

AUTO INSURANCE

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Table of Contents

Chapter I – Automobile Insurance.....	3
Vicarious Liability.....	3
Guest Hazard Statues.....	4
Auto Liability Insurance and Laws.....	6
Auto Insurance Forms.....	6
Family Auto Policy.....	7
Minimum Liability Coverage in Maryland.....	8
Persons insured.....	10
Trailers.....	12
Medical Payments Coverage.....	15
Exclusions.....	16
Damage Coverage.....	17
Supplementary Payments.....	20
Uninsured Motorists Coverage.....	21
Conditions of Family Auto Policy.....	23
The Special Auto Policy.....	24
Chapter II – The Basic Auto Policy.....	27
Other Auto Forms.....	28
Buying Auto Insurance.....	29
Safe Driver Rating Plan.....	32
Chapter III – Auto Insurance Problems.....	36
The Keeton- O’Connell Plan.....	37
The Cotter Plan.....	39
Massachusetts Personal Injury Protection Plan	40
Maryland Personal Injury Protection	41
Maryland Automobile Insurance Fraud.....	44
Maryland Insurance Code.....	50

Automobile Insurance

INTRODUCTION

The automobile is one of America's major cause of economic loss. The ownership or operation of an automobile exposes the individual to a wide range of loss, he may be killed or injured while operating or being struck by an automobile. with resulting medical expenses and loss of income; he might be held legally liable: the automobile itself may be damaged, destroyed, or stolen. Automobile insurance does a remarkable job of protecting against the financial consequences of such losses. Although almost everyone who owns or drives an automobile is protected by some form of automobile insurance, few people really understand the contract which provides this protection. In this chapter, we will begin our examination of the held of automobile insurance. Before we turn to automobile insurance itself, it might be well to discuss some basic principles of legal liability as they apply to the automobile. of others when the driver is negligent. In addition, some laws deal with the liability of the operator toward passengers.

Vicarious liability Vicarious liability involves a situation in which one party becomes liable for the negligence of another party. When the average individual thinks of his possibility of being held legally liable for the operation of a motor vehicle, he normally has in mind a situation in which he is the driver. However, because of the vicarious liability laws and doctrines, it is entirely possible that an individual may be held legally liable in a case in which he is not the operator. First, if the driver of the automobile is acting as an agent for some other individual, the principal may be held liable for the acts of the agent. In addition to the possibility of this imputed or vicarious liability, the owner of an automobile being operated by someone else might be held liable because of his own negligence, either in furnishing the automobile to someone he knew to be an incompetent driver, or in lending a car which he knew to be unsafe. In addition to these situations based on common law principles, vicarious liability laws have been enacted by various states which greatly enlarge the exposure of imputed liability in connection with the automobile.

Under the "family purpose doctrine," applicable in 18 states and the District of Columbia, the owner of an automobile is held liable for the negligent acts of the members of his immediate family or household in their operation of the car. The family purpose doctrine is basically a part of the principal—agent relationship, in that any member of the family is considered to be an agent of the parent—owner when using the family car, even for his or her own convenience or

amusement. Somewhat related to the family purpose doctrine, a large number of states² impose liability on the parents of a minor or any person who signs the application for a driver's license for a minor for any liability arising out of the operation of any automobile by that minor. Note that in this situation it is not only the operation of the family automobile, but of any automobile that gives rise to the vicarious liability. Other states³ have enacted statutes which go somewhat further and provide that any person furnishing an automobile to a minor is responsible for the negligent acts of that minor in the operation of the automobile. The most extensive vicarious liability laws are the "permissive use statutes," applicable in 12 states and the District of Columbia, which impose liability on the owner

¹Arizona, Colorado, Connecticut, Georgia, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Washington, West Virginia, and the District of Columbia.
²Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Kentucky, Maryland, Mississippi, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wisconsin.
³Delaware, Idaho, Kansas, Maine, Pennsylvania, and Utah.

of an automobile for any liability arising out of its use by someone operating it with his permission, regardless of the age of the operator.⁴

One additional point bears mention again. The vicarious liability laws and doctrines do not relieve the driver of his liability they merely make the other party (owner or parent) jointly liable.

Guest hazard statutes. The second statutory modification of the principles of legal liability with respect to the automobile involves the liability of a driver or owner toward the passengers of his automobile. So-called "guest laws" have been enacted in many states, which restrict the right of the passengers of an automobile to sue the owner or the driver. The obvious reason for this modification is the opportunity which such suits present for defrauding insurance companies. In the absence of such laws, the guest in an automobile who is injured might easily induce the driver to admit liability in return for a portion of the settlement which the driver's insurance company might make with the injured guest. Under a standard guest law, the injured guest can collect from the negligent driver only if the driver was operating the automobile in a grossly negligent manner, or, in some jurisdictions, if the driver was intoxicated. Gross negligence is defined as a "complete and total disregard for the safety of one's self or others." Even in the event of gross negligence, the guest may be denied recovery if he assumed the risk involved in the gross negligence. Some laws require that the guest must protest against the grossly negligent manner in which the automobile was being operated.

The most difficult problem in the operation of guest hazard statutes is that of determining the status of the rider. Several rules have been developed. First, if no compensation of any kind has been paid, and there is no common business venture with the driver, the rider is to be considered strictly as a guest and liability must be predicated on gross or wanton negligence in the operation of the car. An example would be your Friday night date. If the rider has paid for the transportation either in money, services, or property, and this payment is the motivating influence in the driver's furnishing of the transportation, the rider becomes a passenger and may hold the driver liable on straight principles of negligence. For example, if a friend agrees

to take you to see a young lady in another city and you pay him for the ride. and if the payment is the only motivating factor in furnishing the transportation. you are then a passenger and not a guest. The situation with respect to car

4. California, Connecticut, Florida, Idaho, Iowa, Massachusetts, Michigan. Minnesota, New York. North Carolina, Rhode island. Tennessee, and the District of Columbia.

Alabama, Arkansas, California. Colorado, Delaware. Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Montana. Nebraska, Nevada. New Mexico, North Dakota. Ohio. Oregon, South Carolina. South Dakota, Texas. Utah, Vermont, Virginia, Washington, Wyoming,

You are probably not using your own car because the state has suspended your driver's license.

pool and similar share-ride arrangements is unclear. Some courts have held that guest laws do not apply to passengers in such arrangements. while other courts have held the opposite. Finally, in the case of a joint business venture. the guest statute does not apply, since the passenger is, in a sense, a partner in the venture, rather than a guest.

Automobile liability insurance and the law. When they become aware of the fact, many persons are surprised to find that the state has not taken more positive steps toward requiring the operator of a motor vehicle to carry automobile liability insurance. At the present time, only three states, Massachusetts, North Carolina, and New York, have compulsory automobile insurance laws. Most states have attempted to solve the problem of the financial responsibility of automobile drivers through what are known as "financial responsibility laws." Such laws have been enacted in all states. The financial responsibility law in effect in most states today is known as a "security-type" law. Here, the law provides that anyone involved in any manner in an automobile accident which causes bodily injury or property damage (the latter must exceed a specified minimum, usually \$50 or \$100) to other than the person or property of the owner or driver, will have his driver's license and automobile registration suspended. unless he can prove that he is able to pay any judgment that may result from the accident. It is necessary for the operator and owner to comply with the provisions of the law even though it may appear that he is not at fault. The law provides that proof must be furnished the proper authorities within a limited period of time, for example, 90 days after the accident. Security must be posted to satisfy claims for the present accident, or the driving privilege will be removed: and if this occurs, then security for future accidents must also be posted.

The requirements of the law may be met if the operator. at the time of the accident, had automobile liability insurance in effect in an amount that would meet the state's requirements. The requirements vary from state to state, the most common requirement today being \$10,000/20,000/5,000. If a person is involved in an accident, his insurance carrier will submit a certificate, commonly known as an "SR-21," to the appropriate authority, thus attesting to the existence of proper insurance at the time of the accident. Many states also provide that the requirement may be satisfied with a deposit of security (money, etc.) with the specified authority, in an amount to be determined by him, or by filing with the authority signed releases from liability for all claims resulting from the accident, or by filing with the authority a

certified copy of a final judgment of non-liability, or by executing a written agreement with all claimants providing for payment of an agreed amount in installments for claims resulting from the accident. If, however, the person involved does not have liability insurance at the time of the accident and cannot make any other arrangements for settlement, his driving privileges will be removed. These privileges remain suspended until the claims are paid and proof of financial responsibility for future accidents is demonstrated. Proof of financial responsibility for future accidents normally is demonstrated by the purchase of automobile liability insurance in the limits prescribed by the state. The insurance carrier then submits a certificate, an "SR-22," showing that the insurance is in effect. Financial responsibility may also be demonstrated by certification of a surety company that a bond guaranteeing payment to the same limits is in effect. Or, as a final resort, the deposit of a stipulated amount of cash or securities (e.g., \$10,000 or \$20,000) with the proper authorities may be used to satisfy the requirement. The length of time for which proof is required varies from state to state, but the most usual time is 3 years.

In many states, the driving privilege may also be revoked if a person has been convicted of a certain number of traffic violations. After the period of suspension has elapsed, the return of the license will require proof of financial responsibility. This can be accomplished as above. Offenses leading to suspension vary among the states. However, practically all states suspend licenses for driving while intoxicated, reckless driving, conviction of a felony in which a motor vehicle was used, operating a car without the owner's permission, and the like.

Automobile Insurance Forms

There are many automobile forms in use in the United States today. Some of these policies were designed to cover specialized types of exposures, and others were differentiated for the purpose of competition. Many companies have developed independent forms which differ in some details from the "bureau forms" (i.e., those forms developed by the national rating bureaus). Since most policies are patterned after the bureau forms, we will confine our discussion to the three more or less standard forms in use today.

THE FAMILY AUTOMOBILE POLICY

The automobile policy that will be examined in detail is the Family Automobile Policy. It is by far the most widely sold of the automobile forms, broadest of the three forms, and by far the most important from an educational point of view.

As noted previously, the automobile insurance policy is one of the most complicated of all insurance contracts. The complicated nature of the contract results from the need to provide a contract that will provide coverage against different types of losses, and under many differing circumstances. The ownership or operation of an automobile involves three possibilities of loss:

1. Legal liability
2. Injury to the insured or members of his family
3. Damage to, or loss of, the automobile

The Family Automobile Policy is a package policy, providing protection against all three of these losses. The policy is a combination of three types of insurance: liability insurance, accident insurance, and property insurance on the automobile itself.

In addition to the various types of losses protected against, the policy must provide protection in various situations. In a highly mobile society such as ours, most people operate motor vehicles, and in many cases the automobile being operated may not be owned by the operator. For example, Jones may loan his automobile to Smith, and as we have seen, Jones may be held liable with Smith if Smith is negligent. Therefore, it is necessary to devise a contract that will protect the owner when someone else is operating his automobile. In addition, it is deemed desirable to provide protection for the insured when he is operating someone else's automobile. Both these requirements add to the complicated nature of the contract.

The Family Automobile Policy is composed of four basic types of coverage, and is divided into four sections. Each of the four sections constitutes a different form of insurance, and two of the sections are further subdivided into various coverages. The Family Automobile Policy is a 5-page contract, with 25 definitions, 26 exclusions, and a large number of extensions, conditions, provisions, and stipulations. A specimen of the Family Automobile Policy should be referred to in following the discussion of the contract.

For our purposes, the important portions of the contract will be the following:

Section I	Coverage A	Bodily injury
	Coverage B	Property damage
Section II	Coverage C	Medical payments
Section III	Coverage D	Comprehensive

	Coverage E	Collision
Section IV	Coverage J	Uninsured motorists

Section I—Liability

Basic coverage in connection with the automobile begins with adequate limits of liability coverage. Unless the individual has adequate limits of liability, a judgment could very easily wipe out the entire assets of the family. The question of what constitutes “adequate” limits has become more and more pertinent in recent years as the size of damages assessed has increased. In spite of the unreasonableness of such a course of action, many persons operate motor vehicles without any liability coverage at all.

Section I of the Family Automobile Policy is the liability coverage. It is composed of two coverages designated Coverages A and B. Coverage A, which covers bodily injury liability, has two limits of liability, one limit which is the maximum the company will pay for injury to any one person. and a second, which is the maximum the company will pay for all persons injured in one accident. The “per occurrence” limit is two or three times as large as the per person limit. Thus, the insured has an option of the various combinations of limits for bodily injury listed below:

\$10,000 per person 20,000 per occurrence
 25,000 per person: 50,000 per occurrence
 50,000 per person: 100,000 per occurrence
 100,000 per person: 300,000 per occurrence

The property damage limit of liability is the maximum amount the company will pay for damage to the property of others as the result of one occurrence. The options available under the property damage insuring agreement are \$5000, \$10,000, \$25,000, \$50,000, and \$100,000.

