

12 Personal Lines Hot Topics, Emerging Issues, Infuriating Claim Denials, and Catastrophic Coverage Gaps No One Ever Told You About!



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The Hot Topics, Emerging Issues, Infuriating Claim Denials, and Catastrophic Coverage Gaps:

1. Unclear and Inconspicuous...The Potentially Catastrophic 'Where You Reside' Homeowners 'Exclusion' You Didn't Know Existed but Could Cause You to Lose Your Home!
2. The 'A Guy at a Bar Told Me' Series:
Insuring teens on Their Own Policies...What WERE You Thinking???
3. The Case of Something or Somebody Stinks
a.k.a. Vermin & Varmints...Rodents and Insects and Bats, Oh My!
4. Raiders of the Lost Coverage...Insurance Jones and The Temple of Exclusions
5. I Pity the Fool Who Doesn't Buy the Rental Car Loss Damage Waiver
(Though It May Not Matter If You Valet Park
6. Homeowners Vehicle Coverage Gaps...Here Are Some 'Mower'
7. Salt, Sugar, Wheat, Gasoline, and Other Commodities Like 'Car Insurance'
8. What Is...? (Part 1: Theft, Voluntary Parting, and Mississippi Lawyers)
9. What is...? (Part 2)
10. The Fast and The Furious, My Adventures in Street Racing with the 'Pink Lady'
11. Just Because It's Not Covered Doesn't Mean It's Not Covered
12. I See Dead People...Are They Covered?

12 Personal Lines Hot Topics,
Emerging Issues, Infuriating Claim
Denials, and Catastrophic Coverage
Gaps No One Ever Told You About!



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"Where You Reside"

**"Unclear and Inconspicuous...The Potentially
Catastrophic 'Where's Waldo'® Homeowners
'Exclusion' You Didn't Know Existed But Could
Cause You To Lose Your Home!"**

Insureds unexpectedly confined to nursing homes. Forced relocations. Foreclosures. Temporary rentals. Home purchases for children or parents. Allowing a homebuyer to move in before the closing. Renovations and remodeling. Did you know that these homeowners may have NO coverage on their dwellings? There are courts and adjusters who say so.



"Where You Reside"

For example...

"Mrs. Jones owns two homes in the same town...one is her primary residence and the other is her son's. Our standard practice is to write an HO3 on both the primary and secondary house in which the child is living. We have a new underwriter that says we must write a dwelling fire and HO4 on the secondary house.

"My contention is the dwelling fire and HO4 cost approx. twice the premium and provide less coverage. Do you agree it is in the best interest of the insured to do it this way or write an HO3 since it is a resident relative living in the home and not a tenant? Thank you."

T.D., Denver, CO



"Where You Reside"

The scope of the problem

- Over 15 million homes vacant (Forbes)
- 1 in 9 housing units vacant (USA Today)
- Vacancy not required to trigger 'exclusion'
- Big "I" consumer survey
- Virtual University straw poll
- "Ask an Expert" questions



"Where You Reside"

Policy language

- 2000 ISO HO-3 insuring agreement
- 2000 ISO HO-3 definitions
- 1976 ISO HO-3 edition
 - **Coverage A – Dwelling**
*This policy covers the described dwelling building, including additions in contact therewith, **occupied primarily as a private residence.***
- Non-ISO policies



"Where You Reside"

ISO HO-3 Coverage A

SECTION I – PROPERTY COVERAGES

A. Coverage A – Dwelling

1. We cover:

- a. The dwelling on the **"residence premises"** shown in the Declarations...



"Where You Reside"

"Residence Premises"

11. "Residence premises" means:
- a. The one family dwelling **where 'you' reside**;
 - b. The two, three or four family dwelling **where 'you' reside** in at least one of the family units; or
 - c. That part of any other building **where 'you' reside**;
- and which is shown as the "residence premises" in the Declarations.



"Where You Reside"

What does "reside" mean?

