Advanced Commercial Auto Insurance
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Introduction

Nearly every business operates at least one car to conduct deliveries, transport employees, or perform essential tasks away from the office. Fortunately, commercial auto coverage is similar to personal auto coverage and can also be purchased as part of a commercial package policy.

The Business Auto Policy is a general purpose policy used to write automobile insurance for most types of business vehicle risks. It is used to insure company cars, vans, trucks and other vehicles for many types of businesses, including those that own and supply company cars to employees, those that use vans and trucks to haul their own goods, those that transport passengers, and those that lease vehicles to others.
Businesses may have automobile exposures arising out of owned, leased, rented, or borrowed vehicles. At one time, the basic automobile policy was used to insure most of these risks. The basic policy only provided coverage for autos which were specifically scheduled on the policy, but coverage for hired cars and non-owned autos could be added by endorsement. At a later date, comprehensive automobile liability coverage was introduced, and it became very popular among businesses having large and continually changing fleets.

What is a Commercial Vehicle?

Many vehicles used for commercial purposes are eligible for commercial auto coverage. There are four categories of vehicles listed by type that are eligible. These include:

Private passenger vehicles – cars, vans, pick-up trucks, utility trailers

Commercial vehicles – trucks, truck-tractors, large trailers, semi-trailers. There are approximately 8 million trucks on the American highways.

Public vehicles – taxis, vans, limousines, luxury buses. There are approximately 171,000 taxicabs in the United States, and 57,000 limousines and luxury buses (according to the Taxicab, Limousine, and Paratransit Association, www.tlpa.org).

Others – Fire trucks, ambulances, farm equipment, snow removal equipment, mobile equipment

Commercial Auto Policies

Commercial auto coverage for these vehicles is provided by a coverage part which will consist of:

- one or more commercial auto declarations forms,
- one or more commercial auto coverage forms,
- any endorsements that may apply, and
- special automobile coverage forms.
Different coverage forms have been designed for different types of commercial automobile exposures. A policy may include one or more of the following:

- Business Auto Coverage Form,
- Garage Coverage Form, and
- Truckers Coverage Form

Two variations of the business auto coverage form are available for special types of risks. The garage coverage form is used to insure garage risks, such as service and repair shops, which have a premises-operations exposure and have temporary possession of customers’ cars. The truckers coverage form is used to insure vehicles for trucking businesses that haul goods for others, and which frequently exchange trailers with other businesses. In this course, we will focus on the business auto form and discuss briefly the garage and truckers forms at the end.

**Business Auto Coverage Form**

**Declarations**

The business auto declarations are lengthy and are divided into six sections. The declarations identify the named insured, the policy number and the form of business (corporation, partnership, etc.), the mailing address of the named insured, the identity of the insurance company and the producer, and the policy period.

- In addition, the declarations show the vehicles insured and the coverages provided, along with rates, premiums, deductibles and other information typically found on policy declarations. When numerous vehicles are insured, separate schedules of the vehicles may be attached. The information is grouped in the following ways:
  - **Item One**—General information about the risk
  - **Item Two**—Coverages, coverage symbols, limits of liability and the premium for each coverage
  - **Item Three**—Schedule of owned autos
• Item Four—Schedule of hired or borrowed autos

• Item Five—Schedule for non-ownership liability

• Item Six—Schedule of gross receipts or mileage for liability coverage for public auto or leasing rental concerns

Various sections of the declarations will be completed as appropriate for the coverages being written. If a particular coverage does not apply, that section will be left blank.

Policy Structure

The Business Auto Coverage form was updated in 2001. The basic coverage form (ISO CA 00 01 10 01) is divided into five distinct sections. The sections of the coverage form are:

• Section I—Covered Autos

• Section II—Liability Coverage

• Section III—Physical Damage Coverage

• Section IV—Conditions

• Section V—Definitions

Provisions for two common coverages, medical payments and uninsured motorists coverage, are not included in the coverage form. These are options which do appear on the declarations page, but endorsements must be attached to put the coverages into effect.

Policy Preamble

The coverage form begins with a few simple statements. First it cautions you to read the “entire policy,” meaning all parts of the policy in addition to this coverage form. It then explains that various pronouns (such as “you” and “we”) are used to refer to the named insured and the insurance company. The last statement points out that the coverage
form has a specific “definitions” section, and that the meaning of any words that appear in quotation marks can be found in that section.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations. The words “we,” “us” and “our” refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V—Definitions.

Section I - Covered Autos Symbols

The policy uses “symbols” to designate what kind of cars are covered under the various parts of the policy.

Section I of the coverage form lists the nine symbols which may be used to identify “covered autos,” and describes each one. Business auto coverage applies only to those autos which are identified as “covered autos” in the declarations by entry of the appropriate numerical symbol(s) after each coverage purchased.

Coverage may be tailored to your needs by selection of the appropriate symbols. Different symbols may be used for different coverages.

If no symbol is shown for a particular coverage, then that coverage is not provided. More than one symbol may be shown for a given coverage if there is no conflict or overlap between the symbol descriptions—for example, the same coverage could apply to “owned autos” and “hired autos” (symbols 2 and 8).

The broadest coverage available is reflected by symbol 1, because “any auto” includes all owned, hired, and nonowned autos. The insured may purchase the most narrow coverage by using symbol 7 and requesting that a coverage apply only to “specifically described autos.” It is not uncommon for a policyholder to purchase liability coverage for “any auto,” and to purchase physical damage coverage only for some specifically described autos. Liability insurance—of any kind—is the most important type to secure because liability risks pose the greatest threat to a business’s financial well-being.
Symbols 3 and 4 would be used if the insured wanted a particular coverage to apply only to owned private passenger autos or to owned autos other than private passenger autos. Symbols 5 and 6 can be used to activate no-fault benefits and compulsory uninsured motorists coverage for owned autos which are required to have such benefits in the state where they are licensed or principally garaged.

Hired autos includes all autos the insured leases, hires, rents, or borrows, but not autos owned by employees or members of their households. Non-owned autos include all autos the insured does not own, lease, hire, or borrow which are used in connection with the business, including autos owned by employees or members of their households while being used in your business.

Certain symbols may be used only with specific types of coverage. Symbols 1, 2, 3, 4, 7, 8 and 9 may be used to designate liability coverage. But liability is the only coverage for which symbol 1 may be used, because other coverages cannot apply to “any auto”—no-fault benefits, medical payments, uninsured motorists and physical damage coverages are not available for “nonowned autos.”

Symbols 2, 3, 4, 7 and 8 may be used to designate physical damage coverages. Symbol 5 may only be used to designate no-fault benefits. Symbol 6 may only be used to designate uninsured motorists coverage for certain vehicles for which the coverage is mandatory, but broader uninsured motorists coverage for all owned vehicles (whether the coverage is mandatory or voluntary) may be provided by showing symbol 2 for this coverage.

SECTION I:

COVERED AUTOS

Item two of the Declarations shows the “autos” that are covered “autos” for each of your coverages. The following numerical symbols describe the “autos” that may be covered “autos.” The symbols entered next to a coverage on the Declarations designate the only “autos” that are covered “autos”.

A. DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS

SYMBOL DESCRIPTION

1. Any “auto”.

2. Owned “autos” only. Only those “autos” you own (and for Liability Coverage any “trailers” you don’t own while attached to power units you own). This includes those
“autos” you acquire ownership of after the policy begins.

3. Owned Private Passenger “Autos” Only. Only the private passenger “autos” you own. This includes those private passenger “autos” you acquire ownership of after the policy begins.

4. Owned “Autos” Other Than Private Passenger “Autos” Only. Only those “autos” you own that are not of the private passenger type (and for Liability Coverage any “trailers” you don’t own while attached to power units you own). This includes those “autos” not of the private passenger type you acquire ownership of after the policy begins.

5. Owned “Autos” Subject To No-Fault. Only those “autos” you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those “autos” you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.

6. Owned “Autos” subject to a Compulsory Uninsured Motorists Law. Only those “autos” you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those “autos” you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

7. Specifically Described “Autos.” Only those “autos” described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any “trailers” you don’t own while attached to any power unit described in Item Three).

8. Hired “Autos” Only. Only those “autos” you lease, hire, rent or borrow. This does not include any “autos” you lease, hire, rent, or borrow from any of your employees or partners or members of their households.

9. Nonowned “Autos” Only. Only those “autos” you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes “autos” owned by your employees or partners or members of their households but only while used in your business or your personal affairs.
Case In Point:

The issue of which cars—and which people—are covered by a commercial auto policy can be very complicated. Unlike personal auto policies, business auto policies go to great lengths to define coverage. The 1993 federal appeals court decision Volkswagen of America, Greg Harmon et al. v. Hartford Casualty Insurance illustrates how the issues of corporate ownership and structure can complicate the definition of “covered auto” in a commercial auto policy.

While on partnership business, a truck owned by Dexter Rogers collided with Greg Harmon’s automobile. Harmon suffered serious injuries which resulted in the amputation of one of his legs.

Hartford—which had written the commercial coverage for the Rogers partnership—denied coverage for the accident on the ground that its policy provided coverage only for nonowned autos and for hired autos, and that the truck in question was owned by one of the partners.

The Rogers partnership had a separate commercial policy issued by Cal-Farm Insurance Co., which listed Rogers’s truck as a covered auto and which provided coverage for business and personal use. Cal-Farm ultimately paid Harmon $100,000, its policy limit. Harmon wasn’t satisfied with this amount.

Harmon reached a settlement with Dexter Rogers and Pamela Lourence, who had driven the truck. He received a judgment of $1.4 million against Rogers and Lourence, who assigned him their rights under the Hartford policy. Harmon then sued the insurance company.

The trial court rejected Harmon’s suit, ruling that Hartford’s denial of coverage was appropriate. The Rogers partnership’s insurance policy contained a common schedule of coverages and covered autos that stated:

This policy provides only those coverages for which a charge is shown in the premium column below. Each of these coverages will apply only to the autos shown as covered autos. Autos are shown as covered autos for a particular coverage by the entry in the covered auto column below, next to the name of the coverage....

The entries in the covered auto column indicated that the policy provided auto coverage for “hired autos only” and “nonowned autos only.” This coverage applied to: Only those autos you do not own, lease, hire, or borrow which are used in connection with your business. This includes autos owned by your employees or members of their
Harmon argued that the “you” in that definition referred only to the Rogers Partnership—not any specific member of the partnership. He argued that the trial court’s summary dismissal of his case was therefore improper, because a dispute remained as to whether the truck involved in the accident was owned by Dexter Rogers personally or by the partnership.

However, the appeals court cited a separate endorsement to the policy which excluded partner-owned autos from coverage. This endorsement stated:

If you are a partnership, no auto owned by any of your partners or members of their households is a covered auto for the LIABILITY INSURANCE unless the policy is endorsed to cover that auto as a covered auto and the proper premium is charged.

Therefore, the appeals court ruled, the factual dispute concerning ownership of the truck was irrelevant. The truck was excluded from coverage under the policy either as an auto owned by the partnership—as the policy stated—or as an auto owned by one of the partners—as the endorsement stated.

Harmon argued that these two sections conflicted and created an ambiguity in the policy. And, as you should now know, an ambiguity in a policy will usually create a presumption of coverage.

But the appeals court hammered down against this argument:

[Harmon] seeks to cloud the clear meaning of this policy by introducing an issue of ambiguity where none exists.