Minimum Liability Coverage in Maryland

- \$ 20,000 for bodily injury or death suffered by one person in any accident
- \$ 40,000 for bodily injury or death suffered by two or more persons in any

one accident

- **\$15,000 for damage to the property of others arising out of any one accident (19-504)**

Insuring agreement. The liability insuring agreement is extremely broad, promising to pay all sums the insured becomes legally obligated to pay as damages because of either bodily injury or property damage arising out of the ownership, maintenance, or use of either an owned or a non owned automobile. Since the policy agrees to pay all sums “the insured” becomes obligated to pay. the section of the Family Automobile Policy entitled “Persons Insured” is one of the most crucial portions of the contract. There are four types of individuals covered under the liability section of the policy, and this coverage is provided for both owned and non owned automobiles. The Family Automobile Policy includes a “severability of insureds” provision similar to that of the **CPL**, which states that the insurance afforded under the policy applies separately to each insured against whom suit is brought. Thus, one insured under the policy could sue another insured and the insurance company will be required to respond for any damages that are assessed by the court.

Persons insured—owned automobile. The following persons are insured with respect to the owned automobile:

1. The named insured (including a spouse if a resident of the same household)
2. Residents of the same household
3. Any other person using the owned automobile with the permission of the named insured
4. Any other person or organization who might be held vicariously liable because of negligence on the part of one of the three above listed insureds

Note that the definition of “named insured” in the policy includes the spouse of the person listed in the declarations. This is an important point since the coverage afforded under the policy for a “named insured” is considerably broader than the coverage for other insureds.

Residents of the insured’s household other than a spouse are also covered as insureds under the policy, and do not need the permission of the named insured to be covered while operating the owned automobile. The term “resident” has a special legal connotation and may extend beyond the named insured’s household. If a relative, such as a son, is temporarily away from home, he is still considered to be a resident, if he considers the named insured’s home to be his residence and intends to return to it.

In addition to the coverage provided for the named insured and residents of his household, the policy provides coverage for any other person using the owned automobile, provided that they

have the permission of the named insured. Note that only the named insured (including a spouse if a resident of the same household), can give permission and have coverage apply. Although children residing in the insured's household are "insureds" under the policy, they are not "named insureds" and they cannot therefore permit friends to drive the owned automobile and have coverage apply)

The inclusion of any other person who might be held vicariously liable because of the negligence of an insured is intended to provide liability protection for the employer of anyone who might be operating the automobile as an "insured" (i.e., the named insured, a resident of the same household, or someone else who is operating the automobile with the permission of the named insured). Employers often request that they be named as additional insureds under their employee's automobile policy, but this provision makes such action unnecessary.

Persons insured—non owned automobile. The named insured or members of his family may occasionally borrow automobiles from others. The Family Automobile Policy makes provision for this possibility by providing coverage on non owned automobiles which are being operated by the named insured or resident relatives with the permission of the owner of the non owned auto. It is important to note that there is a difference between the drive other car or use of non owned automobile coverage of the named insured and that of an insured. An insured (as contrasted with a named insured), is covered only while operating a private passenger automobile with the permission of the owner. The named insured, on the other hand, is covered while operating any automobile (a truck, for instance).

The general rule is that the permission must be given expressly by the named insured, but from time to time the Courts have recognized "implied permission." as in a case where the father knew that the son permitted his girlfriend to drive the car on many occasions and gave tacit consent.

The coverage granted for non owned automobiles can be a source of great difficulty as far as the liability coverage of the Family Automobile Policy is concerned. Let's take a simple example and explore the possibilities. Let us assume that Mr. Jones has a Family Automobile Policy with himself as the named insured, with liability limits of \$10,000/\$20,000/\$5000. His neighbor, Mr. Smith, also has a Family Automobile Policy with the same limits. Mr. Jones has a son and Mr. Smith has a daughter. On the evening in question, Jones Jr. is driving his father's car. Of course, he is insured, since he is a resident of his father's household. Smith's daughter asks Jones Jr. to teach her how to drive and Jones Jr. agrees. This proves to be a serious mistake, for shortly after Miss Smith gets behind the wheel, she smashes into a bus, caroms into three other vehicles, and finally hits a pedestrian. The lawsuits may very well be substantial, and Miss Smith is in real trouble. Is there any coverage under either of the two policies to protect her from the liability she incurs? Unfortunately, the answer is "no." Jones' policy will not provide any protection, because she did not have the permission of the named insured. Children may be insured under their parents' policies, but they do not enjoy the right to grant permission to others. Furthermore, Miss Smith will not have coverage under her father's policy, for the drive other car coverage of his policy requires that the non owned automobile be operated with permission of the owner. Since she does not have the permission of the named insured, Jones' policy will not provide coverage. Since she does not have permission of the owner of the non owned automobile (who in this case is Jones Sr.), she does not have coverage under Smith's policy. If she had had the permission of Jones Sr., then both policies would have

applied.” In such situations, that is, in those cases where there are two policies that may cover the loss, the insurance on the car being driven is primary. It will pay first; after the limits of liability under the policy covering the automobile being driven have been exhausted, the excess policy will apply.

Definition of owned automobile and non owned automobile. After the definition of “persons insured,” the most important definitions in the Family Automobile Policy are the definitions of an “owned automobile” and a “non owned automobile.” Under the Family Automobile Policy, an owned automobile is defined as:

Some students may say ‘This may all be very true. hut the only thing that Miss Smith has to do is to get Mr. Jones to say that she had his permission. If he will just do this, then both policies will cover her.’ As you will recall from the discussion of vicarious liability as it relates to the automobile, the owner of an automobile may be held liable for the operation of his automobile by someone else who is operating the automobile with his permission. Since by admitting that Miss Smith had his permission, Jones would leave himself open for a substantial amount of legal liability, he may be reluctant to say this.

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded.
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile ownership of which is acquired during the policy, provided
 - (1) it replaces an owned automobile as defined in (a) above, or
 - (2) the company insures all private passenger, farm or utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days of the date of such acquisition of his election to make this and no other policy issued by the company applicable to said automobile, or
- (d) a temporary substitute automobile

The portion of this definition that deserves attention is the part dealing with the acquisition of a new automobile during the policy period. As the provisions of the definition indicate, there is automatic coverage on a new car purchased by the insured, if it replaces a car that was insured under the policy. Even in the case of an additional automobile, the policy will provide automatic coverage, provided that all the automobiles owned by the named insured are insured by the company. For instance, if Mr. Jones has a 1969 Ford and he trades it on a 1970 Ford, the 1970 Ford will be covered automatically if, on the other hand, he keeps the 1969 Ford and buys a 1970 Ford, the additional car will be covered only if Jones does not have any other cars which are not insured or which are insured in some other company. Of course, the company is entitled to an additional premium for covering the additional automobile, but even if Jones has an accident before he notifies the company about the additional automobile, the policy will cover him. Note that notice to the company is required only during the policy period or within 30

days; notice within either period will generally provide coverage.

A non owned automobile is defined in the policy as an automobile or trailer not owned by, or furnished for, the regular use of the named insured or a relative who is a resident of his household. This means that the liability coverage of one member of the family will not apply to an automobile owned by another member of the family. If the father has an automobile insured in his name, and the son owns an automobile insured in his name, the father's insurance will not cover him while he is driving the son's car. As far as the father's policy is concerned, the son's car is not a "non owned automobile," for it is owned by a relative who is a resident of the same household. At the same time, it is not an "owned automobile." since it does not meet the definition of "owned automobile" in the father's policy. In the event that the father drives the son's car, only the insurance on the son's car will apply. This can be an important factor. Most insurance companies are unwilling to write high limits of liability on automobiles operated by youthful drivers. If the father has high limits of liability on his own car, he may feel adequately~ protected while driving the son's car, which might have minimum limits. In the event of an accident, the father will find to his dismay that his policy does not protect him while driving the son's car.

On the other hand, if either the father or the son is operating a private passenger automobile which qualifies as a non owned automobile, both policies will apply. For example, let us say that both Jones and Jones Jr. have their automobiles insured under the Family Automobile Policy, each with \$10,000/\$20,000/ \$5000 limits of liability. If Jones Jr. is involved in an accident while driving a friend's private passenger automobile with permission, both policies will provide coverage on an excess basis (after the insurance on the car being driven). Jones Jr. has drive other car coverage under his own policy, and as a resident of his father's household, he also has drive other car coverage for a private passenger automobile tinder his father's policy.

Trailers. Under the liability section, the definition of both an "owned automobile" and a "non owned automobile" include a "trailer." A trailer is defined as:

a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm, or utility automobile, or a firm wagon or farm implement while being used with a farm automobile

This definition is sufficiently broad to include virtually any type of trailer. The only restrictions imposed are that the trailer must be designed for use with a private passenger car, and if it is being used for business, it must be used with a private passenger, farm, or utility automobile. If it is not being used for business, a trailer is covered when used with any automobile.

The coverage afforded under the Family Automobile Policy for trailers is an important feature of the policy. Under the basic automobile policy, and the Special Automobile Policy, the liability coverage on the automobile is suspended if the car is used with any trailer (except a utility trailer), which is not specifically insured in the same company. Not only are both owned and non owned trailers covered under the liability section of the Family Automobile Policy, but there is no additional premium required for such coverage.

12 There is one exception to this statement. The son's automobile might qualify as a temporary substitute automobile." if it is being used by the father while his own car is withdrawn from use because of mechanical breakdown, servicing, or repair. A temporary substitute automobile ma~ he owned by a resident of the insured's household, although it may not be an automobile owned by the named insured himself.

Motorcycles and motor scooters. Because of their increasing popularity, the question often arises as to whether there is any coverage under the Family Automobile Policy with respect to the operation of a motorcycle or motor scooter. Of course, a motor scooter or motorcycle is not

eligible for insurance under the Family Automobile Policy and must be insured under the basic automobile policy, so a vehicle of this type could not be covered as an “owned automobile. The case of the “non owned automobile” coverage is somewhat different. The definition of a “non owned automobile” includes, as we have seen

an automobile or trailer not owned by or furnished for the regular use of either the named insured or a relative, other than a temporary substitute automobile

This definition is circular, defining a “non owned automobile” as an automobile that is not owned. While there is a definition of an “owned automobile,” a “non owned automobile,” a “temporary substitute automobile,” and a “private passenger automobile,” the term “automobile” itself is not defined in the policy. The question is, could a motorcycle be considered to be an “automobile?” One authority, Black’s Law’s Dictionary, defines an automobile as “a vehicle for the transportation of persons or property on the highway, carrying its own motive power and not operated on tracks.” A motor scooter or motorcycle would seem to fit this definition. Furthermore, in its definition of a “private passenger automobile,” the Family Automobile Policy specifies that such a vehicle is a “four-wheel private passenger, station wagon, or jeep type automobile.” Yet none of the other definitions specify that the vehicle must have four wheels. Although there have been several court cases in which it was held that a motorcycle or motor scooter is not an automobile,¹³ many authorities do not consider these cases to be conclusive, for there are also court cases which have ruled the other way.

Supplementary payments. As is the case with most liability policies, in addition to paying the sums that the insured is legally obligated to pay, the liability section includes another set of promises that are extremely important. First, the company promises to defend the insured in any suit that is brought alleging negligence in the operation of an owned or non owned automobile. This promise is in effect a legal retainer that is always available to the insured in the event that he is sued for negligence in connection with the operation of an automobile, provided that the judgment in such suit would be payable under the terms of the policy. The promise to defend is in addition to the promise to pay any judgment, and any expenses incurred in investigation or defense are payable in addition to the maximum limit of liability. To illustrate, let us say that Jones has a Family Automobile Policy with the basic \$10,000/\$20,000/\$5000 limits of liability, and that he is sued for \$20,000 by an injured party. The policy will pay \$ 10,000 of the judgment under insuring agreement A, and will pay any court costs and defense costs in addition to this.

Second, the policy promises to pay the cost of any appeal bonds, bonds to release attachments, or bail bonds which are required from the insured because of an accident or traffic law violation connected with an automobile. This last provision, relating to bail bonds, is often overlooked simply because insureds do not know that it exists. If the insured is arrested for speeding, drunken driving, or any other traffic violation, the policy will pay the cost of his bail bond.¹⁴

Finally, the company agrees to pay any expenses incurred by the insured at the time of an accident in providing immediate surgical or medical care to a person injured in an accident involving an insured automobile, or any other expenses incurred by the insured (except loss of earnings), which are at the company’s request.