- Webster
- American Heritage
- Black's Law
- Case law



"Where You Reside"

Exposure scenarios

- Nursing homes
- Relocations
- Foreclosures (lender in for a BIG surprise?)
- Rentals
- Child occupies parent's home
- Parent occupies child's home
- Divorce
- Illness of insured
- Death of insured
- Trusts
- Homes owned by LLCs and corporations
- Seller moves out after closing
- Seller moves out before closing
- Buyer moves in or takes possession before closing
- Renovations / homes under construction
- Unoccupancy
- Vacancy



"Where You Reside"

Case law

NO COVERAGE

- Bryan v. United States Fire Ins. Co. (Texas, 1970)
- Fisher v. Indiana Lumbermens Mutual Ins. Co. (Texas, 1972)
- Doyle v. Members Mutual Ins. Co. (Texas, 1984)
- Epps v. Nicholson (Georgia, 1988)
- Shepard v. Keystone (Maryland 1990)
- Nancarrow v. Aetna Casualty & Surety Co. (Arkansas, 1991)
- Georgia Farm Bureau Mutual Ins. co. v. Kephart (Georgia, 1993)
- Heniser v. Frankenmuth Mutual Ins. Co. (Michigan, 1995)
- Ivanov v. Phenix Mutual Ins. Co. (Maine, 2007, remanded 2008)

COVERAGE

- O'Neil v. Buffalo Fire Ins. Co. (New York, 1849)
- Joyce v. Maine Ins. Co. (Maine, 1858)
- German Ins. Co. v. Russell (Kansas, 1902)
- Reid v. Hardware Mutual Ins. Co. (South Carolina, 1969)
- Insurance Co. of North America v. Howard (Oregon, 1982)
- Farmers Ins. Co. v. Trutanick (Oregon, 1993)
- FBS Mortgage Corporation v. State Farm (Illinois, 1993)
- Hill v. Nationwide Mutual Fire Ins. Co. (Georgia, 1994)
- Lunquist v. Allstate Ins. Co. (Illinois, 2000)



"Where You Reside"

Claims experience

- Total loss while insured in a nursing home in KY
- \$100,000+ condo rental claim in FL
- 5-figure loss while home being remodeled in AZ
- \$186,000 renovation claim in GA
- \$300,000 loss to home occupied by child in MD
- \$150,000 rental home in MI
- \$229,000 total loss in MN (niece moved in)
- Small fire loss in NC
- Fire loss in PA (daughter moved in)
- Others? Email bill.wilson@iiaba.net





"Where You Reside"

Reasons FOR coverage

- "Where you reside" are words of description, not a warranty of occupancy.
- Hidden 'exclusion' (not so in Section II)
- Reasonable expectation theory...existing policy vacancy limitations and permits
- Eligibility vs. coverage
- Precedents (e.g., HO-6)
- Tornados and meth labs
- "Onerousness"



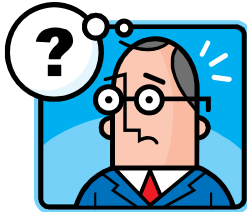
"Where You Reside"

Possible solutions

- Remove "where you reside" language
- Nonresidency penalties
- Grace period
- Nonresidency endorsement vs DP program
- Education
- Regulatory or legislative directive



Questions?



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Insuring Teens

Who is this?




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Insuring Teens

“The ‘A Guy at a Bar Told Me’ Series: Insuring Teens on Their Own Policies...What WERE You Thinking???”

Often insureds are advised to title a car in their child's name (if possible, though it really isn't material to coverage in this topic) and place them on their own auto policy (usually at minimum limits) in order to insulate the parents' assets... this may be a fatal mistake in more ways than one, including settling up both the parents and child for a catastrophic uncovered loss.



Insuring Teens

The situation

- Attorney or financial planner recommends titling and insuring car only in kid's name to protect the parents' assets
- Parents have high-limit PAP and umbrella
- Kid has “minimum coverage for minimum budgets”
- Kid (might) also have a driving record problem



Insuring Teens

The scenario

- Kid runs stop sign at 40 mph while texting
- T-bones compact car
- Pregnant driver in other car dies, 14 year old passenger becomes paraplegic to be cared for by single father
- Kid claims he lost control due to a wobbly tire dad changed earlier
- Kid and parents are sued



Insuring Teens

Bases for parental liability

- Statutory parental liability
- Vicarious liability (e.g., law of agency)
- Negligent entrustment/supervision
- Dangerous instrumentality doctrine
- Direct liability (e.g., operation or maintenance)



Insuring Teens

Kid's PAP - Insureds

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



Insuring Teens

Parents' PAP - Exclusion

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

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

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

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

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



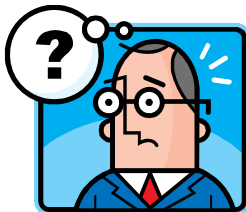
Insuring Teens

What if parents not liable?

- Kid's future liability
- Moral issues
- The Message



Questions?



