

INTRODUCTION TO LIABILITY CLAIMS (36-1)

EO 1. THE THREE PARTIES IN A LIABILITY CLAIM:

1. **the insured,**
2. **the insurer, and**
3. **the claimant** (the third party who makes a claim against an insured).

A **claim** is an assertion of a legal right and a demand for relief. **First party claims** arise when a policyholder (**the first party**) makes a claim against his insurer (**the second party**).

Third party claims involve claims by a third party against the insurer for bodily injury or property damage losses for which the insured may be legally liable.

A **plaintiff** is a claimant who has filed a lawsuit.

EO 2. TEN TYPES OF LIABILITY CLAIMS:

1. **Auto liability**--is liability for bodily injury and property damage arising from the failure to use reasonable care in the ownership, maintenance, or use of autos.
This is the most common type of liability claim in the US.
2. **Premises liability**--results when an entity that owns and/or controls land (or any real property) failed to exercise reasonable care to use and/or maintain the premises.
3. **Product liability**--is legal responsibility arising out of the manufacture, distribution, or sale of a dangerous or defective product.
4. **Professional liability (aka malpractice)**--results from the failure of a professional to use the standard of care expected in his profession. Some professional liability policies contain a **consent to settle clause**, requiring the insurer to obtain the insured's consent to settle the claim.
5. **Employer liability**--includes both liability for claims not covered by workers' compensation and for claims related to employment practices liability. [See Obj 3.]
6. **Directors and officers liability**--arises when a company's directors and/or officers damage the company by performing their duties improperly.
7. **Personal injury liability**--arises from injury, other than bodily injury, arising from false arrest, detention, or imprisonment; malicious prosecution; wrongful entry into or eviction of a person from a location; or libel or slander.
8. **Advertising injury liability**--arises from injury resulting from libel or slander disparaging another's goods or services; libel or slander violating another's right of privacy; misappropriation of another's advertising ideas or style of business; or infringement of copyright, title, or slogan.
9. **Intellectual property rights claims**--arise from infringements of copyrights, trademarks, service marks (CPCU is a service mark owned by the AICPCU.), or patents.
10. **Environmental liability**--arises from acts that pollute or otherwise injure the environment.

Obj 3. EMPLOYMENT PRACTICES LIABILITY (EPL) claims are made by employees or job applicants based on

1. **wrongful termination or wrongful failure to promote**--without valid documentation of the reasons for termination or failure to promote;
2. **sexual harassment--including both**
 - a. **quid pro quo claims**--in which workplace advance or job-related favors are conditioned on submission to sexual requests and
 - b. **hostile work environment claims**--in which sexual conduct (eg, jokes, comments, physical contact, or pin-ups) permeates the work place to such an extent that it is oppressive;
3. **discrimination**--based on race, color, religion, sex, national origin, pregnancy, childbirth, age, or disability;
4. **violation of civil rights; and**
5. **failure to provide or enforce adequate and consistent company policies.**

FEDERAL EMPLOYMENT LAWS:

1. **Title VII of the Civil Rights Act of 1964**--prohibits discrimination based on race, color, religion, sex, national origin or on the basis of pregnancy, childbirth, or related conditions.
2. **Equal Pay Act of 1963**--prohibits gender discrimination in wages for work that requires *equal* skill, effort, responsibility, *and* working conditions ... ie, equal pay for identical work.
3. **Age Discrimination in Employment Act of 1967 (ADEA)**--prohibits employers from discriminating against employees over age 40.
4. **Americans with Disabilities Act (ADA)**--prohibits discrimination against workers or job applicants with disabilities and requires employers to make "reasonable accommodations" for disabled workers.
5. **Civil Rights Act of 1991**--strengthens the Civil Rights Act of 1964 and the ADEA and imposes caps on compensatory and punitive damages.
6. **Family and Medical Leave Act of 1993**--permits employees to take up to 12 weeks of unpaid leave to handle family and medical issues.

Obj 4. **THE STEPS IN THE LIABILITY CLAIM PROCESS:**

1. **Determine coverage**--Check if the policy was in force at the time of the claim. Verify that the vehicle or premises involved is listed on the policy. Determine if coverage applies. [*See Obj 5.*]
2. **Investigate liability--Prompt investigation is important because**
 - a. insurers have a good faith duty to investigate and
 - b. **investigation provides information needed to** evaluate liability, assess damages, and settle claims.
3. **Evaluate damages--Compensatory damages** compensate claimants for injury or property damages. **Compensatory damages include**
 - a. **special damages** (for out-of-pocket expenses resulting from loss) *and*
 - b. **general damages** (for paid and suffering, emotional pain, scars, loss of consortium, etc.).
4. **Terminate the claim**--Either accept and pay the claim in full, reject the claim, or compromise and negotiate a settlement. Conclude the claim with a settlement agreement or a denial letter.

Obj 5. **ANALYSIS OF INSURANCE POLICY COVERAGES--For each occurrence, the claim representative should read the policy and ask nine questions:**

1. **Is the person covered?**--The named insured is listed on the policy. The policy defines which other parties are considered "insureds".
2. **Are the activities that caused the injury covered?**--Some liability coverages apply *only* to *specific* types of liability. *Example:* If a policy covers "accidents", the loss must be definite in time and place *and* not intended by the insured.
3. **Are the damages covered?**--Most policies specify the type of damages covered, such as "bodily injury" and "property damage". Many liability policies do *not* cover punitive damages or damages for **personal injuries** (loss of reputation, loss of privacy, etc.).
4. **Does an exclusion apply?**--Exclusions may restrict coverage for certain activities. If an exclusion applies, coverage does *not* apply *even if all* other requirements for coverage are met.
5. **Did the damages occur within the policy period?**--An **occurrence-based policy** covers loss that occurs during the policy period.
A claims-made policy covers only claims first made against the insured during the policy period for occurrences that took place after the retroactive date.
6. **Is the location of loss covered?**--The personal auto policy coverage territory includes the US and its territories, Puerto Rico, and Canada.
The commercial general liability policy provides limited worldwide coverage.
7. **Did the insured and insurer meet their obligations?**--**Both the insurer and insured must meet policy conditions, including both**

- a. **conditions precedent** (which must be met *before* a loss, such as maintaining protective devices) *and*
 - b. **conditions subsequent** (which must be met *after* a loss, such as report the loss).
8. **Are there limitations on liability?**--Policies have different maximum limits of liability. Some policies apply sublimits of liability.
 9. **Do laws or regulations affect coverage?**--Any judicial decisions about coverage interpretation will apply to other similar claims in the court's jurisdiction.