Liability exclusions. There are ten exclusions under the liability section of the Family Automobile Policy. Exclusion (a) excludes liability while the insured automobile is used as a public or livery conveyance. There is no intent under this exclusion to exclude coverage when the insured uses his automobile in a car pool or a similar arrangement. The basic characteristic of a public or livery conveyance is the fact that the insured has no control over whom he carries. If the insured carries fellow workers to the job and charges them, this does not make his automobile a public or livery conveyance.

Exclusion (b) deals with damage caused intentionally or at the direction of the insured. As noted previously, such coverage would be contrary to public policy.

Exclusion (c), which deals with nuclear energy liability, and exclusion (d), which excludes liability arising out of the operation of farm machinery, are self-explanatory.

Exclusions (e) and (f) both deal with liability in connection with persons who are entitled to workmen's compensation benefits. Exclusion (e) excludes bodily injury liability to employees of the insured if workmen's compensation benefits are payable or required to be paid under a workmen's compensation law. Exclusion (f) deals with liability to fellow employees of the insured, and excludes liability to fellow employees if they are injured as a result of the operation of an insured automobile in the business of the employer. However, the exclusion states that it does not apply to the named insured. In other words, if the named insured should be sued by a fellow employee who was entitled to workmen's compensation benefits, the policy would protect the named insured. The basic intent of this provision is to exclude the employer from coverage for bodily injury to a fellow employee of the named insured.

Exclusion (g) excludes liability completely when the automobile is used in the automobile business by anyone except the named insured, a resident of the same household, a partner of the named insured, or an agent or employee of the named insured. The basic intent is to deny liability coverage for a garage or other automobile business which might have custody of the automobile. This liability must be covered under a separate business contract. If Mr. Jones takes his automobile into a garage to have it serviced, his Family Automobile Policy will not provide protection to the garage or to an employee of the garage who is driving or testing the automobile.

Exclusion (h) is similar to exclusion (g), in that it deals with business use of automobiles. This exclusion excludes any non owned automobile from coverage while it is being used in the automobile business, or any other business of the insured. The exclusion states that it does not apply to the named insured with respect to a private passenger automobile operated by the named in-

15 The case of *Allstate Insurance Co. vs. Roberson*, 5, C. C. H. (Auto 2nd) 389 clearly held that ride-sharing arrangements do not violate the policy provisions and do not constitute use of the automobile as a "public or livery conveyance."

ured in a business other than the automobile business. Thus, the exclusion would not provide coverage for the named insured while operating a non-owned automobile in the automobile business, but it would cover him while operating a non owned private passenger automobile in any other business. The intent of this provision is to exclude coverage for automobiles that should be insured under a business liability policy. If the named insured works for a garage, his

Family Automobile Policy will not provide protection while he is driving a non owned auto in connection with his occupation.

Exclusion (i) is one of the most important of all of the exclusions. It states:

This policy does not apply under Part I to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage

This is the “care, custody, and control” exclusion of the Family Automobile Policy. It is important because it modifies the coverage that is provided with respect to “non owned automobiles.” When the insured borrows or rents an automobile, the liability exposure connected with the operation of that non-owned automobile is covered, except with respect to damage to the non-owned automobile itself. For example, let us say that Mr. Jones rents a car from Hertz. His Family Automobile Policy will pay for any damage he causes in connection with the use of the rented automobile, but it will not pay for damage to the Hertz car itself, for the car is property which is “rented to or in charge of the insured.” It is important to remember that the liability coverage of the Family Automobile Policy will not provide indemnification for damage to an automobile that is borrowed or rented.

Exclusion U) provides that the automatic coverage applicable to replacement and additionally acquired automobiles does not apply if the insured has purchased other automobile liability insurance applying to the replace-mentor additional automobile.

Section II Medical Payments Coverage

Medical payments coverage has been available in one form or another in the automobile policy since 1939. This section of the policy provides coverage for necessary medical, surgical, dental, and funeral expenses that are incurred within 1 year from the date of an accident. The coverage is divided into two sections, designated Division 1 and Division 2. Division I of the medical payments coverage provides protection for the named insured and each relative who suffers bodily injury caused by accident, while occupying, or through being struck by, an automobile. According to the definition in the policy, the term “occupying” includes the acts of entering the automobile or alighting from it. One of the most important features of the Division I coverage is the fact that coverage is provided to the named insured and resident relatives if struck by an automobile; there is no requirement that they be occupying an automobile when struck for coverage to apply.

Division 2 provides coverage for persons other than the named insured and members of his household, but the coverage is not as broad as that provided under Division 1. Persons covered under Division 2 are covered only when they are injured while occupying an insured automobile. This means they are covered, first, if occupying an owned automobile while it is being used by the named insured, a resident of the household, or any other person who has the permission of the named insured~ and second, if occupying a non owned automobile, provided the injury results from the operation or occupancy of the non owned automobile by the named insured or a resident relative. As under the liability section, the relative has coverage only for a non owned private passenger automobile, while there is no such restriction with respect to the named insured. Both the named insured and resident relatives must have the permission of the

owner of the non owned automobile, and the operation must be within the scope of the permission.

It is important to note that the insuring agreement that provides the medical payments coverage is a separate insuring agreement. Unlike the medical payments of the CPL, the medical payments of the Family Automobile Policy are designed to pay for members of the insured's family and others who are occupying an automobile operated by the named insured or a resident relative, or who are occupying the owned automobile with the permission of the named insured. Medical payments coverage does not apply to persons who are injured by the insured unless they are occupants of an insured automobile.

One of the important features of the medical payments coverage is that it applies to the named insured or resident relatives when they are struck by an automobile, even though they may not be in an automobile at the time. A child of the insured might be struck by an automobile while crossing the street. In such a case, the medical payments of the Family Automobile Policy would pay for the medical expenses involved, up to the limit available.

The basic limit of liability under the medical payments portion of the policy is \$500 per person, with no maximum limit per accident. For a small additional premium (a few dollars per year), this limit can be increased to any amount up to \$5000 per person, with no aggregate limit per accident.

Exclusions under medical payments. There are relatively few exclusions under the medical payments section of the Family Automobile Policy. Exclusion (a) excludes injury sustained while occupying an owned automobile which is being used as a public or livery conveyance, or a trailer that is being used as a residence, such as a house trailer.

Exclusion (b) excludes injury sustained by the named insured or a resident relative as a result of being struck by a farm-type tractor or other equipment designed for use off public roads unless it is on public roads, or as a result of being struck by a vehicle operated on rails or crawler treads.

Exclusion (c) deals with persons covered under Division 2. and excludes payment to such persons while occupying a non owned automobile which is being used as a public or livery conveyance or in the automobile business. In addition, there is no coverage if the injury results from the use of a non owned automobile in any business unless the injury results from the operation or occupancy of a private passenger automobile by the named insured, his private chauffeur, or a domestic servant.

Exclusion (d) deals with injuries sustained by a person who is entitled to workmen's compensation benefits. The coverage is extremely broad in this respect. Medical payments are payable in addition to any benefits payable under workmen's compensation unless the individual is employed in the automobile business.

Exclusion (e) excludes loss due to war.

Many people underestimate the importance of adequate limits under the medical payments portion of the automobile policy. Those who have hospitalization policies often feel that they can do without this coverage. Yet this coverage is probably one of the best insurance buys

available. It is designed to cover not only the members of the insured's family, but also guests in the car. Every responsible motorist feels a sense of obligation to his passengers, yet if these passengers are injured due to the negligence of the driver, a guest hazard statute might prevent them from collecting. A driver who has high medical limits can meet the obligation he feels without forcing the guest to resort to legal action. This is probably one of the most important points concerning medical payments coverage: it is not a liability coverage. There need have been no negligence or liability in order to collect under the medical payments portion of the policy. The medical payments coverage provided under the Family Automobile Policy is simply a specialized type of health insurance which has been made a part of the automobile policy. The benefits under this coverage are payable in addition to benefits which may be received from other sources. For example, if Mr. Smith is struck by an automobile, his medical payments coverage will pay any medical expenses which result, up to the limit of the coverage. In addition, Mr. Smith may sue the driver of the vehicle which struck him and collect for his medical expenses, for there is no subrogation provision applicable to the medical expense coverage. In addition, medical payments under the Family Automobile Policy are made regardless of coverage under any other health and accident policy the insured may have.

Section III—Physical Damage Coverage

The physical damage section of the Family Automobile Policy provides coverage against loss of the automobile or damage to the automobile. There are six coverages available:

- Coverage D Comprehensive
- Coverage E Collision
- Coverage F Fire, lightning, transportation
- Coverage G Theft
- Coverage H Combined additional coverage
- Coverage I Towing and labor costs

We will confine our discussion, for the most part, to the first two of these six coverages, comprehensive and collision: these are the most frequently purchased. As we shall see, Coverage D (comprehensive) includes protection against all the perils insured against under Coverages F, G, and H. These are seldom used, simply because the difference in cost between them and comprehensive (which is an all-risk coverage) is so small.

Coverage D —comprehensive coverage. Comprehensive coverage is essentially an all-risk type of property insurance. Under the comprehensive insuring agreement, the insurance company promises to pay for "loss caused other than by collision to the owned automobile or to a non-owned automobile." The purpose of excluding collision under the comprehensive insuring agreement, and then providing this coverage under a separate insuring agreement, is to permit the application of a deductible to collision losses. If it were not desirable to use a deductible on collision losses from an underwriting and price standpoint, it would be possible to combine comprehensive and collision into one insuring agreement. The comprehensive insuring agreement states that for the purpose of this coverage, breakage of glass, and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, Windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or

animal, shall not be deemed to be loss caused by collision.

In other words, since these losses are not deemed to be losses caused by collision, they are losses covered under the comprehensive insuring agreement. The insured would prefer to have any losses that occur covered under the comprehensive insuring agreement rather than the collision coverage, since the collision coverage is written with a deductible. To illustrate the intent of the above provision, suppose that Mr. Jones has a Family Automobile Policy with comprehensive and collision, and that the collision coverage is written with a \$50 deductible. If Mr. Jones' car is stolen and later found wrecked, the insurance company will be obligated to pay the entire loss, without any deductible, for the policy specifically states that a loss due to theft shall not be deemed to be a loss due to collision.

The comprehensive coverage also provides some limited coverage on personal effects of the insured while they are in or upon the owned automobile. The coverage for personal effects is widely misunderstood, particularly in the case of the Family Automobile Policy, which will pay for loss to personal effects, up to \$100, while they are in or upon the owned automobile, provided they are damaged by fire or lightning. It should be noted that this coverage is extremely limited. Fire and lightning are the only insured perils with respect to the contents of the automobile. Many persons who have their automobile insured under a Family Automobile Policy mistakenly think that the policy provides coverage for theft of articles from the automobile. Comprehensive coverage includes theft coverage. but this applies to the automobile itself, and not to articles stolen from the automobile.

Coverage E—collision coverage. The collision coverage of the Family Automobile Policy is simple to understand. The company promises

To pay for loss caused by collision to the owned automobile or a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the declarations as applicable hereto.

The insuring agreement further provides, and this is an important provision that is often overlooked:

The deductible amount shall not apply to loss caused by a collision with another automobile insured by the company.

The deductible amount is normally \$50 to \$250, although other options are available. Under the collision portion of the policy, the company promises to pay for damage to the owned automobile (and to non owned automobiles, a provision which will be discussed later), which is caused by collision with another object or by upset, no matter whose fault the accident is. Collision coverage can therefore be a valuable coverage even if the accident is not the insured's fault. In those cases where the driver of the other automobile is at fault. we would expect his liability coverage to respond for damages to the owned automobile. However, the other party may not have insurance. If the innocent driver has collision coverage, he can collect the amount of the loss (less any deductible) and then leave the task of collecting from the negligent driver to his insurance company. The physical damage section of the Family

Automobile Policy includes a subrogation provision, under which the insured is required to assign to the company all right of claim against a negligent third party, to the extent that he collects from his insurance company. Also, in the case where the insured is at fault, his collision coverage will pay for the damage to his automobile, in addition to the payment made under liability for damage to the other party's automobile.