Although an ambiguous policy must be read to favor coverage, [Harmon’s] argument fails on two distinct grounds.

First, [his] construction of the nonowned auto provision as extending coverage beyond employee-owned autos runs counter to the plain meaning of the policy when read as a whole. In the Schedule for Non-Ownership Liability, the “rating basis” for nonowned auto coverage is the number of employees and the premium is based on an estimate of 10 employees. To find that this coverage was meant to extend beyond employees to other persons, including the partners, would require a strained interpretation of the policy.

Second, [the disputed endorsement], which excludes partner-owned autos from
coverage, states clearly at the heading of the page:

“THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.”

If there is a conflict in meaning between this endorsement and the body of the policy with regard to coverage of partner-owned vehicles, the endorsement controls.

So, the appeals court affirmed the trial court’s grant of summary judgment in favor of Hartford.

**Newly Acquired Autos**

Newly acquired autos are automatically covered until the end of the policy term if symbols 1, 2, 3, 4, 5 or 6 are entered next to a coverage.

If symbol 7 is entered next to any coverage, a newly acquired auto will be automatically insured under that coverage for 30 days only if it is a replacement auto, or the insurance company already insures all autos owned by you for that coverage. To continue coverage for a newly acquired auto when “specifically described autos” are insured, the vehicle must be reported to the insurance company before the end of the 30-day period.

For liability coverage only, “owned autos” is automatically extended to include small trailers, “mobile equipment” while it is being carried or towed by a covered auto, and any auto that is a temporary substitute for a covered auto that is out of service because of its breakdown, repair, servicing, loss or destruction. When symbols 2, 4 or 7 apply, liability coverage also applies to any nonowned trailers while attached to power units owned by the named insured or specifically described in the declarations (this provision is stated in the coverage symbol descriptions).

These extensions of the definition of “covered auto” are given because the above situations do not significantly change the liability exposure. Small trailers are covered because the exposure is minimal. Nonowned trailers of any size, and mobile equipment, are covered for liability while being towed or carried by a covered auto because they become an extension of the covered auto. The driver of the covered auto is in control, and in the event of an accident it would be difficult to separate injury or damage caused by each unit separately. Temporary substitute autos are covered because they replace a covered auto and the exposure is essentially unchanged.
B. OWNED AUTOS YOU ACQUIRE AFTER THE POLICY BEGINS

1. If symbols 1, 2, 3, 4, 5 or 6 are entered next to a coverage in Item Two of the Declarations, then you have coverage for “autos” that you acquire of the type described for the remainder of the policy period.

2. But, if symbol 7 is entered next to a coverage in Item Two of the Declarations, an “auto” you acquire will be a covered “auto” for that coverage only if:

   a. We already cover all “autos” that you own for that coverage or it replaces an “auto” you previously owned that had that coverage; and

   b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C. CERTAIN TRAILERS, MOBILE EQUIPMENT AND TEMPORARY SUBSTITUTE AUTOS

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered “autos” for Liability Coverage:

1. “Trailers” with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.

2. “Mobile equipment” while being carried or towed by a covered “auto”.

3. Any “auto” you do not own while used with the permission of its owner as a temporary substitute for a covered “auto” you own that is out of service because of its:

   a. Breakdown;

   b. Repair;

   c. Servicing;

   d. “Loss”; or

   e. Destruction.
Section II - Liability Coverage

This is a typical insuring agreement for liability insurance coverage. The insurance company agrees to pay sums that the insured becomes legally obligated to pay “as damages” because of bodily injury or property damage. The injury or damage must result from an accident and arise out of an insured automobile exposure.

Remember, an automobile can do a great deal of harm and property damage to others. These are the exposures which can jeopardize the financial strength and management focus of any business.

The insurance also applies to “covered pollution cost or expense,” but this is an extremely limited type of coverage. As you will see when you review the policy definitions, this applies only to a demand or order to clean up, remove or neutralize pollution caused by the escape of substances (such as fuel or motor oil) that escape from an automobile’s normal operating systems. There is no coverage for any pollution resulting from the escape of any substances being transported, stored, treated or processed in or upon a covered auto.

Example: If the insured transports a drum of pesticide in a pickup truck and that pesticide is spilled on the highway, the cost of clean-up would not be covered.

Business auto liability coverage is usually written with a single limit of liability (split limits are available by endorsement). Up to that limit, the insurance company agrees to pay the insured’s legal obligations for damages caused by a covered accident resulting in bodily injury or property damage, to pay the insured’s legal obligations for covered pollution cost resulting from a covered accident, and to defend, investigate, and settle suits and claims. The duty to defend and settle ends when the limit of insurance has been exhausted by payment of judgments or settlements. There is no duty to provide a defense for any bodily injury or property damage not covered by the coverage form.

The final paragraph in this section spells out the insurance company’s right and duty to defend suits and to investigate and settle claims. However, there is no duty to defend suits or claims for damages that are not covered by the policy form, or to defend after the limit of liability has been exhausted by the payment of claims.
SECTION II:
LIABILITY COVERAGE

A. COVERAGE

We will pay all sums an “insured” legally must pay as damages because of “bodily injury” or “property damage” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of a covered “auto”. We will also pay all sums an “insured” legally must pay as a “covered pollution cost or expense” to which this insurance applies, caused by an “accident” and resulting from the ownership, maintenance or use of covered “autos”. However, we will only pay for the covered pollution cost or expense if there is either “bodily injury” or “property damage” to which this insurance applies that is caused by the same “accident.”

We have the right and duty to defend any “suit” asking for such damages or a “covered pollution cost or expense.” However, we have no duty to defend “suits” for “bodily injury” or “property damage” damage or a “covered pollution cost or expense” not covered by this Coverage Form. We may investigate and settle any claim or “suit” as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

Who Is An Insured

This section clarifies who is insured by the liability coverage. To the extent that coverage is not limited by exclusions, an “insured” includes:

• the named insured for any covered auto;

• the owner or anyone else from whom a trailer is hired or borrowed and connected to an auto owned by the named insured;

• anyone while using with permission a covered auto owned, hired, or borrowed by the named insured (except for the five excluded classes below); and

• anyone liable for the conduct of an insured person, but only to the extent of that liability.

The following five classes of people are not insured for liability exposure under the business auto coverage part:
• the owner or anyone else from whom the named insured hires or borrows a covered auto;

• employees of the named insured, if the covered auto is owned by that employee or a member of that employee’s household;

• anyone using a covered auto while working in a business of selling, servicing, repairing, or parking autos if it is not the named insured’s business;

• anyone other than the named insured’s employees, a lessee or borrower or any of their employees, while moving property to or from a covered auto;

• a partner of the named insured’s, for any covered auto owned by that partner or a member of his or her household.

These exclusions are designed to preclude automatic coverage for the exposures of others which should properly be insured elsewhere. For example, if an employee uses a personal auto in the business of the named insured, the business auto coverage could cover the liability of the employer for use of the auto (symbol 1 or 9 must apply). It would not cover the employee or a family member if named in a suit as the owner or driver. Of course, such an owner should have protection under his or her own personal auto policy.

In all of these cases the “named insured” would have liability coverage for any accidents that occur, but the owners or operators of such vehicles would not be covered under business auto liability coverage if they were named in a suit or claim—they should have their own liability insurance for these exposures.

1. WHO IS AN INSURED

The following are “insureds”:

a. You for any covered “auto”.

b. Anyone else while using with your permission a covered “auto” you own, hire or borrow except:

(1) The owner or anyone else from whom you hire or borrow a covered “auto”. This exception does not apply if the covered “auto” is a “trailer” connected to a covered
“auto” you own.

(2) Your employee if the covered “auto” is owned by that employee or a member of his or her household.

(3) Someone using a covered “auto” while he or she is working in a business of selling, servicing, repairing, parking or storing “autos” unless that business is yours.

(4) Anyone other than your employees, partners, a lessee or borrower or any of their employees, while moving property to or from a covered “auto”.

(5) A partner of yours for a covered “auto” owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.

**Liability Coverage Extensions**

Two types of liability coverage extensions are provided. First, the insurance company agrees to make a number of supplementary payments in addition to amounts which are subject to the limit of insurance. These include expenses incurred by both the insured and the insurance company, the cost of certain bonds, costs taxed against the insured, and interest on final judgments.

The second extension is for out-of-state coverage. To the extent that the laws of another state where a covered auto is being used require minimum amounts of liability coverage which are higher than the policy limit, or require other types of coverage such as no-fault benefits, the policy will automatically provide the minimum amounts and types of coverages.

A caveat: For most businesses, minimum coverage limits leave significant exposure to various liabilities. The insured should be advised to carry liability coverage in excess of state minimums. If the insured decides to absorb the risk and carry only state minimums, consider asking the insured to sign a waiver indicating that he or she understands that this coverage is less than recommended.
2. COVERAGE EXTENSIONS

a. Supplementary Payments. In addition to the Limit of Insurance, we will pay for the “insured”:

(1) All expenses we incur.

(2) Up to $2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an “accident” we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any “suit” we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the “insured” at our request, including actual loss of earning up to $250 a day because of time off from work.

(5) All costs taxed against the “insured” in any “suit” we defend.

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any “suit” we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.


While a covered “auto” is away from the state where it is licensed we will:

(1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered “auto” is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered “auto” is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.


Liability Exclusions

The liability section of the business auto coverage form lists 12 13 exclusions. Exclusions generally appear in insurance policies to remove coverage for three types of losses:

1) losses which are not insurable,

2) losses which should be covered by other types of insurance coverage, and

3) losses which result from an above-average exposure and for which coverage is not provided automatically, but for which optional coverage may be available at an additional cost.

Most of the liability exclusions fall into the first two categories.

The first exclusion eliminates coverage for expected or intended losses, because they are not insurable. Coverage applies only to unexpected and accidental injury or damage. On the surface the contractual liability exclusion may be misleading—it eliminates coverage for liability assumed under contract, but it does not apply to an “insured contract.” As you will see when you review the definitions, the meaning of an “insured contract” is actually very broad, and many contracts or agreements are covered.

The next three exclusions relate to injuries to employees and others that are part of the workers compensation and employers liability exposures. Auto liability insurance is designed to cover injuries to third parties who do not work for the insured. Injuries to employees, even when caused by a fellow employee, which arise out of and in the course of employment should be covered by workers compensation insurance.

B. EXCLUSIONS

This insurance does not apply to any of the following:

1. EXPECTED OR INTENDED INJURY

“Bodily injury” or “property damage” expected or intended from the standpoint of the “insured.”

2. CONTRACTUAL

Liability assumed under any contract or agreement.
But this exclusion does not apply to liability for damages:

a. Assumed in a contract or agreement that is an “insured contract” provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement; or

b. That the “insured” would have in the absence of the contract or agreement.

3. WORKERS COMPENSATION

Any obligation for which the “insured” or the “insured’s” insurer may be held liable under any workers compensation, disability benefits or unemployment compensation law or any similar law.

4. EMPLOYEE INDEMNIFICATION AND EMPLOYER’S LIABILITY

“Bodily injury” to:

a. An employee of the “insured” arising out of and in the course of employment by the “insured”; or

b. The spouse, child, parent, brother or sister of that employee as a consequence of paragraph a. above.