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Animal Claims

“The Case of Something or Somebody Stinks” a.k.a. “Vermin & Varmints...Rodents and Insects and Bats, Oh My!”

Back in the '70s, Jim Stafford sang, “I don't like spiders and snakes.” Well, neither do adjusters based on the number of claim denials we see for raccoons, skunks, snakes, bats, bees, turtles, goats, and other critters. We've seen denials based on exclusions ranging from “vermin” to “pollution” (really).



Animal Claims

Varmints

- Rats, mice, lice, bedbugs, fleas, foxes, otters, badgers, weasels, minks, ferrets, muskrats, skunks, badgers, raccoons, turtles, bats, hawks, owls, gophers, squirrels, offensive persons....
- Let's consider skunks, raccoons, and bats



Animal Claims

The Case of Something or...

- An elderly lady came home one night from a church bingo party, flipped on the light and discovered a skunk in her living room.
- The skunk sprayed the lady and the living room.
- Damage was done to wallpaper, wall to wall carpeting, furniture, clothing, and her.
- She encountered loss of property, cleaning bills, and the cost of the Critter Ridder to banish the skunk.



Animal Claims

...Somebody Stinks

- The adjuster denied the personal property damage due to lack of a named peril.
- The adjuster denied the real property damage due to the following exclusions:
 - The pollution exclusion
 - The rodent exclusion
 - The vermin exclusion



Animal Claims

Named perils

- The adjuster is correct.
- In addition, there is no property damage if the smell is just atmospheric, similar to a gas line leak.



Animal Claims

Open perils...pollution exclusion

- *Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C.*
- Exceptions?
 - Windstorm
 - Explosion
 - Accidental discharge from plumbing system



Animal Claims

Open perils...rodent exclusion

- Birds, vermin, rodents, insects...or...Animals owned or kept by an "insured"
- Order of Rodentia
 - **Sciuromorpha** ("squirrellike")...366 species, including squirrels, marmots, chipmunks, gophers, beavers, etc.
 - **Myomorpha** ("ratlike")...1,183 species, including rats, mice, hamsters, and lemmings
 - **Hystricomorpha** ("porcupinelike")...480 species, including porcupines and chinchillas



Animal Claims

Open perils...vermin exclusion

- Dictionaries dating from at least 1828 and citing usage since 1513 cannot agree on what is a vermin except for rodents and parasitic insects
- EVERY precedent-setting court case we can find says the term "vermin" is ambiguous except for rodents, including *Jones v. American Economy Ins. Co.*, Texas Court of Appeals, 1984



Animal Claims

Solutions


- CP 10 30
"Nesting or infestation, or discharge or release of waste products or secretions by insects, birds, rodents or other animals."
- HO 2011 adopts this wording



Questions?




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Nonowned Autos

“Raiders of the Lost Coverage...Insurance Jones and The Temple of Exclusions”

Do you ever get a loaner vehicle while your auto is being repaired or serviced? Do you ever test drive dealer cars? If you wreck them, your personal auto policy responds for damage to the auto, right? After all, we know that whatever coverage you have on your auto policy extends to a nonowned auto, right? And, of course, the dealer's commercial policy pays anyway, doesn't it?



Nonowned Autos

Real claims

- \$37,000 dealer Cadillac loaned to a consumer while his car was in the shop
- \$14,000 used car dealer auto being test driven by a prospective customer
- In each case, the vehicle was totaled by the driver in an at-fault accident and the dealers' garage policies paid for the damage, less the deductibles.



Nonowned Autos

Garage policy subrogation

- **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.
- The dealer can waive subrogation prior to loss but rarely does.



Nonowned Autos

ISO PAP...physical damage

OTHER SOURCES OF RECOVERY

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

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



Nonowned Autos

ISO PAP...liability coverage

EXCLUSIONS

- A. We do not provide Liability Coverage for any "insured":
 3. For "property damage" to property:
 - a. Rented to;
 - b. Used by; or
 - c. In the care of; that "insured".



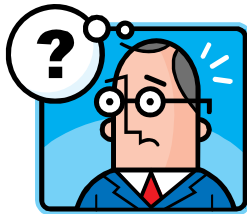
Nonowned Autos

Possible solutions

- State-specific endorsements
- Modify the Garage/BAP forms subrogation clause similar to the PAP:
“However, our rights in this Paragraph (A.) do not apply under Part D, against any person using ‘your covered auto’ with a reasonable belief that that person is entitled to do so.”
- Modify the PAP “Other Insurance” clause similar to the BAP



Questions?