Coverage on non owned automobiles under Section III 'Drive other car' coverage similar to the liability coverage is also provided under the physical damage section of the policy. The insured is protected from the financial consequences he might suffer if he damages an automobile which he has borrowed or rented. As you will recall from our discussion of the liability section of the policy, there is a liability exclusion relating to the property of others in the care, custody, or control of the insured. If Mr. Jones borrows Smith's car, his liability coverage will provide protection for any damage he causes, but it will not provide coverage for damage to Smith's car. However, if Jones also has comprehensive and collision coverage, these coverages will apply to Smith's automobile as a non owned automobile. Coverage is provided with respect to a non owned automobile regardless of whether or not the insured is legally liable.

The coverage with respect to a non owned automobile is excess. In other words, if Smith has a collision coverage, Jones' collision coverage will apply only after Smith's policy has paid. If Smith has no collision coverage, then Jones' policy will pay for the loss, less the deductible. If the deductible on the non owned automobile is higher than the deductible on the policy which is excess, the excess policy will pay the difference between the deductibles. Perhaps another example will serve to illustrate the point.

Mr. Smith has a 1972 Chrysler, which he has insured under a Family Automobile Policy with a \$100 deductible on the collision coverage. Jones, who wishes to impress a young lady he has just met, borrows Smith's car. Jones has a 1937 Nash, also insured under a Family Automobile Policy, but with a \$50 deductible under the collision coverage. While showing the young lady what a superior driver he is, Jones piles the Chrysler into a brick wall and totally demolishes it (the car, not the wall). Since the coverage on the automobile being driven is primary, Smith's policy will pay for the damage to the Chrysler, less the \$100 deductible. As excess coverage, Jones' policy will pay the amount of the remaining loss (\$100), less his deductible (\$50). Jones' policy will therefore pay an additional \$50. Jones will probably have to pay the remaining \$50 himself or lose Smith's friendship (or possibly both).

The drive other car coverage under Section III of the policy is somewhat more limited than the drive other car coverage of the liability section. Under the physical damage coverage, the named insured and resident relatives are covered for physical damage to an automobile which they are driving or which is in their possession, however, a non owned automobile is defined more narrowly under the physical damage section than it is under the liability section. As you will recall, the named insured has drive other car liability coverage for any type of automobile, while the resident relatives are covered only for a private passenger automobile. Under the physical damage section, both the named insured and resident relatives are covered only for non owned private passenger automobiles. Again, as under the liability section, a non-owned automobile is defined as an automobile which is not owned by, or furnished for, the regular use of the named insured or a resident relative.

Trailers under Section III. Under the physical damage section of the Family Automobile Policy, an owned trailer is covered against loss under collision or comprehensive coverage only if the trailer is listed and a premium is paid therefore. In addition, the definition of a trailer is somewhat more limited under Section III than under the liability coverage. Under the physical damage coverage, a trailer is defined as

a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm, or utility automobile, and if not a home, office, store, display or passenger trailer.

Under the definition of a non owned automobile in the physical damage section, a non owned utility trailer is covered against loss under comprehensive and collision coverage, but with a maximum limit for any loss of \$500.

Physical damage supplementary payments. This section of the coverage provides certain additional benefits to the insured without additional premium. The supplementary payments are in a sense “fringe benefits” which have been added to the contract over a period of time as competitive devices. The most important of the supplementary benefits under the physical damage section is the promise to pay for loss of use following the theft of the owned automobile the company agrees with the insured

to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$10 per day or totaling more than \$300.

The payment for loss of use as a result of the theft of the automobile is payable in addition to the applicable limit of liability for the automobile.

The physical damage coverage under both comprehensive and collision is on an “actual cash value” basis. The company is not required to replace the used automobile with a new one. As a matter of fact, the company may not replace the automobile at all. The policy provisions give the company three options in loss settlement: it may

1. Pay for the loss in cash
2. Repair the damaged property
3. Replace the damaged property

The choice of which option it elects is up to the company. If the insured and the company cannot agree on the amount of loss, either party may, within a period of 60 days after the submission of the proof of loss, demand an appraisal of the loss. The procedure used in appraisal is the same as that used under the fire policy. Each party selects a competent and disinterested appraiser~ the appraisers then select a competent and disinterested umpire. The appraisers independently determine the amount of the loss, and failing to agree, they submit

their differences to the umpire. An agreement on the part of any two of the three parties involved in the appraisal is binding.

Coverage I—towing and emergency road service. The towing and emergency road service coverage is available for a nominal premium. This coverage is designed to pay for any on-the-road service or charge for towing the automobile to a garage which may be necessary due to a mechanical failure. Towing is not a crucial coverage: the insured can probably afford to pay such expenses himself rather than purchase insurance protection. However, as in the case of many insignificant losses, many individuals prefer to purchase this protection rather than budget such expenses. The normal limit for this coverage is \$25.00 per disablement.

Exclusions under Section III. Taken together. Coverages D and E (i.e., comprehensive and collision) provide a broad form of all-risk coverage on the automobile. There are eight exclusions applicable to the coverage under Section III of the Family Automobile Policy.

Exclusion (a) excludes loss to any automobile when it is being used as a public or livery conveyance. As we have seen, participation in a car pool, or carrying friends, even though a charge might be made, does not constitute use as a public or livery conveyance.

Exclusion (b) excludes any loss due to war.

Exclusion (c) excludes loss to any non owned automobile arising out of its use by the insured while he is employed in the automobile business. If the insured works for a garage, his Family Automobile Policy will not provide coverage on customers' automobiles which he may be driving.

Exclusion (d) excludes loss to any automobile owned by the insured, which is not described in the policy, if the insured has other valid and collectible insurance against such a loss. Essentially, this exclusion eliminates coverage for additionally acquired automobiles, if the insured purchases insurance to cover such automobiles.

Exclusion (e) excludes damage which is due to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such loss results from a theft covered by the policy. If the insured's automobile is stolen, and when recovered is found to have suffered substantial wear and tear, the loss would be covered as a loss due to theft.

Exclusion (f) excludes loss to tires, unless they are damaged by fire, malicious mischief, or vandalism, or stolen, or unless the loss be coincident with, and from the same cause as, other loss covered by the policy. For instance, if the insured suffers a blowout while driving down the road, the loss would not be covered. However, if the blowout happened as a result of a collision, the loss to the tire would be covered.

Exclusion (g) excludes loss due to radioactive contamination.

Exclusion (h) states that breakage of glass is excluded under Coverage E (collision) if insurance with respect to such loss is otherwise provided. In other words, if the insured has purchased comprehensive coverage, glass breakage will be covered under that section. If he has not purchased comprehensive coverage, but carries collision coverage, the glass breakage which is a result of a collision will be covered under the collision section, subject to the deductible.

Section IV—Uninsured Motorists Coverage

Uninsured motorist coverage, designated Coverage J in the Family Automobile Policy, is designed to protect the insured and members of his family from the acts of financially irresponsible motorists. In spite of the financial responsibility laws and the dictates of common sense, some people still drive without automobile liability insurance. Uninsured motorist coverage is designed to meet the need for protection against bodily injury which an insured may suffer as a result of being struck by an uninsured driver or a hit-and-run driver. ¹⁷

In its simplest terms, Section IV promises to pay the amount which an insured person could have collected from the insurance company of an uninsured driver or a hit-and-run driver, if such a driver had carried automobile liability insurance. The coverage is an attempt by the insurance companies to provide a solution to the problem of uninsured drivers and forestall compulsory automobile insurance.

Persons insured. Under Section IV, an insured person includes:

- I. The named insured and resident relatives
2. Any other person while occupying an insured automobile
3. Any person, with respect to damages he is entitled to collect because of bodily injury to the named insured, a resident relative, or any other person occupying an insured automobile

Note that the named insured and resident relatives are covered even when they are not occupying an automobile. If the insured or a resident relative is struck by an uninsured automobile, there is coverage. Others are covered only while actually in an automobile which is covered under the policy as an "owned automobile" or a "non owned automobile."

There are five situations in which the coverage does not apply:

- I. When the insured is involved in an accident with an automobile that is insured for an amount at least equal to the minimum limits of liability required by the financial responsibility law of the state.
2. When the insured is involved in an accident with an automobile which is owned or operated by a qualified self-insurer.
3. When the insured is involved in an accident with a government-owned vehicle, even though the government vehicle may be uninsured.
4. When the insured is involved in an accident with an automobile owned by the named insured or any resident of the named insured's household, regardless of who is operating the uninsured auto.
5. When the insured or his representative makes any settlement with the guilty party without written consent of the insurance company.

The limit of liability under this coverage is normally \$ 10,000 per person and \$20,000 per accident.

In Maryland Uninsured motorist coverage must be at least equal to the minimum amounts required for bodily injury liability insurance - \$ 20,000 per person and \$ 40,000 per accident.

There is a possibility that the insured and the company may not be able to agree as to whether the operator of the uninsured automobile is legally liable, or on the amount to which the insured would have been entitled to collect. The policy specifically provides that a judgment against the negligent party is not taken to be conclusive proof of the amount to which the insured is entitled. In the event that the insured and the company cannot agree, the policy provides that settlement is to be made through arbitration in accordance with the rules of the American Arbitration Association.

Uninsured motorist coverage is an essential part of the Family Automobile Policy. In some jurisdictions, this coverage has been made mandatory on all policies sold. In view of the relatively low cost of the coverage (about \$3 per year), it is exceedingly worthwhile and should be included in every policy.

Conditions of the Family Automobile Policy

There are 18 conditions to the Family Automobile Policy. In addition to those which have already been noted, the following are a few of the more important.

Policy period and territory. One of the more important conditions limits the territory in which the policy applies to the United States, its territories and possessions, or Canada, or while the automobile is being transported between ports thereof. Note that there is no coverage under the policy in Mexico, a rather important exception in this day of travel. If the insured drives into Mexico, he must obtain coverage from a company writing automobile insurance in Mexico.

Two or more automobiles. The Family Automobile Policy is often used to insure two automobiles which are owned by the same individual. When two or more automobiles are insured under the same policy, the terms of the policy apply separately to each automobile. An automobile and a trailer which are being used together are considered to be one automobile for the liability coverage, and two automobiles with respect to the physical damage coverage. Thus, since they are considered to be one automobile for liability, only the limits of liability listed in the policy are available to the insured. Since they are considered to be two automobiles for physical damage coverage, the deductible would apply to each.

Cancellation. The Family Automobile Policy has a limited cancellation provision. The insured may, of course, cancel the policy at any time he desires. In the event that the insured decides to cancel, the return premium is computed on a short rate basis. If the company cancels, the return premium is computed on a pro rata basis. The company's right to effect cancellation is limited after the policy has been in force for 60 days. After the policy has been in effect for 60 days, or, if the policy is a renewal, effective immediately, the company cannot cancel Section 1 (the liability coverage) except in certain instances specified in the policy:

1. Failure of the insured to pay the premium
2. If the insurance was obtained through fraudulent misrepresentation
3. Violation of any of the terms or conditions of the policy
4. Suspension or revocation of the driver's license of the named insured or any other resident of the same household

5. Epilepsy or heart attacks on the part of any operator of the automobile
6. Conviction or forfeiture of bail during the 3 years immediately preceding the effective date of the policy or during the policy period for any felony, drunken driving, criminal negligence in the operation of a motor vehicle, leaving the scene of an accident, or making false statements in an application for a driver's license
7. A third violation within eighteen months of any speed law or other traffic law.

No attempt has been made to discuss all the provisions of the Family Automobile Policy. However, sufficient treatment has been provided to permit the reader to appreciate the scope of the coverage under the contract. Further knowledge may be obtained from a more thorough study of the contract itself, or from more advanced texts.

OTHER AUTOMOBILE POLICY FORMS

At this point, it is assumed that the reader is reasonably familiar with the provisions of the Family Automobile Policy. As noted previously, it is only one of several bureau forms available. It was studied in detail, because it offers the broadest coverage of the standard forms. Our discussion of the other bureau forms will focus on the differences between the Family Automobile Policy and those forms.

The Special Automobile Policy

Next to the Family Automobile Policy, the Special Automobile Policy, which has already been described briefly, is the most widely sold form of auto insurance. The Special Automobile Policy was introduced in 1959, and has since been revised twice (once in 1963 and again in 1967) it marks a departure from many of the principles of the Family Automobile Policy. Although the eligibility requirements are technically the same as for the Family Automobile Policy, the underwriting requirements are more exacting in most companies.

The policy is usually written for a period of 6 months, and is renewed by a certificate of renewal rather than by being replaced with a new policy. The renewal premiums are paid by the insured directly to the insurance company. giving rise to the descriptive term "direct bill policy."

