually called "pain and suffering" are paid for by Uninsured Motorists

Coverage. In some jurisdictions, Uninsured Motorists Coverage also pays for damage to property caused by someone uninsured. In other jurisdictions, such losses are covered by Part D, Coverage for Damage to Your Auto. Further, Uninsured Motorists Coverage specifies that payment is made in those cases where the legally liable driver doesn't have enough assets to pay the costs, doesn't have any insurance, doesn't have adequate insurance, or cannot be found. In other words, if the liable party, while uninsured, does have assets sufficient to pay the loss, those assets will be tapped.

Part D, Coverage for Damage to Your Auto, pays for the direct, accidental loss to the auto covered, to any non-owned auto, and also to equipment such as battery, radio, hubcaps, etc., which are normally part of the purchase price of a new car, or to any part which has been installed permanently on the car. Part D covers damage which is caused by both collision and incidents other than collision. Under collision are grouped such causes of loss as the upset of the auto, or its impact with another object, which does not have to be another vehicle. The object may be a lamp-post, a bridge abutment, a building—all of these are covered under collision. Of course, vehicles suffer losses caused by other incidents. Windshields and windows break, objects fall on a vehicle and dent it or crush it, a car is stolen, is swept away in a flood—all of these are covered under Other Than Collision Coverage. While Other Than Collision Coverage may be purchased without Collision Coverage, Collision Coverage may not be purchased without Other Than Collision Coverage. With such coverage, direct and accidental damage to a covered auto will be paid for even if the insured caused it. The policy must specifically state that each coverage applies to a specific vehicle.

Each of these four coverages will be discussed in depth in following sections.

PERSONS ELIGIBLE FOR PERSONAL AUTOMOBILE INSURANCE

Personal Automobile Insurance may be issued to cover automobiles owned by: 1)Individuals; 2)A husband and wife living in the same residence; 3)Or, by a Joint Ownership Coverage Endorsement, to cover vehicles owned by persons living together, or to cover vehicles owned by relatives other than husband and wife. Unless a specific exception is made, PAP's do not cover vehicles owned by businesses or by groups of people. In a later section we will discuss the effect upon PAP rates of the variables in an applicant's personal situation.

Parts of the Policy

A Personal Auto Policy has three basic sections: 1)Declarations; 2)Insuring Agreement; 3)Policy Definitions.

Let us look first at the Declarations.

The Declarations Page is where the basic information about the policy can be found. The insured and insurer are named; the coverage provided is listed, as well as any limits as to where the coverage is in effect, when the coverage is in effect, and at what amounts. Further, rates and premiums per vehicle and per policy period are presented. The policy number is also on the Declarations page. If the policy has endorsements, they are listed here.

The policy term is the amount of time during which coverage is in effect. While most PAP's are issued for a year's term, many times they are delivered on a six-month basis. Coverage begins at 12:01 AM on the inception date of the policy, and ends on the date of expiration. Both times and dates are on the Declarations page.

Each PAP has limits; these limits vary within the types of coverage offered. As each type of coverage is discussed in depth, these limits will be explored.

One portion of the Declarations contains information about the insured. This will include the name of the insured, and, for some insurers, the names of other members of the household who will be operating the covered auto. Since the age, gender, and marital status of insureds are among the variables used by insurers to determine rates, this information will be obtained at the time the policy application is filled out.

There are circumstances in which a covered auto will be garaged and operated at a place other than the insured's legal address. In such a case, the legal address is still included on both the application and the Declarations page, because all communications from the insurer to the insured about the policy, will be sent to the legal address. The place where the covered auto will be garaged and operated is significant because rates vary depending upon the population density of an area, the traffic congestion, and other considerations. Rates for insureds who garage and operate their vehicles in high crime, high traffic areas will be higher than those who garage and operate them in a rural setting.

The Declarations Page of a PAP will also give the name of the bank, credit union, or savings and loan through which the automobile to be covered is financed. Such an institution will be listed as a Loss Payee or Lienholder. The reason for including the lender as a payee on the PAP is that until the vehicle is paid for, it serves as collateral for the loan. If the vehicle is damaged, the lending institution will lose. Thus, in case of loss, the PAP will pay damages to the lending institution in proportion to its interest in the vehicle.

A complete description of covered vehicles is also on the Declarations page. The make, year, model, serial number, use, horsepower, address where the vehicle is primarily garaged is listed. This information helps determine the premium: obviously, a brand new luxury car poses more of a loss risk in case of a collision than does a ten year old pick-up truck.

Loss experience varies from auto type to auto type, and even among models and years, and the loss experience of a certain class of vehicles is taken into account by many automobile insurers when setting rates. But, just as non-smokers pay less for health insurance than do smokers, certain elements can get a discounted premium for a driver. For example, many insurers offer discounted premiums for drivers who have had driver training, or who take refresher courses on a regular basis, and also for such things as anti-theft systems.

How an automobile is used is crucial in setting rates: vehicles used to drive to and from work, or in the conduct of business are found to have higher accident rates than those driven only for pleasure. In fact, there are separate rate classes which reflect the varying loss of risk due to vehicle use. For example, persons who own private passenger vehicles which are used in business are in a separate rate class, as are vehicles used by individuals driving to and from work, and/or carrying tools/materials to job locations.

The PAP is a basic policy which can be enhanced and/or amended through the use of endorsements. For example, an endorsement may be added that will cover losses due to underinsured motorists. While any such endorsements are listed on the Declarations page, the endorsements are found at the back of the policy.

Finally, the amount of premium paid for the listed coverages is given on the Declarations page.

The Insuring Agreement forms the basis of the insurance policy, for it contains the contract between the insurer and the insured which is legally enforceable. Note that in cases of a dispute between an insurer and an insured as to the meaning of certain clauses in the insurance contract, courts will often find against the insurer on the grounds that the party drawing up the contract has a better understanding and thus an advantage over the party who did not draw it up. As with any other contract, insurance contracts must conform to certain standards. These are five in number.

(1). First of all, for a contract to be legally binding, there must be an offer, and an acceptance of that offer. Contrary to what might seem logical, it is not the insurer who makes the offer, and the applicant who accepts it, but quite the other way around. The applicant makes an offer to enter into a contract with the insurer by filling out the insurance application. The insurer accepts the offer by issuing the coverage.

If all the information on the application is correct, and if no relevant information has been omitted—a history of DWI's, for example—the insurance is usually effective when the premium or deposit is paid. If, of course, the insurer later learns something that would have made it reject the applicant's offer, the policy may be canceled without the insurer being charged with breech of contract.

(2). All valid contracts involve the exchange of something of value between those entering into it. The consideration the insurer offers the applicant is detailed in the policy—the specific coverages, the amounts to be paid in case of loss, the obligation of the insurer to act for the insured should a lawsuit charging liability arise. The consideration the applicant offers the insurer is the payment of the required premium and the observance of any conditions the policy defines.

(3). The competency of parties to a contract is another element of a valid contract. Legal competency normally is applied to persons reaching the age of 18 or 21, depending upon the laws of the particular state, who are neither mentally incompetent through insanity or retardation, who are not intoxicated, and who understand both the terms and the conditions of the contract.

(4). Only contracts whose purpose is legal are valid before the law. For example, while a person may enter into a legal contract with another person to locate used automobiles for the first person to purchase, that person may not enter into a legal contract with another person to steal automobiles for him or her.

(5). Finally, a legal contract must be put into a legal form: such forms are normally dictated by the particular state. Note that while oral contracts are legally enforceable in some states, insurance contracts must be submitted for approval by state insurance commissions, and so of course must be in written form. In the course of business, the agent representing the insurer and the person interested in purchasing coverage have usually come to an oral agreement before the written contract is produced, in that the agent has described the coverages and quoted a premium, and the applicant has indicated a willingness to pay the premium required.

Each PAP opens with a general insuring agreement which sets forth the perils the policy covers, and any conditions or exclusions which affect the coverage. But each of the four parts of the policy will have a specific insuring agreement: we will discuss these in later sections.

Finally, each PAP has a Definitions section, in which certain terms used throughout the policy are explained. The Definitions section may well be one of the most significant sections, and one which an agent should go over with a client most thoroughly. It is not a given that everyone defines words in precisely the same way, and when a misunderstanding about the meaning of certain words or phrases in a legally-binding document, such as an insurance policy, arises, then the consequences can be costly.

In the first part of the two part Definitions section, the client will learn that the terms "you" and "your" used throughout the policy refer to him/her, the person who is the named insured. "We", "us," and "our" refer to the insurer. Also in this section, the client will learn that under specific conditions, a leased

auto will be considered an owned auto for insurance purposes. These conditions are that the auto is leased to the named insured under a written agreement for a continuous period not less than six months.

An alphabetical list of terms usually used in a PAP with their definitions constitutes the second part of this section. These definitions serve to make as clear as possible what IS included in the policy coverage and what is excluded. Thus, even though some of the definitions seem obvious enough, it is still necessary to go over each one with the insured. In fact, it is a primary duty of an insurance agent to go over the policy with the client, even when the client might prefer not to, particularly when the coverage is first purchased. Remember that if a dispute between a client and an insurer gets into court, and if the main point of dispute is an understanding of the policy, if an agent has failed to properly explain the policy to the insured, and has not satisfied himself or herself that the client does indeed understand the coverage, this negligence could weigh against the agent's employer.

Following are the terms usually found in section two of the Definitions section.

1)"**Bodily injury**" means bodily harm, sickness or disease, including death that results. (Bodily injury definitions vary depending on the policy, and so its use in a PAP is carefully defined. Reference to Bodily Injury [B.I.] coverage is found in several sections of the PAP, including Liability Coverage, Medical Payments Coverage, Uninsured Motorists Coverage, and Underinsured Motorists Coverage, in jurisdictions where this last is offered.

2)"**Business**" includes trade, profession or occupation. (Although the PAP is designed to cover vehicles whose use is primarily pleasure or driving to and from work, still, if the covered auto is involved in an accident while owned or used by the named insured, or others covered by the policy, in the course of business, the PAP will cover the damage. For example, a person may run an errand service, using his/her vehicle. The auto will be classified and rated for "business" use on the PAP. There will be cases where the insurer's underwriting department will determine that a commercial auto policy is more appropriate then a PAP, where business use of the vehicle is concerned.

However, damages occurring while the insured is involved in the business or storing, selling, repairing or parking vehicles meant for use on public roads is excluded from a PAP. This exclusion is directed at garage businesses operated by the insured.

3)"**Family member**" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child. (Such extended coverage is essential to protect an insured against liability arising when a member of his/her household operates a vehicle the insured owns.)

4)"**Occupying**" means in, upon, getting in, on, out or off. (This definition draws the fine line between when the coverage begins and ends, establishing as it does the connection between the vehicle and the insured.)

5)"**Property damage**" means physical injury to, destruction of or loss of use of tangible property. (This

definition clarifies the precise nature of property damage coverage: it refers to the physical injury to, or destruction of, tangible property belonging to another which results from a negligent act of the insured while operating, maintaining, or using a covered auto.

6)"**Trailer**" means a vehicle designed to be pulled by a:

a. Private passenger auto; or
b. Pickup or van.

It also means a farm wagon or farm implement while towed by a vehicle listed above.
(This definition excludes mobilehomes, which, though capable of being moved from one place to another, are usually intended for permanent locations.)

7)"**Your covered auto** means:

a. Any vehicle shown in the Declarations.
b. Any of the following types of vehicles on the date you become the owner:
    1) A private passenger auto; or
    2) A pickup or van that:
        a. Has a Gross Vehicle Weight of less than 10,000 lbs.; and
        b. Is not used for the delivery or transportation of goods and materials unless such use is:
            1) Incidental to your "business" of installing, maintaining or repairing furnishings or equipment; or
            2) For farming or ranching.

Since coverage is automatically extended to newly-acquired vehicles, the insurer puts a time limit on this coverage in order to avoid situations in which an insured could have additional vehicles covered with no additional premium being paid. Thus, these policy limitations apply:

This provision applies only if:

a. You acquire the vehicle during the policy period;
b. You ask us to insure it within 30 days after you become the owner; and
c. With respect to a pickup or van, no other insurance policy provides coverage for that vehicle.

If the vehicle you acquire replaces one shown in the Declarations, it will have the same coverage as the vehicle it replaced. You must ask us to insure a replacement vehicle within 30 days only if you wish to add or continue Coverage for Damage to Your Auto.

If the vehicle you acquire is in addition to any shown in the Declarations, it will have the broadest coverage we now provide for any vehicle shown in the Declamations.

Although these policy provisions seem relatively clear, it is not wise to rely upon the insured's going to his/her policy when acquiring another vehicle and making his/her own determination as to what coverage the new vehicle has. To forestall problems, agents should advise clients to always notify them when vehicles are acquired so that the agent can determine what coverage exists, and what gaps need to be

filled. For example, an insured might read the section that says coverages on the previous vehicle apply when a replacement vehicle is obtained. BUT—there is an exception. The limitations clearly state that if Coverage for Damage to Your Auto is either added, or continued, then the insurer must be informed of the new acquisition within 30 days. This is an entirely reasonable limitation, since most replacement vehicles are considerably newer than the vehicles they replaced, and thus will cost more to repair should damage occur. Also, an insured might not want a newly-acquired vehicle to have all the coverage of those already owned. But, unless the insurer is notified of the new vehicle, then it will have "the broadest coverage we now provide for any vehicle shown in the Declarations." It is always wiser to consult an agent when a new vehicle is acquired.

Provision J.3. and J.4. in the Definitions section relating to "Your covered auto" state that coverage is provided for:

J3. Any "trailer" you own.

J4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:

a. Breakdown;
b. Repair;
c. Servicing;
d. Loss; or
e. Destruction.

This provision (J.4) does not apply to Coverage for Damage to Your Auto.

UNIT THREE: LIABILITY COVERAGE

Part A of the PAP form is Liability Coverage, sometimes called third party coverage, because the payment is not to the insured from the insurer, but rather from the insurer to a party harmed by some negligent act of the insured, who is thus LIABLE for the resulting costs.

As has been stated, each of the four parts in Liability Coverage has its own Insuring Agreement. The Insuring Agreement for Part A reads as follows:

WE WILL PAY DAMAGES FOR "BODILY INJURY" OR "PROPERTY DAMAGE" FOR WHICH ANY "INSURED" BECOMES LEGALLY RESPONSIBLE BECAUSE OF AN AUTO ACCIDENT. Damages include prejudgment interest awarded against the "insured." We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all

defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

There are several significant terms and phrases in this agreement. In the first sentence, the type of damages covered are stated: they are the same as are given in the general Insuring Agreement at the beginning of the PAP. This same sentence also states clearly the conditions under which said damages will be paid—that the insured is LEGALLY responsible for the damages, and that they are the result of an auto accident. Establishing legal responsibility for an accident is sometimes clear-cut and obvious, and sometimes ambiguous and drawn out in court battles. For this reason, the injured party's insurer may very well pay for the damages, and then collect from the insured's insurer once legal responsibility has been determined. Also, note that the damages must result from an auto accident, not from some intentional harm. For example, if John deliberately rams his ex-wife's automobile in a fit of anger, his insurer would not pay for the resulting damage.

Further, because liability for an accident is determined by law, regardless of what the insured says about the accident, the insurer proceeds according to the dictates of applicable law. The insurer then has two options, depending upon the facts of the case. An out-of-court settlement may be made, or the insurer may decide to defend the case in court. The inclusion of prejudgment interest makes the insurer responsible for legal interest, which is the amount of interest charged back to the date of the accident, if the injured party prevails in court, and if the court determines that further harm has been caused the plaintiff because of the length of time settlement of the case took.

The growing number of attorneys specializing in personal injury suits has led to a legal climate in which cases having little foundation in actual fact clutter court calendars and create tremendous administrative and legal costs for insurers. Encouraged by billboards and TV advertisements, many drivers succumb to the temptation to turn a minor accident into a money-making proposition. And, some drivers do not wait for an accident to happen. They stage one, using any of a number of tried-and-true techniques. For example, they will stop suddenly, causing the car behind them to hit them. Or they will slide over into another lane just enough so that an unwary driver crashes into them. There are cases on record where a driver staged an accident, and then had waiting "passengers" get into the vehicle, so that more than one damage claim can be made.

Insurers are all too familiar with these scams, and must be constantly on the alert for these and others that creative drivers come up with. It would seem simple enough to prove that a person is not telling the truth about either the way the accident happened, or the extent of damage to his/her property and person. But in a "it's your word against mine" situation, the facts are often difficult to ascertain, and insurers may well agree on a smaller sum rather then spend the amount of time and money it would take to defend the case in court.

These claims, however, add up, and faked or exaggerated damages are one factor in the rise in automobile rates that are the cause of concern around the country. A wise agent will inform clients about the danger of staged accidents, and offer tips that will help the insured avoid them. For example, "tail-gating" another car is an invitation to a staged accident, as are driving habits such as swinging into another lane

when turning a corner, rushing through traffic lights, and the like. This is not to say that all careful drivers are safe from faked accidents, but it is more likely that a truly alert driver who constantly observes the vehicles around him/her will reduce the risk of being thus victimized.

Note that the insurer is responsible only for damage caused by an auto ACCIDENT. For example, if John, whose temper is on a particularly short fuse during difficult divorce proceedings with his wife Jane, deliberately rams the brand new Jaguar he gave Jane for her birthday three weeks before she announced she wanted a divorce, his insurer will not pay for the damages incurred.

Part A—Liability Coverage is more liberal in its definition of the term "insured" than the definition found on the Declarations Page. You will remember that the definition there states that the "named insured" is the person named in the Declarations, and the spouse if a resident of the same household. But in Subsection B of Part A, we find that the term "insured" has widened, and that the policy covers damages caused by any person using the covered auto. Subsection B reads as follows:

"Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer."
2. Any person using "your covered auto."
3. For "your covered auto," any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer," other than "your covered auto," any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision (B.4) applies only if the person or organization does not own or hire the auto or "trailer."

Let us examine Subsection B more closely. B.1 expands the term "named insured", so that it now includes not only a spouse living in the same household, but also a ward, foster child, or anyone whose relationship to the insured is by blood, marriage, or adoption, and who is also a resident of the insured's household. These additional persons are covered for liability if an auto or trailer they own, maintain or use is involved in an accident for which they are found legally liable. Note that it is not necessary for the INSURED to own the auto/trailer: liability coverage still applies.

B.2 extends liability coverage to anyone using a vehicle owned by the insured, so long as the insured has given his/her consent, or so long as the person using the vehicle has reasons to believe that the insured would give his/her consent. For example, Mary is in the habit of using her mother's automobile when hers is in the shop. Mary's mother purchases a new automobile while Mary is out-of-town. Mary's mother does not want Mary to drive her new automobile, because she believes that the reason Mary's own car is in the shop so much is that Mary does not take proper care of it. On the day after Mary returns from her trip, and before her mother has had a chance to tell Mary that she does not want her borrowing the new car, Mary's car won't start. Afraid she will be late to work, Mary walks the block to her mother's house, goes into the kitchen, sees the car keys in their usual place, and, knowing that her mother is out taking her daily walk, leaves a note saying she has borrowed the new car. When Mary is involved in an accident, and is found liable, the insurer will determine that Mary had a reasonable belief

that she had her mother's consent to use the new car, and the damages Mary caused will be covered.

If, on the other hand, a passing teen-ager saw the new car, took it on a joy ride, and wrecked it, causing damage to others as well, Mary's mother would have no liability. Consent of the owner, either implied or direct, is a necessary factor in Subsection B.2. While it may seem harsh for the owner of the vehicle to have to assume liability for the acts of someone else, courts have established that when the owner of an insured vehicle allows someone else to operate it, an agency relationship is created. The owner is the principal, and the person using the vehicle is the agent. Thus, if an accident occurs, THE LAW OF AGENCY, which states that the principal is responsible for the acts of the agent performed within the context of the agreement between them, comes into play.

Subsection B.3 covers situations in which someone not otherwise defined as an insured in Subsections B.1 and B.2 may be in charge of the insured vehicle. For example, Shirley wants to learn to drive, and her parents engage the services of a friend of Shirley's older brother, who is a skilled driver and has the patience to deal with a novice like Shirley. The young man used Shirley's parents automobile for the lessons. Shirley is behind the wheel, but he is in charge of the vehicle, since he is instructing her every step of the way. If there is an accident, liability coverage would be extended to cover him.

Also, Subsection B.3 is applicable in cases where an organization is found legally liable for damages resulting from an accident in which one of its members was driving the insured vehicle. For example, Jack and Marie have put their pick-up truck at the disposal of a local non-profit organization to use while moving from one office to another. A staff member of the organization operates the vehicle. This driver is covered under subsection B.2, that anyone other than Jack and Marie using the pickup is an "insured." If the driver is involved in an accident, and if the organization is found to be responsible for the "acts or omissions" of that person, then the organization itself is termed an "insured" under subsection B.3: the damages will be covered under Part A—Liability Coverage.