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Rental Car Caveats

“I Pity the Fool Who Doesn’t Buy the Rental Car Loss Damage Waiver (Though It May Not Matter If You Valet Park)”

We all know that personal auto coverages transfer to a nonowned auto, including a rental car (at least that’s what we thought we knew before the last topic). Regardless, there are some specific problems with rental car exposures that both you and your customers need to know. Here’s our **Top 10 Reasons to Buy the Rental Car LDW** and an 11th hour request to be very careful about valet parking.



Rental Car Caveats

1. Loss Valuation

- Rental agreement typically requires payment for the "full value" of the auto or rental agency's cost to repair
- PAP and BAP cover "actual cash value" or "necessary" repair cost
- PAP and BAP exclude "betterment"



Rental Car Caveats

2. Loss Settlement

- The insurer has the right to "...inspect and appraise the damaged property before its repair or disposal."
- Recent claim involving farm equipment under a similar policy provision...denied when farmer had the equipment repaired immediately before appraisal in order to minimize lost production.



Rental Car Caveats

3. Loss Payment

- Rental agreement often requires immediate reimbursement for damages
- May max out a credit card



Rental Car Caveats

4. Loss Damage Waivers

- Rental agreement probably makes the renter responsible for ANY loss in value beyond normal wear and tear, regardless of fault, so PAP and BAP won't respond to excluded losses
- In contrast, the PAP and BAP should respond to losses not coverage by an LDW such as operation off a paved road, DUI, operation by unlisted drivers, etc.



Rental Car Caveats

5. Indirect Losses

- Loss of rental income with limited or no PAP or BAP coverage
 - Regardless of fleet utilization rates
 - One renter was charged over \$2,000
- Rental agreements permit a charge for diminished value with no PAP or BAP coverage
 - \$5,000
 - \$8,000
 - \$15,000



Rental Car Caveats

6. Administrative Expenses

- Towing (one renter was charged for a 230-mile tow)
- Storage charges
- Appraisal fees
- Claims adjustment expenses
- Etc.
- Few if any covered by the PAP or BA



Rental Car Caveats

7. Other Insurance

- Physical damage coverage is excess over any other collectible source of recovery
- State laws vary



Rental Car Caveats

8. Vehicles and Territories

- **Excluded vehicles**...no PAP physical damage coverage unless a private passenger auto, pickup truck, or van, and only limited coverage for trailers
- **Excluded territories**...
 - No PAP coverage outside the U.S., territories or possessions, Puerto Rico or Canada
 - Same for BAP except worldwide coverage for most private passenger auto rentals of 30 days or less IF the insurer settles or suit is brought in the territory



Rental Car Caveats

9a. Excluded Uses

- Older PAP editions provide no physical damage coverage for business use of nonowned pickups and vans
- Some proprietary forms may be more restrictive



Rental Car Caveats

9b. Excluded Drivers

- Rental agreement may only cover designated drivers, but PAP or BAP may also have driver exclusions
- Underage family member drives rental car
- **Valet parking** (uno momento, por favor)
- Employees renting autos

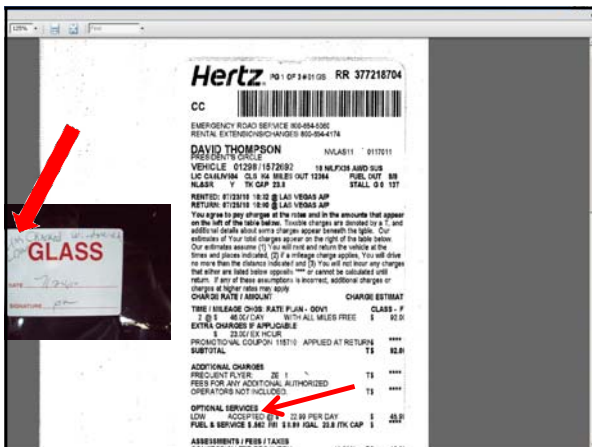
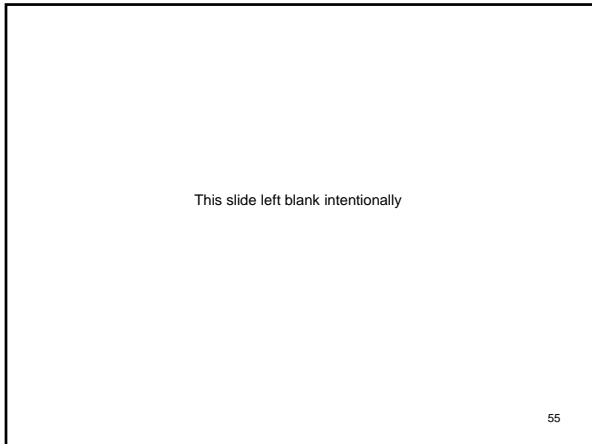