There are a number of changes in coverage. In some instances, the coverage is broader than that of the Family Automobile Policy, while in other areas it is considerably narrower. In those instances where the coverage is narrower, it is primarily a result of an attempt to avoid duplication of coverage and elimination of those situations under which an injured party might collect more than once for the same injury. The most important differences in coverage between the Family Automobile Policy and the Special Automobile Policy are the following:

1. The Special Automobile Policy is a package in the sense that there are certain mandatory coverages. and the insured has less choice with respect to the limits. Liability, medical payments. uninsured motorists coverage, and an accidental death benefit come as a package, and the insured must purchase all of them. A single limit of liability under the Special Automobile Policy gives the insured a choice of \$25,000. \$50,000. \$100,000. \$200,000, or \$300,000. with medical payments coverage of \$ 1000. \$2000. \$3000, \$4000. or \$5000, respectively.

The accidental death benefit is a relatively simple insuring agreement which requires little in the way of explanation. It applies to the named insured and spouse and agrees to pay \$1000 in the event of death caused by accident, directly and independently of all other causes, as a result of being struck by an automobile or while occupying an automobile.

2. Residents of the named insured's household must have permission of the named insured to be covered while driving the owned automobile. They do not need such permission under the Family Automobile Policy.

3. A person related to the named insured and residing in his household is not a relative under the terms of the Special Automobile Policy if he owns a private passenger automobile. This means that such a person does not enjoy the coverage afforded a relative. For example, he would not have drive other car coverage under the Special Automobile Policy while operating a non owned automobile. Under the Family Automobile Policy, he would have coverage under both his own policy and that of the relative.

4. Notice must be given to the company within 30 days for coverage to apply to an additional automobile, or for physical damage coverage to apply to a replacement automobile. Under the Family Automobile Policy, notice is required only during the policy period.

5. An automobile is defined as a "four wheel land motor vehicle designed for use principally upon public roads." This could not include a motorcycle or a motor scooter (but might include a truck). Under the Family Automobile Policy, the named insured might be covered while operating a non owned motorcycle or motor scooter. since automobile is not defined.

6. Medical payments are paid only if the injured party executes a written statement that the medical payments will be applied toward the settlement of any claim against the insured under the liability section of the policy.

7. Medical payments are made only to the extent that expenses are not paid or payable under (a) other automobile or premises medical payments insurance; (b) individual, blanket, or group accident and health; (c) medical or surgical reimbursement plans; (d) workmen's compensation. Under the Family Automobile Policy, medical payments are made regardless of other coverage

which the insured may have or workmen's compensation benefits (except workmen's compensation benefits for persons engaged in the automobile business).

8. The insurance company may require a subrogation right against a third party equal to medical payments paid. Under the Family Automobile Policy, there is no provision with regard to subrogation for medical payments.

9. Comprehensive and collision coverages are applicable to a non owned private passenger automobile only if the insured is legally liable for the loss (and without regard to the insurance on the non owned automobile). Under the Family Automobile Policy, coverage is afforded on non owned private passenger automobiles regardless of the insured's liability, to the extent that coverage does not exist on those automobiles.

10. There is no automatic coverage on physical damage to non owned trailers under the Special Automobile Policy. Under the Family Automobile Policy, there is automatic coverage on non owned trailers up to 5500 (when physical damage on the owned automobile has been purchased).

11. The Special Automobile Policy pays for loss by fire, lightning, flood,

falling objects, explosion, earthquake, theft of the entire automobile and collision (if collision coverage is purchased) for robes, wearing apparel, and luggage (including the contents), belonging to the insured or a relative while in or upon the owned automobile for up to \$200 per loss. The Family Automobile Policy covers only against the perils of fire and lightning, and the limit is only \$ 100.

12. The Special Automobile Policy provides coverage for reimbursement for bail bonds up to \$250. The Family Automobile Policy provides only \$100.

13. The Special Automobile Policy provides for reimbursement for loss of wages up to \$25 per day, when incurred at the request of the company because of attendance at trials and hearings.

14. There is an exclusion providing that there is no liability coverage on any automobile (even one that is specifically insured), when that automobile is being used to tow a trailer (other than a utility trailer) that is not specifically insured with the same company. This exclusion, called the "cross trailer exclusion," has existed in commercial automobile policies for many years, but it is only with the introduction of the Special Automobile Policy that the individual became exposed to the dangers it may involve. The Special Automobile Policy provides automatic coverage only on a "utility" trailer, which is defined in the policy as: "A trailer designed for use with a private passenger automobile, if not a home, office, store, display, or passenger trailer." The exclusion is of special importance to those who may own house trailers. In addition, it may be important in certain other instances. For example, the widespread use of camping trailers may present a problem. There are two types of trailers used for camping: the "camping trailer," which is a small unit, frequently of the "fold-down" type, and the "travel trailer," which is much the same as a mobile home of 20 years ago. The distinction between these two types of vehicles may be of critical importance. The camping trailer is a utility trailer, but what about the travel trailer? This may vary with the individual trailer, its equipment, and perhaps company interpretation. Those trailers which are equipped with refrigeration, cooking, and bathing facilities are probably a "home" within the context of the above definition, and are, therefore, not covered automatically under the Special Automobile Policy. Under the Family Automobile Policy, such trailers would

be covered automatically for liability without additional premium. Under the Special Automobile Policy, not only would the trailer not be covered, but the automobile pulling the trailer would not be covered. Such a trailer may be covered under the Special Automobile Policy by listing it in the declarations.

The Basic Automobile Policy

Although the Family Automobile Policy and the Special Automobile Policy have been specifically designed to cover the automobile exposure of the individual and the family, instances may arise in which yet another contract must be used to afford coverage for these classes. Due to the rigid underwriting and eligibility requirements of both the Family Automobile Policy and the Special Automobile Policy, there are some automobiles and some drivers that do not qualify for these contracts. In such instances, coverage must be provided through the use of the basic automobile policy. As you will recall, only private passenger, farm, or utility automobiles owned by an individual or by a husband and wife are eligible for the Family Automobile Policy or Special Automobile Policy. The Basic Automobile policy, although narrower in coverage than either the Family Automobile Policy or Special Automobile Policy, is much broader in terms of eligibility. It may be used to insure any type of automobile, including not only private passenger automobiles, but motorcycles, motor scooters, trucks, buses, and the like. In addition, some drivers are not eligible for the broad coverage of the Family Automobile Policy or the Special Automobile Policy because of bad driving records. In such cases, they can obtain coverage only under the Basic Automobile Policy. For example, insurance obtained through the "assigned-risk pool" is usually written on the basic form. In addition, coverage offered by the substandard carriers (or so-called "distress" carriers) is usually written on this form. Obviously, there is a distinct possibility that some students will be required to obtain automobile insurance under circumstances that will necessitate the use of the basic policy. For this reason, we will look at the principal differences between the basic policy and the Family Automobile Policy. Many of the differences between the basic policy and the Family Automobile Policy are the same as those between the Family Automobile Policy and the Special Automobile Policy: the major differences are:

1. The coverage of the basic policy is written on an "accident" basis rather than an "occurrence" basis as is the Family Automobile Policy.
2. Residents of the named insured's household are not covered automatically when driving the owned automobile. They must have specific permission from the named insured. (This same provision exists in the Special Automobile Policy.)
3. Drive other car coverage is afforded only for the named insured and his spouse (and is afforded only if the insured is an individual or husband and wife). Members of the insured's family are not covered when driving a non owned automobile. (Coverage for such use of non owned automobiles can be provided for members of the named insured's family by adding the Drive Other Car Endorsement for an additional premium.)

This is one of the most significant differences between this policy and the others. *There is no automatic drive other car coverage for resident relatives.*

4. Notice must be given to the company within 30 days for coverage to apply to an additional automobile or for physical damage coverage to apply to a replacement automobile. (This same provision exists in the Special Automobile Policy.)

5. Contractual liability is excluded. Therefore, any liability assumed under a contract (as, for example, in the case of a rent-a-car agreement) would not be covered. There is no such exclusion in either the Family Automobile Policy or the Special Automobile Policy.

6. There is no liability coverage on any automobile (even one that is specifically insured) when that automobile is being used to tow a trailer (other than a utility trailer) not specifically insured with the same company. (This provision also exists in the Special Automobile Policy.)

7. Persons having custody of the owned automobile are not additional insureds under the physical damage (collision—comprehensive) section of the policy. This means that when making payment for damage to the owned automobile, the insurance company may require an assignment of the right to sue the borrower of the owned automobile. To illustrate the effect of this provision, let us look at an example. Mr. Brown, who is insured under a Basic Automobile Policy for collision, loans his automobile to Mr. Smith. Smith is involved in an accident and demolishes the car. Brown will collect from the insurance company, but the company will then subrogate against Smith, seeking damages equal to the amount which was paid to Brown. This possibility is eliminated in the Family Automobile Policy, by making the person who has custody of the owned automobile an insured (provided, of course, that the custody is with permission of the named insured, and the use is within the scope of that permission).

There are other miscellaneous differences between the Family Automobile Policy and the Basic Automobile Policy. However, those discussed above are the most significant differences.

Other Automobile Forms

The policies discussed above are the so-called “bureau forms.” which have been developed by the national rating bureaus. It is important, therefore, to recognize that many insurance companies use contracts that differ from the bureau forms, and that the forms discussed in this text are not the only ones available. Although the trend has been for the bureau and the independent forms to become more and more alike, it is nevertheless important to bear in mind that there may be significant differences between the forms discussed above and those marketed by independent companies.

BUYING AUTOMOBILE INSURANCE

The Cost of Automobile Insurance

One of the most distressing aspects of automobile insurance, as far as youthful drivers are concerned, is the difficulty in obtaining adequate coverage and the cost of the coverage when it can be obtained. Because younger drivers have been an unprofitable class of business for the insurance companies, most companies are reluctant to write coverage for them. When a company accepts a young driver, in most cases it will provide only the minimum limits of liability. Because youthful drivers have had a higher proportion of accidents, their premium rates are higher by far than the average.

Like all insurance rates, the rates for automobile insurance are based on averages. The premiums collected by the insurance company are designed to be sufficient to cover the cost of all claims, plus the expenses involved in the operation of the program. To provide for an equitable assessment of cost, a large number of classifications have been established, and the drivers in each class are charged a premium that reflects the experience of the drivers in their class.

Although the rating systems used in the field of automobile insurance are both numerous and varied, the pattern and the factors used in determination of the rate for an individual are quite similar in most cases. Virtually every rating system in use is patterned after one of the two systems discussed below, and while the details may vary by area and with individual companies, most rating systems are simply variations of these systems. The first rating system to be discussed is the traditional classification system, which has been in use for many years. In addition, a revised classification system, adopted in 1965 by the bureau companies in most states, will be discussed. The revised system is the result of an attempt to refine the premium classifications so that the rate for each class will be a more accurate measure of the loss costs of the group comprising the class.

Traditional classification system. The traditional classification system, still used in some jurisdictions and by a number of companies in those jurisdictions in which the new system has been adopted, classifies private passenger automobiles according to three factors:

1. Use of the automobile
2. Distance driven to and from work
3. Age and sex of the driver

In addition to these factors, the rates vary with the territory in which the automobile is principally garaged, the limits of coverage desired, and, for physical damage coverage, the value of the automobile, and the deductible selected.

Under the traditional system, drivers are classified IA, 1 B, IC, 2A, 2C, 3, or IAF, 2AF, 3AF. The traditional class 1A involves an automobile owned by an individual or hired under a long-term contract by the individual. It is not customarily used in the business or occupation of anyone and is not even used for driving to and from work, but is used for pleasure only. Most important, there is no male operator in the household less than 25 years of age. Class 1 B is the same, except that the car is driven to work and back, but less than 10 road miles one way. Class IC is also the same, except that the road mileage in driving to and from work one way is 10 miles or more. Class 1B premium rates are about 10% higher than class IA, and class IC rates are approximately 45% higher than IA.

Class 2A, with premium rates ~~~approximately 90% higher than IA, is designed for those families in which there are one or more male operators under 25 years of age in the household, but the underage male operator is not the owner or principal operator of the automobile. In addition, the class 2A group of the traditional system includes a male operator under age 25 who is married.

The highest rated class is class 2C. The premium here is approximately 3 1/2 times that for class IA. This classification is applicable to male owners or principal operators who are unmarried: the classification is applied whether the automobile is used in business, driving to and from work, or for pleasure only.²

Class 3 involves business uses of private passenger automobiles. i.e., the automobile is actually used by the insured in his business or occupation. In most territories, the premium rate for this class is approximately 1 times the class IA rate. The classification is applicable to private passenger automobiles owned by individuals, used in business, and with no under-age male operator. It is also used for private passenger cars owned by corporations, partnerships, and unincorporated associations regardless of the age of the operator.