Subsection B. 4 states the conditions under which liability protection is afforded in two particular circumstances: in both instances, the protection is on a temporary basis. First, if a driver who fits the definition of an insured is using a vehicle not shown in the Declarations as covered, and that driver is in an accident while using the vehicle, liability protection is offered. Second, liability protection is extended on a temporary basis to a person or organization who in a particular situation is found to have had legal responsibility for the actions—or lack of actions—of the named insured, his/her spouse living in the same household, and other residents of the household related to the named insured by blood, marriage, or adoption.

These four subsections use rather technical terms to explain how both ownership of a vehicle and use/operation of a vehicle can create situations in which the insurer will extend liability coverage to take care of damages resulting from an accident. It is important to understand that information about BOTH the named insured—age, traffic violation record, eyesight, etc.—AND the vehicle—make, model, year, etc.—are important in determining the rate the insured pays for coverage. Further, the owner of a vehicle is considered to be the person primarily responsible for its use. Thus, if the owner allows others to drive the vehicle, and an accident occurs, the "buck stops at the owner," so to speak, in terms of liability. And, as in the case where a licensed driver is instructing a student, and an accident happens, the

person IN CHARGE OF THE VEHICLE at that point in time—in other words, the licensed driver—has liability because he or she did not keep the student driver from committing an act or failing to commit an act which would have prevented the accident. In this case, the insurer would pay for damages if the student driver is found at fault.

However, such instances will certainly affect future premiums the named insured pays, just as any accidents caused directly by the named insured will. It is important to go over all sections of any insurance policy with the insured, but in the case of automobile insurance, it is doubly so, as the opportunity for accidents is usually higher than with any other type of property and casualty insurance.

Because those who are found liable in an accident that causes harm to others often have expenses over and above the damages to the victims, a PAP's liability coverage also provides for certain Supplementary Payments. These fall into two types: premiums for bonds, and expenses occurring due to legal action taken against the insured. This latter expense is paid only when the insurer has asked that the insured cooperate in its defense against the suit.

The wording of the Supplementary Payments section having to do with premiums for bonds is as follows:

In addition to our limit of liability, we will pay on behalf of an "insured":

1. Up to $250 for the cost of bail bonds required because of an accident, including related traffic law violations. The accident must result in "bodily injury" or "property damage" covered under the policy.

2. Premiums on appeal bonds and bonds to release attachments in any suits we defend.

This language describes the three types of bonds the insurer will pay premiums for. A BAIL BOND is a guarantee that a person charged with a traffic violation will appear in court: if the person does not appear, the amount of the bond is forfeited to the court. Depending on the severity of the violation, the face amount of the bail bond will vary, with violations such as driving while intoxicated obviously requiring a higher bond than a violation such as misuse of a lane, or failure to yield. However, the insurer will pay only up $250 of the premium, regardless of what the actual premium is. The second type of bond is an APPEAL BOND. Appeal bonds are used as guarantees that a judgment against an insured will be paid, and are purchased to put off execution of the judgment while the defendant appeals the case to a higher court. If the appeal does not succeed in reversing the judgment, then it will be paid. Yet a third type of bond is one which releases property which may have been legally seized by the court in an effort to make certain that a judgment can be paid. For example, a court may have ATTACHED—legally seized—a savings account of a defendant to make sure that should the plaintiff in the case prevail, the defendant will have funds to pay the judgment. A bond may be used to release the funds, for the bond stands as a guarantee that the judgment will be paid.

The Supplementary Payments section continues as follows, with statements describing other expenses the insurer will pay.

3. Interest accruing after a judgment is entered in any suit we defend. Our duty to pay interest ends

when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.

4. Up to $50 a day for loss of earnings, but not other income, because of attendance at hearings or trials at our request.

5. Other reasonable expenses incurred at our request.

The insurer thus promises to pay legal interest which may be awarded to the injured party by the court. Most trials involve a number of hearings, meetings, depositions, and so on, and insureds have a duty to the insurer to cooperate with it in preparing the defense. Thus, numbers 4 and 5 describe the insurer's responsibility to compensate the insured in some measure for loss of income and "reasonable expenses" associated with the time and perhaps travel involved in preparing the case.

Insurers must be as careful to state what a policy does NOT cover as they are in stating what it does cover. EXCLUSIONS are those sections in a policy which set forth the various conditions or perils the policy does not cover. In a PAP, Part A—Liability Coverage—has three basic exclusions. First, it excludes any damage the insured intentionally caused to a covered auto; second, it will not pay for harm covered by other insurance; third, it will not cover what are termed as nonstandard risks.

These are the broad exclusions, and they are amplified in thirteen specific exclusions, which are listed here.

A. WE DO NOT PROVIDE LIABILITY COVERAGE FOR ANY "INSURED":

1. Who intentionally causes "bodily injury" or "property damage."
2. For "property damage" to property owned or being transported by that "insured."
3. For "property damage" to property:
   a. Rented to;
   b. Used by; or
   c. In the care of; that "insured."

This exclusion (A.3.) does not apply to "property damage" to a residence or private garage.

What this is saying is that the insurer has no liability for intentional damage, nor does it have liability for any damage the insured owns, or is transporting, or any property the insured has rented, is using, or has the care of. Thus, if an insured is moving from one house to another, and is transporting a collection of valuable china in boxes on the back seat, and is involved in an accident which damages the vehicle and breaks most of the china, the insurer will pay for damage to the vehicle, but not for the china. A homeowner's policy would possibly pay for that.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This exclusion (A.4) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available to that domestic employee.

This section covers two contingencies: the first contingency is that a domestic employee's employer is required by state law to provide workers' compensation for employees whose work meets certain minimum standards. In such a case, Part A would not cover injury to that employee. The second contingency is that an injured domestic employee does not have workers' compensation coverage. In such a case, Part A would cover "bodily injury" to a domestic employee when said injury occurred as a result of an auto accident that happened in the course of employment.

5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion (A.5.) does not apply to a share-the-expense car pool.

Thus, if an insured using his/her vehicle to transport people for a fee, and they suffer bodily harm as a result of an auto accident for which the insured is liable, Part A will not cover the loss. It will, however, cover losses that occur when the insured is driving as part of a share-the-expense car pool.

6. While employed or otherwise engaged in the "business" of:
   a. Selling;
   b. Storing; or
   c. Repairing;
   d. Parking;
   e. Servicing;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (A.6.) does not apply to the ownership, maintenance or use of "your covered auto" by:

a. You;
b. Any "family member";
c. Any partner, agent or employee of you or any "family member.

7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in exclusion A.6. Exclusion (A.7.) does not apply to the maintenance or use of a:

   a. Private passenger auto;
   b. Pickup or van that:
      (1) You own; or
      (2) You do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
         (a) Breakdown;
         (b) Loss;
         (c) Repair;
         (d) Destruction; or
         (e) Servicing;
   c. "Trailer: used with a vehicle described in a. or b. above.

What these exclusions boil down to is that coverage normally covered by some other type policy is excluded, but in certain situations, Part A will provide coverage. Such situations include car-pooling; damages arising from accidents occurring while trying to sell covered autos; and those losses occurring when employees are using covered vehicles in any business other than those specifically excluded in A.6.

The eighth exclusion is simple, and to the point:

8. Using a vehicle without a reasonable belief that "insured" is entitled to do so. In other words, a car thief who causes loss while driving a stolen, covered vehicle, is denied coverage. The ninth exclusion refers to the type of catastrophic risk associated with a nuclear disaster.

9. For "bodily injury" or "property damage" for which that "insured":
   a. Is an insured under a nuclear energy liability policy; or
   b. Would be insured under a nuclear liability policy but for its termination upon exhaustion of its limit of liability.

10 A nuclear energy liability policy is a policy issued by any of the following or their successors:
   a. American Nuclear Insurers
   b. Mutual Atomic Energy Liability Underwriters; or
   c. Nuclear Insurance Association of Canada.

   Certain vehicles are not appropriately covered by a Personal Auto Policy, and these are described in subsection B.1.

B. WE DO NOT PROVIDE LIABILITY COVERAGE FOR THE OWNERSHIP, MAINTENANCE OR USE OF:

11 Any vehicle which"
   a. Has fewer than four wheels; or
   b. Is designed mainly for use off public roads.

This exclusion (B.1.) does not apply:
   a. While such vehicle is being used by an "insured" in a medical emergency; or
   b. To any "Trailer."

Further, this subsection makes it clear that Part A Liability Coverage applies to one vehicle only, with the exception already noted that an newly purchased vehicle is covered for a limited amount of time in order for the insured to obtain insurance on it.

12 Any vehicle, other than "your covered auto," which is:
   a. Owned by you; or
   b. Furnished or available for your regular use.

In the next subsection, we find that vehicles owned or regularly operated by family members of the named insured, and which are not listed on the Declarations pages, are excluded from liability coverage.

The subsection is worded as follows:

13 Any vehicle, other than "your covered auto," which is:

  a. Owned by any "family member"; or
  b. Furnished or available for the regular use of any "family member."

However, this exclusion (B.3.) does not apply to you while you are maintaining or "occupying" any vehicle which is:

a. Owned by a "family member," or
b. Furnished or available for the regular use of a "family member."

Thus, the named insured and his/her spouse will be covered if he/she is maintaining or "occupying" a vehicle a family member owns, or regularly uses.

In some states a final exclusion states that parties who receive "bodily injury" as a result of an accident for which the insured is found liable may not collect for their medical expenses under both Part B—Medical Coverage and Part C—Uninsured Motorists Coverage.

Because not all automobile accidents occur in the state in which the insured has his/her domicile, PAP's carry provision for Out of State Coverage which detail what liability limits will be observed when loss occurs as a result of an accident in another state/province than the one where the insured normally keeps the covered vehicle. The Out of State Coverage provision reads thus:

If an auto accident to which this policy applies occurs in any state or province other than the one in which "your covered auto" is principally garaged, we will interpret your policy for that accident as follows:

A. If the state or province has:
    1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
    2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province,your policy will provide at least the required minimum amounts and types of coverage.
B. No one will be entitled to duplicate payments for the same elements of loss.

This provision is significant in that, whether the limits of liability in the state/province in which a covered accident occurs are congruent with the laws of the state in which the covered auto is usually garaged, the insurer will meet those limits. The final statement, that no one will be entitled to duplicate payments for the same elements of loss, prevents those injured in a covered accident from making claims against more than one of the insured's policies, if the accident occurs in a state where such claims might be allowed. For example, Harold is driving out-of-state. The back seat of his automobile is packed with a variety of boxes containing household goods. Harold is involved in an accident for which he is found

liable. One of the parties injured in the accident was hit by both the door of Harold's vehicle as it flew open, and by a box that, jarred by the impact, fell out of the open door, hitting the victim on the same leg as was hit by the door. Harold's homeowner's policy would cover damage done by his property; his PAP would cover damage done by his covered vehicle. But the injured party could not collect damages from both policies for the same injured leg.

We have already noted that some jurisdictions have financial responsibility laws which mandate that drivers prove their ability to pay for any losses which might occur as a result of their negligent use or their vehicles. When an insurance policy is certified as providing that financial responsibility, it will contain this language:

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

This statement makes it clear that the insured must purchase at least the minimum limits of liability mandated by the state in which the covered vehicle is primarily garaged.

Because there are other types of insurance policies which might cover certain losses, all an insured's property and liability contracts are usually taken into account when a covered loss occurs. There are times when the insurers issuing the various policies pay a pro-rata part of the total loss. In other cases, by contract, a policy is named primary, while others are termed excess coverage. Part A—Liability Coverage addresses this situation as follows:

IF THERE IS OTHER APPLICABLE LIABILITY INSURANCE WE WILL PAY ONLY OUR SHARE OF THE LOSS. OUR SHARE IS THE PROPORTION THAT OUR LIMIT OF LIABILITY BEARS TO THE TOTAL OF ALL APPLICABLE LIMITS. However, any insurance we provide for a vehicle you do not own shall be excess over any other collectible insurance.

The wording of this section is a perfect example why Part A—Liability Coverage is possibly the most important part in the entire PAP, in terms of helping establish what the insurer WILL pay for, and what it will NOT pay for. In the section just cited, the insurer makes it clear that if a person is driving another person's automobile--with that person's permission, of course—and there is an accident, the insurance naming that vehicle as an insured vehicle will be primary, and the insurance in which the driver is the named insured will be secondary. The reasoning behind this, of course, is that the automobile policy covering the vehicle will contain a clause stating that insurer has liability when someone other than the named insured is driving the vehicle with the named insured's permission. When an insured understands from the very beginning what is covered and what is not covered, he or she can become a more responsible policyowner—and a more responsible vehicle owner, being careful not only in his/her own use and operation of the vehicle, but being careful as to who drives the vehicle, and under what circumstances.

UNIT FOUR: MEDICAL PAYMENTS COVERAGE

Part B of the Personal Auto Policy is Medical Payments Coverage, in which is found the insurer's promise to pay medically-related expenses incurred by the insured and/or others. Medical expenses include also surgical, ambulance, hospital, professional nursing, funeral and other such expenses. There are four subsections in Part B—Medical Payments Coverage: the Insuring Agreement, Exclusions, Limit of Liability, and Other Insurance.

Let us look first at the Insuring Agreement, which opens thus:

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

   1. Caused by an accident; and
   2. Sustained by an "insured."

We will pay only those expenses incurred for services rendered within 3 years from the date of the accident.

Note that nowhere in this statement is there a requirement that the insured be liable for the accident in order for medical expenses to be paid. The word "reasonable" is a key word in this agreement. By using that word, the insurer conveys that those expenses considered usual and appropriate will be paid: it will not require that injured persons seek the cheapest medical care available, but it will not compensate them if they use the most expensive when adequate and competent care is available at a lesser charge. Further, once the three year limit has expired, no further claim for injuries for the accident will be paid.

In defining who is an "insured", Part B states:

A. "Insured" as used in this Part means:
   1. You or any "family member":
      a. While "occupying"; or
      b. As a pedestrian when struck by; a motor vehicle designed for use mainly on public roads or a trailer of any type.
   2. Any other person while "occupying" "your covered auto."

Therefore, the insurer will pay for medical expenses incurred by the insured, or any family member—which was defined in the Definitions section as a person related by blood, marriage or adoption who resides in the insured's household—or by any other person who is in the covered auto

when the accident occurs. Remember that "occupying" is defined as "in, upon, getting in, on, out or off" the vehicle. Medical payments coverage also provides payment when a defined insured is struck by a motor vehicle. As we will see in the Exclusion section, the policy does not provide payment for injuries caused by a number of other types of vehicles.

Let us look at the Exclusions now.

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (2.) does not apply to a share-the-expense car pool.

3. Sustained while "occupying" any vehicle located for use as a residence or premises.

Injuries resulting from accidents involving bicycles, motorcycles and the like are clearly excluded by this section, as are injuries resulting from accidents when the insured auto was being used to convey people for a fee. And, if injuries result from an accident in a trailer which serves as a place for people to live, the Personal Auto Policy will not pay for the medical expenses.

Since the purpose of insurance is to restore parties, insofar as is possible, to pre-loss condition, and since insurance is not meant to be a device by which people may enrich themselves by making claims for the same loss under several policies, Exclusion 4. states clearly that if the accident injured an employee in the course of employment, and if workers compensation is available, then Part B will not pay for expenses associated with those injuries.

4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury."

The next two sections release the insurer from any obligation to pay for injuries which are the result of an accident involving a vehicle not covered in the policy, with one exception.

5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
   a. Owned by you; or
   b. Furnished or available for your regular use.

6. Sustained while "occupying," or when struck by, any vehicle (other than "your covered auto") which is:
   a. Owned by any "family member"; or
   b. Furnished or available for the regular use of any "family member.:

However, this exclusion (6) does not apply to you.

What these two subsections are saying is that ONLY if the named insured or a spouse in residence are injured in an accident involving a non-covered vehicle will their resulting medical expenses be paid. If a "family member", even one related by blood, marriage, or adoption, and in residence with the named insured, is injured in an accident involving a non-covered auto, those medical expenses may not be paid in some states.

The next exclusion prevents those who use covered autos illegally from getting medical expenses paid in the event of an accident while they are "occupying" the vehicle.

7. Sustained while "occupying" a vehicle without a reasonable belief that "insured" is entitled to do so.

Mirroring the differentiation between private passenger autos and those used for commercial purposes in the definitions section of the Personal Auto Policy, exclusion 8 states that medical expenses incurred as a result of an accident involving a vehicle used for commercial purposes will not be paid, but that if the vehicle is a private passenger auto being used in the insured's business, and that auto is listed in the Declarations, medical expenses will be paid.

8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured." Exclusion 8 does not apply to "bodily injury" sustained while "occupying" a:

    a. Private passenger auto;
    b. Pickup or van that you own; or
    c. "Trailer" used with a vehicle described in a. or b. above.

The final three exclusions in Part B—Medical Payments Coverage of the Personal Auto Policy all relate to situations of catastrophic or high risk. Thus, we find losses resulting from such things as nuclear weapons, war, insurrection, and so on, excluded.

9. Caused by or as a consequence of:

    a. Discharge of a nuclear weapon (even if accidental);
    b. War (declared or undeclared);
    c. Civil war;
    d. Insurrection; or
    e. Rebellion or revolution.

10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:

    a. Nuclear reaction;
    b. Radiation; or
    c. Radioactive contamination.

Exclusion 11. states that accidents resulting from competitive auto racing are not covered.

11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:

    a. Competing in; or
    b. Practicing or preparing for; any prearranged or organized racing or speed contest.

All eleven exclusions fulfill one of three logical bases for exclusion: they relieve the insurer from paying claims that are more suitably covered by other types of insurance; they cover only those risks that are not more hazardous than those used when determining the rates; they relieve the insurer of risks resulting from conditions which can neither be predicted nor controlled, such as war and rebellion.

Personal Auto Policies use "per person" and "per accident" as measures of limits of what insurers will pay. Thus, the limit of liability for Part B—Medical Payments Coverage, states that:

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

    1. "Insureds";
    2. Claims made;
    3. Vehicles or premiums shown in the Declarations; or
    4. Vehicles involved in the accident.

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

    1. Part A or Part C of this policy; or
    2. Any Underinsured Motorists Coverage provided by this policy.

Thus, no claims that exceed the limits of liability for which the insured has paid, and which are listed in the Declarations Page of the policy, will be paid. Nor may an injured party receive payment for medical expenses under Part B, and then later submit claims for the same expenses under Part A, Liability Coverage, or Part C, Uninsured Motorists Coverage. Note that the purpose of Part B, Medical Payments Coverage, is to make sure that those who are injured as a result of an accident involving a covered auto are able to pay medical bills for treatment needed then, REGARDLESS of who is at fault. Later, if the insured is found liable, and an injured person fills a suit for damages, any payments made to that person under Part B will be deducted from the suit in most states. The same situation would occur if a motorist found at fault did not have insurance. Parties could make claims under Part C, Uninsured Motorists Coverage, but not for medical expenses for which they have already been paid. And, of course, if another party to the accident is determined to be liable for the losses, the insurer that has already paid claims submitted under Part B—Medical Payments Coverage, will collect from the responsible party's insurer.

As is usual in property and casualty policies, Part B of the Personal Auto Policy carries a clause regarding Other Insurance, which reads as follows:

If there is other applicable auto medical payments insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

The meaning of this clause is clear, and refers to particular situations. For example, a named insured is injured while riding in his/her office car pool in an insured auto driven by someone else. His/her own insurance provides medical payments in such a situation, but so would the insurance on the auto involved in the accident. The driver's insurance would be primary in such a case, with the injured party's insurance kicking in if his/her medical and related expenses exceed the limits of the Medical Payments Coverage section of the driver's insurance. However, if the driver were proved at fault, the balance of the medical bills would be paid under Part A—Liability Coverage, of that driver's policy. If the driver is not at fault, the injured party's Medical Payments Coverage in his/her own policy would take care of the balance of bills.

UNIT FIVE: UNINSURED MOTORISTS COVERAGE

Despite numerous state laws and regulations requiring that everyone operating a motor vehicle have the appropriate license, and display the financial ability to meet the minimum requirements set by that jurisdiction, all too many people drive with no thought to the consequences of an accident for which they are found liable. And, generally speaking, the conditions that lead people to drive with no liability insurance are often those that make them more accident-prone: poorly maintained automobiles, erratic employment or no employment, minimal education, etc. For example, a person who has difficulty reading street signs is more likely to stop suddenly to better see a sign than a person with adequate vision and reading skills. Most drivers know of at least one case, a friend or family member, in which the driver causing an accident had no insurance, and no other financial resources which could be tapped to cover the loss. Thus, Personal Auto Policies carry Uninsured Motorists Coverage, which provides coverage for losses an insured suffers in an accident caused by a person with neither Liability Coverage or financial resources.

On the surface, one would be led to believe that Uninsured Motorists Coverage would apply only to cases where the liable driver is known, and has no insurance. However, such coverage also applies to hit-and-run drivers, who are not known, and to known drivers who do have insurance, but with an insurer which does not have the funds with which to pay claims for which it is responsible.