Rental Car Caveats

10. Additional/Future Costs

- Deductible expense
- Premium increase
- Possible nonrenewal

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Rental Car Caveats

Valet Parking - LDW

- Some rental agreements automatically cover spouses or even co-workers
- Most rental agreements do not otherwise cover undeclared drivers



Rental Car Caveats

Valet Parking - PAP Liability

- **“Insured” definition includes:**
“Insured’ as used in this Part means...Any person using ‘your covered auto’.”
- **Liability exclusion:**
“We do not provide Liability Coverage for any ‘insured’...While employed or otherwise engaged in the ‘business’ of...Parking...vehicles designed for use mainly on public highways.”



Rental Car Caveats

The Bottom Line

- **Thompson’s Rule:**
 - If you can afford the vacation of \$150 a day for a hotel room, \$40 a day for the rental car, \$50 a day for fuel, \$50 to 100 a day for food, plus the other “fun stuff,” you can afford \$20 to \$30 a day for the loss damage.
- It’s all about “The Hassle Factor”



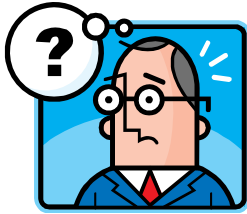
Rental Car Caveats

Valet Parking – PAP PhyDam

- Coverage extends to “nonowned autos”:
“Any private passenger auto, pickup, van or ‘trailer’ not owned by or furnished or available for the regular use of you or any ‘family member’ while in the custody of or being operated by you or any ‘family member’;”
- If a rental car is being parked by a valet at a hotel or restaurant, is it still in your custody?



Questions?



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HO Vehicles

“Homeowners Vehicle Coverage Gaps...Here are Some ‘Mower’”

You use your lawn mower to cut the grass on the small vacant corner lot next to yours. Are you covered by your HO policy? What if you cut your neighbor's grass while he's on vacation? Covered? How about the church lawn or the Little League outfield? You have a lawn service that cuts your grass...he runs over a screw driver your son left in the yard and it kills a child next door. You're sued. Are you covered? How about using an ATV? A jet ski?



HO Vehicles

5 quick vehicle scenarios

- You cut your neighbor's yard
- A lawn care service cuts your yard
- You operate an ATV
- You park a company car in your garage
- You rent a jet ski



HO Vehicles

Cutting your neighbor's yard

- **1991 HO-3**
Motor vehicles *"Used to service an 'insured's' residence"*
- **2000 HO-3**
Motor vehicles *"Used **solely** to service an 'insured's' residence"*
- **2011 HO-3**
Motor vehicles *"Used solely to service **a** residence"*



HO Vehicles

Hiring a lawn care service

Another ISO HO-3 motor vehicle exclusion:

*Coverages **E** and **F** do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle"...is being...**Used for any "business" purpose** except for a motorized golf cart while on a golfing facility.*



HO Vehicles

Operating an ATV

- If you own it, you're only covered while on certain "insured locations."
- If you don't own it, you're covered anywhere in the world.
- Solution to getting worldwide HO coverage for owned ATVs....



HO Vehicles

Garaging a company car

- 1991 ISO HO-3 excludes detached structures "Used in whole or **in part** for 'business'."
- 2000 ISO HO-3 makes an exception for: *[Business property] **solely owned by an "insured"**... provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.*



HO Vehicles

Renting a jet ski

- The ISO HO-3 excludes liability for any **owned** watercraft with an inboard or inboard-outdrive engine or motor, including those that power a water jet pump.
- The ISO HO-3 excludes liability for any **rented** watercraft with an inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of **over 50 hp.**



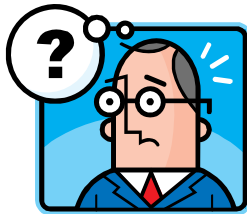
HO Vehicles

Conclusions

- Don't cut your neighbor's yard.
- Cut only your own yard.
- Don't ride your own ATV.
- Don't park your company car in your detached garage.
- Don't rent a jet ski or, if you do, rent one with a buddy and swap.



Questions?



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Insurance: Commodity?