If an automobile is principally garaged on a farm or ranch and is not used in any other business and is not customarily used in driving to and from work in any business except farming, special classifications then exist, with premium rates approximately 30% lower than comparable city rates. The classes are 1AF, 2AF, and 2CF, corresponding to the 1A, 2A, and 2C classes.

Revised classification system. The revised classification system, which went into effect in most states in January 1965, greatly increases the total number of classifications. The starting point for this system is the "base premium" for each coverage, which varies with the territory. This is the premium that is charged for an automobile with no youthful drivers and which is used for pleasure only. The premiums for all other drivers and uses of the automobile are expressed as a percentage of this base premium. Each driver is assigned a rating factor that expresses the percentage of the base premium he is to be charged. The rating factors are expressed as multiples of the base premium. Thus, a rating factor of 1.55 means that the driver would pay 155% of the base premium, and a 3.30 rating factor would require a premium equal to 330% of the base premium. There are six general driver classifications under the new plan:

1. No youthful operator
2. Only operator female, age 30 64
3. Female operator under age 21. unmarried
4. Male operator under age 25, married
5. Male operator under age 25, not married, owner, or principal operator
6. Male operator under age 30. not married, owner, or principal operator

Several changes from the traditional system are immediately evident. First, special consideration has been given to female operators between the ages of 30 and 64 who are the only operators of their automobiles: they have been separated from other adult drivers and given the lowest rated classification. In addition, under the revised system, unmarried female operators under age 21 have been surcharged. Married males under age 25 and incidental male operators age 25 (the traditional class 2A) have been separated, with the married males receiving a lower rate. The surcharge for unmarried males who are the owners or principal operators of the automobile has been extended to age 29.

One of the most significant changes is the fact that underage drivers are further subdivided by age, with a decreasing surcharge as the individual becomes older. One major criticism that can be aimed at the traditional system is the lumping of all male drivers in a given classification regardless of age. For example, under the traditional system, an unmarried male operator pays the same surcharge whether he is 17 or 24. Under the new rating system, under-age drivers are still surcharged, but the charge is reduced each year.

Under the traditional system, only the adult classifications were rated with respect to the use of the car. Under the revised system, use classifications apply to all age groups. The basic classification is pleasure use only. If the automobile is driven to work or school more than 3 but less than 10 miles one way, the rate is surcharged 10% of the base rate. For driving to work more than 10 miles one way, the surcharge is 40% of the base rate. If the automobile is used in business, the surcharge is 50%. The final use classification is farm use, which pertains to an automobile principally garaged on a farm or ranch and not used in any other business or in going to or from any other work. For farm use, the basic pleasure classification is discounted 25%. The surcharges for the use of the automobile are added to the rating factor based on the age, sex, and marital status. This means that the additional charge for business use is the same regardless of the age or marital status of the driver. For example, the adult male pleasure factor is 1.00 and the business use factor is 1.50. For a 22 year old who is the owner of the automobile, the pleasure factor is 2.30, and the business factor is 2.80. Each driver would pay the same number of additional dollars for business use.

The rating program contains two features which work to the benefit of some under-age drivers.³ The first of these is the driver training credit. If the youthful driver has completed an approved driver training course, his rating factor is reduced by 5—20 percentage points, depending upon his basic classification factor. The higher the basic factor, the greater the credit for drivers training. In some states, the discount is applicable when all male drivers have had driver training, while in other states both male and female under-age drivers must have had driver training. A second feature of considerable interest to some youthful drivers is the good student discount.

Introduced by many companies in several states in the fall of 1967, the good student discount applies to full-time students, 16 years of age or older, who are high school juniors or higher, upon certification that the student, for the preceding semester or comparable period:

1. Ranked in the upper 20% of his class, or
2. Had a B average or higher, or
3. Had a 3-point average or higher, or
4. Was on the dean's list, honor roll, or similar list

Like the discount for driver training, the good student discount varies with the individual's basic rating factor. The discount results in a reduction in the rating factor by 10—80 points, depending upon the basic rating factor.

³These discounts may also be used with the traditional system in some jurisdictions by some companies.

If there are chargeable accidents and the company uses the safe-driver rating plan, there will be additional percentage surcharges.

Safe-driver rating plan. The safe-driver rating plan is a program in use by many companies and in many jurisdictions today, whereby the premium will depend on the driving record of the insured involved. It was originally introduced with the Special Automobile Policy and was designed specifically for use with that contract. However, its use is not limited to the Special Automobile Policy; it may be used with the Family Automobile Policy or any other policy form under both the traditional and revised systems. It was originally designed to be applicable to the liability and collision premiums. but in the revised rating system it is applicable to all coverages except uninsured motorist coverage.

The plan is based on the principle that the driving record with respect to motor vehicle violations and accidents during an experience period will be indicative of the characteristics of the insured as an automobile operator in the future. Therefore, premiums in the various classifications are to be based on the operator's record during the experience period. For most plans, the experience period is the 3 years immediately preceding the date of the application for the insurance or the inception of the renewal policy. Points are assigned for traffic violations or accidents involving bodily injury or death or \$100 or more of property damage which the applicant or operator resident in the household has had or for which he has been convicted during the experience period. Three points are assigned for a conviction of drunken driving, for driving under the influence of drugs, for failure to stop and report when involved in an accident, for homicide or assault arising out of the operation of a motor vehicle, or for driving during a period while the license is suspended or revoked. Two points are assigned for an accumulation of points under a special state motor-vehicle point system or from a series of convictions requiring evidence of financial responsibility under a state financial responsibility law. One point is assigned for any other conviction or any other motor-vehicle law violation as a result of which the operator's license is suspended or revoked, and the filing of financial responsibility is required as of the effective date of the policy. One point also is assigned for each accident involving bodily injury or death or \$100 or more in property damage. And one point is assigned if there were two or more accidents during the experience period, each of which resulted in damage to property in an amount of \$100 or less. No points are assigned, however, under the following circumstances:

1. If at the time of the accident the automobile was lawfully parked
2. If the injured party was reimbursed by the responsible party or a judgment was obtained against him
3. If the car was struck in the rear and the applicant or operator was not convicted of a moving traffic violation in connection with the accident
4. If the operator of the other automobile involved in an accident was convicted of a moving traffic violation and the applicant or operator was not convicted of a moving traffic violation in connection therewith
5. If the damage was caused by a hit-and-run driver, providing the accident is reported to the proper authorities within 24 hours

If the individual has one point under the plan, his rating factor is increased by 30 points. For the second point, there is an additional surcharge of 140 points. The third point involves an additional 50-point surcharge, and the fourth point an additional 60 points. Thus, a driver with four points would incur a total surcharge of 180 percentage points.

The safe-driver plan has many commendable features, particularly because of the greater element of equity in the determination of premium rates which it produces. It is becoming more firmly established in the private passenger automobile rating process as time goes on, and perhaps it may become a compulsory feature of all rating plans in the future.

Cost of increased limits. There is little doubt that automobile insurance can be costly, and it promises to become more so in the future. The premiums charged by the companies reflect the accident experience of the drivers they insure. As the number of automobiles increases and the size of liability judgments increases, automobile insurance premiums will also increase.

One of the poorest ways of attempting to save in the purchase of automobile insurance is to purchase only the minimum limits of liability. When a driver is held legally liable for damages, it does not make any difference to the court whether the driver has enough insurance to cover the judgment. If the amount of the judgment is \$100,000 and the liable party has only \$10,000 in coverage available to meet the judgment, he will have to pay the additional \$90,000 himself. Fortunately, higher limits of liability costs far less proportionately than the basic limits.

As an example, the adult rate for basic liability coverage and the cost of increased limits in one major Midwestern city are as follows:

If 10,000/\$20,000 bodily injury limits cost	\$39
Then \$25,000/\$50,000 bodily injury limits cost	\$46
\$100,000/\$300,000 bodily injury limits cost	\$55
If \$5000 property damage limit costs	\$34
Then \$ 10,000 property damage limit costs	\$36
\$25,000 property damage limit costs	\$37

\$ 50.000 property damage limit costs	\$38
\$ 100.000 property damage limit costs	\$40

Likewise, increased medical payments cost relatively little. In the same city. for the same driver.

\$500 medical payments cost	\$ 7
\$1000 medical payments cost	\$ 9
\$2000 medical payments cost	\$ 11
\$5000 medical payments cost	\$14

Automobile Insurance Plans (Assigned-Risk Plans)

A discussion of purchasing automobile insurance would hardly be complete without at least some reference to automobile insurance plans (formerly called assigned-risk plans). There are many people who for one reason or another have difficulty in obtaining automobile liability insurance. A person may attempt to purchase the insurance and discover that no insurer will assume his risk. This is particularly true of youthful male owners or operators and of people who must demonstrate financial responsibility under the laws of the state. It is true also of a person who, because of his driving record, has demonstrated that he is more hazardous as a risk than the average of the classification to which he otherwise would normally belong.

Automobile insurance companies, as in most other businesses, would like to make a profit, or at least to cover all expenses of their business operation. This cannot be accomplished by accepting a relatively large number of insureds in which the possibility of loss is considerably greater than the average. However, many of the undesirable risks may be politically powerful, and if private insurers will not underwrite the insurance, the state may be called upon to do so. If the state should set up a fund to underwrite undesirable risks, it perhaps would not be too long until it would be insuring all automobiles, and private insurers might disappear altogether. Assigned risk plans have been developed whereby private insurers can provide insurance on some equitable basis for risks they would not otherwise underwrite in the normal course of business operations.

An assigned-risk plan is a voluntary organization of all automobile insurance companies operating in a particular state. Its purpose is twofold:

First, it will provide automobile liability insurance, within limits, to those who cannot obtain it through normal channels. Second, it establishes a procedure for the equitable distribution of these risks among all the automobile liability insurers operating in the state.

With respect to the first function, the applicant must certify on a prescribed form that he has attempted, within 60 days prior to the application, to obtain liability insurance and has been unable to procure it. Not all applicants are eligible for coverage under the plan, and while the eligibility requirements vary from state to state, in general, criminals, persons without driver's licenses, and habitual traffic violators are ineligible. If the applicant is eligible a company will be assigned to underwrite the insurance. The designated company will be obligated to provide liability coverage with limits equal to the requirements of the financial responsibility law.⁵

A risk cannot be assigned to accompany for a period in excess of 3 years, and the insurer may cancel an assigned risk under certain circumstances. The right to cancel is

based on facts which demonstrate that the risk ceases to be eligible in good faith for the insurance—nonpayment of the premium, and the like. A number of major offenses and convictions obviously would result in a justifiable cancellation.

The second function of the plan is to provide an equitable procedure for the distribution of risks among all the automobile insurers operating in the state. This is accomplished by assigning to a particular insurer the percentage of assigned-risk premiums that its total liability premiums bear compared to the total liability premiums of all automobile insurers operating in the state. Thus, if a particular company has 1/20 of all liability premiums written in the state, it would be assigned 1/20 of the risks. This perhaps is the only equitable method available, and it appears to be working reasonably well.

For those persons who are unable to obtain liability insurance even through assigned risk, the best procedure would be to give up driving a car. But to some people this is not a practical possibility, or at least they imagine such. To purchase insurance coverage to meet the requirements of a state financial responsibility law, these persons must turn to what is commonly known as a ‘distress risk’ company. In many instances, these insurers will specialize in this type of insurance. They have special rating plans in which the premium can attain almost incredible proportions, and special policy forms that may be highly limited. The distress risk companies perform a service, at least to the extent that they are making automobile liability insurance possible at some price.

5 In many jurisdictions, the coverage available under the automobile insurance plans has been greatly increased in the recent past. Under the plans of many states the applicant may obtain not only liability coverage, but medical payments and physical damage coverage as well.

THE AUTOMOBILE INSURANCE PROBLEM AND THE ATTACK ON THE TORT SYSTEM

It is not at all unusual to hear complaints about automobile insurance today. Almost everyone connected with the automobile insurance business has what they consider to be a legitimate complaint. The insurance companies complain that they are losing money because of inadequate rates. The buyers complain that the rates are too high. Young drivers (and, more recently, older drivers) complain that they frequently have difficulty in obtaining coverage. Finally, many who have suffered losses maintain that settlements do not measure up to the economic loss. With all this dissatisfaction, it is not surprising that every proposal for change meets with widespread acclaim in one corner or another.