The Insuring Agreement for Part C says:

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury"

1. Sustained by an "insured," and
2. Caused by an accident.

By compensatory damages is meant that amount which will cover the financial loss suffered by the injured person or persons. Uninsured Motorists Coverage does NOT pay for damages such as pain and suffering. Also, by stating that losses are covered only if the "insured" has LEGAL entitlement to them, the insurer is bound to pay only those claims for which an uninsured driver IS found liable, or, as in the case of a hit-and-run driver, clearly would have been found liable.

In an earlier section, we discussed the concept of negligence, and how it is defined and determined by courts. For an insured to collect under Uninsured Motorists Coverage, negligence as understood by courts must be established in some degree. Negligence can range from ordinary negligence to gross negligence to gross and wanton negligence, with the difference among them being that ordinary negligence equates to carelessness—for example, misjudging the speed with which another vehicle is approaching an intersection and going through it, which gross negligence equates with reckless driving—taking chances that ultimately result in fatal accidents. Gross and wanton negligence equates to a driving with absolutely no attention paid to the care required to protect others, as when drivers who are intoxicated get behind the wheel of a car.

A further condition is imposed if the insured is to collect for damages suffered in an accident caused by an uninsured driver.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle."

Nor will the insurer honor judgments for damages that result from a suit the insured brought against the alleged negligent party without the insurer's consent.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

The reasoning behind this statement is simple. If insurers were to honor judgments arising out of suits they had neither consented to nor were a party to, they would be put in the untenable situation of having no control over how their resources were used. And further, because insurers are specialists in their particular insurance field, they are far more likely to understand all the nuances of a particular case than the drivers who are involved.

A clear definition of just who is considered an "insured" is essential in any policy. The definition of who is covered by Uninsured Motorists Coverage is as follows:

B. "Insured" as used in this Part means:

1. You or any "family member."
2. Any other person "occupying" "your covered auto."
3. Any person for damages to that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

B.1. and B.2. are clear. B.3. refers to situations in which a person is under the legal care of another person, as in the case of minor children, and persons with certain mental conditions or defects. In such cases, the parent or other party legally responsible for the injured person's care would be entitled to payment for the damages suffered.

Now comes the definition of an uninsured motor vehicle, which is careful to cover every possible element of an accident in which such a vehicle is involved, including drivers, vehicles, and insurers.

C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.

2. To which a bodily injury liability bond or policy applies at the time of the accident. In this case its limit for bodily injury liability must be less than the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged.

3. Which is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:
   a. You or any "family member";
   b. A vehicle which you or any "family member" are "occupying"; or,
   c. "Your covered auto."

4. To which a bodily injury liability bond or policy applies at the time of the accident but the bonding or insuring company :
   a. Denies coverage; or
   b. Is or becomes insolvent.

This definition covers the various possibilities under which an insured may collect for damages caused by an uninsured driver. It covers situations in which there is no insurance, situations in which there is insurance, but it does not meet the minimal requirements of the state in which the damaged auto is primarily garaged, and also situations in which there is insurance, or there is a bond, but the company issuing the insurance/bond claims it does not cover the accident, or is or becomes insolvent. And, it specifically states that when an accident is caused by a hit-and-run vehicle whose operator or owner cannot be identified, the policy will pay for damages.

Some vehicles are not considered to be "uninsured motor vehicles," and we find these exceptions in the following:

HOWEVER, "UNINSURED MOTOR VEHICLE" DOES NOT INCLUDE ANY VEHICLE OR

EQUIPMENT:

1. Owned by or furnished or available for the regular use of you or any "family member."
2. Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer which is or becomes insolvent.
3. Owned by any governmental unit or agency.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.

Some of the vehicles described above—for example, trains which operate on rails, or bulldozers and other such equipment which run on crawler treads, would be covered by other types of policies. Vehicles owned by or furnished or available for regular use by you or any "family member" are covered under the Medical Payments section of the PAP.

If a vehicle owned by a governmental unit or agency causes an accident, even if the vehicle itself is uninsured, the governmental unit/agency has resources which may be tapped. Nor does the policy cover injuries sustained in an accident with a vehicle that is meant to be used off public roads, and is indeed not on a public road—for example, a golf cart. The statement excluding vehicles owned by a self-insurer means that since the an individual or corporation self-insuring its risks must have resources to guarantee its ability to pay any losses it becomes liable for, the PAP will not pay—unless, as is stated, the self-insurer is or becomes insolvent.

The definition of an uninsured motor vehicle thus states what vehicles are included in the definition, and which are excluded. But in addition to exclusion by definition, Part C also has an Exclusions section, which we will examine now.

A. WE DO NOT PROVIDE UNINSURED MOTORISTS COVERAGE FOR "BODILY INJURY" SUSTAINED:

   1. By an "insured" while "occupying," or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under the policy. This includes a trailer of any type used with that vehicle.
   2. By any "family member" while "occupying" or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

B. WE DO NOT PROVIDE UNINSURED MOTORISTS COVERAGE FOR "BODILY INJURY" SUSTAINED BY ANY "INSURED":

   1. If that "insured" or the legal representative settles the "bodily injury" claim without our consent.
   2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This exclusion (B.2.) does not apply to a share-the-expense car pool.
   3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so.

These exclusions make it clear that is the loss is caused by a vehicle owned by the insured, but which is not listed on the Declarations Page of the policy, and is not a recently purchased vehicle which is temporarily covered, no payment will be made. Further, no bodily injury claim settled without the insurer's consent will be honored, nor will claims be paid if the vehicle in question was being used as a vehicle for hire. And finally, if the vehicle in question is being used illegally, no payment will be made. And, as in the Exclusions section of Medical Payments Coverage, there is an Exclusion in Part C preventing the possibility of someone collecting double payments for the same loss.

C. THIS COVERAGE SHALL NOT APPLY DIRECTLY OR INDIRECTLY TO BENEFIT ANY INSURER OR SELF-INSURER UNDER ANY OF THE FOLLOWING OR SIMILAR LAW:

   1. Workers' compensation law; or
   2. Disability benefits law.

The last exclusion limits any payments made under Part C by stating:

D. WE DO NOT PROVIDE UNINSURED MOTORISTS COVERAGE FOR PUNITIVE OR EXEMPLARY DAMAGES.

This Exclusion refers to situations in which an uninsured driver who is found liable for an accident is charged with, not only the amount necessary to pay for medical expenses, repair of the vehicle, and so on, but punitive damages—amounts intended to punish the negligent driver. Depending upon the law followed in the jurisdiction in which the accident occurs, insurers may be required to pay punitive damages, or they may be prohibited from paying them. In any case, even where insurers are required to pay punitive damages, that requirement would apply only to situations in which their own insureds were found at fault, not to situations where an uninsured driver is at fault.

As in every section of the Personal Auto Policy, Part C—Uninsured Motorists Coverage also sets forth limits as to the amount it will pay. You will note that there is a similarity between the language used in the Medical Payments Coverage section and the language used here:

A. The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for all damages resulting from any one accident. This is the most we will pay regardless of the number of:

   1. Insureds;
   2. Claims made;
   3. Vehicles or premiums shown in the Declarations; or
   4. Vehicles involved in the accident.

The limit of liability shown in the Declarations may be that which is legally required by the state, or that which the insurer insists upon, or, by choice of the insured, it may be higher. Higher limits of liability of course require a higher premium to be paid. Two other exclusions specifically prohibit duplicate

payments. They are worded thus:

B. No one will be entitled to receive duplicate payments for the same elements of loss under this coverage and:

   1. Part A or Part B of this policy; or
   2. Any Underinsured Motorists Coverage provided by this policy.

C. We will not make a duplicate payment under this coverage for any elements of loss for which payment has been made by or on behalf of persons or organizations who may be legally responsible.

NOTE THE INTRODUCTION OF A NEW TERM IN B.2.; UNDERINSURED MOTORISTS COVERAGE. Such Coverage is optional, and is not the same as Uninsured Motorists Coverage. Underinsured Motorists Coverage takes care of the difference in the amount of insurance a driver found legally liable for an accident carries, and the actual cost of the losses incurred. It comes into play ONLY in cases where an at-fault driver does carry insurance, but that insurance is inadequate to cover the loss, and does not have financial resources which can be tapped to pay the difference.

Insurers in Exclusion C state that they will subtract any payments an injured party received from the person/s or organization/s legally liable for the loss from any payments they make under Uninsured Motorists Coverage. For example, Mary is in an accident with a person who does not have liability insurance, nor does he/she have financial resources to pay for the damage caused. However, the liable party has a wealthy friend who offers to pay a part of the loss. Under the terms of the policy, Mary is obligated to report this partial payment to the insurer, who will then deduct it from the amount they will pay. (Note that in this instance, since the friend has no LEGAL responsibility to pay any of the loss, neither Mary nor the insurer can go after him/her for more funds.)

The final clause under Limit of Liability, clause D, restricts payment where there are other sources that are obligated to pay.

D. WE WILL NOT PAY FOR ANY ELEMENT OF LOSS IF A PERSON IS ENTITLED TO RECEIVE PAYMENT FOR THE SAME ELEMENT OF LOSS UNDER ANY OF THE FOLLOWING OR SIMILAR LAW:

   1. Workers' compensation law; or
   2. Disability benefits law.

The technical language used in insurance policies—and, indeed, in other legal contracts—sometimes seems to confuse more issues than it clarifies. All of the language we have been reading in Part C—Uninsured Motorists Coverage—has one intent, and one intent only—to protect the insured while making certain that the insurer does not make payments that could be and should be made by another party, and or for a loss that did not occur under the specific requirements set out.

The entire financial stability of insurers depends, in large part, on how accurately they can predict losses,

so that adequate reserves are available to cover them. Uninsured motorists are like loose cannons—one never knows when they will go off, or how much damage they will produce. By making very specific rules about who will be covered, what will be covered, and how it will be covered, insurers are insulating themselves as well as they can from the type of risk uninsured motorists create.

Other Insurance is always a factor in a Personal Auto Policy: Part C is the same as Parts A and B in this respect.

If there is other applicable insurance available under one or more policies or provisions of coverage:

1. Any recovery for damages under all such policies or provisions of coverage may equal but not exceed the highest applicable limit for any one vehicle under any insurance providing coverage on either a primary or excess basis.

For example, let us assume that John is killed in a hit-and-run accident. Besides his PAP, which has Uninsured Motorist Coverage, John also has an accidental death policy with a face value of $3500. The final expenses connected with John's funeral amount to $8500. John's automobile insurer would pay only $5,000, representing the amount between the accidental death policy and the actual costs.

2. Any insurance we provide with respect to a vehicle you do not own shall be excess over any collectible insurance providing coverage on a primary basis.

For example, Harry borrows a neighbor's automobile to get gas for his car. While he is driving to the gas station, he is in an accident caused by a driver who has no insurance. In this instance, since Harry drove the neighbor's car with the neighbor's permission, the neighbor's insurance would be primary in paying for Harry's injuries, and his insurer would pay only if the neighbor's limit of liability was not sufficient to cover the loss.

The situations which Uninsured Motorists Coverage is designed to take care can be more ambiguous than other accidents, simply because there are so many ramifications to be considered. True, the at-fault driver might not have insurance, but there might be other assets which the insurer believes should be tapped. The insured might prefer to avoid the trouble involved in collecting from the at-fault driver, and wish to be paid directly by his/her insurer. Or, there might be disputes as to which of several policies is primary and which is excess. Thus, there is an Arbitration provision within the Uninsured Motorists Coverage section which provides a way for disagreements between an insured and his/her insurer to be resolved.

A. If we and an "insured" do not agree:

   1. Whether that "insured" is legally entitled to recover damages; or
   2. As to the amount of damages which are recoverable by that "insured"; from the owner or operator of an "uninsured motor vehicle," then the matter may be arbitrated. However, disputes concerning coverage under
   3. This Part may not be arbitrated.

The arbitration process is described:

Both parties must agree to arbitration. If so agreed, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction.

B. Each party will:

1. Pay the expenses it incurs; and
2. Bear the expenses of the third arbitrator equally.

C. Unless both parties agree otherwise, arbitration will take place in the county in which the "insured" lives. Local rules of law as to procedure and evidence will apply. A decision agreed to by two of the arbitrators will be binding as to:

1. Whether the "insured" is legally entitled to recover damages; and
2. The amount of damages. This applies only if the amount does not exceed the minimum limit for bodily injury liability specified by the financial responsibility law of the state in which "your covered auto" is principally garaged. If the amount exceeds that limit, either party may demand the right to a trial. This demand must be made within 60 days of the arbitrators' decision. If this demand is not mad, the amount of damages agreed to by the arbitrators will be binding.

It may seem strange that an insured and his/her insurer could be adversaries in a legal process. However, we must remember that certain types of insurance are much more susceptible to emotional response and to a variety of opinions as to what is just than are others. A life insurance policy, for example, has a face value which will be paid so long as the death is not a suicide in the first two years after the policy goes into effect, and so long as a death actually occurred. (Life insurance fraud is an increasing problem.) A loss by a fire is fairly easy to calculate. But where damage to both driver and vehicle is concerned, logic often flies out the window, and all the insured can think about is the inconvenience the accident has caused, and the damage to a perhaps much-favored automobile, which, in the driver's eyes, will never be the same even after repairs. And when an insured in a less than reasonable state of mind must collect from his/her own insurer, you can see the problems that will result. Instead of being a friend in time of need, instead of being a solution to problems, the insurer is now imposing all sorts of conditions before it will honor the loss. Thus, arbitration is a necessary element when Uninsured Motorists Coverage offered with a Personal Auto Policy.

UNIT SIX: COVERAGE FOR DAMAGE TO YOUR AUTO

The three previous sections of the Personal Auto Policy have provisions which take care of harm to other drivers and to their vehicles, provide for medical payments, and protect an insured against losses caused by uninsured drivers. We will now look at Part D—Coverage for Damage to Your Auto, which is designed to protect the insured automobile itself.

Note that while most states require all owners of vehicles to carry liability insurance on that vehicle, Physical Damage Coverage or Collision Coverage, as this type coverage is also called, is not legally required. It is optional insurance, and whether or not an insured chooses to purchase it often depends upon the age and condition of the vehicle itself.

The Insuring Agreement for Part D reads:

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto," including their equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision," only the highest applicable deduction will apply. We will pay for loss to "your covered auto" caused by:

   1. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
   2. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

If there is a loss to a "non-owned auto," we will provide the broadest coverage applicable to any "your covered auto" shown in the Declarations.

Let us describe a situation which explains clause A. The Brown family owns three automobiles, two of which are of fairly recent model and year, one of which is more or less a "fishing car." While they carry liability insurance on all three cars, they only carry Collision on the two newer ones. The Browns go on vacation, flying to a resort and renting an automobile at the airport. They have an accident in that non-owned vehicle. Because they carry Collision insurance on two autos, that coverage is extended to this non-owned vehicle. Even if they had carried Collision insurance on only one auto, the coverage would have been extended. And, if the Browns had not purchased collision insurance at the time they rented the auto, their insurance would be primary. If they had purchased insurance at the time of rental, their insurance would be excess, paying the difference between the limits on the policy purchased at the rental

agency and the cost of the loss.

Remember that the definition of a "non-owned auto" includes vehicles which are used as temporary substitutes for an insured vehicle because the insured vehicle has broken down, is being repaired or serviced, has been lost or destroyed.

Not only is damage to the covered auto covered, but also direct and accidental loss of or to any equipment which is normally included in any new vehicle, or which has been permanently installed. For example, Jack removed the plain hubcaps that came with his vehicle and replaced them with more elaborate ones. Since hubcaps are normal equipment on an automobile, these hubcaps are covered should a loss occur through collision.

The definition of "collision", like other definitions in a Personal Auto Policy, both includes and excludes causes of accidents.

B. "Collision" means the upset of "your covered auto" or a "non-owned auto" or their impact with another vehicle or object.

   Loss caused by the following is considered other than "collision":

   1. Missiles or falling objects;
   2. Malicious mischief or vandalism;
   3. Fire;
   4. Riot or civil commotion;
   5. Theft or larceny;
   6. Contact with bird or animal;
   7. Explosion or earthquake;
   8. Breakage of glass.
   9. Windstorm;
   10. Hail, water or flood;

If breakage of glass is caused by a "collision," you may elect to have it considered a loss caused by "collision."

Losses excluded from Collision Coverage may be covered by Other Than Collision Coverage, which is terms comprehensive coverage. It is important to remember that an insured may not purchase Collision Coverage unless he/she has first purchased Other Than Collision Coverage. And, an insured may purchase ONLY Other Than Collision Coverage, if he/she so desires. BOTH types of coverage for damage to "your covered auto" are written with deductibles—amounts for which the insured is liable before the coverage pays. In Personal Auto Policies, no matter how many losses an insured may sustain, the deductible will have to be paid for each loss before the insurer is liable for the balance. In terms of the two types of coverage being discussed, Other Than Collision Coverage has smaller deductibles than does Collision Coverage: occasionally, it is written with no deductible at all.

If we examine the list of causes for damage other than collision, we see that what they have in common is the unpredictability of occurrence, and the unpredictability of the size of the loss. Most insureds will go through a lifetime without experiencing a loss due to one of these causes. Even breakage of glass is more likely to be damage to a windshield because a rock or other hard object thrown up by the tires of another vehicle strikes and cracks the windshield, or leaves a "pock-mark."

Other Than Collision Coverage will pay for damages to autos when stolen, for damages that occur when a vehicle hits a deer or other large animal running across the road, for damages that result from a bird flying into the windshield and blocking the driver's view, thus causing him/her to swerve off the road, and a host of other unusual circumstances.

The final portion of the Insuring Agreement for Part D is this:

C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer: not owned by or furnished or available for the regular use of you or any "family member: while in the custody of or being operated by you or any "family member"; or

2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:

   a. Breakdown;
   b. Loss;
   c. Repair;
   d. Destruction;
   e. Servicing.

Note that if an insured has Part D coverage on several vehicles, but carries more on one of them than on the others, the coverage available to the vehicle with the broadest coverage will be applied to the non-owned auto, should it be damaged in a collision or by some cause other than collision.

Transportation expenses are now offered when an insured is deprived of the use of a covered vehicle because of damage caused by collision or other than collision. Before June, 1994, such coverage had been offered when the covered auto had been stolen, but not for other causes that removed it from the insured's use. Still, such coverage must be noted in the Declarations Page of the policy. Normally, the transportation clause offers that:

In addition, we will pay, without application of a deductible, up to $15 per day, up to a maximum of $450, for:

1. Temporary transportation expenses incurred by you in the event of a loss to "your covered auto." We will pay for such expenses if the loss is caused by:

a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for that auto.
b. "Collision" only if the Declarations indicate that Collision Coverage is provided for that auto.

2. Loss of use expenses for which you become legally responsible in the event of loss to a "non-owned auto." We will pay for loss of use expenses if the loss is caused by:

   a. Other than "collision" only if the Declarations indicate that Other Than Collision Coverage is provided for any "your covered auto."
   b. "Collision: only if the Declarations indicate that Collision Coverage is provided for any "your covered auto."

By "loss of use" expenses, the insurer refers to, for example, the loss an automobile rental firm would suffer because an otherwise rentable car is out of service. Or, in another example, perhaps an insured has borrowed a pickup truck from his neighbor, a truck the neighbor used to take produce from his garden to a local farmer's market. If the neighbor cannot use the truck because of damage, he would lose money because he could not then transport his produce. The limit for loss of use expenses is the same as for transportation: $15 a day, up to $450 maximum payment.

Should theft be involved in the loss, the insurer makes specific provision for that type loss:

If the loss is caused by a total theft of "your covered auto" or a "non-owned auto," we will pay only expenses incurred during the period:

1. Beginning 48 hours after the theft; and
2. Ending when "your covered auto" or the "non-owned auto" is returned to use or we pay for its loss.

However, nothing in this provision is intended to raise the limits of the maximum amount the insurer will pay: $450.

The time period that must elapse before the insurer pays transportation/loss of use expenses is less if the cause of loss is something other than theft.

If the loss is caused by other than theft of a "your covered auto" or a "non-owned auto," we will pay only expense beginning when the auto is withdrawn from use for more than 24 hours.

Our payment will be limited to that period of time reasonably required to repair or replace the "your covered auto" or the "non-owned auto."

The difference in time periods before the policy begins to pay can be explained by the fact that when a car is stolen, the police will sometimes locate it within 48 hours, particularly if it had been taken by a joy-riding teen-ager. And there are cases where a car reported stolen had been borrowed by a family member who neglected to tell the owner he/she was taking the car. In other causes of loss, the loss is clear and the payments begin within 24 hours. As far as the "time reasonably required to repair or

replace" the damaged vehicle, the $15 per day, $450 maximum provides payment for a month, which should be long enough for a vehicle which can be repaired to be restored to service.

The exclusions under Coverage for Damage to Your Auto mirror in some ways those found in Liability Coverage and Medical Payments Coverage. Let us examine these now.

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This exclusion (1.) does not apply to a share-the-expense car pool.
2. Damage due and confined to:

    a. Wear and tear;
    b. Freezing;
    c. Mechanical or electrical breakdown or failure; or
    d. Road damage to tires.