This exclusion applies:

(1) Whether the “insured” may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But his exclusion does not apply to “bodily injury” to domestic employees not entitled to workers compensation benefits or to liability assumed by the “insured” under an “insured contract.” For the purposes of the Coverage Form, a domestic “employee” is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. FELLOW EMPLOYEE

“Bodily injury” to any fellow employee of the “insured” arising out of and in the course of the fellow employee’s employment or while performing duties related to the conduct of your business.
There is no coverage for damage involving property owned or being transported by the insured, or to property in the insured’s care, custody or control. These exposures should be covered by commercial property coverages. Liability insurance is designed to cover the insured’s legal obligation for damages suffered by others.

Injury or damage resulting from the handling of property before it is accepted for loading onto a covered auto, or after it is unloaded from a covered auto, is excluded because this is part of a general liability exposure and is not an automobile liability exposure.

Automobile liability coverage applies while property is being loaded or unloaded manually or by a hand truck, but not by any mechanical device (such as a forklift) which is not attached to the auto. This is another general liability exposure.

Injury or damage arising out of the “operation” of certain types of “mobile equipment” is excluded because it is a general liability exposure. This applies to self-propelled vehicles upon which cherry pickers or similar devices are mounted to raise and lower workers, or which have permanently attached equipment such as air compressors, pumps and generators used for spraying, welding and other purposes.

An exception to the definition of “mobile equipment” states that these vehicles are considered to be “autos,” and they are insured under auto liability coverage while they are being driven to and from job sites. Example: A back-hoe driven on public roads for a brief distance between two job sites would be covered for liability under this coverage. But as soon as it is being “operated” for its intended purpose, the risk shifts to a general liability exposure.

(A similar exception in the exclusions of the general liability coverage form is made to pick up the coverage where the auto liability coverage ends.)

Injury or damage arising out of the insured’s “completed operations” is excluded because this is another general liability exposure. Example: If the back-hoe were driven to a construction site on which a building was completed and later collapsed, the resulting loss would not be covered even though insured vehicles had been used in its construction.
6. CARE, CUSTODY OR CONTROL

“Property damage” to or “covered pollution cost or expense” involving property owned or transported by the “insured” or in the “insured’s” care, custody or control.

But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. HANDLING OF PROPERTY

“Bodily injury” or “property damage” resulting from the handling of property:

a. Before it is moved from the place where it is accepted by the “insured” for movement into or onto the covered “auto”; or

b. After it is moved from the covered “auto” to the place where it is finally delivered by the “insured.”

8. MOVEMENT OF PROPERTY BY MECHANICAL DEVICE

“Bodily injury” or “property damage” resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered “auto”.

9. OPERATIONS

“Bodily injury” or “property damage” arising out of the operation of any equipment listed in paragraphs 6.b. and 6.c. of the definition of “mobile equipment.”

10. COMPLETED OPERATIONS

“Bodily injury” or “property damage” arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in paragraphs a.
Your work will be deemed completed at the earliest of the following times:

(1) When all of the work called for in your contract has been completed.

(2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

(3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The final liability exclusions remove coverage for most forms of pollution and for any injury or damage resulting from acts of war.

The pollution exclusion is designed to reinforce the other policy language describing the limited coverage for “pollution cost or expense” and the related definitions. Nearly all forms of pollution liability resulting from substances being transported, towed by, stored or processed in or upon a covered auto are excluded. These risks are designed to be covered under a pollution liability endorsement—or separate environmental impairment liability insurance. An exception is made for the escape of certain substances, such as fuel and motor oil, from the normal operating systems of a covered auto.

Any injury or damage resulting from war or any act of war is excluded because war is a catastrophic peril and is usually not insurable.

11. POLLUTION

“Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”:

a. That are, or that are contained in any property that is:

(1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered vehicle;
(2) Otherwise in the course of transit by or on behalf of the “insured”; or

(3) Being stored, disposed of, treated or processed in or upon the covered “auto”; 

b. Before the “pollutants” or any property in which the “pollutants” are contained are moved from the place where they are accepted by the “insured” for movement into or onto the covered “auto”; or 

c. After the “pollutants” or any property in which the “pollutants” are contained are moved from the covered “auto” to the place where they are finally delivered, disposed of or abandoned by the “insured.” 

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar “pollutants” that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered “auto” or its parts, if:

(1) The “pollutants” escape, seep, migrate, or are discharged, dispersed or released directly from an “auto” part designed by its manufacturer to hold, store, receive or dispose of such “pollutants”; and

(2) The “bodily injury,” “property damage,” or “covered pollution cost or expense” does not arise out of the operation of any equipment listed in paragraphs 6.b. and 6.c. of the definition of “mobile equipment.”

Paragraphs b. and c. above of this exclusion do not apply to “accidents” that occur away from premises owned by or rented to an “insured” with respect to “pollutants” not in or upon a covered “auto” if:

(1) The “pollutants” or any property in which the “pollutants” are contained are upset, overturned or damaged as a result of the maintenance or use of a covered “auto”; and 

(2) The discharge, dispersal, seepage, migration, release or escape of the “pollutants” is caused directly by such upset, overturn, or damage.

12. WAR

“Bodily injury” or “property damage” due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

Racing activity is defined here and excluded elsewhere in the policy.
13. RACING

Covered “autos” while used in any professional or organized racing or demolition contest or stunting activity. This insurance also does not apply while that covered “auto” is being prepared for such a contest or activity.

**Limit of Liability**

Business auto liability coverage is usually written with a single limit of insurance that applies per accident. This section states that the limit shown in the declarations is the most the insurance company will pay for “all damages” resulting from any one accident, regardless of the number of covered autos, insureds, claims made, or vehicles involved. (But any covered supplementary payments will be paid in addition to the limit of insurance.)

Although we often think of an automobile “accident” as something that occurs suddenly, as in the case of collision, the term also includes repeated exposure to the same conditions. The last paragraph clarifies that continuous or repeated exposure to substantially the same conditions is considered to be “one accident.” This eliminates the possibility of a claimant seeking damages in excess of the limit of insurance on the basis of repeated exposure.

Example: The insured’s overloaded truck continuously drives by a nearby business and eventually causes $300,000 of structural damage to the building from repeated ground vibrations. The limit of coverage is $100,000. The claimant sues for the entire $300,000 and argues that you’re the insured’s truck passed by on at least three occasions. Although this accidental damage may be covered, the most the insurance company will pay is $100,000 because it is a single accident.

No one is entitled to receive duplicate payments for the same elements of loss under the liability coverage and under any medical payments, uninsured motorists, or underinsured motorists coverage endorsements attached to the coverage part.

B. LIMIT OF INSURANCE

Regardless of the number of covered “autos,” “insureds,” premiums paid, claims made or vehicles involved in the “accident,” the most we will pay for the total of all damages and “covered pollution cost or expense” combined, resulting from any one “accident” is the Limit of Insurance for Liability Coverage shown in the Declarations.
All “bodily injury,” “property damage,” and “covered pollution cost or expense” resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one “accident.”

No one will be entitled to receive duplicate payments for the same elements of “loss” under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

Section III - Physical Damage Coverage

Major Coverages

Under the physical damage section, the business auto coverage form agrees to pay for loss to a covered auto or its equipment under any of three separate insuring agreements—comprehensive coverage, specified causes of loss, and collision coverage. Each coverage applies only if one or more coverage symbols and a premium are shown in the declarations.

When comprehensive coverage applies, it will pay for loss from any cause—including theft—except collision with another object or overturn of the vehicle (which is the definition of collision coverage). Comprehensive coverage is written with a deductible, but the deductible will not apply to loss caused by fire or lightning (this provision is stated in the declarations and in the physical damage deductible provision, and does not appear here in the coverage agreements).

When specified causes of loss coverage applies, the coverage will only pay for loss caused by any of the perils specified in the agreement. A $25 deductible applies only to loss by vandalism or mischief (this provision is stated in the declarations and does not appear in the coverage form).

When collision coverage applies, it will pay for loss caused by collision with another object or the overturn of the auto. Note that “collision” does not necessarily mean collision with another vehicle—collision with a tree or a bridge is a covered collision. This coverage is written with a deductible.

The physical damage section includes an agreement for towing and labor costs which are incurred when a covered auto is disabled. This coverage is optional. The amount of coverage for each disablement of an auto will be the limit shown in the declarations.
Special provisions apply to glass breakage, hitting a bird or animal, and damage caused by falling objects or missiles. If an auto is insured for comprehensive coverage, the insurance company will pay under the “comprehensive coverage” for glass breakage and loss by hitting a bird or animal, or loss caused by falling objects or missiles. This usually works to the insured’s advantage, because comprehensive is usually written with a lower deductible than collision coverage. However, the insured is given the option of having glass breakage paid as a collision loss—this removes a possible double deductible if glass breakage and other damage result from a collision.

SECTION III:

PHYSICAL DAMAGE COVERAGE

A. COVERAGE

1. We will pay for “loss” to a covered “auto” or its equipment under:

a. Comprehensive Coverage. From any cause except:

(1) The covered “auto’s” collision with another object; or

(2) The covered “auto’s” overturn.

b. Specified Causes of Loss Coverage. Caused by:

(1) Fire, lightning or explosion;

(2) Theft;

(3) Windstorm, hail or earthquake;

(4) Flood;

(5) Mischief or vandalism; or

(6) The sinking, burning, collision or derailment of any conveyance transporting the covered “auto”.

c. Collision Coverage. Caused by:

(1) The covered “auto’s” collision with another object; or
(2) The covered “auto’s” overturn.

2. Towing.

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered “auto” of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. Glass Breakage—Hitting a Bird or Animal—Falling Objects or Missiles.

If you carry Comprehensive Coverage for the damaged covered “auto,” we will pay for the following under Comprehensive Coverage:

a. Glass breakage;

b. “Loss” caused by hitting a bird or animal; and

c. “Loss” caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered “auto’s” collision or overturn considered a “loss” under Collision Coverage.

The physical damage section automatically includes an extension of coverage for transportation expenses incurred as a result of the total theft of private passenger vehicles, but only if such vehicles are covered for theft losses (comprehensive or specified causes of loss coverage). When applicable, after a 48-hour waiting period, the coverage will begin to pay up to $20 a day for transportation expenses, subject to a maximum payment of $600.

The second coverage extension is to pay for loss of use expenses for rental autos for which the insured has become legally responsible under a written contract. Coverage is limited to $20 a day and a maximum of $600.


Transportation Expenses

We will pay up to $20 per day to a maximum of $600 for transportation expense incurred by you because of the total theft of a covered “auto” of the private passenger type. We will pay only for those covered “autos” for which you carry either
Comprehensive or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy’s expiration, when the covered “auto” is returned to use or we pay for its “loss.”

Loss of Use Expense

For Hired Auto Physical Damage, we will pay expenses for which an “insured” becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered “auto”; 

Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered “auto”; or

Collision only if the Declarations indicate that Collision Coverage is provided for any covered “auto”.

However, the most we will pay for any expenses for loss of use is $20 per day, to a maximum of $600.

Physical Damage Exclusions

Losses caused by nuclear hazards or war are excluded because these are catastrophic exposures.

Certain items, such as tape decks, CB radios, and other sound receiving equipment, are not covered unless permanently installed in the auto (portable or detachable devices are too easily removed). Tapes and records are not covered because they are easily lost, misplaced or removed. Equipment designed for radar detection is not covered because it suggests that the driver intends to violate speed laws, which is a practice the insurance companies want to discourage.