All these problems are the backdrop for the recent discussion about automobile insurance and the tort system in general. Many critics of automobile insurance contend that the problem today is not so much with insurance as such, but rather with the system we use to compensate the injured persons. These critics maintain that our tort system is wasteful, expensive, unfair, and excessively time-consuming, and they recommend that we abolish it in connection with automobile accidents. The effectiveness and rationale of the negligence system has been questioned since the *Columbia Report* of 1932, which pointed to many shortcomings of the tort system. One major criticism of that report, and of today's critics, is that many persons who are injured remain uncompensated or are inadequately compensated. The victim in an accident may be unable to obtain compensation because he himself was negligent, because the guilty party is insolvent, or because the guilty party is unknown, as in the case of a hit-and-run accident. Additionally, the amount of compensation that is finally awarded may depend more on the ability of the victim's attorney than on the facts. Other criticisms of our present system include the high cost of providing benefits to those who are injured because of the cost of operating the insurance mechanism, the courts, and the contingency fee system, and the congestion of the courts, which results in long delays in providing the final compensation to those who are injured. Furthermore, the critics maintain that our present system is inequitable. Insurance companies intentionally overpay small claims to avoid litigation, but they resist large claims in which the victim was seriously injured. For these reasons, the tort system has been under attack, and numerous proposals have been made to substitute a no-fault compensation system. Such proposals are not new, but there has been increased interest in them since the middle of the 1960's. We will discuss a number of the proposals that are currently prominent, so that the student may be aware of their general nature. It should be pointed out that this discussion includes only the highlights of the programs, and does not include the complete details that may be necessary for a full evaluation of the plans.

The Keeton—O’Connell Plan

One of the landmark proposals for modification of the tort system, and the one that has received the most attention in the recent past, is the Keeton O’Connell plan, which the authors call Basic Protection. The details of the Basic Protection plan, together with the documentation of the need for it as seen by the authors, are presented in their book, *Basic Protection for the Traffic Victim*. The Keeton—O’Connell plan seeks to rectify the defects of the present automobile system by providing for compensation of all parties involved in automobile accidents without regard to anyone’s fault or lack thereof, up to certain specified limits. In the event of injuries involving losses in excess of the specified limits, tort liability would be retained. Briefly, the features of the plan are given below.

A new form of automobile insurance coverage. Under the Keeton -O’Connell plan, a new form of compulsory automobile insurance would compensate all persons injured in automobile accidents without regard to fault or anyone’s lack of it. It would pay whenever a motorist carrying this insurance was involved in an accident and he, or a guest, or a pedestrian was injured. The Basic Protection coverage would pay up to \$10,000 per person and \$100,000 per accident, for any out-of-pocket expenses (primarily lost wages and medical costs). The coverage would be subject to a \$100 deductible.

Partial exemption from tort liability for basic protection insureds. The

second feature of the proposal is a law which would make those insured under Basic Protection exempt to some extent for legal liability for negligence in the use of the automobile. If tort damages for pain and suffering would not exceed \$5000 and other tort damages (principally for medical expenses and lost wages) would not exceed \$10,000, an action for basic protection under the injured party’s own Basic Protection policy would replace any tort action against the negligent driver. In cases of more severe injury, where economic loss is in excess of \$10,000 or pain and suffering is in excess of \$5000, the tort action is preserved, but the recovery is to be reduced by these amounts. In addition, tort action would be preserved in cases where the loss is less than \$100.

Reimbursement limited to “net loss.” Basic Protection benefits would be designed to reimburse for net economic loss only. Overlapping would be eliminated and any benefits collected from other sources would be subtracted from the gross loss in determining the net loss. Net economic loss would include work loss and expenses. Work loss would consist of loss of income from work (for example, wages) and expenses reasonably incurred for services in lieu of those the injured person would have performed without income. The policy would pay some percentage of the lost wages (say, 85%), the deduction being made to allow for the tax-free nature of the benefits, with a maximum of \$750 per month.

Periodic reimbursement. Benefits would be payable month by month as the losses accrued, rather than at some distant time in the future after the injured party had actually paid them all.

Optional pain and suffering coverage. While the basic protection coverage would limit recovery to economic loss only, an optional coverage would be available to compensate for pain

and suffering to the insured in amounts of less than \$5000. Pain and suffering over \$5000 would be recoverable through tort action.

The assigned-claims plan. Through what is referred to as an ‘assigned claims plan,’ Basic Protection benefits would be available even when the vehicles involved in an accident are either uninsured or hit-and-run automobiles. Nonresidents without Basic Protection coverage would also be paid under the assigned-claims plan.

Liability coverage. Optional liability coverage would be available to cover liability incurred by the insured out of the state or in excess of amounts of Basic Protection.

The American Insurance Association Plan

In June of 1967, the American Insurance Association (AIA) formed a committee to undertake an immediate study of the Keeton O’Connell plan. In October of 1968, this committee released the result of its study and at the same time announced the AIA’s own reform proposal. Under the Complete Personal Protection Automobile Insurance Plan, as the new proposal is known, the AIA goes further than Keeton and O’Connell, proposing abolition of the tort system for automobile accidents without regard to the amount of the damage. The chief points of the AIA proposal are discussed below.

A new form of compulsory automobile insurance. Like the Keeton— O’Connell plan, the AIA plan involves a new form of first party insurance designed to cover the family. The policy would cover the owner and his family for their loss in any accident, and in addition would cover the occupants of the car and any pedestrians not otherwise covered. The policy would provide unlimited medical expense benefits and coverage for lost wages or work loss up to \$750 per month, without limit of time. Lost wages would be reduced by 15% to reflect the tax advantage. In the event of a death claim, economic loss benefits would be payable to survivors subject to the same limitations. In addition, funeral and burial expenses would be paid up to \$ 1000.

Abolition of tort liability for automobiles. Tort liability in connection with the automobile would be totally abolished for anyone who purchased a Complete Protection Policy. Uninsured drivers would be subject to tort liability. Jury trial would be preserved for settling disputes between the claimant and the insurance company as to the amount of benefits, and the cost of such suits would be borne by the claimant unless his claim was sustained by the courts.

Elimination of compensation for pain and suffering. The AIA proposal recommends elimination of compensation for pain and suffering, but includes a recommendation of an extra lump sum payment in the event of permanent impairment or disfigurement. The additional compensation for disfigurement or impairment would not exceed 50% of the claimant’s hospital or medical expense.

Coverage in other states. Accidents occurring to insureds in states not covered by the AIA

proposal would still be subject to the tort liability system. In these cases, the insured would have residual automobile liability insurance for limits most commonly in use under state financial responsibility statutes.

Property damage. Owners of property other than automobiles that is damaged by an insured car would be covered and reimbursed under the policy on the insured car. Each motorist would be responsible for damage to his own vehicle, and physical damage coverage would be available as an option.

Uninsured persons and vehicles. An assigned-claims plan would be supported by all companies and would pay losses of uninsured persons even when an automobile accident involved uninsured or hit-and-run vehicles. Uninsured *drivers* would be subject to tort liability. Loss benefits would be subtracted from any tort recovery against an uninsured driver and repaid to the insurer, who would make payment under the assigned-claims plan.

The Cotter Plan

The Cotter plan has been hailed in many corners as the least radical and perhaps most workable of the changes that have been proposed. Conceived by Connecticut Insurance Commissioner William R. Cotter and announced in January of 1969, the Cotter plan consists of a group of legislative proposals directed at the major problems affecting automobile insurance. The essential features of the plan are described below.

Medical and disability benefits. Every private passenger automobile policy would automatically include a minimum of \$2000 in medical payments coverage and 1 year of disability benefits, which would be applicable not only to the motorist and his family and guests in the automobile, but to pedestrians struck by the automobile as well. This would provide for immediate payment of most economic losses. At the same time, those who were injured by a negligent driver would retain their right to file suit for additional damages, and the insurance company would have subrogation rights against the negligent driver to recover any money it had paid out. This means that the tort system would remain essentially intact.

Negligence. A comparative negligence law would be adopted.

Small-claims arbitration. Mandatory small-claims arbitration would be adopted for cases of less than \$3000. This would help to relieve the congestion of the courts and would guarantee equitable treatment of those injured on an economical basis. Advance payments would be made for expenses of claimants as they were incurred.

Pain and suffering coverage. Standards for assessment of damages for pain and suffering would be adopted. In those cases where hospital and medical bills are less than \$500, the plan would

pay up to 50% of that amount for additional damages. In cases where medical expenses exceeded \$500, the plan would pay up to 100% of that amount for additional damages. In the event that medical testimony demonstrated that such amounts would not justly compensate for the actual pain and suffering experienced, additional amounts could be awarded.

The Massachusetts Personal Injury Protection Plan

Massachusetts became the first state to enact a compulsory no-fault automobile compensation plan when the Massachusetts legislature, in August of 1970, enacted the Personal Injury Protection Plan as an amendment to the compulsory automobile insurance law of that state. As the provisions of the plan presented below indicate, the Massachusetts plan is a modified no-fault plan, and does not go nearly as far as most of the other plans that have been proposed in abrogating the fault system. In essence, the plan provides for direct reimbursement of medical expenses and lost wages by the injured party's own insurance company up to \$2000, with limited immunity from tort action.

Basic benefits. Personal Injury Protection applies to the named insured, members of his or her household, any authorized operator or passenger of the insured's motor vehicle, and any pedestrian struck by the insured motor vehicle. Members of the insured's household are also covered if struck by an automobile that is not covered by Personal Injury Protection. Insurance protection up to \$2000 per person applies to cover medical expenses (including funeral expenses) and loss of wages. Payment is also made for loss of personal services when someone other than a member of the insured party's family is paid to perform such services. This would include, for example, wages paid to someone hired to perform an injured housewife's normal duties.

Lost wages coverage. Coverage for lost wages is limited to the actual loss sustained and further to 75% of the injured party's average weekly wage for the year immediately preceding the accident. No benefits are payable if the injured person is entitled to workmen's compensation benefits, and benefits for lost wages are reduced by any amounts received under a wage continuation plan.

Tort immunity. Immunity from tort action is provided to the extent of expenses recoverable under the Personal Injury Protection Plan. Tort recovery for pain and suffering is allowed if medical and funeral expenses exceed \$500. In addition, in those instances where the accident results in death, loss of a body member, disfigurement, loss of sight or hearing, or fractures, pain and suffering claims are not limited.

Exclusions. Certain types of conduct preclude the injured party from collecting under the plan. Specifically, benefits are not payable under the Personal Injury Protection Plan to persons operating a motor vehicle:

1. While under the influence of alcohol or narcotics

2. While committing a felony or seeking to avoid arrest by a police officer
3. With the intent of causing injury or damage to himself or others

Subrogation. Insurance companies are subrogated to the rights of any person to whom benefits are paid, and may seek recovery directly from the insurer of the negligent party. This recovery may include the cost of claim adjustment expense and legal costs.

Coverage of uninsured persons. The plan is applicable only in Massachusetts. Drivers must carry liability insurance to protect against losses in excess of the limited immunity from tort and losses which occur outside of Massachusetts. An assigned-claims plan provides coverage for persons who do not carry Personal Injury Protection (e.g., drivers from other states or persons who do not own automobiles). If such a person is injured, the claim is assigned to one of the insurers operating in the state for payment. The insurer then assumes subrogation rights against the negligent party.

Deductibles. Personal Injury Protection coverage may be purchased subject to a deductible. Deductible options of \$250, \$500, \$1000, or \$2000 are available. The deductible applies only to the named insured and members of his household. Deductible amounts are not recoverable in a tort action, and the inclusion of a deductible does not affect the immunity from tort liability.

In addition to the provisions outlined above, the Massachusetts plan includes certain other provisions with respect to the fixing of rates and a system of surcharges for individuals with bad driving records. It also imposes certain limitations on the rights of the insurance companies to cancel or refuse renewal of insurance contracts.

Property damage. Although the original Massachusetts plan did not include property damage, effective January 1, 1972, it was extended to include no-fault property damage coverage. Under this newest aspect of the Massachusetts plan, called Property Protection Insurance (PPI), drivers are responsible for damage to their own automobiles. Every insured must elect one of three first party options with respect to their automobile:

1. Collision or upset coverage
2. Restricted collision coverage
3. No coverage for insured vehicle

Having selected one of these options, the **PPI** insured is exempt from liability for damage to any vehicle required to come under the plan. The first option, "collision or upset coverage," is ordinary collision coverage as it has traditionally been written. The second option, "restricted collision coverage," applies only when the driver of the other vehicle is at fault. In a sense, it takes the place of the other driver's property damage liability coverage. As the title of the third option indicates, the insured would have no coverage for his own vehicle, and he would have no right of action against another party carrying **PPI** for any damage suffered. Property damage liability coverage is mandatory, and the exemption from tort liability does not apply to out-of-state vehicles or other property.