This exclusion (2.) does not apply if the damage results from the total theft of "your covered auto" or any "non-owned auto."

3. Loss due to or as a consequence of:

    a Radioactive contamination;
    b. Discharge of any nuclear weapon (even if accidental);
    c. War (declared or undeclared)
    d. Civil war;
    e. Insurrection; or:
    f. Rebellion or revolution.

4. Loss to:

    a. Any electronic equipment designed for the reproduction of sound, including, but not limited to:
        (1). Radios and stereos;
        (2). Tape decks; or
        (3). Compact disc players;
    b. Any other electronic equipment that receives or transmits audio, visual or data signals, including but not limited to:
        (1). Citizens band radios;
        (2). Telephones;
        (3). Two-way mobile radios;
        (4). Scanning monitor receivers;
        (5). Television monitor receivers;
        (6). Video cassette recorders;

(7). Audio cassette recorders; or

(8). Personal computers;

c. Tapes, records, discs, or other media used with equipment described in a. or b.; or

d. Any other accessories used with equipment described in a. or b.

However, the entire exclusion 4. does not apply if the equipment (1)is designed solely for the reproduction of sound, (2)has been permanently installed in the auot or (3)can be removed from a housing unit which is permanently installed in the auto.

This exclusion (4.) does not apply to:

a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided:

(1). The equipment is permanently installed in "your covered auto" or any "non-owned auto"; or

(2). The equipment is:

(a). Removable from a housing unit which is permanently installed in the auto;

(b). Designed to be solely operated by use of the power from the auto's electrical system; and

(c). In or upon "your covered auto" or any "non-owned auto"at the time of the loss.

b. Any other electronic equipment that is:

(1). Necessary for the normal operation of the auto or the monitoring of the auto's operating systems; or

(2). An integral part of the same unit housing any sound reproducing equipment described in a. and permanently installed in the opening of the dash or console of "your covered auto" or any "non-owned auto" normally used by the manufacturer for installation of a radio.

5. A total loss to "your covered auto" or any "non-owned auto" due to destruction or confiscation by governmental or civil authorities.

This exclusion (5) does not apply to the interest of Loss Payees in "your covered auto."

6. Loss to a camper body or "trailer" you own which is not shown in the Declarations. This exclusion (6.) does not apply to a camper body or "trailer: you:

a. Acquire during the policy period; and

b. Ask us to insure within 30 days after you become the owner.

7. Loss to any "non-owned auto" when used by you or any "family member: without a reasonable belief that you or that "family member" are entitled to do so.

8. Loss to:

a. Awnings or cabanas; or
b. Equipment designed to create additional living facilities.

9. Loss to equipment designed or used for the detection or location of radar or laser.

10. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:

a. Special carpeting and insulation, furniture or bars;
b. Facilities for cooking and sleeping;
c. Height-extending roofs; or
d. Custom murals, paintings or other decals or graphics.

11. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in the "business" of:

a. Selling;
b. Storing;
c. Repairing;
d. Parking;
e. Servicing;

vehicles designed for use on public highways. This includes road testing and delivery.

12. Loss to any "non-owned auto" being maintained or used by any person while employed or otherwise engaged in any "business" not described in exclusion 11. This exclusion (12.) does not apply to the maintenance or use by you or any "family member: of a "non-owned auto: which is a private passenger auto or "trailer."

13. Loss to :your covered auto: or any "non-owned auto," located inside a facility designed for racing, for the purpose of:

a. Competing in; or
b. Practicing or preparing for; any prearranged or organized racing or speed contest.

14. Loss to, or loss of use of, a "non-owned auto: rented by:

a. You; or
b. Any "family member";

if a rental vehicle company is precluded from recovering such loss or loss of use, from you or that "family member," pursuant to the provision of any applicable rental agreement or state law.

We have listed all 14 exclusions before discussing them because reading over them is an object lesson in how the insurance industry responds to changing times. Twenty years ago, a large number of these

exclusions would not have been necessary, because the items they cover did not exist. And, we can presume that many of these exclusions came after the fact—after an insured had filed a claim for loss.

Exclusions 1, 3, 6, 7,11, 12, and 13 are like exclusions found in Liability and Medical Payments Coverages. Exclusions 2, 4, 5, 8, 9, 10 and 14 are those which fit particular situations. We will discuss these now.

Exclusion 2 relieves the insurer from any responsibility to pay for damage caused by the normal use of an auto, and which should be and are expected by people who own and operate motor vehicles.

Exclusions 4 is careful to list the very long list of "electronic equipment designed for the reproduction of sound" which is now available. Note that if any of this equipment has been permanently installed in the auto, either at the factory or at a later date, the exclusion does not apply. While car thieves have been known to rip out factory-installed audio equipment, that is less likely than the probability that they will steal equipment lying on the car seat.

Exclusion 5 is an interesting reflection on a society in which the seizure of property of persons believed to be dealing in drugs is permitted by federal and state law enforcement agencies. Note, however, that if there is a mortgage on the seized vehicle, the insurer pay the amount due on that loan, even if the car was seized because of the illegal activities of the owner.

Exclusion 8 recognizes the ingenuity with which people adapt vehicles for their own particular uses through the use of awnings, cabanas, and even tents which can make their vehicles more versatile. However, any such items will not be covered by the PAP, though they may be covered under a homeowners policy.

Exclusion 9 recognizes that many drivers do install equipment that will detect police radar or laser equipment intended to monitor the speed of vehicles traveling on a particular roadway. Because such equipment is not even an option when a person purchases a car, because it is not audio equipment, and because the most usual reason for purchasing such equipment is to evade detection when going over the speed limit, insurers will not pay for its loss.

Exclusion 10 covers the many amenities owners of pickups and van use to customize their vehicles, or to expand their utility. As we shall see later, it may be possible for such amenities to be covered with an endorsement, but they are not covered as part of the standard PAP. The reasoning behind a refusal to consider customized amenities part of a standard policy is this: a Personal Auto Policy is designed to cover vehicles the main purpose of which is transportation. Many of the amenities owners add to pickups and vans move away from simple transportation to other objectives, some of which may present a higher risk to the insurer. For example, when a van is customized so that a party can be going on while it is traveling, the driver may well be distracted from his/her primary occupation—to operate the vehicle in a safe and responsible manner.

Finally, Exclusion 14 covers a situation in which a rental company's right to recover the loss to a rental vehicle is waived, either by the rental contract itself, or by the law of the state in which the rental company operates.

The Limits of Liability under Coverage for Damage to Your Auto are often a source of disgruntlement for insureds, because the insurer has no obligation to pay for full replacement, or even to restore damaged or lost property to the condition it was in before the loss occurred. As you will remember, we opened this book with a discussion of this very situation, pointing out issues on both sides of the question.

Section A under Limit of Liability states the insurer's obligation clearly:

A. Our limit of liability for loss will be the lesser of the:

   1. Actual cash value of the stolen or damaged property;

   2. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to any "non-owned auto" which is a trailer is $500.

B. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total loss.

C. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

It is clause B. that of course causes the most dissension between insurers and insureds, because even if a vehicle is old, if it is still providing reliable transportation the amount an insurer is bound to pay under the policy may not be sufficient to allow the insured to purchase equally reliable transportation. From the insurer's point of view, however, clause B is a fiscally responsible and reasonable method of insuring that the insured receives some payment, but that the insurer is not "held up" by loss payments that are far larger than the premium paid represents.

Indeed, it is because an insurer has a duty to ALL of its policy-holders to remain solvent that rules about payment for loss are so stringent. These rules are even more necessary in the field of auto insurance, because of the character of the risk of loss involved. As we pointed out earlier, no matter how carefully an insurer screens the risks a particular applicant presents, it cannot accurately determine the risks the OTHER drivers pose to its insured.

When paying loss, the insurer has two choices: it may pay in money, or it may repair/replace the property.

We may pay for loss in money or repair or replace the damaged or stolen property. We may, at our expense, return any stolen property to:

1. You; or
2. The address shown in this policy.

If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value.

If we pay for the loss in money, our payment will include the applicable sales tax for the damaged or stolen property.

It is possible for an insured to purchase the property from the insurer, if payment has been made in money. The purchase price will be the agreed or appraised value. For example, John Smith's automobile is stolen. Although it is found and returned, it has been seriously damaged. His insurer opts to pay him in money for the loss, and has an agreed/appraised price on the damaged vehicle. John's son is a car buff and amateur mechanic. He wants the car to work on, and his father purchases the vehicle from the insurer at their set price.

The No Benefit to Bailee clause in Part D—Coverage for Damage to Your Auto, takes care of situations in which an insured has parked or stored his/her vehicle in a facility designed for that purpose—an airport parking lot, a parking garage in a business district, etc. The firm storing the vehicle is the bailee. Legally, the bailee is responsible for property owned by others that it has temporary possession of. If a vehicle is damaged while in a bailee's care, the insurer will not make any payment to that bailee for property belonging to it that may have been involved in the accident causing the loss. For example, Jane's vehicle is stored in a parking garage near her place of work. Her vehicle is parked next to a tow truck owned by the garage, and used to tow vehicles which are illegally parked. A driver taking his vehicle down the ramp loses control, hits Jane's vehicle, and sends it crashing into the tow truck. The driver flees and cannot be identified. Jane's coverage would pay for the damage to her auto, but not for the truck belonging to the bailee. And, usually, Jane's insurer will file a claim against the bailee to cover the amount it paid out to Jane. Note that public parking facilities such as airport parking lots and garages have posted signs proclaiming that they are not responsible for items left in the vehicles under their charge. A wise car owner will remove items that would not be covered under any of his/her insurance policies from his/her car before leaving it in such a facility. And a careful agent will so instruct his/her clients.

The Other Sources of Recovery provision is similar to the Other Insurance provisions in other sections of the PAP.

It states:

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:

1. Any coverage provided by the owner of the "non-owned auto,"
2. Any other applicable physical damage insurance;
3. Any other source of recovery applicable to the loss.

Finally, there is an Appraisal provision in Part D, which is intended to resolve differences between the

insured and the insurer over the actual amount of the loss.

A. If we and you do not agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will select a competent appraiser. The two appraisers will select an umpire. The appraisers will state separately the actual cash value and the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the expenses of the appraisal and umpire equally.

This language reflects the language in the Arbitration provision of Uninsured Motorists Coverage. The final clause of the Appraisal provision states:

B. We do not waive any of our rights under this policy by agreeing to an appraisal.

In other words, other conditions required by the policy, such as the payment of premiums, are not stopped while the dispute is resolved.

UNIT SEVEN: DUTIES AFTER AN ACCIDENT OR LOSS

Until a loss occurs, the relationship between the insured and the insurer is distant and passive. The insured pays the required premiums when they are required, and the insurer maintains loss reserves to cover any insured risks, as well as the administrative procedures and personnel to effectively address a loss. But when a loss occurs, the relationship becomes immediate and active. Like other insurance policies, the Personal Auto Policy states quite clearly what duties an insured has after a loss. Because this statement of duties is part of a legal contract, the duties are legally binding on the insured, and unless they are followed as required, payment for loss may be denied. Let us study Part E—Duties After an Accident or Loss.

WE HAVE NO DUTY TO PROVIDE COVERAGE UNDER THIS POLICY UNLESS THERE HAS BEEN FULL COMPLIANCE WITH THE FOLLOWING DUTIES:

A. We must be notified promptly of how, when and where the accident or loss happened. Notice should also include the names and addresses of any injured persons and of any witnesses.

Usually, an insurer will provide a "quick-list" or "check-list" of duties that an insured can carry in the

glove compartment of his/her car. Also, in most jurisdictions, it is necessary that the police be called if there is any physical damage to any auto, or injury to any person. With the prevalence of scams in the field of automobile insurance, a wise driver will insist on police being called even in cases where the other driver promises no action will be taken, or that he/she will pay for the minor damage himself/herself. Nor should an insured ever volunteer the information that he or she was at fault, as that question is to decided by the insurers involved, and, possibly, a court. Even where there is no evident bodily injury or property damage, an insured is obligated to inform the insurer that an accident occurred, and to furnish the insurer with the information noted above. Where there is a police report, the insured should make certain that a copy of that report is put in his/her insurer's hands. While the insurer does not define the word "promptly," we can take it as a given that it means—as soon as possible. Any delay in reporting a loss can jeopardize efforts to determine accurately what actually occurred, and can end in the claim being denied. In cases of severe injury or death, it is understandable that emotions could prevent family members from remembering to notify the insurer of the loss, but in any case, promptness in reporting an accident is essential.

ONCE A LOSS HAS BEEN REPORTED, THE INSURED HAS FURTHER DUTIES WHICH ARE DESCRIBED THUS:

B. A person seeking any coverage must:

1. Cooperate with us in the investigation, settlement or defense of any claim or suit.
2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.
3. Submit, as often as we reasonably require:
   a. To physical exams by physicians we select. We will pay for these exams.
   b. To examination under oath and subscribe the same.
4. Authorize us to obtain:
   a. Medical reports; and
   b. Other pertinent records.
5. Submit a proof of loss when required by us.

These duties seem normal and understandable to some people, while to others they seem arbitrary and perhaps, even, an invasion of privacy, when it comes to medical reports. Issues that have no bearing at all on the claim under question often come into play where losses sustained through vehicular accident are involved. It is thus important that insureds read and understand each part of their PAP at the time of delivery, so that if they do sustain a loss, they will understand the importance of absolute and complete compliance with the duties the policy requires. People can get very set in their ways. They may want their own physician to perform the exam, or they may say that providing all that paperwork is too much to expect when they are so stressed. But unless these duties are performed to the letter, coverage can be denied.

The claim forms sent to the insured once a loss has been reported will take him/her though the steps necessary to satisfy these duties to which they are legally bound.

SHOULD THE LOSS BE THE RESULT OF AN ACCIDENT INVOLVING AN UNINSURED MOTORISTS, ONE FURTHER DUTY IS REQUIRED:

C. A person seeking Uninsured Motorists Coverage must also:

1. Promptly notify the police if a hit-and-run driver is involved.
2. Promptly send us copies of the legal papers if a suit is brought.

Hit-and-run drivers have committed a crime, and thus, police should be brought in to look for him/her. The driver may have insurance or other means with which to pay the loss; even if he/she does not, legal charges can be made.

The final provision of Part E deals with Duties Regarding Coverage for Damage to Your Auto.

D. A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss to protect "your covered auto" or any "non-owned auto" and their equipment from further loss. We will pay reasonable expenses incurred to do this.
2. Promptly notify the police if "your covered auto" or any "non-owned auto" is stolen.
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

Item one in this provision requires the insured to take the damaged vehicle to a garage or other safe place, either by driving it there if it is driveable, or having it towed. Item two requires that police be notified that a crime has been committed. With the increase of auto insurance fraud, with vehicles being "stolen" in order that claims may be made, it has become even more essential that police be called promptly to report a loss. And, as is only reasonable, the adjuster for the insurer must inspect and appraise the damaged property before anything has been done to it, because otherwise, no accurate and equitable assessment of the damage can be made.

We saw in the section covering Part D—Damage to Your Auto—a broad array of items excluded from that coverage, and noted at the time that some of these could be covered by endorsement. An endorsement is a provision attached to a policy to cover a particular need; it will increase the premium in accordance with standard rating practice. In terms of legally binding an insurer, an endorsement has just as much force as does the contract itself, much as a codicil in a will is as legally binding as the original document itself. And, where there seems to be a difference between what the contract says, and what the endorsement says, the endorsement will be determined to rule.

There are many types of endorsements. They can be created to meet highly unusual circumstances, or they may become fairly standard as the circumstances they cover become more usual. In this study course, we will look at those which more commonly appear, and which conform to the ISO 1994 revisions regarding PAP's.

The ISO will furnish copies of its wording of endorsements upon request.

An Amendatory or Change Endorsement (PP 00 o6 06 94) is one which revises a Personal Auto Policy issued under the April 1986 or December 1989 ISO edition to the coverage defined in the June 1994 edition.

Endorsement PP 03 02 (Extended Transportation Expenses Coverage) was discussed in Part D: this endorsement revised prior provisions under which transportation/loss of use expenses were paid only when a covered auto or non-owned auto was stolen. This endorsement specifically extends payment of said expenses when a covered auto or non-owned auto cannot be used because of collision or other than collision loss. Note that the June 1994 edition of the Personal Auto Policy includes this coverage if physical damage covered is carried on a covered or non-owned auto. However, the endorsement can still be used to increase the coverage from that automatically included in the policy.

PP 03 03 (Towing and Labor Costs Coverage) takes care of the cost of towing a disabled covered or non-owned auto if Physical Damage Coverage is listed on the Declarations Page, and if the auto in question is covered by the terms of the policy. The labor costs are paid only for any labor involved with getting the disabled vehicle towed from the scene, not for labor that might take place during repairs.

PP 03 06 (Extended Non-Owned Coverage for Named Individual is used in cases where the owner of a covered auto wishes to extend liability protection to a particular, named individual when he/she is using or occupying the auto in question, which he/she does not own for any business except the garage business. This endorsement furnishes both liability protection and medical payments coverage for any losses arising from the liability for an accident involving any auto furnished or available for the insured's regular use. For example, Margaret Harris is an attorney practicing by herself. She employs a runner to do errands for her, and allows the runner to use a private passenger auto Margaret owns. Margaret may purchase PP 03 06 to extend the coverages cited to that individual.

PP 03 07 Covered Property Coverage is an endorsement which will cover certain items excluded in Part D—Coverage for Damage to Your Auto, namely, those related to loss occurring to cabanas, awnings, tents, or equipment which provides additional living space. This endorsement not only protects the owner of such items for direct and accidental loss, but also names the covered auto or autos, the amount of coverage, the deductible, and the premium to be paid for the endorsement.

PP 03 09 (Split Liability Limits) is an endorsement which addresses the fact that while PAP's are normally written with one limit of liability for all the damages one auto accident may cause, there are states as well as insurance companies that do permit this endorsement, which effectively splits the limits of liability between Bodily Injury and Property Damage with a Split Liability Limits endorsement. A policy so endorsed would then show the limits of liability on a per person and per accident basis. For example, the per person limit might be $75,000, and the per accident limit $200,000. If three persons were injured in the same accident, and if each of their claims was over the $75,000 limit, then the maximum per accident limit of $200,000 would have to be divided among them. The insured would be responsible for whatever remained after this maximum was paid.

PP 03 11 (Underinsured Motorists Coverage) is an endorsement which may be added to a policy to protect an insured from the losses that can occur if an accident is the fault of a driver with inadequate

insurance to cover the loss.

PP 03 13 (Coverage for Audio, Visual and Data Electronic Equipment and Tapes, Records, Discs and Other Media) protects these items which are specifically excluded from Part D—Damage to Your Auto. The endorsement binds the insurer to pay for loss of the above listed equipment, as well as for tapes, records, discs, etc, so long as they belong to either the named insured or a family member (as defined on the Declarations Page) and are in a covered auto at the time the loss occurs. The limit of liability is stated in the endorsement.

PP 03 18 (Customizing Equipment Coverage) takes care of situations in which insureds have spent a great deal of money making their autos better fit their own personal needs and desires. The insurer will pay the LESSER of the amount shown in the endorsement, the actual cash value of the stolen/damaged property, or the sum needed to repair/replace the property. A deductible is always included on this endorsement.

PP 03 20 and PP 03 23 (Snowmobiles and Miscellaneous Type Vehicle) are endorsements that are designed to take care of particular types of vehicles. PP 03 20 covers snowmobiles, while PP 03 23 covers miscellaneous vehicles such as motorcycles, mopeds, golf carts and motor homes. The Snowmobile Endorsement protects the named insured, resident spouse and family members with liability insurance regardless of whether they own, rent or borrow a snowmobile. The endorsement will also offer liability protection to other individuals using the covered snowmobile or one that is being used as a temporary substitute: however, such individuals are NOT covered if the insured has rented or leased the vehicle. In the case of Miscellaneous Type Vehicle Endorsement, the vehicle must be specifically described on the endorsement as the vehicle to be covered. Liability, Medical Payments, Uninsured Motorists, Collision and Other Than Collision coverages are all available, if additional premiums are paid. This endorsement carries deductibles, and, as with PP 03 18, the insurer will pay either actual cash value, cost to repair/replace the vehicle, or the amount stated in the endorsement, whichever is the lesser amount.

These endorsements represent the variety of ways in which a standard Personal Auto Policy can be amended to fit an insured's particular situation and needs, but they are by no means all of the endorsements which are used in the field. Before telling a client that it is not possible to cover a certain item or situation, it is wise to consult the list of available endorsements.

UNIT EIGHT: GENERAL POLICY PROVISIONS

While the previous sections have dealt with the types of coverage a policy offers, with the limits of

liability the insurer has under each coverage, with the duties the insured has when a loss occurs, and with endorsements to make policies more useful for an insured, we have not yet dealt with the general provisions of the policy which actually establish the contractual rights and duties of both parties to the insurance contract. We shall do so now.