Maintenance type losses, such as wear and tear, mechanical breakdown, and tire damage, are not covered because these are expected as a consequence of using an automobile and do not result from accidents. An exception is made when these losses result from another covered cause of loss— if tires rupture due to a covered collision, the tire loss would be covered.
B. EXCLUSIONS

1. We will not pay for “loss” caused by or resulting from any of the following. Such “loss” is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the “loss.”

   a. Nuclear Hazard.

      (1) The explosion of any weapon employing atomic fission or fusion; or

      (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

   b. War or Military Action.

      (1) War, including undeclared or civil war.

      (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

      (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for “loss” to any covered auto” while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for “loss” to any covered “auto” while that covered “auto” is being prepared for such a contest or activity.

3. We will not pay for “loss” caused by or resulting from any of the following unless caused by other “loss” that is covered by this insurance:

   a. Wear and tear, freezing, mechanical or electrical breakdown.

   b. Blowouts, punctures or other road damage to tires.

4. We will not pay for “loss” to any of the following:

   a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.

c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.

Any accessories used with the electronic equipment described in Paragraph c. above.

Exclusions 4.c. and 4.d. do not apply to:

Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered “auto” at the time of the “loss” or such equipment is removable from a housing unit which is permanently installed in the covered “auto” at the time of the “loss”, and such equipment is designed to be solely operating by used of the power from the “auto’s” electrical system, in or upon the covered “auto”, or

Any electronic equipment that is:

(1) Necessary for the normal operation of the covered “auto” or the monitoring of the covered “auto’s “operating system; or

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

5. We will not pay for “loss” to a covered “auto” due to “diminution in value”.

**Physical Damage Limits**

The most the insurance company will pay for loss resulting from any one accident is the lesser of the actual cash value of the loss or the cost of repairing or replacing the damaged or stolen property. Recovery for physical damage losses will be reduced by any applicable deductible(s) shown in the declarations. However, any comprehensive coverage deductible shown in the declarations does not apply to loss caused by fire or lightning.
C. LIMIT OF INSURANCE

1. The most we will pay for “loss” in any one “accident” is the lesser of:

   a. The actual cash value of the damaged or stolen property as of the time of the “loss”; or

   b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

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

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

D. DEDUCTIBLE

For each covered “auto,” our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations.

Any Comprehensive Coverage deductible shown in the Declarations does not apply to “loss” caused by fire or lightning.

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Section IV – Conditions

Loss Conditions

The business auto coverage form includes a number of loss conditions and general conditions that apply to the automobile insurance in addition to the common policy conditions.

The business auto conditions are divided into two sections—loss conditions and general conditions. These apply in addition to the common policy conditions (which apply to all coverages in the commercial package policy program).

Appraisal

The first loss condition provides for appraisal in the event that the insured and the insurance company disagree over the amount of a loss. It is virtually identical to the
appraisal condition found on property insurance forms. Either party may request an appraisal. Each party will then select a competent appraiser, and the two appraisers will select an impartial umpire. The appraisers will separately state the actual cash value and amount of loss, and if they disagree the differences will be submitted to the umpire. Agreement by any two will be binding. The insured and the insurance company will each pay their own appraiser and share the costs of the umpire.

SECTION IV:

BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. LOSS CONDITIONS

1. APPRAISAL FOR PHYSICAL DAMAGE LOSS

If you and we disagree 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 a competent and impartial umpire. The appraisers will state separately the actual cash value and 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:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

Duties of the Insured

This condition specifies the insured’s duties in the event of an accident, claim, suit or loss. These duties obligate the insured to keep the insurance company informed and limit further losses as much as possible.

The insured must give the insurance company “prompt notice” of any accident or loss. Notice must include name and address, “how, when and where” the accident or loss occurred, and to the extent possible the names and addresses of any injured persons and witnesses.
Every involved insured is required to assume no obligation, make no payment and incur no expense without the consent of the insurance company—except at the insured’s own cost. Copies of any demand, notice, summons or legal paper received concerning a claim or suit must be immediately sent to the insurance company. Every insured person must cooperate with the insurance company in the investigation, settlement or defense of the claim or suit.

With respect to physical damage losses only, the insured must notify the police if there has been a theft, and must take reasonable steps to protect the auto from further damage.

In the event of bodily injury, the insurance company is authorized to obtain medical information, and each insured when requested is required to submit to a medical examination at the insurance company’s expense. In the event of loss to a covered auto, the insured must promptly notify the police if the vehicle or any of its equipment has been stolen. The insured must also take reasonable steps to protect the auto from further damage, and permit the insurance company to inspect the auto and records proving loss before its repair or disposition. When requested, the insured must agree to be examined under oath and to sign a statement of answers given concerning the loss.

2. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

a. In the event of “accident,” claim, “suit” or “loss,” you must give us or our authorized representative prompt notice of the “accident” or “loss.” Include:

(1) How, when and where the “accident” or “loss” occurred;

(2) The “insured’s” name and address; and

(3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved “insured” must:

(1) Assume no obligation, make no payment or incur no expense without our consent, except at the “insured’s” own cost.
(2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or “suit.”

(3) Cooperate with us in the investigation, settlement or defense of the claim or “suit.”

(4) Authorize us to obtain medical records or other pertinent information.

**Legal Action Against the Insurance Company**

A brief condition addresses legal action against the insurance company. No one may take legal action against the insurance company under the coverage form until there has been full compliance with the terms of the coverage form. Under the liability insurance, no one may take legal action until the insurance company has agreed that you have an obligation to pay, or until the amount of that obligation has been determined by judgment after trial.

With regard to physical damage loss payment, the insurance company has the option to pay for, repair or replace the damaged or stolen property. If stolen property is recovered, the insurance company may return it and will pay for any damage resulting from the theft. The insurance company has the option to take all or part of any damaged or stolen property at an agreed or appraised value. Loss payments will include applicable sales tax.

The final loss condition, transfer of rights of recovery, is a standard subrogation clause. To the extent that any payment is made to or on behalf of any person or organization under the coverage, any rights to recover damages from another party shall be transferred to the insurance company. The person or organization must do everything necessary to secure these rights, and must do nothing after an accident or loss to impair them.

3. the insured LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Form until:

a. There has been full compliance with all the terms of this Coverage Form; and

b. Under Liability Coverage, we agree in writing that the “insured” has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the “insured’s” liability.
4. LOSS PAYMENT – PHYSICAL DAMAGE COVERAGES
At our option we may:

a. Pay for, repair or replace damaged or stolen property;

b. Return the stolen property, at our expense. We will pay for any damage that results to the “auto” from the theft; or

c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

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

5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

That person or organization must do everything necessary to secure our rights and must do nothing after “accident” or “loss” to impair them.

**General Conditions**

The general conditions begin with a brief statement to the effect that the insured’s bankruptcy will not relieve the insurance company from its obligations under the coverage form.

The next condition provides that the coverage will be void in the event of fraud by the named insured, or in the event of intentional concealment or misrepresentation of a material fact by “any insured” concerning the coverage form, a covered auto, insurable interest in a covered auto, or a claim under the coverage form.

A liberalization clause is included as a matter of convenience for both the insured and the insurance company. It states that any revision to the policy form that provides more coverage without additional premium will automatically be provided as soon as the revision takes effect in the insured’s state (thus, there is no need to issue an endorsement to update the form).
With respect to physical damage coverage, the insurance will provide no benefit to a bailee who takes temporary possession of a covered auto. Bailees, such as auto repair shops or storage facilities, should carry their own insurance to cover customers’ vehicles.

When a covered auto is a trailer connected to another vehicle, liability coverage will be “primary” when it is connected to a vehicle the insured owns and “excess” when connected to a vehicle the insured does not own. If the coverage from any another coverage form or policy provides insurance on the same basis, either primary or excess, the insurance company will pay only its proportional share.

In the event that other insurance applies, coverage will be “primary insurance” for covered autos which the insured owns. All liability coverage for liability assumed under an “insured contract” will always be “primary insurance.” Insurance for covered autos which the insured does not own will be “excess” over any other collectible insurance. Autos hired or borrowed by you are considered “owned” for physical damage coverage.

B. GENERAL CONDITIONS

1. BANKRUPTCY

Bankruptcy or insolvency of the “insured” or the “insured’s” estate will not relieve us of any obligations under this Coverage Form.

2. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Form is void in any cause of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other “insured,” at any time, intentionally conceal or misrepresent a material fact concerning:

a. This Coverage Form;

b. The covered “auto”;

c. Your interest in the covered “auto”; or

d. A claim under this Coverage Form.

3. LIBERALIZATION
If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. NO BENEFIT TO BAILEE—PHYSICAL DAMAGE COVERAGES

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. OTHER INSURANCE

a. For any covered “auto” you may own, this Coverage Form provides primary insurance. For any covered “auto” you don’t own, the insurance provided in this Coverage Form is excess over any other collectible insurance. However, while a covered “auto” which is a “trailer” is connected to another vehicle, the Liability Coverage this Coverage Form provides for the “trailer” is:

(1) Excess while it is connected to a motor vehicle you do not own.

(2) Primary while it is connected to a covered “auto” you own.

b. For Hired Auto Physical Damage coverage any covered “autos” you lease, hire, rent or borrow is deemed to be a covered “auto” you own. However, any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

c. Regardless of the provisions of paragraph a. above, this Coverage Form’s Liability Coverage is primary for any liability assumed under an “insured contract.”

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

Premium Audit

Business auto coverage is subject to premium audit, which means that the initial premium is an estimated premium and that the final premium is determined at the end of the policy period based on actual exposures.
Example: If the insured acquires additional vehicles during the policy term, the final premium would be determined based upon the actual number of vehicles, dates of acquisition, values and other rating factors that apply to the coverage. If the policy is written for a period more than one year, the actual premium will be computed annually.

The insurance applies only to accidents and losses occurring during the policy period and within the coverage territory. The policy period is the period shown in the declarations. The coverage territory is the United States of America including its territories and possessions, plus Puerto Rico and Canada. Coverage also applies to covered autos while being transported between any places included in the coverage territory.

In a situation where the insured rents a car for 30 days or less, coverage is provided worldwide.

The final condition addresses insurance under two or more coverage forms or policies issued by the same insurance company. When such duplicate insurance applies, the maximum limit of insurance under all coverage forms will not exceed the highest limit under any applicable coverage or policy. (But this does not apply to coverage specifically written to apply as excess over the business auto coverage.)

6. PREMIUM AUDIT

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Form, we cover “accidents” and “losses” occurring:

a. During the policy period shown in the Declarations; and
b. Within the coverage territory.

The coverage territory is:

a. The United States of America;

b. The territories and possessions of the United States of America;

c. Puerto Rico; and

d. Canada.

Anywhere in the world if:

(1) A covered “auto” of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and

(2) The insured’s responsibility to pay damages is determined in a “suit” on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to. We also cover “loss” to or “accidents” involving a covered “auto” while being transported between any of these places.

8. TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same “accident,” the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

Section V – Definitions

The business auto coverage form includes a definitions section which defines key terms applicable to the automobile insurance. Since many of these are self-explanatory, we will only comment briefly on the definitions, placing slightly more emphasis on the few longer and more complex definitions.
Accident, Auto and Bodily Injury

“Accident” includes continuous or repeated exposure to these same conditions resulting in bodily injury or property damage.