“Salt, Sugar, Wheat, Gasoline, and Other Commodities Like ‘Car Insurance’”

You've seen the commercials: “Call now and save 15% or more on your car insurance!” or “Same coverage, better price!” Unfortunately, in the instances where someone is selling substandard coverage or service, their only marketing policy is price. So, their advertising campaign leads consumers to believe that the only difference between insurance companies is price. Here's proof that you can't compare apples to oranges.



Insurance: Commodity?

Priceline.com Syndrome

- “Save 15% or more!” (by cutting out the agent)
- “Minimum limits for minimum budgets!”
- “Name your price!”

Myth: “All policies are the same.”



Insurance: Commodity?

15+ ways to dispel the myth


- Undisclosed household residents
- Named insureds driving family member autos
- Physical damage dollar limit
- ANY business use
- Business use of nonowned autos
- Business use of nonowned pickups and vans
- ANY nonowned auto
- Rental cars



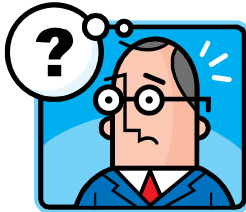
Insurance: Commodity?

15+ ways to dispel the myth


- Only licensed physician expenses under MedPay
- Pizza or other delivery
- Theft without evidence of forced entry
- “Criminal acts”
- Nonowned vehicles over 10,000 GVW
- Custom equipment/electronics w/o options
- Punitive damages
- More...



Questions?




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"What is..." (Part 1)

"What is...?"
(Part 1: "Theft, Voluntary Parting, and Mississippi Lawyers")

An insured was conned out of a \$29,000 diamond ring. Her homeowners insurer denied the claim on the basis that it was voluntary parting, not theft. What is theft and did she get robbed after all? And if you think that's bad, what about a \$41,500 uncovered Corvette theft claim?



"What is..." (Part 1)
 \$29,000 diamond ring

- Counterfeit cashiers check
- Voluntary parting
- Adjuster says claim is covered for \$500 for a counterfeit check
- Black's Law defines "theft" to include fraudulent taking of property, swindling, obtaining by deception, etc.
- HO 04 61
- The rest of the story...



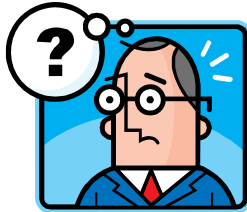
"What is..." (Part 1)

\$41,500 Corvette

- Counterfeit cashiers check exchanged for title
- Voluntary parting, i.e., conversion (GA law refers to "Theft by conversion")
- Not "theft"
- No insurable interest
- Courts in AR, AZ, FL, IA, KS, NE, NJ, NY, OH, and OK say it's covered



Questions?



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"What is..." (Part 2)

"What is...?"

(Part 2: "Vacant Land, Sewer Backup, Surface Water, Wear and Tear, Mechanical Breakdown, and Collision")

Now that we've answered the question (more or less), "What is theft?" let's answer some more. What is "vacant land"? What is "sewer backup"? What is "surface water"? What is "wear and tear" and "mechanical breakdown"? What is "collision"?



"What is..." (Part 2)

Vacant Land...Defined

- No policy definition
- The ISO HO manual defines it as "any land on which there exist no man made structures."
- Fences, walls, telephone poles, signs, abandoned wells, roads, deer stand, old foundation, and in two cases a man-made drainage ditch and pond have excluded such property from the "insured location" definition



"What is..." (Part 2)

Vacant Land...Case law

- "[V]acant land requires that the property be unoccupied, unused and in its natural state." – *Travelers Indemnity Co. v. Holman*, 330 F.2d 142, 5th Cir. Tex. (1964)
- A preponderance of decisions indicate that ANY unnatural object or condition is sufficient for land to not be vacant



"What is..." (Part 2)

Thy Royal Throne Runneth Over

- **ISO HO-3:**
"Water or waterborne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment;"
- **ISO BOP:**
"Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;"
- **ISO CP 10 30:**
"Water that backs up or overflows from a sewer, drain or sump;"



"What is..." (Part 2)
Surface Water...Scenarios

- Water accumulates when a French drain is clogged and runs into a basement
- Your son leaves a garden hose running and water seeps through a basement window
- Water accumulates on a flat roof from a clogged drain and gets into the building
- Heavy rain puddles on the 16th floor of condo high rise, causing water damage to the interior of the unit



"What is..." (Part 2)
Surface Water...Case Law

- "[N]atural precipitation coming on and passing over the surface of the ground...."
- "Surface waters are commonly understood to be waters on the surface of the ground, usually created by rain or snow...."
- "'Surface' water may be defined as water on the surface of the ground...."
- "Surface waters are those falling upon, arising from, and naturally spreading over lands produced by rainfall, melting snow, or springs."