The possible bankruptcy of an insured is referred to:

BANKRUPTCY OR INSOLVENCY OF THE "INSURED" SHALL NOT RELIEVE US OF ANY OBLIGATIONS UNDER THIS POLICY.

For example, an insured is at-fault in an accident with a loss so enormous that the limits of liability in his/her policy will only pay the smallest portion of it. The victims go after the insured in court, slapping him/her with a suit of such dimensions that all the insured's resources are exhausted, and he/she declares bankruptcy. The insurer will still have to pay its portion of the loss, because though there is money available to pay this particular obligation of the insured, it is not money that can be or will be paid to the insured, and so does not come under the ruling of the bankruptcy court..

A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.

If there is a change to the information used to develop the policy premium, we may adjust your premium. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:

1. The number, type or use classification of insured vehicles;
2. Operators using insured vehicles;
3. The place of principal garaging of insured vehicles;
4. Coverage, deductible or limits.

B. If we make a change which broadens coverage under this edition of your policy without additional premium charge, that change will automatically apply to your policy as of the date we implement the change in your state. This paragraph (C.) does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

1. A subsequent edition of your policy; or
2. An Amendatory Endorsement.

Clause A simply means that since the insurer draws up the original contract, only the insurer can make changes to it. Clause B gives the insurer the right to adjust premiums where the vehicles insured or conditions affecting them change. Clause C gives notice that when a change in a policy results from a decision of the insurer itself, whether in response to state law or changing markets, when the change broadens the coverage, and when no additional premium is charged for this change, then that change takes effect automatically at the same time all policies issued by that insurer in that state are so changed.

Clause C also refers to changes that result because the insurer has a new edition of the policy, or because an Amendatory Endorsement has brought the policy in line with an ISO edition.

Any fraudulent activity by an insured, whether in furnishing information to obtain the policy, or in filing claims for loss under the policy, will negate the insurer's obligation to provide coverage, as this provision states:

We do not provide coverage for any "insured" who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy.

As has already been noted, there are circumstances in which an insured may feel that he/she is not being treated fairly by the insurer, and these feeling may be so strong as to lead to a lawsuit. Under a section titled Legal Action Against Us, insurers set forth the conditions under which such action may take place.

A. No legal action may be brought against us until there has been full compliance with all the terms of this policy.

In addition, under part A, no legal action may be brought against us until::

1. We agree in writing that the "insured" has an obligation to pay; or
2. The amount of that obligation has been finally determined by judgment after trial.

B. No person or organization has any right under this policy to bring us into any action to determine the liability of an "insured."

For example, let us say that an insured had an accident in which he/she was at fault, but refused all cooperation with his/her insurer. Despite notification from the insurer that failure to comply with his/her duties will constitute an abrogation of the contract, and thus relieve the insurer from an obligation to pay for the loss, the insured becomes even more stubborn, and finally, tries to take his/her insurer to court. Clause A prevents this scenario from succeeding.

Clause B prohibits any party from trying to separate the insured from the insurer by suing only the insurer in an effort to blame the insured for damages.

The next provision is titled Our Right to Recover Payment, and allows the insurance company to file claims or bring suit against parties other than its own insured who are legally liable for the loss.

A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

1. Whatever is necessary to enable us to exercise our rights; and
2. Nothing after loss to prejudice them.

This section bans the insured from taking any action which would seem to release an at-fault party from his/her obligation to reimburse the insurer for any payments it has made to the insured.

However, our rights in this paragraph (A.) do not apply under Part D, against any person using "your covered auto: with a reasonable belief that person is entitled to do so.

In other words, if Walter allows another person to drive his car, and that person has an accident while driving it, Walter's insurer will pay for the loss, and will not go after the person who drove the car with Walter's permission.

B. If we make a payment under this policy and the person to or for whom payment is made recovers damages from another, that person shall:

1. Hold in trust for us the proceeds of the recovery; and
2. Reimburse us to the extent of our payment.

This clause simply reinforces statements made in other sections that prevent an injured party from collecting duplicate payments.

POLICY PERIOD AND TERRITORY

Policy period and territory is a provision which makes clear that the policy covers only those losses which occur within the policy time period, and in the territories named.

A. This policy applies only to accidents and losses which occur:

1. During the policy period as shown in the Declarations; and
2. Within the policy territory.

B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada.

This policy also applies to loss to, or accidents involving, "your covered auto" while being transported between their ports.

If an insured plans a trip to Mexico, he/she will have to purchase insurance to cover his/her auto while in that country. This is also true if an insured plans to drive a personal auto in any country not listed in the PAP.

Both the insured and the insurer have the right to cancel the policy in the ways presented in the

TERMINATION provision.

A. Cancellation. This policy may be canceled during the policy period as follows:

1. The named insured shown in the Declarations may cancel by:

   a. Returning this policy to us; or
   b. Giving us advance written notice of the date cancellation is to take effect.

2. We may cancel by mailing to the named insured shown in the Declarations at the address shown in this policy:

   a. At least 10 days' notice:

      (1). If cancellation is for nonpayment of premium; or
      (2). If notice is mailed during the first 60 days this policy is in effect and this is not a renewal or continuation policy; or

   b. At least 20 days' notice in all other cases.

Insurers often request that an insured canceling a policy send them proof that new insurance has been obtained, with the effective date of that new insurance clearly marked. Thus, if an accident occurs, there is definite proof as to which insurer should pay.

3. After this policy is in effect for 60 days, or if this is a renewal or continuation policy, we will cancel only:

   a. For nonpayment of premium; or
   b. If your driver's license or that of:

      (1). Any driver who lives with you; or
      (2). Any driver who customarily uses "your covered auto";has been suspended or revoked. This must have occurred:
         (a) During the policy period; or
         (b) Since the last anniversary of the original effective date if the policy period is other than 1 year; or

c. If the policy was obtained through material misrepresentation.

Because of the possibility that an insurer will be liable for large losses if an insured is involved in an accident, rules governing the contract must be strict. Clause 3 gives three major reasons for cancellation by the insurer, all of which may be used after the policy is in effect for at least 60 days. If an insured does not pay the premium, or if anyone who might be considered an "insured" under the policy terms has his/her driver's license suspended/revoked, or if the insurer learns that certain information provided by

the insured was false, then it can terminate coverage.

B. Nonrenewable. If we decide not to renew or continue this policy, we will mail notice to the named insured shown in the Declarations at the address shown in this policy. Notice will be mailed at least 20 days before the end of the policy period. If the policy period is:

1. Less than 6 months, we will have the right not to renew or continue this policy every 6 months, beginning 6 months after its original effective date.
2. 1 year or longer, we will have the right not to renew or continue this policy at each anniversary of its original effective date.

C. Automatic Termination. If we offer to renew or continue and you or your representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.

If you obtain other insurance on "your covered auto," any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

D. Other Termination Provisions.

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund. The premium refund, if any, will be computed according to our manuals. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.

Clause B outlines what steps an insurer takes when it will not renew the policy. Reasons for nonrenewable are varied: the insured may have an unacceptably high loss rate, the insurer may no longer be doing business in the state in which the insured lives.

Clause C notes that a PAP will terminate if the premium for the renewal period is not paid.

Clause D details how notice of termination is to be given, how a premium refund will be calculated, and states how the date of cancellation is determined.

As we discussed earlier, when an insurer cancels an insured's policy because of an unacceptable loss history, that insured may purchase automobile insurance from a pool of high risk drivers like himself/herself. The rates will be considerably higher, reflecting the higher risk to insurers these drivers represent.

Automobile policies are written not only on the value of the vehicles they cover, but also on personal

characteristics of the insured, such as credit standing, traffic violation record, and the like. The ensuing contract is between the insurer and the person whose credentials they have examined. Therefore, as the Transfer of Your Interest in This Policy provision states, the policy may NOT be assigned/transferred to another party unless the insurer agrees in writing.

A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:

   1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations; and

   2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use "your covered auto."

Thus, a surviving, resident spouse may drive the deceased person's automobile, as may a legal representative, such as the executor of the insured's estate.

B. Coverage will be provided only until the end of the policy period.

At the end of the policy period, the surviving spouse may of course apply for renewal of the policy after furnishing the same sort of information required of all applicants.

The final provision in Part F is Two Or More Auto Policies, which states what will occur in case of a loss.

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest limit of liability under any one policy.

In other words, the insured is not allowed to add up all the limits of liability contained in his/her polices from the same insurer, and claim that amount. Only the highest limit will apply.

RATING PERSONAL AUTO INSURANCE

There are a number of factors that enter into the determination of the rates or premiums insurers charge for personal auto insurance. These include the costs of losses, administrative fees, and other overhead such as commissions to agents. Loss costs include payments to insureds as well as legal costs when issues are disputed in courts. The Insurance Service Office provides a rating service. It gathers data that affect rates from its members, and then analyzes the data to establish rates that are based on past loss history. Rates so determined are then adjusted to conform to such things as inflation, interest rates, and other such factors. An individual insurer uses these rates as a base, adjusting them to reflect its own record of loss. If an insurer does not belong to a rating service, it develops its own rates, using its own record of loss as the key factor.

How accurate are the rates provided by rating services? If a sufficient number of examples are used, the rates can be very close to the reality of losses that actually occur. The Law of Large Numbers is used in statistical analysis: it states that the more examples used, the truer the resulting statistic will be.

Once a rate based on loss experience is realized, the insurer than adds its expenses, a sum to take care of contingencies—those things which might occur which would affect the ability of the insurer to pay its losses—and also an amount for profit. Each of these additional factors is added to the loss rate in the same proportion that the individual loss rate bears to the entire loss rate. For example, if John Smith's loss rate reflects 1 millionth part of his insurer's entire loss rate, his share of the other expenses will also be 1 millionth. In actuality, of course, such computations are not made on an individual basis, but on a class basis.

Class or manual rating arranges risks into certain classes, according to their particular characteristics. Rates are set for that class, and an applicant's information is reviewed to determine which class he or she belongs to. He or she then pays the rate assigned to that class. For example, male drivers under the age of 25 belong to one of the highest rated classes, because the loss rate for drivers in that group is so high.

Among factors considered when determining which class an applicant belongs to when applying for Liability Coverage are the age, sex and marital status of the driver, and vehicle use and annual mileage. We have discussed these factors in an earlier section, and will not repeat that discussion here. Suffice it to say that insurance records show that females under 25 cause less loss to insurers than do their male counterparts, married people drive less than do single people, that the fewer miles a vehicle is driven, the less chance there is it will be involved in an accident, and that vehicles driven in cities are more likely to have accidents than those driven in less-populated areas.

Factors used in determining loss rates for Physical Damage Coverage are the place where the covered vehicle is primarily garaged, the amount of the deductible, and the make, model, model year and purchase price of the vehicle.

Premiums for Medical Payments Coverage and for Uninsured Motorists Coverage are determined only on the basis of previous loss rates. The age, sex, condition of the vehicle—none of these are considered when establishing these rates. The finished base rates for Medical Payments Coverage are determined by the policy limits, and where the vehicle is primarily garaged. Finished base rates for Uninsured Motorists Coverage are based on the type of coverage the insured chooses, the limits in the policy, the amount of the deductible, the place where the vehicle is primarily garaged, and the make and model year of the covered vehicle.

Just as certain factors such as age and loss history may make rates go up, there are factors which may provide an insured with a premium discount. For example, some insurers charge less to drivers who have a violation-free record, just as they charge higher rates to those who have a high loss record. People who take driver training often receive premium discounts, and good students also may receive discounts on the theory that they are more mature than others in their age group. Where an insurer insures more than one vehicle for the same insured, it may reduce the premiums to account for lower administrative costs in writing and maintaining the policy. Insurers may also reduce premiums when vehicles have been

provided with features that reduce the possible severity of a loss. These include such things as seat belts (which are standard on all passenger autos), crash-resistant bumpers, and the like.

The only factor concerning auto insurance rates an insured has any control over is his/her driving record. Agents should emphasize this over and over: the safer and more cautious the driver, the greater the possibility that he/she will avoid an accident/loss.

NO-FAULT INSURANCE

As automobile insurers search for ways in which to more accurately predict both the frequency and severity of the losses their policies cover, various ideas affecting insurer liability have emerged. Among these are concepts of comparative negligence and contributory negligence, in which the degree of negligence of all drivers involved in an accident is determined, and the insurer of each is liable to that degree.

Yet another concept is that of No-Fault Insurance, which is in effect in a number of jurisdictions in a modified version. In this system, when an insured sustains a loss, he or she is paid by his/her insurer for all expenses related to that loss, such as medical expenses, transportation expenses, loss of wages, and so forth. Even if it is clear that another driver was at fault, still, the insurer of each bears the burden of its own insured's loss The insured still maintains a limited right to sue the other driver for losses that exceed the limit of liability his/her policy carried. (In a pure no-fault system, neither the insured or the insurer would be able to sue a party they believed to be at fault.) Normally, when a jurisdiction has a modified no-fault system, the victim of a serious loss, such as death, disablement, or disfigurement, would be allowed to sue for actual damages as well as for any punitive damages allowed by that state.

Because some states have adopted this system, and some have not, insurers make provision for instances where an insured who is domiciled in a state that does not have no-fault is driving through a state that does, and is involved in an accident. In such a case, the out-of-state driver's insurer would play by the rules of the state where the accident occurred. Conversely, if a driver from a state that DOES operate under a no-fault plan has an accident in a state that does not have such a plan, the out-of-state driver's insurer will pay benefits, just as though the accident had occurred in the driver's home state.

There are two ways in which states with no-fault systems determine from which source benefits are to be paid. One of these is called "follow the car," meaning that an injured person's benefits will be paid by the insurer covering the vehicle she/he occupied or was struck by at the time of the accident. The other method is "follow the family," which means that an injured person eligible for benefits will collect them from the insurer issuing his/her family's automobile insurance policy.

The usual benefits paid to injured persons come in a basic package termed Personal Injury Protection Benefits, and include medical benefits, work loss benefits, survivor-death benefits and funeral benefits. Limits for medical benefits vary from plan to plan, which work loss benefits are paid according to a scale, normally a certain percentage of the wages for a certain period of time. Dependents of a deceased are eligible for survivor benefits, and funeral benefits are self-explanatory.

It is important to note that even in states where no-fault laws operate, drivers still need coverage for any liability they may have for property damage which they cause. Remember, these are MODIFIED no-fault systems, which retain a victim's right to sue in specific instances. Further, drivers need collision and other than collision coverage, because most no-fault plans do not cover property damage. These coverages may be purchased separately.

What, then, is the point of a no-fault system? Primarily, it insures that only the real costs of a loss will be paid, and that insurers will be relieved of damages for pain and suffering. Note that although a victim has the right to sue another driver, the driver's INSURER will not be liable for whatever amount of damages the court awards. Through no-fault insurance plans, insurers are attempting to control those costs which are the most unpredictable in the entire field of risks they cover. It is relatively simple to attach a value to a real object such as a covered vehicle. It is far more difficult to predict the kind of expenses that may result from even the smallest injury.

Insurance is not a stagnant field. It continues to grow and change to meet the changes in our society, in the way we drive, the way we work, the way we interpret our rights under the law. No-fault systems are a reflection of the type of change the future holds..

UNIT NINE: CALIFORNIA RULES

California's auto insurance system, a frequent target of criticism, has been subjected to repeated reform attempts, including five auto insurance initiatives that appeared on the November 1988 ballot. Voters adopted one of those competing proposals, Proposition 103, a rate rollback and rebate that created the elected office of state insurance commissioner, and required state approval of future premium increases.

Its results have been mixed. Industry rebates to consumers have been sporadic and piecemeal since Proposition 103's enactment. But drivers with multiple traffic violations have seen their premiums rise, while drivers with good records have earned discounts. Overall, premium rates have increased just 0.02 percent in California since 1989. As a result, California premiums, while still high, are growing slowly and are no longer the most expensive in the nation, dropping to 12th.

In addition to the 1988 initiative wars that produced Proposition 103, California voters, by a wide margin rejected Proposition 200, which would have instituted a "pure" no-fault system in California, barring virtually all lawsuits arising from automobile accidents.

Prior to Proposition 213, law did not limit the rights of injured parties to receive compensation for their injuries, even if they were uninsured, driving while under the influence of alcohol or drugs, or were injured in the commission of a felony.

California law also requires auto insurance rates to be established by the state Department of Insurance (DOI) through the regulatory process.

TERMS

As described under the California Insurance Code agents should be familiar with the following terms and

definitions:

a) "Policy" means an automobile liability, automobile physical damage, or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state, insuring a single individual or individuals residing in the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:

(1) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others; or

(2) Any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less; provided, however, that this chapter shall not apply (i) to any policy issued under an automobile assigned risk plan, or (ii) to any policy insuring more than four automobiles, or (iii) to any policycoveringgarage, automobile sales agency, repair shop, service station, or public parking place operation hazards; or

(3) A motorcycle.

b) "Automobile liability coverage" includes only coverage of bodily injury and property damage liability, medical payments, and uninsured motorists coverage.

c) "Automobile physical damage coverage" includes all coverage of loss or damage to an automobile insured under the policy except loss r damage resulting from collision or upset.

d) "Automobile collision coverage" includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.

e) "Renewal" or "to renew" means to continue coverage with either the insurer which issued the policy or an affiliated insurer, as defined in Section 1215, for an additional policy period upon expiration of the current policy period of a policy, provided that if coverage is continued with an affiliated insurer, it shall be the same or broader coverage as provided by the present insurer, and the insured shall be notified in writing at least 20 days prior to expiration of the current policy period of all of the following:

(1) That the insurer has determined that it will not offer renewal of the policy with the present insurer,

(2) That it is offering replacement in an affiliated insurer, and

(3) That the insured may obtain in writing the reasons for the change in insurers if he or she requests in writing not later than one month following the expiration of the policy period the reason or reasons for the change in insurers. Any policy with a policy period or term of six months or less, whether or not made continuous for successive terms upon the payment of additional premiums, shall for the purpose of this chapter be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year, or any policy with no fixed expiration date, shall for the purpose of this chapter, be considered as if written for successive policy periods or terms of one year.

f) "Nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premiums on a policy, or any installment of such

premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

g) "Cancellation" means termination of coverage by an insurer (other than termination at the request of the insured) during a policy period.

h) "Nonrenewal" means a notice by the insurer to the named insured that the insurer is unwilling to renew a policy.

i) "Expiration" means termination of coverage by reason of the policy having reached the end of the term for which it was issued or the end of the period for which a premium has been paid.

CANCELLATIONS & RENEWALS

(Section 661) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(1) Nonpayment of premium.
(2) The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.
(3) Discovery of fraud by the named insured in pursuing a claim under the policy provided the insurer does not rescind the policy.
(4) Discovery of material misrepresentation of any of the following information concerning the named insured or any resident of the same household who customarily operates an automobile insured under the policy:

A) Safety record.
B) Annual miles driven in prior years.
C) Number of years of driving experience.
D) Record of prior automobile insurance claims, if any.
E) Any other factor found by the commissioner to have a substantial relationship to the risk of loss.

Any insured who negligently misrepresents information described in this paragraph may avoid cancellation by furnishing corrected information to the insurer within 20 days after receiving notice of cancellation and agreeing to pay any difference in premium for the policy period in which the information remained undisclosed.

These cancellation rules do not apply to any policy or coverage that has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy. Also, modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one

hundred dollars ($100) shall not be deemed a cancellation of the coverage or of the policy.

(Section 662) No notice of cancellation of a policy shall be effective unless mailed or delivered by the insurer to the named insured, lienholder, or additional interest at least 20 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor shall be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation. (These rules shall not apply to nonrenewal).

Proof of mailing or delivery of a notice of cancellation to a lienholder or an additional interest on a policy to which this chapter applies shall be sufficient to terminate the interest of the parties provided the notice is mailed or delivered at least the maximum number of days prior to termination of the parties' interest as required by Section 662. For purposes of this section, "delivery" includes electronic transmittal or facsimile or personal delivery.

Lienholders or additional interest shall not require a more restrictive form of notice. In fact, they must abide by the following:

(Section 663) (1) At least 20 days before expiration, a written or verbal offer of renewal of the policy, contingent upon payment of premium as stated in the offer.

(2) At least 30 days before expiration, a written notice of nonrenewal of the policy, including the statement required by Section 666.

An insurer that delivers a verbal offer to renew that is declined by an insured shall, at least 20 days before expiration of the policy, deliver to or mail to the named insured, at the address shown on the policy, a written confirmation of the offer and rejection.

An insurer that attempts to satisfy subdivision (a) with a verbal offer to renew, but is unable to contact the named insured directly at least 20 days before policy expiration, shall, at least 20 days before policy expiration, deliver to or mail to the named insured, at the address shown on the policy, a written offer to renew the policy, contingent upon payment of premium as stated in the offer.

In the event that an insurer fails to give the named insured either an offer of renewal or notice of nonrenewal as required by this section, the existing policy, with no change in its terms and conditions, shall remain in effect for 30 days from the date that either the offer to renew or the notice of nonrenewal is delivered or mailed to the named insured. A notice to this effect shall be provided by the insurer to the named insured with the policy or the notice of renewal or nonrenewal. Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other replacement or succeeding automobile insurance policy procured by the insured, or his agent or broker, with respect to any automobile designated in both policies.