“Auto” for the purposes of automobile insurance means land motor vehicles designed for use on public roads. Usually these are vehicles subject to licensing and registration—but not always. The term “auto” does not include “mobile equipment”—these terms are mutually exclusive, because mobile equipment exposures are covered by general liability insurance. However, as noted earlier, a back-hoe would be considered an auto when driven on a public road, en route to a job site.

“Bodily injury” includes injury, sickness or disease, including death resulting from any of these conditions.

SECTION V – DEFINITIONS

A. “Accident” includes continuous or repeated exposure to the same conditions resulting in “bodily injury” or “property damage.”

B. “Auto” means a land motor vehicle, trailer or semi trailer designed for travel on public roads but does not include “mobile equipment.”

C. “Bodily injury” means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

Covered Pollution

Although the definition of “covered pollution cost or expense” is very detailed, it is designed to reinforce other policy language and exclusions related to this limited coverage. The intent is to provide only a very limited coverage for the cleanup and removal of pollution resulting from certain substances (such as fuel or motor oil) that escape from an automobile’s normal operating systems as the result of an accident. Coverage also exists for expenses arising from suits brought by governmental authorities.

There is no coverage for any pollution resulting from the escape of any substances being transported, stored, treated or processed in or upon a covered auto. As noted earlier, escape of pollutants other than those used to drive the vehicle would fall under other coverage.
D. “Covered pollution cost or expense” means any cost or expense arising out of:

1. Any request, demand or order; or

2. Any claim or “suit” by or on behalf of a governmental authority demanding that the “insured” or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of “pollutants.”

“Covered pollution cost of expense” does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants.”

a. That are, or that are contained in any property that is:
   (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered “auto”; 

   (2) Otherwise in the course of transit by or on behalf of the “insured”; 

   (3) Being stored, disposed of, treated or processed in or upon the covered “auto”; or 

b. Before the “pollutants” or any property in which the “pollutants” are contained are moved from the place where they are accepted by the “insured” for movement into or onto the covered “auto”; or 

c. After the “pollutants” or any property in which the “pollutants” are contained are moved from the covered “auto” to the place where they are finally delivered, disposed of or abandoned by the “insured.”

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar “pollutants” that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered “auto” or its parts, if:

(1) The “pollutants” escape, seep, migrate, or are discharged, dispersed or released directly from an “auto” part designed by its manufacturer to hold, store, receive or dispose of such “pollutants;” and

(2) The “bodily injury,” “property damage” or “covered pollution cost or expense” does not arise out of the operation of any equipment listed in paragraphs 6.b. or 6.c. of the definition of “mobile equipment.”
Paragraphs b. and c. above do not apply to “accidents” that occur away from premises owned by or rented to an “insured” with respect to “pollutants” not in or upon a covered “auto” if:

(1) The “pollutants” or any property in which the “pollutants” are contained are upset, overturned or damaged as a result of the maintenance or use of a covered “auto”; and

(2) The discharge, dispersal, seepage, migration, release or escape of the “pollutants” is caused directly by such upset, overturn or damage.

**Diminution in Value**

Diminution of value is the actual loss in market value or a perceived loss in value that results after a loss.

E. “Diminution in value” means the actual or perceived loss in market value or resale value which results from a direct and accidental “loss”.

**Employee**

The definition of employee includes a worker provided by a labor leasing firm but does not include seasonal or short-term temporary workers.

F. “Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

**Insured and Insured Contract**

As mentioned earlier, “insured contract” is actually a broad term and the coverage form does provide many types of contractual liability coverage. Liability assumed under a lease of premises, sidetrack agreement, easement agreement, agreement to indemnify a municipality when required by law, agreement related to the rental or lease of automobiles, and other agreements related to the insured’s business operations may be covered.

But there are some specific exceptions to what is an insured contract. An “insured contract” does not include that part of any contract or agreement that (1) indemnifies a person or organization for BI or PD resulting from construction or demolition operations within 50 feet of any railroad property which affects a railroad bridge,
tunnel, trestle, tracks, road bed, underpass, or crossing; (2) pertains to the loan, lease or rental of an auto to the named insured if the auto is loaned, leased or rented with a driver, or (3) that holds a person or organization engaged in the business of transporting property by auto for hire harmless for the insured’s use of an auto over a route or territory that person or organization is authorized to serve by public authority.

G. “Insured” means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or “suit” is brought.

H. “Insured contract” means:

1. A last of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for “bodily injury” or “property damage” to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your employees, of any “autos”.

However, such contract or agreement shall not be considered an “insured contract” to the extent that it obligates you or any of your employees to pay for “property damage” to any “autos” rented or lease by you or any of your employees.

An “insured contract” does not include that part of any contract or agreement:

a. That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing; or
b. That pertains to the loan, lease, or rental of an “auto” to you or any of your
employees, if the “auto” is loaned, leased or rented with a driver; or

c. That holds a person or organization engaged in the business of transporting property by “auto” for hire harmless for your use of a covered “auto” over a route or territory that person or organization is authorized to serve by public authority.

Leased Worker

Leased workers act as employees of the insured but are “leased” to the employer through a labor leasing firm set up to handle the workers compensation requirements, administration, and providing other benefits to their employees. A labor leasing firm allows small employers to provide better benefits to employees through the leasing firm than it could provide on its own.

I. “Leased worker” means a person leased to you by a labor-leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. “Leased worker” does not include a “temporary worker”.

Loss

“Loss” as defined by the policy means damage that is both direct and accidental.

J. “Loss” means direct and accidental loss or damage.

Mobile Equipment

The definition of “mobile equipment” is rather detailed, but it generally applies to motorized equipment that is not designed or intended for travel on public roads. Such things as bulldozers, forklifts, and road construction equipment are not subject to registration, and are not covered by automobile insurance (they are covered by general liability insurance). However, exceptions are made for some types of self-propelled vehicles which have “permanently attached” equipment and are designed for use on public roads.

Snowplows and street cleaning equipment which perform their intended operations on public roads are insured as “autos” under this coverage form. Vehicles with other types of equipment mounted on auto or truck bodies may be insured as “autos” while
traveling to job sites but, as stated earlier (see the liability exclusions), auto liability coverage terminates as soon as the special equipment is being operated (at this point the risk shifts to a general liability exposure).

The definition of “mobile equipment” is identical on the business auto and general liability coverage forms. This allows the two coverages to fit together precisely, and removes any doubt about which coverage applies to “autos” and which applies to “mobile equipment.” Both forms specify that certain self-propelled vehicles are not mobile equipment and will be considered to be autos. This group of self-propelled vehicles includes those with permanently attached equipment designed primarily for snow removal, road maintenance other than construction or resurfacing, or street cleaning. Cherry pickers and similar devices used to raise or lower workers are “autos” if they are mounted on an automobile or truck chassis.

K. “Mobile equipment” means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

2. Vehicles maintained for use solely on or next to premises you own or rent;

3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
   a. Power cranes, shovels, loaders, diggers, or drills; or
   b. Road construction or resurfacing equipment such as graders, scrapers or rollers.

5. Vehicles not described in paragraphs 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
   a. Air compressors, pumps and generators including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
   b. Cherry pickers and similar devices used to raise or lower workers.

6. Vehicles not described in paragraphs 1., 2., 3. or 4. above maintained primarily for
purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not “mobile equipment” but will be considered “autos”:

a. Equipment designed primarily for:

(1) Snow removal;

(2) Road maintenance, but not construction or resurfacing; or

(3) Street cleaning;

b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment

Pollutants

“Pollutants” include solids, liquids, gases, and other substances that are capable of causing pollution damage.

Covered pollution cost or expense means costs arising out of any request, demand or order, or claim or suit by a governmental authority demanding that the insured tests for, monitors, cleans up, removes, contains, treats, detoxifies or neutralizes, or responds to or assesses the effects of pollutants. It does not include the cost of pollutants in property being transported or towed by, handled into, onto, or from the covered auto, or otherwise in the course of transit by the insured, or being stored, disposed of, treated or processed in or on the covered auto. Also excluded are pollutants released before the property is moved to the place where they are accepted by the insured for movement into the covered auto, and after the pollutants are delivered by the insured. This exclusion does not apply to fuels, lubricants, fluids, exhaust gases, or other pollutants necessary for or resulting from the normal operation of a covered auto or its parts.

L. “Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
**Final Definitions**

“Property damage” means not only direct damage to property, but loss of use of tangible property as well.

Example: The insured's truck that is involved in a collision topples over and blocks the entrance to a store parking lot. The insured driver is liable for the accident. Although the store suffered no actual property damage, it loses sales because customers cannot reach the premises. The store owner would have a legitimate automobile liability property damage claim against the insured on the basis of loss of use.

“Suit” means a civil proceeding in which damages because of bodily injury, property damage, or covered pollution cost or expense, to which the insurance applies are alleged. The term “suit” also means an arbitration proceeding or alternative dispute resolution proceeding in which damages are claimed and to which the insured must submit with the insurance company’s consent.

The final definition found on the business auto coverage form specifies that the term “trailer” include a semi trailer.

M. “Property damage” means damage to or loss of use of tangible property.

N. “Suit” means a civil proceeding in which:
   1. damages because of “bodily injury,” or “property damage”; or
   2. “covered pollution cost or expense,” to which this insurance applies are alleged.

   “Suit” includes
   a. An arbitration proceeding in which such damages or “covered pollution costs or expenses” are claimed and to which the “insured” must submit or does submit with our consent; or
   b. Any other alternative dispute resolution proceeding in which such damages or “covered” pollution costs or expenses” are claimed and to which the insured submits with our consent.

O. “Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.

P. “Trailer” includes semi trailer.
Endorsements

Because the business auto coverage form uses a flexible system of coverage symbols, it has eliminated the need for a number of endorsements that once were common. Endorsements are no longer needed to add coverage for non-owned autos and hired cars. However, business auto coverage still leaves a few gaps that can only be closed by endorsement when the coverages are needed. This section will review the most frequently used endorsements.

Medical Payments

Commercial auto coverage forms do not automatically include medical payments coverage. Commercial auto declarations forms have a space to enter a limit and premium for medical payments, but the coverage applies only when the auto medical payments coverage endorsement is attached to the policy.

Medical payments coverage is written with a limit of insurance per person, per accident. Necessary medical and funeral expenses resulting from accidental bodily injury and incurred within three years of the accident date are covered. When the named insured is an individual, the named insured and all family members are covered while occupying or when struck by any auto. For all insured businesses, coverage applies to anyone occupying a covered auto or a temporary substitute for a covered auto. Coverage does not apply to injuries to the insured’s employees if the injury arises out of and in the course of their employment, but domestic employees not eligible for workers compensation are covered.

Uninsured Motorists

Commercial auto coverage forms do not automatically include uninsured motorists coverage. Commercial auto declarations forms have a space to enter a limit and premium for uninsured motorists coverage, but the insurance applies only when an uninsured motorists coverage endorsement is attached to the policy.