"What is..." (Part 2)
Surface Water...Case Law

- Most of the surface water court cases cited later as "Additional Reading" are based on naturally occurring water, as opposed to a water source such as a broken water main.
- Several state courts (e.g., Texas, Arkansas, Pennsylvania, and Nebraska, to name four) have held that "surface water" does not include water from "unnatural" sources.
- In addition, the HO 2000 program made it clear that damage arising from a broken water main off the premises was covered.



"What is..." (Part 2) Surface Water...Conclusions

- The surface water exclusion applies only to naturally occurring water sources
- The surface water exclusion applies to water that accumulates on the ground, not on an upper floor of a multi-story building or a roof



"What is..." (Part 2) Wear and Tear...Fortuity

- Wear and tear, rust, corrosion, deterioration, latent defect, settling, cracking, shrinking or expansion, mechanical breakdown, marring, scratching, etc.
- IRMI reference manual:
"The excluded perils in this group are characterized either by their predictable or expected occurrence, or by gradual, routine, or frequent occurrence. They are either the normal, unavoidable consequence of use of the property in question or detectable and preventable with proper maintenance."



"What is..." (Part 2) Wear and Tear...Case Law

- **"Losses due to normal wear and tear are not fortuitous...as such damage is inevitable...."** – *Contractors Realty Co. v. Ins. Co. of N. Am.*, 469 F.Supp. 1287, 1293 (S.D.N.Y. 1979)
- **"Normal wear and tear...is not an insurable risk, but is a certainty."** – *City of Burlington v. Indemnity Ins. Co. of North America*, 332 F.3d 38 (2d Cir. 2003)
- Black's Law: **"[D]eterioration or depreciation in value by ordinary and reasonable use of the subject-matter."**



"What is..." (Part 2)

Wear and Tear...Camper Trailer

- Adjuster cites "wear and tear" exclusion
- What's excluded...deteriorated camper shell
- What's covered...non-excluded ensuing loss such as worn wiring leading to fire, rusted pipe fitting leading to water damage
- PAP clarifies that the damage must be "**due and confined to**" wear and tear, mechanical breakdown or failure, road damage to tires, etc.



"What is..." (Part 2)

Wear and Tear...Garage Collapse

- Building was admittedly in a poor state of repair
- Collapse caused by a Coverage C peril is covered
- Collapse was caused by weight of ice, snow and sleet
- No anti-concurrent causation wording
- "Wear and tear" immaterial



"What is..." (Part 2)

Mechanical Breakdown

- **IRMI:** "Damage to equipment from an external cause is not excluded by the mechanical breakdown exclusion. Instead, the mechanical breakdown exclusion applies only to loss caused by an internal defect in the equipment."
- "[E]xclusion of losses caused by structural or mechanical breakdown or failure is restricted to losses arising from internal or inherent deficiency or defect, rather than from any external cause." – *Caldwell v. Transportation Ins. Co.*, 234 Va. 639, 364 S.E.2d 1 (1988)



"What is..." (Part 2)

Mechanical Breakdown

- Water escaped from hot water heating boiler and firing chamber caused fire damage to it
- Adjuster cited HO-3 mechanical breakdown exclusion
- HO-2 would cover this claim:
"Sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system...."

So.....



"What is..." (Part 2)

Mechanical Breakdown

- 1991 ISO HO Filing Memorandum (regarding a change in language on the HO-3 form):
"This change is being made to avoid having the Special Coverage forms provide lesser coverage than what is provided under a Named Perils form (e.g., under the Falling Objects peril)."



"What is..." (Part 2)

Comp or Collision?

- An insured was driving along the highway, the hood somehow became unhooked, flew up and smashed into the windshield causing \$2,400 damage to the windshield and hood. What is it? Comp claim or collision?
- A car was jacked and the jack slipped, causing the car to fall to the ground and break the rear axle. The adjuster says the car collided/hit the ground and the collision deductible applies. True?



"What is..." (Part 2)

Comp or Collision?

- The insured and a friend were carrying a small refrigerator past (over the hood of) the car and put some deep scratches on the top of the hood as it passed over the car. Comp or collision?
- A guy, discovering thieves on his loading dock, pulls his car across the exit in the fence to block them in. They ram his car and escape. The adjuster said this was a collision between two vehicles.