The insurer shall not be required to notify the named insured, or any other insured, of nonrenewal of the policy if the insurer has mailed or delivered a notice of expiration or cancellation, on or prior to the 30th day preceding expiration of the policy period.

No insurer shall fail to renew a policy solely on the basis of the age of the insured.

(Section 664) Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice.

Any insurer who requires periodic physical examinations of an insured as a condition of renewal of a policy shall pay the cost of such physical examinations, except that an insurer shall not pay any cost if it elects to accept the certified written results of an insured's physical examination voluntarily conducted within 12 months preceding the policy expiration or renewal date.

(Section 665) When a policy of automobile liability insurance is canceled, other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance to which Section 663 applies, the insurer shall notify the named insured of his possible liability for automobile liability insurance through the automobile liability assigned risk plan. Such notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew.

(Section 666) Where the reason for cancellation does not accompany or is not included in the notice of cancellation, the insurer shall upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, specify in writing the reason for such cancellation. Such reason shall be mailed or delivered to the named insured within five days after receipt of such request.

(Section 667) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Insurance Commissioner or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.

Unless a policy specifically provides otherwise, the
cancellation of a policy, or any change in the policy, executed by an insurer, at the request of the named insured designated on the declarations page of the policy, shall be binding upon any other
insured or named insured.

Notice of cancellation or an endorsement evidencing the named insured's request shall be mailed or delivered to the address stated in the policy to all individuals or to all entities designated as named insureds on the declarations page of the policy.

Section 663 shall not apply to policies of liability insurance issued pursuant to assigned risk plans.

(Section 668) No cancellation of a policy or coverage of insurance subject to this chapter but not subject to Section 661 or 662 (because it has been in effect less than 60 days) shall be effective unless a notice of cancellation subject to Sections 664 and 665, when applicable, but not to any other provision of this chapter, be mailed or delivered by the insurer to the named insured not later than the 59th day following its effective date and at least 10 days prior to the effective date of cancellation.

(Section 669) Any insurer willfully violating any provisions of Section 663 is guilty of a misdemeanor and is punishable by a fine of not exceeding one thousand dollars ($1,000) for each violation thereof.

No insurer shall fail to renew any private automobile insurance policy of a peace officer, member of the California Highway Patrol, or firefighter, with respect to his or her operation of a private motor vehicle, for the reason that the insured has been involved in an accident while operating an authorized emergency vehicle, as defined in subdivision (a) of Section 165 of the Vehicle Code or in paragraph (1) or (2) of subdivision (b) or (f) of Section 165 of the Vehicle Code, in the performance of his or her duty during the hours of his or her employment. As used in this section, "peace officer" means every person defined in Chapter 4.5 (commencing with
Section 830) of Title 3 of Part 2 and Section 830.6 of the Penal Code, and "firefighter" means every person defined in Section 50925 of the Government Code. In the case of a volunteer firefighter, this section applies to the regular employer of the volunteer firefighter to the extent that the involvement of the volunteer firefighter in the accident shall not be cause for the employer's insurer's decision to renew the employer's insurance policy as it applies to the employee covered by this section.

UNINSURED MOTORISTS

California's Financial Responsibility Law requires motorists to carry insurance coverage of $15,000 per individual, and $30,000 total, as a minimum liability protection against injuries to others that result from negligent operation of a vehicle. This
coverage is called bodily injury protection. In theory, it ensures a victim will collect economic damages for quantifiable expenses, primarily medical expenses and lost wages, as well as non-economic damages that directly result from the accident.

Non-economic damages commonly are labeled "pain and suffering". These basic policies cost an average of approximately $550 statewide, ranging from several hundred dollars a year in rural northern California, to as much as $1,000 a year in areas of Los Angeles.

Traditional rules of the tort system govern recovery for auto accident injuries and property damage losses in California. An injured party may seek compensation for all economic and non economic losses from the driver who caused the accident. Accident victims seek compensation for their property and bodily injury losses from the insurance company of the person "at fault" and from that person if damages exceed insurance coverage. Only victims are paid compensation for their injuries. (Guilty parties can collect from their own insurance carrier, if they purchase comprehensive and health coverage.) There

are no theoretical limits on a victim's right to compensation for the injuries sustained. The amount of compensation is decided by arbitrators, courts or the parties themselves.

In 1992, California drivers spent about $3.5 billion for collision and comprehensive insurance, and about $6.4 billion for personal injury and property damage liability coverage, a total of nearly $10 billion. RAND Corporation breaks down that $6.4 billion figure as $4.2 billion for personal injury coverage, and $1.2 billion for property damage liability. Thus, the cost of personal injury coverage represents about 40 percent of a hypothetical policy.

On average, 30 percent of all drivers on the road in California are uninsured. In some particular zip codes in Los Angeles this number is as high as 90 percent. The state Department of Insurance claims that lawsuits brought by uninsured victims cost Californians and their insurers over $300 million every year, as a result of awards for non-economic damages to uninsured drivers.

Effective 11/96 Proposition 213 altered California's auto insurance liability laws by prohibiting uninsured drivers or drivers convicted of operating vehicles under the influence of alcohol or drugs from recovering non-economic damages for pain and suffering (general damages). It also prohibits felons, injured in flight from their unlawful acts, from collecting damages.

AB 1602

Prior to passage of AB 1602 (10/95) California law required uninsured motorist coverage for personal injury or death to be included in a policy of motor vehicle insurance unless waived by the insured. No cause of action accrued under that coverage unless, within one year, suit was filed against the uninsured motorist, an agreement as to the amount due was concluded, or the insured formally instituted arbitration proceedings.

AB 1602 requires the insured to notify the insurer of the arbitration proceedings in writing and it requires that arbitration be concluded within specific time periods.

Section 11580.2.

a) No policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle, except for policies which provide insurance in the Republic of Mexico issued or delivered in this state by nonadmitted Mexican insurers, shall be issued or delivered in this state to the owner or operator of a motor vehicle, or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally used or principally garaged in this state, unless the policy contains, or has added to it by endorsement, a provision with coverage limits at least equal to the limits specified in subdivision (m) and in no case less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code insuring the insured, the insured's heirs or legal representative for all sums within the limits which he, she, or they, as the case may be, shall be legally entitled to recover as damages for bodily injury or wrongful death from the owner or operator of an uninsured motor vehicle. The insurer and any named insured, prior to or subsequent to the issuance or renewal of a policy, may, by agreement in writing, in the form specified in paragraph (2) or paragraph

(3), (1) delete the provision covering damage caused by an uninsured motor vehicle completely, or (2) delete the coverage when a motor vehicle is operated by a natural person or persons designated by name, or (3) agree to provide the coverage in an amount less than that required by subdivision (m) but not less than the financial responsibility requirements specified in Section 16056 of the Vehicle Code. Any of these agreements by any named insured or agreement for the amount of coverage shall be binding upon every insured to whom the policy or endorsement provisions apply while the policy is in force, and shall continue to be so binding with respect to any continuation or renewal of the policy or with respect to any other policy which extends, changes, supersedes, or replaces the policy issued to the named insured by the same insurer, or with respect to reinstatement of the policy within 30 days of any lapse thereof. A policy shall be excluded from the application of this section if the automobile liability coverage is provided only on an excess or umbrella basis. Nothing in this section shall require that uninsured motorist coverage be offered or provided in any homeowner policy, personal and residents' liability policy, comprehensive personal liability policy, manufacturers' and contractors' policy, premises liability policy, special multi peril policy, or any other policy or endorsement where automobile liability coverage is offered as incidental to some other basic coverage, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(2) The agreement specified in paragraph (1) to delete the provision covering damage caused by an uninsured motor vehicle completely or delete the coverage when a motor vehicle is operated by a natural person or persons designated by name shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to delete the coverage completely or to delete the coverage when a motor vehicle is operated by a natural person or persons designated by name. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, which the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code."

The agreement may contain additional statements not in derogation of or in conflict with the foregoing. The execution of the agreement shall relieve the insurer of liability under this section while the agreement remains in effect.

(3) The agreement specified in paragraph (1) to provide coverage in an amount less than that required by subdivision (m) shall be in the following form:

"The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the coverage in an amount less then that required by subdivision (m) of Section 11580.2 of the Insurance Code but not less than the financial responsibility requirements. Uninsured motorists coverage insures the insured, his or her heirs, or legal

representatives for all sums within the limits established by law, which the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code."

The agreement may contain additional statements not in derogation of or in conflict with this paragraph. However, it shall be presumed that an application for a policy of bodily injury liability insurance containing uninsured motorist coverage in an amount less than that required by subdivision (m), signed by the named insured and approved by the insurer, with a policy effective date after January 1, 1985, shall be a valid agreement as to the amount of uninsured motorist coverage to be provided.

b) As used in subdivision (a), "bodily injury" includes sickness or disease, including death, resulting therefrom; "named insured" means only the individual or organization named in the declarations of the policy of motor vehicle bodily injury liability insurance referred to in subdivision (a); as used in subdivision (a) if the named insured is an individual "insured" means the named insured and the spouse of the named insured and, while residents of the same household, relatives of either while occupants of a motor vehicle or otherwise, heirs and any other person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply; as used in subdivision (a), if the named insured is an entity other than an individual, "insured" means any person while in or upon or entering into or alighting from an insured motor vehicle and any person with respect to damages he or she is entitled to recover for care or loss of services because of bodily injury to which the policy provisions or endorsement apply. As used in this subdivision, "individual" shall not include persons doing business as corporations, partnerships, or associations. As used in this subdivision, "insured motor vehicle" means the motor vehicle described in the underlying insurance policy of which the uninsured motorist endorsement or coverage is a part, a temporary substitute automobile for which liability coverage is provided in the policy or a newly acquired automobile for which liability coverage is provided in the policy if the motor vehicle is used by the named insured or with his or her permission or consent, express or implied, and any other automobile not owned by or furnished for the regular use of the named insured or any resident of the same household, or by a natural person or persons for whom coverage has been deleted in accordance with subdivision (a) while being operated by the named insured or his or her spouse if a resident of the same household, but "insured motor vehicle" shall not include any automobile while used as a public or livery conveyance. As used in this section, "uninsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is the applicable insurance or bond but the company writing the insurance or bond denies coverage thereunder or refuses to admit coverage thereunder except conditionally or with reservation, or an "underinsured motor vehicle" as defined in subdivision (p), or a motor vehicle used without the permission of the owner thereof if there is no bodily injury liability insurance or bond applicable at the time of the accident with respect to the owner or operator thereof, or the owner or operator thereof be unknown, provided that, with respect to an "uninsured motor vehicle" whose owner or operator is unknown:

(1) The bodily injury has arisen out of physical contact of the automobile with the insured or with an

automobile which the insured is occupying.

(2) The insured or someone on his or her behalf has reported the accident within 24 hours to the police department of the city where the accident occurred or, if the accident occurred in unincorporated territory then either to the sheriff of the county where the accident occurred or to the local headquarters of the California Highway Patrol, and has filed with the insurer within 30 days thereafter a statement under oath that the insured or his or her legal representative has or the insured's heirs have a cause of action arising out of the accident for damages against a person or persons whose identity is unascertainable and set forth facts in support thereof. As used in this section, "uninsured motor vehicle" shall not include a motor vehicle owned or operated by the named insured or any resident of the same household or self-insured within the meaning of the Financial Responsibility Law of the state in which the motor vehicle is registered or which is owned by the United States of America, Canada, a state or political subdivision of any such government or an agency of any of the foregoing, or a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle, or any equipment or vehicle designed or modified for use primarily off public roads, except while actually upon public roads.

As used in this section, "uninsured motor vehicle" also means an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency. An insurer's solvency protection shall be applicable only to accidents occurring during a policy period in which its insured's motor vehicle coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one year of the accident. In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of the coverage, the insurer making the payment, shall to the extent thereof, be entitled to any proceeds which may be recoverable from the assets of the insolvent insurer through any settlement or judgment of the person against the insolvent insurer.

Nothing in this section is intended to exclude from the definition of an uninsured motor vehicle any motorcycle or private passenger-type four-wheel drive motor vehicle if that vehicle was subject to and failed to comply with the Financial Responsibility Law of this state.

c) The insurance coverage provided for in this section does not apply either as primary or as excess coverage:

(1) To property damage sustained by the insured.

(2) To bodily injury of the insured while in or upon or while entering into or alighting from a motor vehicle other than the described motor vehicle if the owner thereof has insurance similar to that provided in this section.

(3) To bodily injury of the insured with respect to which the insured or his or her representative shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person who may be legally liable therefor.

(4) In any instance where it would inure directly or indirectly to the benefit of any workers' compensation carrier or to any person qualified as a self-insurer under any workers' compensation law, or directly to the benefit of the United States, or any state or any political subdivision thereof.

(5) To establish proof of financial responsibility as provided in subdivisions (a), (b), and © of Section 16054 of the Vehicle Code.

(6) To bodily injury of the insured while occupying a motor vehicle owned by an insured or leased to an insured under a written contract for a period of six months or longer, unless the occupied vehicle is an insured motor vehicle. "Motor vehicle" as used in this paragraph means any self-propelled vehicle.

(7) To bodily injury of the insured when struck by a vehicle owned by an insured.

(8) To bodily injury of the insured while occupying a motor vehicle rented or leased to the insured for public or livery purposes.

d) Subject to paragraph (2) of subdivision (c), the policy or endorsement may provide that if the insured has insurance available to the insured under more than one uninsured motorist coverage provision, any damages shall not be deemed to exceed the higher of the applicable limits of the respective coverages, and the damages shall be prorated between the applicable coverages as the limits of each coverage bear to the total of the limits.

e) The policy or endorsement added thereto may provide that if the insured has valid and collectible automobile medical payment insurance available to him or her, the damages which the insured shall be entitled to recover from the owner or operator of an uninsured motor vehicle shall be reduced for purposes of uninsured motorist coverage by the amounts paid or due to be paid under the automobile medical payment insurance.

f) The policy or an endorsement added thereto shall provide that the determination as to whether the insured shall be legally entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. The arbitration shall be conducted by a single neutral arbitrator. An award or a judgment confirming an award shall not be conclusive on any party in any action or proceeding between (I) the insured, his or her insurer, his or her legal representative, or his or her heirs and (ii) the uninsured motorist to recover damages arising out of the accident upon which the award is based. If the insured has or may have rights to benefits, other than nonoccupational disability benefits, under any workers' compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. In those cases in which the insured claims a permanent disability, the claims shall, unless good cause be shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed. Any demand or petition for arbitration shall contain a declaration, under penalty of perjury, stating whether (I) the insured has a workers' compensation claim; (ii) the claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and (iii) if not, what reasons amounting to good cause are grounds for the arbitration to proceed

immediately. The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue therein for purposes of issuance of a subpoena by an attorney of a party to the arbitration under Section 1985 of the Code of Civil Procedure. Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall be applicable to these determinations, and all rights, remedies, obligations, liabilities and procedures set forth in Article 3 shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in Article 3, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court which shall have jurisdiction for the purposes of this section shall be the superior court of the State of California, in and for any county which is a proper county for the filing of a suit for bodily injury arising out of the accident, against the uninsured motorist, or any county specified in the policy or an endorsement added thereto as a proper county for arbitration or action thereon.

(2) Any proper court to which application is first made by either the insured or the insurer under Article 3 for any discovery or other relief or remedy, shall thereafter be the only court to which either of the parties shall make any applications under Article 3 with respect to the same accident, subject, however, to the right of the court to grant a change of venue after a hearing upon notice, upon any of the grounds upon which change of venue might be granted in an action filed in the superior court.

(3) A deposition pursuant to Section 2016 of the Code of Civil Procedure may be taken without leave of court, except that leave of court, granted with or without notice and for good cause shown, must be obtained if the notice of the taking of the deposition is served by either party within 20 days after the accident.

(4) Paragraph (4) of subdivision (a) of Section 2019 of the Code of Civil Procedure is not applicable to discovery under this section.

(5) For the purposes of discovery under this section, the insured and the insurer shall each be deemed to be "a party to the record of any civil action or proceedings," where that phrase is used in paragraph (2) of subdivision (b) of Section 2019 of the Code of Civil Procedure.

(6) Interrogatories under Section 2030 of the Code of Civil Procedure and requests for admission under Section 2033 of the Code of Civil Procedure may be served by either the insured or the insurer upon the other at any time more than 20 days after the accident without leave of court.

(7) Nothing in this section limits the rights of any party to discovery in any action pending or which may hereafter be pending in any court.

g) The insurer paying a claim under an uninsured motorist endorsement or coverage shall be entitled to be subrogated to the rights of the insured to whom the claim was paid against any person legally liable for the injury or death to the extent that payment was made. The action may be brought within three

years from the date that payment was made hereunder.

h) An insured entitled to recovery under the uninsured motorist endorsement or coverage shall be reimbursed within the conditions stated herein without being required to sign any release or waiver of rights to which he or she may be entitled under any other insurance coverage applicable; nor shall payment under this section to the insured be delayed or made contingent upon the decisions as to liability or distribution of loss costs under other bodily injury liability insurance or any bond applicable to the accident. Any loss payable under the terms of the uninsured motorist endorsement or coverage to or for any person may be reduced:

(1) By the amount paid and the present value of all amounts payable to him or her, his or her executor, administrator, heirs, or legal representative under any workers' compensation law, exclusive of nonoccupational disability benefits.

(2) By the amount the insured is entitled to recover from any other person insured under the underlying liability insurance policy of which the uninsured motorist endorsement or coverage is a part, including any amounts tendered to the insured as advance payment on behalf of the other person by the insurer providing the underlying liability insurance.

i) (1) No cause of action shall accrue to the insured under any policy or endorsement provision issued pursuant to this section unless one of the following actions have been taken within one year from the date of the accident:

A) Suit for bodily injury has been filed against the uninsured motorist, in a court of competent jurisdiction.

B) Agreement as to the amount due under the policy has been concluded.

C) The insured has formally instituted arbitration proceedings by notifying the insurer in writing sent by certified mail, return receipt requested. Notice shall be sent to the insurer or to the agent for process designated by the insurer filed with the department.

(2) Any arbitration instituted pursuant to this section shall be concluded either:

A) Within five years from the institution of the arbitration proceeding.

B) If the insured has a workers' compensation claim arising from the same accident, within three years of the date the claim is concluded, or within the five-year period set forth in subparagraph (A), whichever occurs later.

(3) The doctrines of estoppel, waiver, impossibility, impracticality, and futility apply to excuse a party's noncompliance with the statutory time frame, as determined by the court.

(4) Parties to the insurance contract may stipulate in writing to extending the time to conclude

arbitration.

j) Notwithstanding subdivisions (b) and (l), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the accident occurred.

k) Notwithstanding subdivision (l), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and the claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall operate to toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney.

l) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision shall apply only to policies of insurance issued, amended, or renewed on or after January 1, 1976.

m) Coverage provided under an uninsured motorist endorsement or coverage shall be offered with coverage limits equal to the limits of liability for bodily injury in the underlying policy of insurance, but shall not be required to be offered with limits in excess of the following amounts:

(1) A limit of thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident.

(2) Subject to the limit for one person set forth in paragraph (1), a limit of sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident.

n) Underinsured motorist coverage shall be offered with limits equal to the limits of liability for the insured's uninsured motorist limits in the underlying policy, and may be offered with limits in excess of the uninsured motorist coverage. For the purposes of this section, uninsured and underinsured motorist coverage shall be offered as a single coverage. However, an insurer may offer coverage for damages for bodily injury or wrongful death from the owner or operator of an underinsured motor vehicle at greater limits than an uninsured motor vehicle.

o) If an insured has failed to provide an insurer with wage loss information or medical treatment record releases within 15 days of the insurer's request or has failed to submit to a medical examination arranged by the insurer within 20 days of the insurer's request, the insurer may, at any time prior to 30 days before the actual arbitration proceedings commence, request, and the insured shall furnish, wage loss information or medical treatment record releases, and the insurer may require the insured, except

during periods of hospitalization, to make himself or herself available for a medical examination. The wage loss information or medical treatment record releases shall be submitted by the insured within 10 days of request and the medical examination shall be arranged by the insurer no sooner than 10 days after request, unless the insured agrees to an earlier examination date, and not later than 20 days after the request. If the insured fails to comply with the requirements of this subdivision, the actual arbitration proceedings shall be stayed for at least 30 days following compliance by the insured. The proceedings shall be scheduled as soon as practicable following expiration of the 30-day period.

p) This subdivision applies only when bodily injury, as defined in subdivision (b), is caused by an underinsured motor vehicle. If the provisions of this subdivision conflict with subdivisions (a) through (o), the provisions of this subdivision shall prevail.

(1) As used in this subdivision, "an insured motor vehicle" is one that is insured under a motor vehicle liability policy, or automobile liability insurance policy, self-insured, or for which a cash deposit or bond has been posted to satisfy a financial responsibility law.

(2) "Underinsured motor vehicle" means a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person.