Generally, the coverage pays amounts that an “insured” is legally entitled to recover from the owner or driver of an “uninsured motor vehicle” because of bodily injury sustained in an accident. Unless altered by state requirements, “uninsured motor vehicle” means any of the following:
• a vehicle which at the time of accident is not covered by a bodily injury liability policy or bond;

• a vehicle which at the time of accident is covered by a bodily injury liability policy or bond, but the coverage limit is less than the minimum amount required by the financial responsibility law of the state where the vehicle is principally garaged;

• a vehicle which at the time of accident is covered by a bodily injury liability policy or bond, but the insuring or bonding company denies coverage or becomes insolvent; and

• a hit-and-run vehicle whose owner or operator cannot be identified.

This coverage varies from one state to the next because of differences in statutory requirements. In most states it applies only to bodily injury, but some states permit or require it to include property damage coverage. In some states, the definition of “uninsured” motor vehicle includes an “underinsured” vehicle.

**Drive Other Car Coverage**

Commercial auto coverage may also be extended by endorsement to insure the non business exposures of named individuals who may not own an automobile and may not carry personal auto insurance. Some company executives are issued company cars. Business auto coverage insures their exposure while using those vehicles, and it may cover them while using any other vehicles in the course of business activities. But business auto coverage would not insure them while using other autos for personal activities. For example, it would not cover use of a rental car while on a personal vacation.

By attaching a “Drive Other Car” endorsement, the business auto coverage can be amended to provide personal-type automobile insurance for named individuals. The endorsement changes the liability coverage to insure the named individual and spouse while using any non-owned auto for both business and personal use. It changes the physical damage coverage to make any non-owned “private passenger vehicle” a “covered auto” when used by the named individual or spouse. If medical payments and uninsured motorists coverage are part of the business auto coverage, the “Who Is An Insured” section is expanded to include the named individual and any “family member” who is a resident of the same household. However, coverage will not apply to
any auto owned by the named individual or a family member—such owned autos must be specifically insured outside of the business coverage.

Sole proprietors who operate a business may extend business auto coverage to provide personal auto insurance for immediate family members. The proprietor, as named insured, might be covered for use of any auto, but family members would not normally have that protection—particularly for the personal use of non-owned autos. An “Individual Named Insured” endorsement may be used to add family coverage to business auto insurance. It removes the “fellow employee” exclusion with respect to family members, because family members often work for a family business. It changes the liability coverage to apply to all family members who are residents of the same household. Physical damage coverage is provided for family members using a “private passenger auto” owned by the named insured, and non-owned autos are also covered but coverage for a non-owned trailer is limited to $500.

Normally, the business auto coverage form would not cover a partner of the named insured’s for liability while using an auto owned by that partner or a member of his or her household. This problem may be resolved by endorsing the policy to name the partnership as the named insured with respect to liability coverage. When this endorsement is attached, the liability exposure of individual partners would be covered while using their own cars or those owned by members of their family.

If a business has broad coverage for “all autos,” it would be covered in any suit arising out of an accident involving owned, hired, borrowed, or non-owned autos, including autos owned by employees while used for business purposes. Although the employees are insured under the business auto liability section while driving autos owned by the business, they are not insured while driving their own cars in the course of business. If a suit against a business also named an employee as the driver and owner of a vehicle, the business auto coverage would only protect the business. If the employee had personal auto coverage, it would provide some protection. But claims resulting from a business-related accident might involve amounts well above the employee’s coverage limits. Employees can be protected under the business auto coverage by attaching the “Employees as Additional Insureds” endorsement. It states that any employee is an insured person while using an auto the business does not own, hire, or borrow, when the autos are used in the business or personal affairs of the named insured.

This coverage insures employees for the business use of their own autos or autos owned by family members. It does not protect other family members who may own a vehicle being used by an employee.
Case In Point:

Family drivers can be a big issue—especially for small businesses. The 1992 federal district court decision Ohio Casualty Insurance Co. v. Gail Aron considered the distinctions between personal and business auto policies.

In April 1989, Gail Aron was in a car accident with an underinsured motorist. As a result of the accident, Aron sustained bodily injuries. The 1988 Oldsmobile that Aron was driving at the time of the accident was owned by her father, Werner Aron.

The car was insured by Ohio Casualty, under a personal auto insurance policy in which Werner Aron was the named insured. Pursuant to the personal auto insurance policy, Gail Aron received $200,000 in underinsured motorists benefits from Ohio Casualty.

However, Ohio Casualty had issued Werner Aron more than one auto insurance policy. In January 1989, the insurance company had issued a “Business Auto Policy” to his company, Werner Auto Electric.

Under the business auto policy, there was one vehicle specifically described as a “covered auto.” This vehicle was a 1987 Ford van owned by Werner Auto Electric.

Although Werner Aron’s two policies would seem to be easily distinguished, some confusion followed. Aron and his daughter argued that the business auto policy should have covered her accident. (Apparently, they believed it would absorb the claim with less impact on its premiums than the personal auto policy.)

Ohio Casualty Insurance Company sought a determination in court that it was not obligated to provide underinsured motorist benefits to Gail Aron under its business auto insurance policy.

Aron, on the other hand, sought a declaratory judgment from the court that she was entitled to the underinsured motorists coverage provided in the business auto policy.

The general principles for interpreting policies of insurance are well established under Pennsylvania law. The 1983 state supreme court decision Standard Venetian Blind Co. v. American Empire Insurance had ruled:

Where a provision of a policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, a court is required to
give effect to that language.

The federal appeals court considered the business auto policy which Ohio Casualty issued to Werner Auto Electric, pursuant to which Gail Aron claimed that she was entitled to underinsured motorist benefits. It focused on the following language:

“You” and “your” mean the person or organization shown as the named insured in the declarations.

The above quoted definition of “you” from “PART I—WORDS AND PHRASES WITH SPECIAL MEANING,” is clear that “you” means the “organization shown as the named insured in the declarations.”

In the uninsured and underinsured motorists endorsement, it was clear that “You” referred to the business entity Werner Auto Electric. The court wrote that:

It would strain a court’s imagination to determine that Gail Aron was a family member of the business entity Werner Auto Electric.

At the time of the accident, Gail Aron was driving the Oldsmobile on personal business and was not acting as an agent or an employee of her father’s business. Further, she had never been a corporate officer or an employee of Werner Auto Electric.

The court concluded:

...there is no ambiguity in the Business Auto Policy and, therefore, Gail Aron is not entitled to underinsured motorist benefits under this Business Auto Policy. This is not a case for applying that principle of Pennsylvania law which provides that an insurer will not be allowed to use the explicit language of a policy to defeat the reasonable expectations of the insured. There is no basis for a claim that the reasonable expectations of the insured have in any way been defeated by this Court’s interpretation that Gail Aron is not entitled to benefits from the underinsured motorist coverage under the Business Auto Policy.

It issued the declaratory judgment in favor of Ohio Casualty and rejected the Arons’ arguments. Gail Aron would have to rely on her father’s personal auto policy for her coverage.

**Leased and Hired Autos**
If the insured drives leased automobiles, an endorsement may be used to provide liability and physical damage coverages for the interests of the lessor as an additional insured.

An endorsement may be used to add coverage for specified hired autos as if they were covered autos owned by the named insured. When attached to a policy, the hired autos scheduled in the endorsement will be treated as if they were covered automobiles owned by the named insured.

Example: The insured uses a limousine service frequently to transport employees to and from the airport. A hired auto endorsement will supplement any coverage provided by the limo service.

**Mobile Equipment**

An endorsement may be added to a policy to provide coverage for scheduled items of mobile equipment. When attached, the items scheduled will be treated as covered autos and not mobile equipment.

**Deductibles**

This endorsement may be used to establish deductible amounts for bodily injury liability and property damage liability. Separate deductibles may be shown for bodily injury on a per person and a per accident basis. The property damage deductible will always apply per accident. When applicable, damages otherwise payable under the policy are reduced by the appropriate deductible amounts.

**Rental Reimbursement Coverage**

A rental reimbursement coverage endorsement may be attached to a policy to cover expenses incurred for the rental of another auto because of loss to a covered auto that is shown in the schedule. This coverage applies to expenses beginning 24 hours after a physical damage loss, and continuing for the number of days it takes to reasonably repair or replace the covered auto or for the number of days shown in the schedule. No deductible applies to this coverage.

**Other Endorsements**

A variety of other endorsements may be used to alter business auto coverage. The traditional single limit of liability may be changed to split limits, and physical damage
coverage can be changed from an actual cash value basis to a stated amount of insurance for specified vehicles. An endorsement may be used to alter the pollution exclusion and provide broadened pollution coverage. Other endorsements alter physical damage exclusions and provide comprehensive coverage for such things as citizens band radios and sound reproduction equipment.

Miscellaneous incidental exposures which are not usually covered may often be added to the policy by endorsement. Of course, additional endorsements almost always result in additional premiums.

**Garage Coverage Form**

Businesses that sell, service, repair, park or store autos use the garage coverage form to cover risks that would not be covered under a Business Auto Policy alone. Typical of garage businesses are auto, truck, motorcycle, and mobile home dealers repair facilities; service stations; car washes, and parking facilities.

The garage form is similar in format and coverage to the business auto policy with some notable exceptions. As with the business auto policy, liability and physical damage coverage is provided. In addition there is a Section III – Garage keepers coverage, which includes additional coverages. This section provides coverage for autos in the insured’s care, and other exposures.

The garage form has many of the same definitions as in the business auto policy. There are four additional definitions (garage operations, loss of use, products, work you performed), and some definitions that you saw in the business auto policy have different meanings in the garage coverage form. Under the garage form, the term auto is broadened to include vehicles not designed for travel on public roads and to include mobile equipment (although not specifically defined, it is also not specifically excluded as it was in the business auto policy, so coverage exists). Other business auto policy definitions with new meanings under the garage policy include covered pollution and insured contract. The conditions in the garage form are almost identical to the business auto conditions as well.

The liability section of the garage coverage form is much broader than that under the business auto policy to cover the unique garage risks. Garage liability covers not only the automobiles covered, but also products, premises, and work performed at the garage. There are two limits of liability – one for both an accident limit and an aggregate limit of insurance for garage operations - other than covered autos and a second limit of insurance for garage operations – covered autos.
Because the overall coverage is broader, there are more exclusions than under the business auto policy in order to limit the specific coverages. These exclusions include expected or intended injury, employee indemnification and employers liability, leased autos, watercraft or aircraft, defective products, work you performed, loss of use, products recall, and liquor liability.

Section III – Garage keepers coverage provides liability coverage, but under the direct coverage option can also reimburse garage customers for damage to their autos regardless of fault, and without regard to any other insurance on the vehicles. This coverage also provides physical damage covering autos held for sale or company vehicles such as towing trucks.

Case In Point:

The 1991 Ohio appeals court case Lloyd Scott and Motorists Mutual Insurance v. Mt. Orab Ford shows how various layers of coverage can affect garage risk.

In December 1987, Lloyd Scott rented a Thunderbird from Mt. Orab Ford. According to the rental agreement, Mt. Orab Ford promised that the car was covered by an automobile liability insurance policy with limits of $100,000 per person/$300,000 per accident.

While he was driving the rented Thunderbird, Scott was involved in a collision for which he was sued for damages. At the time of the accident, Scott was the named insured in a personal automobile policy issued by Motorists, which provided liability limits of $100,000 per person/$300,000 per accident.