Obj 6. **SKILLS REQUIRED OF LIABILITY CLAIM REPRESENTATIVES:** An effective liability claim representative should be able to

1. read and interpret contracts;
2. assess the credibility of insureds, claimants, and witnesses;
3. communicate effectively;
4. establish rapport;
5. resolve interpersonal conflicts;
6. take statements; *and*
7. photograph and draw diagrams of accident scenes and evidence.

KNOWLEDGE REQUIRED OF LIABILITY CLAIM REPRESENTATIVES: An effective liability claim representative should understand

1. bodily injury terminology,
2. the law related to claims,
3. medical and damage issues, *and*
4. human nature.

CHARACTERISTICS OF LIABILITY CLAIM REPRESENTATIVES: An effective liability claim representative should

1. be adaptable,
2. enjoy learning,
3. be inquisitive,
4. be analytical,
5. have strong self-esteem,
6. be decisive,
7. be able to handle stress,
8. have a positive attitude and good sense of humor, *and*
9. be trustworthy.

Obj 7. **ISSUES IN LIABILITY CLAIMS:**

1. **Technology**--changes the ways claims are processed, evaluated, and settled. Increased use of technology can increase efficiency, but could alienate insureds who want a personal touch.
2. **Changes in the legal environment**--affect coverage interpretation, create and expand new areas of liability, and change the types and amounts of damages allowed and awarded by courts.
3. **Managed care**--refers to techniques used to control medical costs while providing quality care. Managed care is being used ever more frequently in all types of injury claims.
4. **Ethical issues**--will be discussed below.

Obj 8. **ETHICAL ISSUES** arise from potential conflicts among the claim representative's obligations to the insurer, the insured, and the claimant.

Examples: making unreasonably low settlement offers, accepting gifts, and multiple representation in claims with coverage disputes.

THREE METHODS FOR RESOLVING ETHICAL DILEMMAS:

1. **Ask stock questions for guidance:**
 - a. Do any laws cover this issue?
 - b. Would I want my actions publicized?
 - c. Would I want my mother treated this way?
 - d. If these actions were standard claim practice, would society be better off or worse off?
 - e. If these actions were standard claim practice, would they lead to unfavorable laws or increased regulation?
 - f. How would others (Ralph Nader, my mother, my clergyman, my son) view such acts?
2. **Establish rules or guidelines for resolving ethical dilemmas.**
3. **Eliminate the conflict of interest.**

Obj 9. **THE BASIC PARTS OF AN AUTO INSURANCE POLICY:**

1. **Declarations page**--identifies and provides information about the insured, the policy period, insured autos, coverages, limits, the lienholder, and endorsements.
2. **Definitions**--define the terms used in the policy.
3. **Insuring agreements**--state the insurer's promise to pay damages for bodily injury and property damage for which the insured is legally liable. **Common insuring agreements:**
 - a. **Liability Coverage**--insures auto owners for bodily injuries and property damage they cause to passengers, pedestrians, and property.
 - b. **Medical Payments Coverage**--pays reasonable and necessary medical and funeral expenses incurred by an insured due to bodily injury resulting from an accident.
 - c. **Uninsured Motorists (UM) Coverage**--compensates an insured auto accident victim injured by an uninsured driver, a hit-and-run driver, or a driver whose insurer is insolvent.
 - d. **Underinsured Motorists (UIM) Coverage**--compensates an insured auto accident victim injured by a driver with inadequate liability limits.
 - e. **Auto physical damage coverage**--protects against damage to or theft of autos owned or operated by the insured. **Collision coverage** pays for damage resulting from upset or impact with another object, but *excludes* losses caused by fire, theft, hail, water, flood, windstorm, explosion, earthquake, or contact with a bird or animal--all of which are covered by **other than collision (aka OTC aka comprehensive) coverage**.
4. **Exclusions**--eliminate exposures the insurer does *not* cover. Exceptions to an exclusion restore coverage that was removed by the exclusion.
Example: The named driver exclusion excludes coverage for a named driver who has access to the car but is an unacceptable insurance risk.
Insurers use exclusions to
 - a. eliminate coverage for undesirable loss exposures;
 - b. **manage**
 - 1) **moral hazards** (involve intentional loss or padded claims by an insured) *and*
 - 2) **morale hazards** (loss caused by the insured's indifference to loss);
 - c. avoid duplication of coverage;
 - d. eliminate unnecessary coverage;
 - e. exclude exposures that require specialized rating, underwriting, or loss control;
 - f. keep premiums affordable, *and*
[g. give insureds coverage options, eg, among the HO-1, HO-2, HO-3 and HO-5 policies].
5. **Conditions**--identify and explain the rights and duties of the insurer and insured.
Examples: Common policy conditions require the insured to pay premiums, report losses promptly, document losses, cooperate with the insurer, and refrain from jeopardizing the insurer's right to recover from responsible third parties (**the right of subrogation**).
6. **Endorsements**--modify policy provisions.