(3) This coverage does not apply to any bodily injury until the limits of bodily injury liability policies applicable to all insured motor vehicles causing the injury have been exhausted by payment of judgments or settlements, and proof of the payment is submitted to the insurer providing the underinsured motorist coverage.

(4) When bodily injury is caused by one or more motor vehicles, whether insured, underinsured, or uninsured, the maximum liability of the insurer providing the underinsured motorist coverage shall not exceed the insured's underinsured motorist coverage limits, less the amount paid to the insured by or for any person or organization that may be held legally liable for the injury.

(5) The insurer paying a claim under this subdivision shall, to the extent of the payment, be entitled to reimbursement or credit in the amount received by the insured from the owner or operator of the underinsured motor vehicle or the insurer of the owner or operator.

(6) If the insured brings an action against the owner or operator of an underinsured motor vehicle, he or she shall forthwith give to the insurer providing the underinsured motorist coverage a copy of the complaint by personal service or certified mail. All pleadings and depositions shall be made available for copying or copies furnished the insurer, at the insurer's expense, within a reasonable time.

(7) Underinsured motorist coverage shall be included in all policies of bodily injury liability insurance providing uninsured motorist coverage issued or renewed on or after July 1, 1985. Notwithstanding this section, an agreement to delete uninsured motorist coverage completely, or with respect to a person or persons designated by name, executed prior to July 1, 1985, shall remain in full force and effect.

q) Regardless of the number of vehicles involved whether insured or not, persons covered, claims made, premiums paid or the number of premiums shown on the policy, in no event shall the limit of liability for two or more motor vehicles or two or more policies be added together, combined, or stacked to determine the limit of insurance coverage available to injured persons.

ASSIGNED RISK

Prior to passage of SB 672 (10/95), the law required the filing of an annual report on an insurer's assigned-risk automobile insurance business as to loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio. The Insurance Commissioner required insurers with combined ratios that are 10% above the mean combined ratio to report additional information, as specified.

SB 672 repeal these provisions in the assigned risk law and, instead, requires that information to be filed in the annual record of loss statements required to be filed under the Rosenthal-Robbins Auto Insurance Nondiscrimination Law.

Section 11628

a) No admitted insurer, licensed to issue and issuing motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, language, color, religion, national origin, ancestry, or the same geographic area; nor shall race, language, color, religion, national origin, ancestry, or location within a geographic area of itself constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

As used in this section "geographic area" means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for the geographic area shall include the breakdown of actual loss experience statistics by ZIP Code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under 11/2-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and which are not part of a fleet of five or more motor vehicles under one ownership. A record of loss experience for the geographic area, including that statistical data by ZIP Code area, shall be submitted annually to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten. That report shall include the insurer's statewide loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio on its assigned-risk business.

An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data and statewide expense ratio and combined ratio on its assigned-risk business to a rating

or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner annually after examination. However, the data shall be released in aggregate form by ZIP Code in order that no individual insurer's loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

All information reported to the department pursuant to this subdivision shall be confidential.

As used in this section, (1) "language" means the inability to speak, read, write, or comprehend the English language, (2) "dependents" shall include, but not be limited to, issue regardless of generation, and (3) "spouse" shall be determined without regard to current marital status.

b) The commissioner may require insurers with combined ratios on statewide assigned-risk business that are 10 percent above the mean combined ratio for all plan participants to also report the following:

(1) The reason for the excessive ratio.

(2) A plan for reducing the ratio, and when the reduction can be expected to occur. The commissioner may require insurers subject to this subdivision to provide periodic reports on the progress in reducing the combined ratio.

c) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, refuse to issue that insurance to an applicant therefor, or cancel that insurance solely for the reason that the applicant for that insurance or any insured is employed in a specific occupation, or is on active duty service in the Armed Forces of the United States.

Nothing in this section shall prohibit an insurer from:

(1) Considering the occupation of the applicant or insured as a condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(2) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1 and is based upon actuarial data which demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes of compiling that actuarial data for a specific occupation or grouping thereof, a person shall be deemed employed in the occupation in which that data is compiled if: (A) the majority of his or her employment during the previous year was in the occupation, or (B) the majority of his or her aggregate earnings for the immediate preceding three-year period were derived from the occupation, or © the person is a member in good standing of a union which is an authorized collective bargaining agent for persons engaged in the occupation.

Nothing in this section shall be construed to include in the definition of "occupation" any status or activity which does not result in remuneration for work done or services performed, or self-employment in a business operated out of an applicant's or insured's place of residence or persons engaged in the renting, leasing, selling, repossessing, rebuilding, wrecking, or salvaging of motor vehicles.

d) Nothing in this section shall limit or restrict the ability of an insurer to refuse to accept an application for or refuse to issue or cancel such insurance for the reason that it is a commercial vehicle or based upon the consideration of a vehicle's size, weight, design, or intended use.

e) It is the intent of the Legislature that actuarial data by occupation may be examined for credibility by the commissioner on the same basis as any other automobile insurance data which he or she is empowered to examine.

f) Except as provided in Article 4 (commencing with Section 11620):

(1) Nothing in this section or in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1 or in any other provision of this code, shall prohibit an insurer from limiting the issuance or renewal of insurance as defined in subdivision (a) of Section 660 to persons who engage in, or have formerly engaged in, governmental or military service or segments of categories thereof, and their spouses, dependents, and former dependents or spouses.

(2) The term "military service" includes, but is not limited to, officer and warrant officer candidates, cadets or midshipmen at a service academy, cadets or midshipmen in advance Reserve Officer Training Corps programs or on Reserve Officer Training Corps program scholarships, National Guard officer candidates, students in government-sponsored precommissioning programs, and foreign military officers while on temporary duty in the United States.

g) This section shall be known and may be cited as the "Rosenthal-Robbins Auto Insurance Nondiscrimination Law."

AUTOMOBILE RATINGS

Prior to the passage of Proposition 103 on November 8, 1988, the California Department of Insurance operated under the McBride-Grunsky Insurance Regulatory Act. Under this Act, insurance companies were not required to file rates for approval except for health and life. California was considered an "open competition" state in which competition regulated the marketplace. The Consumer Services Division was responsible for monitoring insurance companies' rating practices. On December 16, 1988, Rate Filing Bureaus were created in the Rate Regulation Division to implement the following provisions of Proposition 103.

PROPOSITION 103

Rollback Provision

Proposition 103 (Section 1861.01 (a) of the California Insurance Code (CIC)) required that every insurer reduce its rates to at least 20% less than the rates that were in effect on November 8, 1987 unless such rollback would lead to a company's insolvency. This provision was later changed by the California Supreme Court to allow companies a fair rate of return. Since 1989, the Rate Regulation Division has been responsible for negotiating with insurance companies to meet their rollback obligations.

Personal Automobile Rating Factors

Another major provision of Proposition 103 dealt with personal automobile insurance. In Section 1861.02 (a) of the CIC, personal automobile insurance rates must be determined using the following factors in decreasing order of importance--insured's driving safety record, number of miles driven annually by the insured, and number of years of driving experience the insured has had. In addition, the commissioner could specify other rating factors that have a substantial relationship to the risk of loss. As such, the Rate Regulation Division required insurance companies to submit automobile classification plans which complied with these codes and emergency regulations. Permanent regulations are being developed.

Good Driver Discount Provision

Proposition 103 also stated that an insurer could not refuse to write an applicant that qualifies for a good driver discount (Section 1861.02 (b)(1) of CIC). Further, the good driver discount should be at least 20% below the rate the insured would otherwise have been charged for the same coverage (Section 1861.02 (b)(2) of CIC). Proposition 103 indicated that a person qualifies for a good driver discount if s/he meets all of the following criteria--licensed to drive a motor vehicle for the previous three years, has not had more than one violation point during the previous three years, and was not a driver of a motor vehicle involved in an accident which resulted in death or in total loss or damage exceeding $500, and was principally at fault. Accordingly, the Rate Regulation Division reviews companies' automobile classification plans and individual insurance policies to ensure these provisions are followed by insurance companies.

Deemer Provision

Proposition 103 also stated that an application is deemed approved sixty days after public notice is given (Section 1861.05 © of CIC) unless: (1) a consumer or consumer group requests a hearing within forty-five days of public notice and the commissioner grants the hearing or determines not to grant the hearing and issues written findings in support of that decision, (2) the commissioner on his own motion determines to hold a hearing, or (3) the proposed rate adjustment exceeds 7% of the then applicable rate for personal lines or 15% for commercial lines, in which case the commissioner must hold a hearing upon a timely request. The Rate Regulation Division reviews rate filings within these provisions and time frames.

Public Viewing Rooms

As Proposition 103 (Section 1861.07 of CIC) states that all rating information provided to the commissioner must be available for public inspection, the Rate Regulation Division maintains public

viewing rooms in San Francisco and Los Angeles.

Advisory Organizations

Although Proposition 103 eliminated rating organizations in California, advisory organizations may still exist. Advisory organizations file loss costs and forms with the Rate Regulation Division (Section 1855.2 of CIC).

Lines Regulated by Proposition 103

Overall the following lines of insurance are regulated by Proposition 103: Personal automobile, dwelling fire, earthquake, homeowners, inland marine, and umbrella; Commercial aircraft, automobile, boiler and machinery, burglary and theft, business owners, earthquake, farm owners, some fidelity, fire, glass, inland marine, medical malpractice, miscellaneous, multi-peril, other liability, professional liability, special multi-peril, umbrella, and coverage under the United States Longshoremen's & Harbor Workers' Compensation Act.

PRIOR APPROVAL OF FILINGS

Beginning November 8, 1989, property and casualty insurance rates must be approved by the insurance commissioner prior to use (Section 1861.01 © of CIC). As the Code continues to state that every insurer desiring to change any rate must complete a rate application with the commissioner (Section 1861.05 (b)), the Rate Regulation Division established a rate application that companies must complete if they wish to make any adjustments to their rates. Such rate applications are reviewed for acceptability by the Rate Filing Bureaus within the Rate Regulation Division.

Bi-weekly, a list of filings that have received approval letters is issued by Rate Regulation. To get on the mailing list and receive the approval list each time it is printed, please call (415) 904-5382. Or, view a copy on-line.

PUBLIC NOTICE

Section 1861.05 © of CIC indicates that public notice must be given for all rate applications. To meet this public notice requirement, the Rate Regulation Division issues a public notice every Friday of prior approval rate filings and file and use filings that have been received and meet basic compliance. The Rate Enforcement Bureau of the California Department of Insurance will send a copy of the public notice to any person or business free of charge. Please call (415) 904-5382 and request to be added to the mailing list. Or, view a copy on-line.

CALIFORNIA AUTOMOBILE RATING FACTORS

(Section 2632.5)

a) Every insurer offering or issuing a policy of automobile insurance shall establish a class plan for the

calculation of rates that specifies rating factors in accordance with this section and which complies with the good driver discount requirements of California Insurance Code Section 1861.02 and all other statutes providing discounts in automobile insurance rates and premiums.

b) Each insurer may only use the characteristics of one driver to rate each vehicle except for as provided in section 2632.5(d)(13) and section 2632.5(c)(2). If there are more vehicles on a policy than drivers, the insurer shall assign either a rate for an undesignated driver or the lowest rate for all driver related factors to the excess vehicles.

c) An insurer's class plan, and all rates and premiums determined in accordance therewith, shall utilize the following rating factors (the "Mandatory Factors") for bodily injury liability, property damage liability, medical payments, uninsured motorist, collision, and comprehensive coverages:

(1) "First Mandatory Factor," as used in subchapter 4.7, is the insured's driving safety record per California Insurance Code Section 1861.02(a)(1). This factor means the following for the driver rated on the insured vehicle:

A) The public record of traffic violation convictions available from the California Department of Motor Vehicles, together with similar public records of traffic violation convictions that are available from other jurisdictions;

B) The principally at-fault accidents, as determined pursuant to section 2632.13;

C) All convictions for violations of Vehicle Code Sections 23140, 23152, or 23153 must be treated as the highest surchargeable violation; however, other Vehicle Code convictions may receive equal treatment.

(2) "Second Mandatory Factor" as used in Subchapter 4.7, is the number of miles he or she drives annually, per California Insurance Code Section 1861.02(a)(2). This factor means the annual mileage for the insured vehicle during the 12 month period following the inception of the policy. Insurers may not retroactively adjust premiums based on actual miles driven unless notice is provided to the policy holder prior to the effective date of the policy.

(3) "Third Mandatory Factor" as used in Subchapter 4.7, is the number of years of driving experience the insured has, per California Insurance Code Section 1861.02(a)(3). This factor means the number of years experience that the driver rated on the insured vehicle has been licensed to drive in any jurisdiction. To the extent that a policy provides coverage for motorcycles or motor-driven cycles, as defined in California Vehicle Code Sections 400 and 405, this factor shall refer to the number of years that the driver rated on the insured vehicle has been licensed to drive such vehicles in any jurisdiction. (d) In addition to the rating factors set forth in subdivision (c), an insurer's class plan, and all rates and premiums determined in accordance therewith, may utilize the following optional rating factors (the "Optional Factors"):

1.Type of Vehicle; 2.Vehicle performance capabilities, including alterations made subsequent to original

manufacture; 3.Type of use of vehicle (pleasure only, commute, business, farm, commute mileage, etc.); 4.Percentage use of the vehicle by the rated driver; 5.Multi-vehicle household; 6.Academic standing of the rated driver; 7.Completion of driver training or defensive driving courses by the rated driver; 8.Vehicle characteristics, including engine size, safety and protective devices, damageability, repairability, and theft deterrent devices; 9.Gender of the rated driver; 10.Marital status of the rated driver; 11.Persistency; 12.Non-smoker; 13.Secondary Driver Characteristics. For drivers not assigned as a primary or secondary driver to another vehicle, this factor may be composed of a combination of the following factors: Safety Record, Years Licensed, Gender, Marital Status, Driver Training, and Academic Status. 14.Multi-policies with the same, or an affiliated company. 15.Relative claims frequency. This factor shall contain a maximum of ten categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims frequency. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed. 16.Relative claims severity. This factor shall contain a maximum of ten categories and shall reflect where the insured vehicle is garaged. These categories shall be based on grouping the zip codes in the state into bands. Alternately, the bands could be based on grouping the census tracts in the state. Each band shall contain areas with a similar average claims severity. In the event that the data for a zip code or census tract is not fully credible, the adjustment process described in Section 2632.9(d) shall be followed.

e) The three mandatory factors may not be combined with any other factor, except Percent Use, Academic Standing, Gender, Marital Status, and Driver Training may be combined with number of years of driving experience.

RATING ANALYSIS *(Section 2632.7)*

Automobile rating analysis is a precise method as prescribed by California law:

a) The determination of the initial relativities to associate with a rating factor shall be established by performing a sequential analysis. The sequential analysis shall remove the variation in loss costs already explained by prior factors.

b) The sequential analysis shall analyze the rating factors one at a time, in the following order:

(1) The first mandatory factor;
(2) The second mandatory factor;
(3) The third mandatory factor;
(4) Any and all optional factors used by the insurer in accordance with subsection 2632.5(d). The order of analysis of the optional factors shall be determined by the insurer, with the exception that frequency band and severity band shall be analyzed last.

c) The initial relativities, as developed, shall be balanced to a weighted average of 1.0 for multiplicative factors or balanced to a weighted average of 0.0 for additive factors. The weighting factor for the

weighted average shall be the number of exposures from the data chosen for use in section 2632.8(b) -- Discounts.

d) The results of the sequential analysis shall be submitted to the Department in a computer file in a format specified by the Commissioner. Individual policy holder's name and street address need not be submitted provided the insurer includes a unique identifying number which permits tracking of the information should questions concerning data quality arise.

NOTE: Authority: Section 1861.02, California Insurance Code and Calfarm Insurance Company v. Deukmejian (1989) 48 Cal.3d 805. Reference: Sections 1861.02 and 1861.05, California Insurance Code.

FACTOR WEIGHTS *(Section 2632.8)*

a) For each type of coverage, four factor weights shall be calculated, one weight for each of the three mandatory factors listed in Section 2632.5(c)(1) through (3) and one for all the optional factors (from Section 2632.5(d)) taken together as a single factor weight.

b) The data used to compute the weight shall be based on one of the following:

1. All of the subject company's currently insured vehicles;
2. The same data set used to perform the sequential analysis in Section 2632.7; or
3. The set of insured vehicles that may be published by the Department of Insurance.

c) For every insured vehicle in the data set and each rating factor utilized in the class plan:

1. First, calculate the premium using the initial relativities from Section 2632.7(c);
2. Second, calculate the premium excluding the rating factor being analyzed;
3. Third, calculate the absolute value of the difference between subdivision (c)(1) and subdivision (c)(2);
4. The weight for the rating factor being analyzed is the summation of the amounts in subdivision (3) divided by the number of calculations.

d) The weights of the factors, as calculated in subdivision (c), must align in decreasing order of importance as follows: driving safety record must have the most weight followed by annual miles driven followed by years of driving experience followed by the weight for the optional factor. If the weights are not in the order as specified herein then the insurer must correct the relativities of the rating factors as follows:

(1) Select the rating factor to be modified.

A) Compute the weighted average of the initial relativities for the factor over the data set selected in subdivision (b) herein;
B) Subtract the weighted average from each initial relativity;
C) Multiply the result of step (B) by a correction factor;

D) Add the result of step © to the weighted average.

The formula for this correction is:
NR = ((IR - WA) * CF) + WA
Where: NR = New Relativity
IR = Initial Relativity
CF = Correction Factor
WA = Weighted Average

(2) Repeat process of subdivision (d)(1)(A) through (D) if it is necessary to correct the weight of any of the rating factors.

(3) The weight of a corrected rating factor may not exceed the corrected weight of the succeeding rating factor, in decreasing order of importance, by more than 0.25.

USE OF DATA

a) An insurer that does not currently have credible data to support any of the categories for any of the rating factors listed in section 2632.5-(c) and (d) may use the following for each such factor in their class plans filed within three years of the effective date of these regulations. An insurer may elect to use more than one of the listed data sources, provided each data source is identified as being primary, secondary, or third etc. The primary data source must be used for all rating factors included in that data source. The secondary data source can be used only if the primary data source does not have information on a specific rating factor or as needed to supplement credibility. The secondary data source must be used for all rating factors included in that data source before using a third data source. Similarly, the third data source can only be used if the secondary data source does not have information on a specific rating factor or as needed to supplement credibility, etc.:

(1) their own data, interpolating or otherwise actuarially adjusting the data to fit the categories; or

(2) data from another company; or

(3) data from an advisory organization; or

(4) the indicated relativity from another insurer with a similar book of business; or

(5) data that may be published by the Department; or

(6) approved relativities from another insurer's approved class plan.

b) For class plans filed more than three years after the effective date of this regulation, an insurer may use only one of the following for every rating factor:

(1) the insurer's own data; or,

(2) the insurer's own data and the data from a single alternative source of primary data; or,

(3) data from a single alternative source of primary data, such as an advisory organization; or,

(4) the indicated relativity from the approved plan of another insurer with a similar book of business; or

(5) data that may be published by the Department; or,

(6) data that may be published by the Department and the insurer's own data.

c) When an insurer uses data from another source (as allowed in 2632.9(a) & (b)) they may use only the raw data before any adjustment factors have been applied (e.g., loss adjustment expenses, trending, loss development, etc.).

(d) If an insurer elects to use the optional factors average relative frequency band and severity band as listed in Section 2632.5(d)(15) and (16), the bands described in Section 2632.9(e) may be used. Use of the data described in section 2632.9(e) shall not be considered a data source for the purposes of section 2632.9(b) and restrict an insurer from selecting one of the options listed there. An insurer may also elect to use their own data for developing the frequency and severity bands. In the event that an insurer lacks credible data at the census tract level, they shall use zip codedata. If the insurer's own zip code data is not fully credible, it shall use the claims frequency and severity for the zip code that is published in the manual described in Section 2632.9(e) either:

(1) directly as it is published, or

(2) to credibility adjust their own data. In the case where the manual indicates that the rate published in the manual has been credibility adjusted, an insurer may:

(A) use the credibility adjusted rate in the manual as the complement of credibility, or

(B) combine the unadjusted data published in the manual with its own unadjusted data. If this combined data is still not credible, then an insurer may elect to use as the compliment of credibility either:

1. the rate published in the manual for the CAARP territory that the zip code is a member of, or

2. the rate based on their own data or data from the manual from another grouping of contiguous whole zip codes, selected by the insurer, that is fully credible and contains said zip code.

e) The frequency and severity rates and possible band assignments for each zip code in California are shown in the manual entitled California Private Passenger Auto Frequency and Severity Bands. Pursuant

to the provision of Section 11344, Government Code, this regulation is not printed in full herein. The Insurance Commissioner has approved the separate manual designated in this Section. This manual was filed with the Secretary of State of the State of California on July 5, 1996, but for the present is separately published, not as part of the California Administrative Code. The manual referenced in this section may be examined at the office of the Insurance Commissioner in San Francisco, Los Angeles, and Sacramento.

f) Zip codes not included in the manual described under (e) shall be assigned to bands as follows:

(1) new zip codes that were split off from an old zip code, shall use the band of the former zip code for that area;

(2) new zip codes that combined all or parts of other zip codes shall be assigned to one of the old zip codes that was used to make the new zip code;

(3) all other zip codes not in (e) shall be assigned by the insurer based on the band of any zip code that borders it.