Mt. Orab Ford maintained a policy through Clarendon National Insurance, which provided liability insurance for certain covered autos in the amount of $12,500 per person/$25,000 per accident. The policy also contained an excess and umbrella liability provision which provided a single, maximum limit of $1,000,000 per occurrence. The respective insurance companies each thought the other should cover the accident. Numerous lawsuits followed.

Scott and Motorists Mutual Insurance Company sued Mt. Orab Ford Mercury, Inc. They wanted Mt. Orab either to provide the insurance warranted on the rental agreement or to indemnify Motorists for any amount paid as the result of negligence.

Mt. Orab Ford, in turn, sued Clarendon National Insurance Company. The dealership claimed that Clarendon should cover any sustained loss as a result of the accident.
The trial court concluded that the policy with limits of $12,500 per person/$25,000 per accident provided primary coverage. It then held that the Motorists policy with limits of $100,000 per person/$300,000 per accident provided excess coverage to the Clarendon primary coverage. Finally, it ruled that Clarendon’s umbrella provision provided excess coverage upon the exhaustion of the Clarendon primary coverage and the Motorists excess coverage.

Motorists appealed, making two arguments against the trial court’s ruling: the trial court erred in its judgment declaring the order of liability of the multiple contracts of insurance issued to Scott, and the trial court erred by rejecting Motorists’ claim that it was a third party beneficiary of the contract to procure insurance executed between Ford and Scott.

Motorists argued that its policy, which covered Scott as a named insured, became applicable only upon the exhaustion of the Clarendon primary and umbrella coverages. Clarendon, on the other hand, argued that its umbrella coverage did not apply because Scott was not an insured person under that policy.

The appeals court ruled that, at the time of the accident, Scott was driving a covered auto—a customer rental—with Mt. Orab Ford’s permission pursuant to the rental agreement. Therefore, it concluded that Scott was an insured person under both of Clarendon’s policies.

Having determined that Clarendon’s umbrella coverage applied, the appeals court next reconsidered the order of liability between the Clarendon umbrella provision and Scott’s personal policy. It looked at the specific contract language employed by Motorists and Clarendon.

The Clarendon umbrella stated:

If other valid and collectible insurance with any other insurer is available to the Assured covering a loss also covered by this policy, other than insurance that is specifically stated to be excess of this policy, the insurance afforded by this policy shall be in excess and shall not contribute with such other insurance. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of other insurance.

The Motorists policy stated:

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 language in each policy was clear. Clarendon’s “other insurance” clause stated that its umbrella coverage was excess to all other collectible insurance except that which specifically stated that it was excess.

Motorists’ policy specifically stated that it was “excess over any other collectible insurance.” Thus, the exception in the Clarendon “other insurance” clause applied and rendered the umbrella coverage applicable before the Motorists coverage.

The court ruled that, “the Motorists policy does not apply to the loss until the Clarendon primary and umbrella provisions are exhausted respectively.”

The appeals court ruled that the trial court “erred in holding that Clarendon’s umbrella policy provided excess coverage upon the exhaustion of the Clarendon primary coverage and the Motorists excess coverage.”

Therefore, Clarendon’s policies were ruled to be primary—and Motorists to be excess.

## Truckers Coverage Form

Businesses that have to deal with major trucking and other land transportation issues sometimes use a complex mixture of specialized auto coverages. We’ll briefly consider these kinds of insurance.

Another modernized coverage form has been designed for truckers who are engaged in the business of transporting goods for others. It also follows the simplified wording, style and format of business auto coverage, but modifies a number of provisions to better shape the coverage to the needs of truckers. For example, the business auto coverage form does not provide liability coverage for the owner of an auto hired or borrowed from an employee (or member of the employee’s family) by the insured company. The comparable limitation on the truckers policy refers only to private passenger autos. This means that the policy covers an employee who owns a commercial vehicle and furnishes it to the named insured for use in the trucking business. This would apply to businesses that use so-called “owner/operators” of large trucks.
The motor carrier coverage form is a variation of traditional truckers coverage developed to reflect certain changes in motor carrier regulation. It has been described as an underwriting alternative for some carriers, and it may provide more appropriate coverage for some insureds. However, the differences between truckers coverage and motor carrier coverage are very minor and very subtle.

This form does not define the term “trucker.” Instead, it has a definition for motor carrier, which means any person or organization providing transportation by auto in the furtherance of a commercial enterprise. One distinction that can be drawn between this definition and the definition of “trucker” found in the truckers form is that a “trucker” is someone engaged in the business of transporting property by auto for hire while a “motor carrier” may be engaged in the transporting of property or passengers. As with the other commercial auto forms, this form has its own set of coverage symbols. On the motor carrier coverage form we find some minor variations in wording in the “Who Is An Insured” section and in the “Other Insurance” condition. In many places, the term “motor carrier” appears instead of the word “trucker.”

In most other respects the motor carrier and trucker forms are the same. The liability coverage, coverage extensions, and exclusions are the same. Trailer interchange coverage and physical damage coverage are the same. Most of the policy conditions and definitions are the same.

**Commercial Carrier Regulations**

Special regulations apply to commercial carriers of both passengers and cargo because of the risk of common carrier accidents. To protect the interest of the general public, state and federal laws have created minimum financial responsibility requirements for commercial carriers. These requirements may be met by purchasing insurance or obtaining a surety bond guaranteeing payment in amounts that at least equal the minimum limits. In some cases, full or partial self-insurance may be permitted, if the carrier provides the necessary financial data to demonstrate the ability to fully or partially self-insure.

Federal rules for common carriers were established by the Motor Carrier Act of 1980, which took effect in 1981. It has since been amended to increase the financial responsibility limits required. Enforcement of the requirements falls under the jurisdiction of the Department of Transportation.

The act requires minimum liability coverage for carriers of certain hazardous substances. In addition to the direct injury and damage that can be caused by a collision
involving a commercial carrier, hazardous substances pose a special threat. Some substances carry a special risk of fire and explosion. Others might release poisonous gases. Toxic wastes and radioactive substances might endanger people and pollute the environment. Many substances which pose no immediate short-term risk to humans might still carry a long-term risk to the environment. Liability regulations serve two purposes: first, they provide some degree of protection to the public by providing funds for actual damage claims; second, the existence of the requirements creates financial incentives and serves as a reminder to common carriers to follow safety standards.

The federal law requires a single limit of liability that will apply to all payments for bodily injuries, property damage and environmental restoration resulting from negligence in the maintenance, operation or use of motor vehicles subject to the act. It is not necessary for the type of motor vehicle “accident” we normally think of to occur for liability to be imposed. “Negligence” could result from failure to close a valve, resulting in leakage of fluids or gases.

The required coverage is designed to pay for “public liability” – it does not apply to injuries to the carrier’s employees or loss of the cargo being carried. Coverage is usually obtained by attaching an endorsement to a policy providing commercial auto or truckers coverage. The endorsement has been developed by the Department of Transportation, and not all insurance carriers are willing to provide it. Commercial coverage forms exclude nearly all forms of pollution, and when insurers are unwilling to write the “environmental restoration” coverage the commercial carrier will have to look to other markets. Some states have a commercial automobile assigned risk pool, which may provide the coverage. Residual market mechanisms and the surplus lines market may have to be explored in order to obtain coverage.

The required limits vary by size of the vehicle and the type of commodity being carried. Materials are classified by listings under Title 49 of the Code of Federal Regulations (CFR), Section 387.33. The minimum liability requirements are:

- $750,000 for the transportation of non-hazardous property;

- $1 million for the transportation of oil listed in 49 CFR 172.101; hazardous wastes, materials, or substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101 but not included in the next category;

- $5 million for the transportation of hazardous substances as defined in 49 CFR 171.8 and designated by the letter “E” in 49 CFR 172.101, and transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; all bulk class A and B explosives; poison gas (poison A);
liquefied compressed gas or compressed gas transported in tanks or hoppers with capacities in excess of 3,500 gallons; or highway route-controlled radioactive materials as defined in 49 CFR 173.455.

For a more detailed account of the classifications and requirements, consult the Federal Motor Carrier Act at www.fmcsa.dot.gov.

Case In Point: The 1992 federal district court decision National American Insurance Co. v. Central States Carriers illustrates how complex auto ownership issues—including liability—can be.

In June 1988, near Lafayette, Indiana, a semi tractor driven by Dwight Smith collided with an automobile driven by Rob Travis. Travis was killed. Smith, who had been driving under the influence of alcohol, was incarcerated.

Smith—an employee of Central States—had been scheduled to drive to Chicago on the morning of June 6, 1988. Because he was to leave early, he took the tractor on the evening before. On his way home, he drove the tractor to Lafayette and spent the evening drinking heavily at several local taverns. It was after the festivities—on his way home—that Smith hit Travis.

The ownership of the truck Smith was driving was a complicated matter. There was a lease between the truck’s corporate owner and Wanco Transportation—which, in turn, had loaned it to Central States. The lease provided, among other things, that Wanco would have exclusive control and complete responsibility over the leased equipment, and that Wanco would secure liability insurance. Wanco did obtain insurance from Industrial Indemnity, Inc.

Wanco did not take actual physical possession of the truck pursuant to the lease, nor did Wanco ever designate freight to be hauled under the lease. Had the load been successfully hauled, Wanco, Central States, and Sculley Trucking—the actual owner of the truck—would each have received a percentage of the revenue.

Travis’s widow filed suit against Smith, Central States Carriers and Wanco Transportation. That lawsuit was settled before trial with the payment of $250,000 plus attorney fees by Central States’ insurer, National American Insurance Co.

However, National American wasn’t happy about paying. It sued Wanco and Industrial Indemnity, seeking indemnity for the settlement under the theory of subrogation. It argued that it had been forced to pay the settlement because government-mandated truck ownership rules had obscured true ownership and liability.
Once the settlement had been paid, the issue of who was ultimately responsible arose. National American chose Wanco and Industrial Indemnity. The court was inclined to agree:

Dwight Smith’s accident assertedly became Wanco’s, and therefore Industrial Indemnity’s, problem because Wanco was the lessee of the tractor at the time of the collision.

The lease between Sculley Trucking and Wanco contained government-required statements that Wanco would “have exclusive possession, control, and use of the equipment for the duration of the lease,” and “shall assume complete responsibility for the operation of the equipment for the duration of the lease.” This was the confusing language to which National American had alluded.

What’s more, the court concluded that government rules weren’t the only confusing part of the story:

...evidence indicated that business operations among Sculley Trucking, Central States, and Wanco were rather relaxed: the trucks were all stored on the same lot, Central States’ drivers were sometimes assigned to Wanco trucks, and profits were apportioned among all three companies. Though Wanco did not zealously control its leased tractor...the evidence does not show that this was anything but a bona fide lease which the court does not need to disturb.

Given the court’s determination that Wanco—as lessee of the truck—was liable, the next question was whether the truck was covered by Wanco’s Industrial Indemnity policy. The Industrial Indemnity policy covered vehicles which are “hired” or “owned autos.” The definition of “hired” includes autos which were leased, hired, rented or borrowed. The truck Dwight Smith drove was therefore a “covered auto.”

The next question was whether Wanco’s leased truck was covered when Central States was using it. The Industrial Indemnity policy provided that the following were insureds:

You for any covered “auto.”

Anyone else while using with your permission a covered “auto” you own, hire or borrow except:

...The owner or anyone else from whom you hire or borrow a covered “private
passenger type auto.”