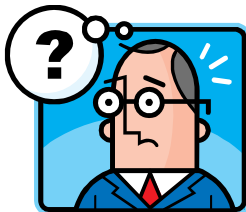
"What is..." (Part 2)

Comp or Collision?

- The insured drove through a puddle of paint from a can that had fallen off a truck and the car's finish was damaged from the paint that sprayed up. The insurer says this is a collision loss (collision with an object - the puddle of paint) and the agent contends it is a comprehensive loss. I can see both arguments - any thoughts?



Questions?



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Street Racing

“The Fast and The Furious, My Adventures in Street Racing with the ‘Pink Lady’”

The ISO personal auto policy excludes racing. Speaking of “what is,” what is “racing”? Is street racing excluded by the personal auto policy? What about the business auto policy?



Street Racing

My Story...



Street Racing

An agency’s story...

- “A close friend of our agency owner’s teenager was in an accident in which he was believed to be drag racing on a public roadway. He and a passenger were seriously injured. The insurance company has denied the claim and probable lawsuit from the passenger, citing the ‘racing exclusion.’ Do you agree?”



Street Racing

PAP exclusion

- B. We do not provide Liability Coverage for the ownership, maintenance or use of:*
- 4. Any vehicle, **located inside a facility designed for racing**, for the purpose of:
 - a. Competing in; or
 - b. Practicing or preparing for;
 any **prearranged or organized racing or speed contest**.



Street Racing

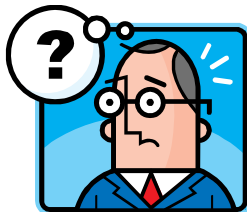
BAP exclusion

This insurance does not apply to any of the following:

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



Questions?



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Read the Policy!

“Just Because It’s Not Covered Doesn’t Mean It’s Not Covered”

A homeowner's brother-in-law was helping him clean up some storm damage when a tree limb damaged his lawn tractor. The adjuster denied the damage as a liability claim under the Damage to Property of Others Additional Coverage because it requires the damage to be “caused by” an insured. In this case, the adjuster might be right, but that doesn’t mean the damage isn’t covered. All it means is that the adjuster hasn’t sufficiently explored the policy.



Read the Policy!

1991 ISO HO-3 Section II

Damage to Property of Others Additional Coverage

*“We will pay at replacement cost up to \$500 per occurrence for property damage to property of others **caused by the insured.**”*



Read the Policy!

1991 ISO HO-3 Section I

COVERAGE C – Personal Property

*We cover personal property owned or used by an “insured” while it is anywhere in the world. **At your request, we will cover personal property owned by others while the property is on the part of the “residence premises” occupied by an “insured”;***



Read the Policy! 1991 ISO HO-3 Section I

Property Not Covered

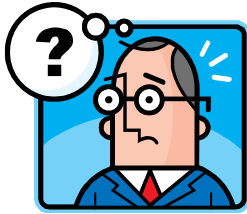
Motor vehicles are not covered with some exceptions including the following:

"We do cover vehicles or conveyances not subject to motor vehicle registration which are...Used to service an 'insured's' residence;"

What if the policy is a 2000 or 2011 edition?



Questions?



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Sixth Sense Claims

"I See Dead People...Are They Covered?"

Exactly what is "pollution"? Perhaps we'll never have a definitive answer in our lifetimes, but the exposures range from dirt to milk to sewage to bleach to meth labs to mold to gun ammo to dead people to Indian food.




Sixth Sense Claims

Pollution claims

- Dirt
- Milk
- Sewage
- Bleach
- Meth
- Mold
- Bullets
- Indian food
- Dead people...

Sixth Sense Claims

"I see dead people."



Sixth Sense Claims

Non-ISO pollution exclusion

- "Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself **caused by a peril insured against under coverage C** (Personal Property perils) of this policy.

*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 except as provided by Section 1 - **Additional Coverage 12. Spoilage or Residue Removal Coverage.**"*



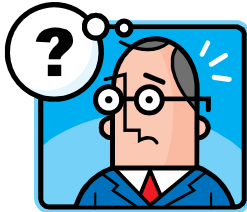
Sixth Sense Claims

Arguments for coverage

- Coverage C cause of loss
- **Noscitur a sociis**
“If the contract provision enumerates specific items, a person or thing will fall within the list if the person or thing is associated with the items on the list.”
- Non-ISO Additional Coverage



Questions?



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