(4) for assignments made under (2) or (3), insurers must choose the same zip code to be used for all band assignments.

NOTE: Authority: Section 1861.02, California Insurance Code and Calfarm Insurance Company v. Deukmejian (1989) 48 Cal.3d 805. Reference: Sections 1861.02 and 1861.05, California Insurance Code.

CLASS PLAN APPROVAL

a) Except as provided in subpart (b) of this section, no insurer may hereafter use a class plan, or charge or collect a premium which does not comply with the provisions of this subchapter or with the provisions of the California Insurance Code. No insurer may offer, sell or renew a policy of automobile insurance, or collect a premium for a policy of automobile insurance which is not calculated in accordance with a class plan that complies with this subchapter.

b) Prior to the approval of a class plan which has been submitted to the Commissioner in good faith and which complies with the provisions of this chapter and the Insurance Code, and prior to the implementation date specified in Section 2632.11, an insurer may continue to use rates and premiums that are calculated pursuant to a class plan that has been approved by the Commissioner.

NOTE: Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code. Reference: Sections 1861.02 and 1861.05 of the California Insurance Code.

CLASS PLANS, SYMBOLS, AND IMPLEMENTATION DATE

a) The Commissioner shall give public notice, at least 120 days in advance, of a date within which every insurer offering or selling a policy of private passenger automobile insurance shall submit a class plan which complies with this subchapter to the Commissioner for review. The following shall apply to all

class plans submitted pursuant to that notice and class plans submitted any time thereafter:

(1) A class plan shall be considered to have been received by the Commissioner on the date that it is received by the Department's Rate Filing Bureau in San Francisco.

(2) Within 15 working days of receipt, the Commissioner shall review filings submitted pursuant to this subchapter for completeness. If the Commissioner determines that the class plan is not complete, notice stating the grounds for incompleteness will be given to the insurer within the 15 working day period and the filing of the class plan will be rejected.

(3) Rejection of the filing of a class plan for incompleteness shall not bar the refiling of a complete class plan.

b) Class plans submitted for review shall contain a completed class plan application, in a form prescribed by the Commissioner, and underwriting guidelines.

c) All class plans submitted in accordance with subsection (a) shall be implemented on the later of the following dates: (1) 90 days after the date the plan is approved by the Commissioner; or (2) a uniform date selected by the Commissioner, as specified in subpart (d) of this section. Implementation, as referred to herein, shall apply to both the issuance of new policies and renewals, and the implementation may not result in unfair discrimination between insureds that are issued new and renewal policies.

d) The Commissioner shall give public notice, at least 90 days in advance, of a date selected for uniform implementation of approved plans.

e) The Commissioner shall approve or reject a class plan submitted by an insurer within 90 days of the date a completed class plan application is received by the Commissioner.

f) An insurer whose class plan has been rejected by the Commissioner may, within 30 days of the date of such rejection, request a hearing before the Commissioner. Such hearing shall be conducted in compliance with California Insurance Code section 1861.08, and the insurer requesting such hearing shall have the burden of proving that the rejected class plan complied with all applicable statutes and regulations.

g) Any change to an approved class plan or values assigned to the rating factors, and any change to the values assigned to the make, model, value, cost of repair, or auto symbol for the insured vehicles requires the prior approval of the Commissioner. Proposed changes must be submitted with a class plan application.

h) Every insurer that uses auto symbols for any vehicle must submit its methodology for determining such symbols, and all values and relativities associated therewith, to the Commissioner for approval prior to use. Any subsequent changes in methodology must also be submitted to the Commissioner for approval prior to use. Further, every insurer that uses auto symbols must submit the following to the Commissioner, annually, on a date to be agreed upon between the insurer and the Commissioner, or

if no agreement is reached, on a date to be specified by the Commissioner:

(1) all auto symbols, and the values and relativities associated therewith, that the insurer proposes to use during the ensuing 12 months. For a new auto model which becomes available after the date upon which the submission is made, the insurer shall assign a symbol according to the insurer's approved symbol methodology, and the insurer may then commence using the symbol. Such symbols shall be submitted for approval to the Commissioner with the insurer's next annual submission of all auto symbols.

(2) data sufficient to support any proposed changes in auto symbols, or changes in the values or relativities associated with any auto symbols, including but not limited to, damageability studies;

(3) data sufficient to show the anticipated impact of any class changes in auto symbols upon the total revenue generated by the insurer's private automobile insurance business.

i) Every insurer that does not use auto symbols, but which uses make, model, value, cost of repair, as factors in determining rates and premiums for private passenger automobile insurance must submit its methodology for determining such factors, and all values and relativities associated therewith, to the Commissioner for approval prior to use. Any subsequent changes in methodology must also be submitted to the Commissioner for approval prior to use. Further, every insurer that uses such factors must submit the following to the Commissioner, or if no agreement is reached, on a date to be specified by the Commissioner:

(1) All factors, and the values and relativities associated therewith, that the insurer proposes to use during the ensuing 12 months. For a new auto model which becomes available after the date upon which the submission is made, the insurer shall determine factors according to the insurer's approved methodology, and the insurer may commence using the factors. Such factors shall be submitted for approval to the Commissioner with the insurer's next annual submission of all factors;

(2) data sufficient to support any proposed changes in such factors, or changes in the values or relativities associated therewith, including, but not limited to, damageability studies;

(3) data sufficient to show the anticipated impact of any changes in factors upon the total revenue generated by the insurer's private passenger automobile insurance business.

j) Insurers may use auto symbols determined by advisory organizations that are in compliance with Insurance Code Section 1855, et seq.. In lieu of the requirements of subpart (h) above, insurers shall submit to the commissioner, annually, on a date to be agreed upon between the insurer and the Commissioner, or if no agreement is reached, on a date to be specified by the Commissioner, the following:

(1) a statement that the insurer proposes to use the symbols of an advisory organization;

(2) the identity of the advisory organization;

(3) sufficient information to identify the auto symbols of the organization that the insurer proposes to use.

NOTE: Authority: Sections 1861.02, 12921 and 12926 of the California Insurance Code and Calfarm Insurance Company v. Deukmejian 48 Cal.3d 805 (1989). Reference: Sections 1861.02 and 1861.05 of the California Insurance Code.

DISCOUNTS (SECTION 2632.6)

a) Insurers may offer discounts to premiums for any of the following:

(1) completion of driver training or defensive driving courses;
(2) any other discount provided by law.

b) Notwithstanding subsection (a), no discount shall be offered or used by any insurer that is not uniformly promoted and offered to the public.

c) The insurer's class plan shall specify the nature of the discounts and the manner in which they will be promoted and offered to the public.

(Section 2621.12)

a) Every insurer offering a policy of automobile insurance shall set its rates so that a good driver, as defined in Section 1861.025 of the California Insurance Code, shall be charged a rate that is at least 20 percent less that the lowest rate available to a comparable driver who is not a good driver. The good driver discount must be applied after the total premium is developed under the class plan, including any policy fees that apply to the issuance of the policy.

b) If a good driver as determined pursuant to California Insurance Code Section 1861.025 is not eligible to purchase a good driver discount policy because of the driving safety record or years of driving experience of any other person, then the good driver shall be eligible to purchase a good driver policy which excludes such other persons from coverage.

NOTE: Authority: Sections 1861.02, 1861.025, 12921, and 12926 of the California Insurance Code. Reference: Section 1861.02 and 1861.05 of the California Insurance Code.

ELIGIBILITY TO PURCHASE GOOD DRIVER DISCOUNT POLICIES

a) In determining a driver's qualification to purchase a good driver discount policy pursuant to California Insurance Code Section 1861.025, an insurer shall determine the driver's violation points and principally at-fault accidents as set forth in this section. This section shall also apply in determining whether a driver was principally at-fault in an accident for the purpose of determining the driver's driving safety record (First Mandatory Factor).

b) Violation point counts and principally at-fault accidents shall be determined as follows:

(1) The insurer may count one violation point for each violation point which has been assessed by the California Department of Motor Vehicles under California Vehicle Code Section 12810, Subsections (a), (b), (c), (d), (e), (g) and (h), for traffic violation convictions with conviction dates not more than three years preceding the effective or renewal date of the policy, and which have not been made confidential under the California Vehicle Code;

(2) For violations not occurring in California, the insurer may count one violation point for each violation point which would have been counted under subsection (1) above had the violation occurred in California. Violation points shall not be counted pursuant to this Subsection if violation points were counted for the violation pursuant to Subsection (b)(1) above;

(3) The insurer may count one violation point if a driver was involved in an accident which resulted only in damage to property if the driver was principally at fault in the accident, as defined in Subsection (c). A driver may also be determined to be principally at fault for such an accident where the accident was a solo vehicleaccident, subject to the exceptions set forth in subsection (d).

c) A driver may be considered to be principally at fault in an accident if the driver's actions or omissions were at least 51 percent of the proximate cause of the accident, subject to the exceptions set forth in Subsection (d), and, in accidents not resulting in death, if the total loss or damage caused by the accident exceeded $500.00.

d) A driver shall not be considered to be principally at-fault if the accident occurred under any of the following circumstances:

(1) The vehicle was lawfully parked at the time of the accident. A vehicle rolling from a parked position shall not be considered to be lawfully parked, but shall be considered as in the operation of the last operator;

(2) The vehicle was struck in the rear by another vehicle, and the driver has not been convicted of a moving traffic violation in connection with the accident;

(3) The driver was not convicted of a moving traffic violation and the operator of another vehicle involved in the accident was convicted of a moving traffic violation;

(4) The driver's vehicle was damaged as a result of contact with a vehicle operated by a "hit and run" operator of another vehicle and the accident was reported to legal authorities within a reasonable time after the accident;

(5) The accident resulted from contact with animals, birds, or falling objects;

(6) The driver was responding to a call of duty as a paid or volunteer member of any police or fire department, first aid squad, or of any law enforcement agency, while performing any other

governmental function in a public emergency;

(7) The accident was a solo vehicle accident that was principally caused by a hazardous condition of which a driver, in the exercise of reasonable care, would not have noticed (for example, "black ice.")

e) An insurer providing insurance coverage at the time of an accident shall not make a determination that a driver was principally at-fault for an accident, other than an indisputably solo vehicle accident and which is not of the type specified in subpart (d), unless the insurer first does the following:

(1) the insurer shall make an investigation of the accident;

(2) the insurer shall provide written notice to the insured of the result of such investigation, including any determination that the insured was principally at-fault. The notice shall specify the following: the percentage of fault ascribed to the insured; the percentage of fault ascribed to any other driver or other cause of the accident; the basis of any determination that a driver was principally at-fault. The notice shall advise the insured of the right to reconsideration of the determination of fault, as set forth in Subsection (e)(3);

(3) Within 30 days of receipt by the insured of a written notice required by Subsection (e)(2), the insured may request reconsideration of the insurer's determination that the insured was principally at-fault, including the insurer's determination of the percentage of fault ascribed to any driver. The insurer shall provide written notice of its decision upon reconsideration within 30 days of the insured's request therefor and the notice shall state the reasons for its decision upon reconsideration. The reconsideration shall be made by an employee or agent of the insurer other than the employee or agent who made the determination being reconsidered. The right to reconsideration set forth herein shall not affect any other rights of the insured.

f) If a driver had insurance that provided coverage for an accident, a subsequent insurer which did not provide coverage at the time of the accident and to whom an application for the issuance of a policy of insurance is made, or from whom a renewal policy is offered, may not consider the driver to be principally at-fault for the accident unless the following circumstances apply:

(1) If the insurer that provided coverage at the time of the accident charged the driver with a violation point for the accident in accordance with this Section, or the predecessor of this Section; or,

(2) If the driver was not covered by an automobile insurance policy delivered or issued for delivery in California and issued and in force pursuant to the laws of California at the time of the accident, and the insurer determines that the driver was principally at-fault as provided for in Subsection (g); or,

(3) If the insurer of the driver at the time of the accident did not have notice of the accident and no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, and the insurer determines that

the driver was principally at fault as provided for in Subsection (g).

g) If the driver did not have insurance that provided coverage for an accident, and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, an insurer to whom an application for the issuance or renewal of a policy of automobile insurance is made may consider a driver to be principally at-fault if the insurer has sufficient information to make that determination. For the purpose of this Subsection, the following shall apply:

(1) the insurer shall make reasonable efforts to obtain information concerning the accident from any insurer of a person involved in the accident;

(2) the insurer shall request sufficient information from the driver;

(3) upon reasonable request by the insurer, a driver shall provide sufficient information concerning the accident to the insurer for the insurer to determine whether the driver was principally at- fault. If the driver fails or refuses to provide such information, then the insurer may count a violation point for the accident or may consider the driver to be principally at-fault.

h) An insurer that has made a determination that its insured was principally at-fault in an accident shall not refuse to disclose that determination to any person involved in that accident, to any person legally responsible for damages resulting from that accident, or to an insurer or prospective insurer of any such person. the requirement for disclosure shall pertain only to the ultimate determination of its insured's fault, and disclosure shall not be required of any other information in its possession or any determination of fault of any person other than the insured.

i) In determining eligibility to purchase a good driver discount policy, the requirement that the driver have been licensed to drive a motor vehicle for the previous three years shall mean that the driver has been licensed to drive in any jurisdiction.

NOTE: Authority: Sections 1861.02, 1861.025, 12921 and 12926 of the California insurance Code, and Calfarm Insurance Company v. Deukmejian 48 Cal.3d 805 (1989). Reference: Sections 1861.025 and 1861.05 of the California Insurance Code and Section 12810 of the California Vehicle Code.

POLICIES OFFERED TO GOOD DRIVERS AND NONDISCRIMINATION
(Section 2632.14)

a) Except as provided by Insurance Code Section 1861.15(d) every insurer required to offer a good driver discount policy of automobile insurance pursuant to Section 1861.02(b) of the California Insurance Code shall offer to sell each of the following to a good driver:

(1) A good driver policy that contains only the minimum limits of liability coverage specified in Section 16056 of the California Vehicle Code;

(2) A good driver discount policy that contains comprehensive coverage or automobile collision coverage, or both of such coverages, in addition to automobile liability coverage;

(3) A good driver discount policy that contains any of the limits of coverage, the types of coverage, and amounts of deductibles that the insurer offers to sell to the public.

b) Insurers required to offer good driver discount policies pursuant to Section 1861.02(b) of the California Insurance Code shall offer and sell good driver discount policies under the same terms and conditions and with the same options and services that the insurer offers and sells to the public for any other automobile insurance policy. The foregoing includes but is not limited to terms for payment of premiums and the payment of commissions to agents.

NOTE: Authority: Sections 1861.02, 1861.15, 12921 and 12926 of the California Insurance Code. Reference: Section 1861.02 of the California Insurance Code.

DATA BANK *(Section 2632.15)*

Every insurer offering or issuing a policy of automobile insurance shall collect and retain the data listed in this subsection. All data requirements apply only to an insurer's direct business. If an insurer does not in any way use or collect an item listed in subsection (3) below for any individual insured, they are not required to collect and report the item. This file will be referred to as the "Current File". Insurers are required to collect and retain data on the listed factors, they are not required to use these factors in calculating premiums.

(1) All data must be kept in a computer file that allows for the insurer to place the data on computer media (tape, cartridge or disk). All data must be recorded in a raw, ungrouped format in a manner specified by the Commissioner.

(2) Every insurer shall begin collecting the data for current policy holders, beginning with all renewals effective on or after 180 days after the effective date of these regulations.

(3) The following items shall be kept for every currently insured vehicle:

A) The latest effective or renewal date of the policy;

B) The number of drivers assigned to this vehicle;

C) The following information for the rated driver on this vehicle (as of the last renewal date for this policy or date of latest coverage or vehicle change). To the extent that it is available, all violation and accident data shall cover a minimum of six years.

1. The total number of convictions.
2. The date and California vehicle code section (or its equivalent) of each violation.
3. The total number of at-fault BI accidents with over $500 damage.

4. The date of each at-fault BI accidents with over $500 damage.
5. The total number of at-fault non-BI accidents with over $500 damage.
6. The date of each at-fault non-BI accidents with over $500 damage.
7. Number of years since the last at-fault BI accident with over $500 in damage.
8. Number of years since the last at-fault non-BI accident with over $500 in damage.
9. Number of years since the last convictions.

10 Gender.

11 Marital status (legally married, single or widowed only).

12 Percentage use this driver.

13 Years licensed to drive.

14. Age.
15. Smoker status.

16 Academic status. Indicator to describe if the driver is a student and if so if they qualify for a good student discount.

17 Senior defensive driver discount eligibility.

18 Driver training status.

19 Any other driver related factors the Commissioner has approved and the insurer uses.(D) The same information listed under "C" shall also be kept for every driver assigned to this vehicle. Data for each driver shall only be kept for one vehicle, unless there are excess vehicles in which case the data under "C" shall include the data for the driver that puts the most mileage on the excess vehicle.

E) Additional vehicle indicator. This is used for insureds that have more vehicles than drivers where there is no rated driver.

F) Zip Code of the vehicle's location.

G) Type of use indicator (pleasure only, business, commute, etc.).

H) Weekly commute miles.

I) Vehicle model year.

J) Vehicle value (price group) code.

K) Vehicle type; auto, light pickup truck, van, heavy truck, Motorcycle, antique auto or other.

L) Vehicle performance type.

M) Limits and deductibles, separately for all coverages.

N) Good driver discount status.

O) Multi-vehicle household.

P) The number of semi-annual renewals for this policy.

Q) Vehicle safety and anti-theft equipment, including by not limited to:

1. Anti-lock brake, including number of wheels covered;
2. Air bags, including number and location;
3. Automatic seat belts;
4. Anti-theft devices, including type;
5. Vehicle garaging status.

R) Premiums, separately for each coverage.

S) Actual previous years mileage, rounded to the nearest hundred miles.

T) Estimated current years mileage for the 12 month period beginning with the start of this policy, rounded to the nearest hundred miles.

U) Any other vehicle related factors the Commissioner has approved and the insurer uses.

V) Any other factor the Commissioner has adopted by regulation.

W) VIN.

X) Policy number and vehicle number.

(4) Insurers shall maintain these data so that they are able to provide them to the Commissioner within three months of receipt of a request for the data.

Every insurer issuing a policy of automobile insurance shall maintain historical underwriting, loss and exposure data for each calendar year for each of the latest four years for every insured vehicle. All data requirements apply only to an insurer's direct business. If an insurer does not in any way use or collect an item listed in subsection (6) and (7) below for any individual insured, they are not required to collect and report the item. This data shall be kept in two files with records kept by each vehicle. One file will be referred to as the "Historical Exposure File", and the other file will be referred to as the "Historical Losses File".

1) All data must be kept in a computer file that allows for the insurer to place each Calendar year's data on computer media (tape, cartridge or disk). All data must be recorded in a raw, ungrouped format in a manner specified by the Commissioner.

2) The data shall be kept for a minimum of four years after the end of each calendar year.

3) Every insurer shall begin collecting the data for all policies in effect beginning the first of the quarter after the effective date of these regulations.

4) All loss and loss reserve information shall reflect the loss and loss reserve estimates as of the latest calendar quarter. The data on losses occurring four years ago shall reflect the reserve estimates as of the latest quarter. All loss data shall be based on claims received by the insurer for that coverage as the consequence of a single incident regardless of the number of claimants.

5) In the event of a change in any risk related factors, multiple records per vehicle shall be generated for the calendar year. A new record shall be generated for the "Historical Exposure File" each time any of the data in (a)(3)(C) through (V) changes.

6) The "Historical Exposure File" shall contain the following items for every insured vehicle for all exposure during each calendar year:

A) The data item listed in Section 2632.15(a);
B) The termination date of the policy or a code indicating the policy is still in effect;
C) Earned premium listed separately for each coverage;
D) Earned exposure listed separately for each coverage.

7) The "Historical Losses File" shall contain the following information for each claims a result of incidents occurring during the calendar year:

A) Policy number and vehicle number. These numbers must match the policy number and vehicle number in the "Historical Exposure File" for the vehicle to which the loss is assigned;

B) Date of accident;
C) Number of claimants;
D) Total dollar amount of incurred losses listed separately by coverage and including the latest estimate of the ultimate loss reserves and loss adjustment reserves as described in Section 2632.15(b) Paragraph (4).
E) Capped losses for bodily injury liability coverages.
(F) Closed claim indicator by coverage.

8) Insurers shall maintain these data so that they are able to provide them to the Commissioner within three months of receipt of a request for the data.

NOTE: Section 1861.02 and 1861.03, California Insurance Code and Calfarm Insurance Company v. Deukmejian (1989) 48 Cal.3d 805. Reference: Sections 1861.02 and 1861.03, California Insurance Code.