...Anyone other than your employees, partners, a lessee or borrower or any of their employees, while moving property to or from a covered “auto.”

...A partner of yours for a covered “private passenger type auto” owned by him or her or a member of his or her household.

None of the above exceptions were applicable. However, Industrial Indemnity pointed to policy language which specifically excepted from coverage:

...the owner or anyone else from whom you hire or borrow a covered “auto” that is not a “trailer” while the covered “auto”...is being used exclusively in your business as a “trucker”....

Industrial Indemnity argued that this language eliminated Central States as an insured entity because the truck was not being used exclusively in Wanco’s business. But the court didn’t agree with this interpretation:

Wanco leased the truck from Sculley Trucking, not from Central States, which was the borrower....

Sculley Trucking’s elimination from insured status is irrelevant.... Central States remains within the definition of “insured” as “anyone else while using with your permission a covered “auto” you own, hire or borrow....”

Since the vehicle was a “covered auto” and Central States was an “insured,” Industrial Indemnity was liable for claims arising from Rob Travis’s death.

The court ruled that Industrial Indemnity should have paid the $225,000 to settle the litigation. It ordered Industrial Indemnity to reimburse National American that amount. It also ordered Industrial Indemnity to pay National American $7,981.35 in legal costs incurred defending Central States.

Underwriting Commercial Auto

Traditionally, some types of commercial vehicles are hard to ensure. These include tractor trailers, taxicabs, and tow trucks, all of which have increased risk exposures. The commercial auto underwriter is interested in past driving experience, financial stability, safety procedures, type of equipment, and miles driven. And with heighten terrorist risks, underwriters are concerned about the possibility of use of a truck as a bomb.
Owners of commercial vehicles have had to add increased security measures, and underwriters are asking more questions about a company’s employees, other than their drivers, and access to cargo.

As with personal auto insurance, the biggest factor in underwriting commercial auto is driving records. As always, past driving behavior is the best predictor of future driving behavior, so underwriters look carefully at motor vehicle records (MVR) of all drivers. The underwriter will ask for a list of all drivers with drivers’ license numbers, date of birth, and date of hire. It would serve employers well to order MVRs annually for all drivers, not just upon hiring as so many do. For truck drivers, the appropriate commercial driver’s licenses must be obtained. The Motor Carrier Act requires medical examinations every two years, and an initial road test. Motor vehicles must also be properly registered and a Department of Transportation registration number is required. A new trend in the insurance industry has been to use “insurance scoring” to determine the rating category. More than 90% of insurers use insurance scoring.

Insurance scores are based on information contained in the insured’s credit report, but they put weight on particular factors. The insurance score may be downgraded when a credit score is downgraded. An insurer might consider an insured a bad risk (this is only allowed in some states) and refuse to sell the insured a policy, or charge a higher premium for the policy. ChoicePoint, part of the Equifax credit-reporting company, maintains a database called CLUE (Comprehensive Loss Underwriting Exchange). CLUE provides insurers with claims history reporting, and driving-record reporting. ISO also maintains a database called the All Claims database, which is used for detecting fraud.

The insured can get a copy of his or her credit history from Equifax, Experian, or TransUnion.

A copy of the ChoicePoint CLUE report can be obtained at http://www.choicetrust.com. The report will cost between $8 and $10, depending on how the consumer wants the information.

The Insured can acquire a copy of the ISO All Claims report if the information it contains is disputed. Consumers can call (800) 709-8842 to obtain copy of their report. A "request for disclosure" form must be completed.

In addition, the commercial underwriter will ask for loss runs for three prior years, assuming the business has had prior insurance coverage. The underwriter will also want to know about the general financial health of the business and ask for two to three years’ of past financial statements, and perhaps the projected revenue for the next year.
The maintenance of safety procedures is also crucial. Does the business have someone whose job it is to maintain safety? How much experience are drivers required to have before they are hired? Are references checked? Is there a written test and road test, physical exam, drug test for all drivers? Is there a training program emphasizing safety? And for the vehicles – are they regularly maintained, and upgraded or replaced on regular schedules?

To correctly price the risk, underwriter will also want a list of the vehicles owned by year make, model, VIN, gross vehicle weight, market value and garaging location. Beyond this, the underwriter will want to know what kinds of products are hauled, and mileage for the current year and three prior years, as well as a projection for the next year.

One of the interesting underwriting challenges is writing global auto programs. Many risks have worldwide operations, with thousands of automobiles. Every country requires compulsory auto insurance, but of course the requirements differ widely.

**Issues in Commercial Auto Insurance Today**

**Safety**

One of the biggest issues in commercial auto is safety. The Department of Transportation (www.dot.gov), and its subset, the Federal Motor Carrier Safety Administration (www.fmcsa.dot.gov) continually put together programs to improve safety on the highways.

As with private passenger insurance, evidence of insurance is required by all drivers. One of the continuing efforts to improve safety is in the regulation of the types of trucks that can legally be on U.S. highways. There are federal size regulations for commercial motor vehicles, and state regulations as well. Single unit trucks are the safest type, but in order to haul more goods, combination vehicles (a tractor and semi-trailer) are often used. These are legal up to 80,000 pounds, gross vehicle weight. States, particularly those in the middle of the country, allow for LCVs (longer combination vehicles) allowing for two trailers behind a semi-trailer. These types of vehicles have higher rates of accidents.
The type of cargo can also be a factor in the severity of accidents on the highway. There are federal and state regulations regarding the transportation of hazardous materials. Hazardous substances include liquefied compressed gas, compressed gas, explosives, poisonous gas, or radioactive materials.

Driver error is a more common cause of accidents than a mechanical failure. One of the biggest concerns has been over the amount of time a driver should drive at a stretch without a rest. The FMCSA has recently developed a new "hours of service" rule proposal that would limit drive time for drivers of trucks of more than 10,000 pounds. The rules take effect January, 2004. Drivers are allowed to drive 11 hours after 10 consecutive hours not driving. Drivers may also not drive more than 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

Another concern is driver distraction, as it is in personal auto. Drivers now have cell phones and other devices that keep them from focusing on driving.

**Terrorism**

Terrorism exposures have affected commercial auto coverage just as they have affected most other lines of insurance.

Of course on September 11, the United States was hit by the world’s largest terrorist attack. The estimate is that $40 billion will be the ultimate cost. Several thousand vehicles were damaged or destroyed in the attacks. But for commercial vehicle owners there is a much larger terrorist concern. Let’s take a look at another terrorist attack that is far enough in the past to see all, or most of the costs. On April 19, 1995 Timothy McVeigh drove a small truck to the curb and remotely set off a 4,000 fertilizer bomb that blew a hole in the Alfred P. Murrah Federal building in Oklahoma City. The blast killed 168, injured 500 and damaged more than 300 other buildings. Here are the financial costs from then to now:

- $1 billion in commercial property damage and business interruption (the Federal Building itself was $96.5 million)
- $37 million in emergency services
- $100 million to find McVeigh, defend him in court, imprison him and finally execute him
• $1.2 billion to upgrade security at other federal buildings nationally (concrete barriers, security cameras, metal detectors, x-ray equipment, double the number of security guards)

Approximately $105 million of destroyed property was covered by insurance. About $33 million was covered by FEMA grants. Many businesses in the downtown area closed. Clearly, any of the thousands of commercial vehicles could be used to transport explosive, chemical or biological materials used in a terrorist attack. The events of September 11, 2001 have a dramatic effect on the insurance industry. The Terrorism Risk Insurance Act of 2002, which went into effect late in that year created a 3 year Terrorism Insurance Program. The Program guarantees the availability of terrorism insurance for commercial accounts, but allows insurers to set premiums. The federal government covers up to 90% of the certified losses (up to a total maximum of $100 billion per year). Certified losses are those caused by acts resulting in more than $5 million in property and casualty losses and which are caused by a large-scale foreign-sponsored act of terrorism. Certification is done by the Secretary of the Treasury. Participation is mandatory for all commercial lines property and casualty insurers, and mandates that insurers must offer terrorism coverage on the same terms or about the same terms as coverage provided for other types of perils, such as similar deductibles and limits. The Program is intended to end at the end of 2004, although it can be extended by the government for an additional year.

The way this worked was to immediately void all the terrorism exclusions in commercial policies for 90 days, during which time insurers were required to notify policyholders that coverage would only be available going forward for an additional premium. Policyholders could accept the new coverage and pay the new premium, or coverage would again be excluded.

To keep abreast of the latest developments, watch the Treasury Department’s terrorism page at http://www.treas.gov/offices/domestic-finance/financial-institution/terrorism-insurance/.

The Insurance Service Office (ISO) filed what are called “Fast Track” Endorsements for many commercial lines policy forms to change terrorism coverage. “Fast track” gives them an emergency status, and they are automatically approved by State Insurance Departments for immediate use upon filing.

Under these endorsements, insureds can choose:

• Coverage for “certified” acts of terrorism
• Coverage for all acts of terrorism

• An exclusion of “certified” acts of terrorism

The ISO endorsements which are intended to provide coverage for “certified” acts of terrorism generally have four different sections which differ slightly depending on the wording of the underlying policy. The four sections:

Define a “certified act of terrorism”

Exclude “other acts of terrorism” (chemical or biological terrorist acts)

Caps the losses on “certified acts of terrorism”

Maintains that the remainder of the exclusions in the policy still apply (such as the nuclear and war exclusions)

“Certified” acts of terrorism are those acts that meet the TRIA definition. Here is some of the actual endorsement wording which defines what acts are covered.

The following definition is added with respect to the provisions of this endorsement: “Certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The criteria contained in that Act for a “certified act of terrorism” include the following:

The act resulted in aggregate losses in excess of $5 million; and

The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The endorsement also makes clear that coverage does not apply to terrorist attacks that are chemical or biological.
We will not pay for loss or damage caused directly or indirectly by an “other act of terrorism”. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to such act:

The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

The next portion of the endorsement looks at the insurer’s limit of liability. These endorsements also include wording to limit or cap the benefits that will be paid under the new coverage. Here is the actual wording.

With respect to any one or more “certified acts of terrorism”, we will not pay any amounts for which we are not responsible under the terms of the federal Terrorism Risk Insurance Act of 2002 (including subsequent acts of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

Insurers were required to notify prospective insureds and insureds that were mid-term in their policies by April 2003 that they had the right to buy coverage for terrorist acts. Now, insureds can only buy terrorism coverage at policy inception or renewal. This is to protect the insurer against the problem of adverse selection – thousands of policyholders suddenly buying coverage because there is an imminent threat in their area. While insureds are offered coverage at inception and renewal, many will decline coverage for terrorist acts. This primarily occurs when insureds decide they do not want to pay the required premium or don’t think they need the coverage. Each policyholder must sign and return the disclosure notice offering coverage whether they are accepting or declining terrorist coverage.

Cost

Commercial auto insurance costs have risen since 1999 due to a number of factors: terrorism, and auto liability awards. As in recent years, there is a cry for tort reform – limiting the verdicts on auto accidents.

Two things commercial insureds can do to lower costs are increase their deductibles, and carry less physical damage coverage, especially for older vehicles. They can also improve their own safety programs, and hire rigorously.
Final Comments

Commercial auto continues to be an active and growing segment of the insurance market. As technology improves and cars and trucks get safer, it will be interesting to see if drivers can drive more safely, or whether the technology and our insistence on multi-tasking will make us less safe on the road.