Maryland Personal Injury Protection (PIP) Coverage

Unless waived by the named insured, each insurer that issues, sells, or delivers a motor vehicle liability policy in Maryland must provide coverage for the medical, hospital, and disability benefits described in this section for each of the following individuals:

- The first named insured and family members who reside in the same household who are injured in any motor vehicle accident, including an accident that involves an uninsured motor vehicle or a motor vehicle that cannot be identified
- Any other individual who is injured in a motor vehicle accident while using the insured motor vehicle with the express or implied permission of the named insured
- An individual who is injured in a motor vehicle accident while occupying the insured motor vehicle as a guest or passenger
- An individual who is injured in an accident that involves the insured motor vehicle either as a pedestrian or while that person is in, on, or alighting from a vehicle that is operated by animal or muscular power (such as a bicycle or horse-drawn carriage)

Benefits do not have to be provided to individuals who are specifically excluded from coverage by endorsement due to their driving or accident records.

The minimum medical, hospital and disability benefits must include up to **\$2,500** for payment of the following types of expenses or lost income arising from an accident and incurred within **three years** from the accident date:

- Reasonable and necessary **medical and funeral** expenses for hospital, medical, dental, professional nursing, surgical, ambulance, and x-ray services, any necessary prosthetic devices, and funeral costs if death results
- Benefits for **85% of income lost** by an injured individual who was earning or producing income when the accident occurred
- Reimbursement of reasonable and necessary expenses incurred for **essential services** ordinarily performed for the care and maintenance of the family or household by an injured individual who was not earning or producing income when the accident occurred

As a condition of providing loss of income benefits, an insurer may require the injured individual to furnish reasonable medical proof of the injury causing loss of income.

Benefits may be excluded for:

- Individuals who intentionally cause the motor vehicle accident resulting in injury
 - Nonresidents of Maryland who are injured as pedestrians outside the state
 - Individuals knowingly operating or voluntarily riding in a stolen vehicle
 - Individuals injured in an accident while committing a felony
 - Insureds injured while occupying uninsured motor vehicles owned by the named insured or a family member residing in the same household
- (19-505)**

Waiver of PIP Benefits

If the first named insured does not wish to obtain the personal injury protection benefits otherwise required, the first named insured must make an affirmative written waiver of those benefits. If the first named insured does not waive the benefits, the insurer must provide them.

A waiver made under this section is binding on the following persons covered by the policy:

- Each named insured
- Each listed driver
- Each member of the first named insured's family residing in the same household who is at least 16 years old

An individual listed above may recover PIP benefits under another motor vehicle liability policy if that individual:

- Is the first named insured under the other policy
- Has not waived the benefits under the other policy
- Is not a named insured under any other motor vehicle liability policy where a waiver of the benefits is in effect

A waiver of PIP benefits is not effective unless, prior to the waiver, the insurer gives the first named insured written notice of the nature, extent, and cost of the coverage. The form must clearly and concisely explain:

- The nature, extent, and cost of the coverage that would be provided under the policy if not waived
- The effect of the waiver
- That a failure to make a waiver requires the insurer to provide the coverage
- That an insurer may not refuse to underwrite a person because the person refuses to waive the coverage
- That a waiver made under this section must be an affirmative written waiver

A waiver made under this section by a person who is insured continuously by the Maryland Automobile Insurance Fund is effective until the waiver is withdrawn in writing. **(19-506)**

PIP Benefits are No-Fault Benefits; Non duplication of Coverage

The required PIP benefits must be payable without regard to the fault of the named insured or the recipient of benefits in causing or contributing to the accident, and without regard to any collateral source of medical, hospital, or wage continuation benefits.

If an insured has coverage for both PIP benefits and a collateral source of medical, hospital, or wage continuation benefits, the insurers may coordinate the policies to provide for non duplication of benefits, subject to appropriate reductions in premiums for one or both of the policies, as approved by the Commissioner. However, the named insured has the right to elect or reject the coordination of policies and non duplication of benefits. If the insured elects to

coordinate policies, the insured must indicate in writing which policy is to become primary.

An insurer that issues a policy providing PIP benefits may not impose a surcharge for any claims or payments made under that coverage and, at the time the policy is issued, must notify the policyholder in writing that a surcharge may not be imposed for any claims for PIP benefits.

An insurer that provides PIP benefits does not have a right of subrogation and does not have a claim against any other person or insurer to recover any benefits paid because of the alleged fault of the other person in causing or contributing to a motor vehicle accident. **(19.507)**

Payment of Benefits

An insurer must make all payments of PIP benefits periodically as claims for the benefits arise and within 30 days after the insurer receives satisfactory proof of claim. A policy may set a period of not less than 12 months after the date of the motor vehicle accident within which the original claim for benefits must be filed with the insurer.

A policy may also provide that if, after a lapse in the period of total disability or in the medical treatment of an injured individual who has received benefits. The individual claims additional benefits based on an alleged recurrence of the injury for which the original claim for benefits was made, the insurer may require reasonable medical proof of the alleged recurrence.

The aggregate benefits payable to an individual under PIP benefits may not exceed the maximum limits stated in the policy. When an insurer that provides PIP benefits receives written notice from an insured of the occurrence of a motor vehicle accident for which benefits may be available, the insurer must notify the insured by mail of the latest date on which a claim may be filed for such benefits.

Payments of benefits that are not made in accordance with this section and that are overdue must bear simple interest at the rate of 1.5 % per month.
(19-508)

MARYLAND AUTOMOBILE INSURANCE FUND

Purpose

The purpose of the Fund is to provide automobile insurance to eligible persons who are unable to obtain it in the private market. The fund consists of an Association of insurers authorized to write motor vehicle liability insurance in the state. The Fund is administered by an Executive Director.

Covered Vehicles

As used in this section, **covered vehicle** means a motor vehicle for which the Fund is required to provide coverage. "Covered vehicle" includes an automobile, truck, van, and trailer, but does **not** include a motorcycle or motorbike.

(20-501)

Policyholder Eligibility

On payment of the premium set by the Fund, the Fund is authorized to sell, issue, and deliver a policy that provides the minimum requirements for automobile liability insurance under state law. The Fund will issue a policy to a person who:

- Owns an automobile registered with the Motor Vehicle Administration and has a driver's license issued by the Motor Vehicle Administration
- Does not owe the Fund reimbursement for any claim payment obtained by fraud or any unpaid premium for a prior policy that has expired or been cancelled
- Has attempted in good faith to obtain a policy that provides the minimum coverages from at least two insurers, and coverage has been rejected or refused by at least two Association members for any reason other than nonpayment of premium
- Has had an automobile insurance policy cancelled or non renewed by an Association member for any reason other than nonpayment of premium
- Meets the other eligibility requirements of this section

To be eligible for a policy issued by the Fund, a person must:

- Be a resident of Maryland or have a nonresident permit
- Own, lease, or rent a primary place of residence in the state and, regardless of the person's domicile, have lived in the state for more than one year
- Have filed as a state resident for income tax purposes (unless eligible under a nonresident permit)
- If the applicant is a business, maintain a main or branch office or warehouse facility in the state, and base intrastate operations of motor vehicles in the state

A person who is otherwise eligible for coverage will still be eligible if the person is:

- An active duty member of the United States armed forces or the United States Public Health Service
- A student enrolled in an accredited school, college, or university
- Serving a medical internship

The eligibility of an applicant for insurance from the Fund may be certified at a time and in a manner approved by the Fund. If a prospective insured fails to qualify for coverage after a policy has been issued, the policy is void and a commission may not be paid by the Fund to the Fund producer. In addition, the Fund may charge a policy processing fee to cover its expenses or a

portion of the gross unearned premiums, whichever is greater. Before doing so, the Fund must refer the case to the Insurance Fraud Division for investigation and possible prosecution of the person who applied and failed to meet the eligibility requirements. **(20-502)**

Coverages and Disclosures

Each policy issued by the Fund must contain the minimum coverages required by state law, and may contain other provisions determined by the Executive Director and approved by the Board of Trustees and the Commissioner. When the policy is issued, the Fund must include in the policy a written notice to the applicant that contains the following disclosures:

- The time and the conditions under which the applicant is eligible to seek insurance from an Association member
- That if the applicant seeks insurance directly from an Association member, the Association member may not refuse to provide coverage solely because the applicant or named insured previously obtained insurance from the Fund. If the Association member violates this provision, a complaint may be filed with the Commissioner against that Association member.

Whenever the Fund issues a policy of commercial auto liability insurance, the Fund may provide coverages in addition to and in excess of the minimum coverages required by law, but is not required to do so except to the extent that reinsurance for the additional or excess coverage is available and acceptable to the Fund. **(20-503)**

Optional Coverages

As used in this section, **add-on coverage** means coverages or services sold in connection with a policy issued by the Fund, other than coverages authorized to be offered by the Fund. “Add-on coverage” includes:

- Rental reimbursement coverage
- Personal effects theft coverage
- Collision and comprehensive deductible waiver coverage
- Supplemental hospital benefit coverage
- Emergency living expense coverage
- Vehicle towing coverage
- Emergency vehicle repair service coverage

“Add-on coverage” does **not** include fire, life, and health insurance coverages that are not directly related to the underlying motor vehicle insurance coverage and are written by an authorized insurer.

At the time coverage provided by the Fund is bound and before any add-on coverage is sold, a Fund producer must provide a clear and conspicuous written disclosure that:

- States that the cost of add-on coverage is not part of the premium for the related policy issued by the Fund
- Includes an itemized list of any add-on coverages to be sold

- States the nature and cost of each add-on coverage
- States that add-on coverage is optional and not required by law

Before an insured may purchase add-on coverage, the insured must expressly consent to the purchase by signing the disclosure form. On continuation of a policy that includes add-on coverage, the insured does not have to sign a disclosure form if the number and type of add-on coverages do not change from the preceding policy and the insured has signed the original disclosure form.

A Fund producer may not require an insured or prospective insured to purchase any add-on coverage as a condition of purchasing the related policy issued by the Fund, or sell add-on coverage or any combination of add-on coverages in an amount that exceeds \$200 per covered vehicle. **(20-504)**

Premium Determination and Collection

Subject to the approval of the Commissioner, the Executive Director will determine the premiums to be charged on policies issued by the Fund. The Executive Director may base premiums on the number of points accumulated by an insured or applicant under the point system provided for in the Transportation Code, the prior claims experience of an insured or applicant for insurance, or both.

The Fund may not provide directly or indirectly for the financing of premiums or accept premiums on an installment basis. A premium may be financed only by a premium finance company registered with the Commissioner.

if an insured's initial payment to the Fund, a Fund producer or a premium finance company is not honored, the policy or endorsement for which the premium was charged is void. **(20-507)**

Producer Authority to Bind Coverage

A Fund producer may bind the minimum required coverage for an applicant in the Fund if the applicant submits an application to the producer and pays the appropriate premium. Payment of the premium will not make coverage effective if payment of all or part of the premium is made by an instrument that is later dishonored.

The Board of Trustees will adopt regulations that relate to the authority of Fund producers to bind coverage, including the amount of premium to be collected, the evidence necessary to establish qualification of an applicant, procedures for notifying the Fund of the binding of coverage, and the time within which the producer is to give notice to the Fund. The Fund is liable for coverage from the date that the producer binds coverage.

The Fund may refuse to grant producer authority to any producer who has been previously terminated as a producer or whose license has previously been revoked or surrendered.

On review of an application, the Fund may cancel coverage and refuse to issue a policy if the

applicant is not qualified for the insurance or has not paid the appropriate premium, or if there are grounds for the Fund to reject the application.

Whenever coverage is cancelled, the Fund must promptly notify the applicant, producer, and Motor Vehicle Administration of the cancellation. The applicant has the right of appeal. If the cancellation occurred because an applicant did not pay the appropriate premium, the Fund will provide a reasonable opportunity to pay it. **(20-509)**

Producer's Fiduciary Duties

A Fund producer is a fiduciary as to all premiums, return premiums, or other money received from any person in connection with a policy or application for Fund coverage. Premiums must be deposited as trust money and accounted for and paid over to the Fund as the law requires. **(20-510)**

Producer's Surety Bond

When applying to the Fund for appointment as a Fund producer, an applicant must file a **\$10,000 surety bond** for the benefit of the Fund for the balance of the current year. On or before December 31 of each year, the bond must be filed for the next year.

The required bond must provide that the producer will account for and pay over to the person entitled to it all money belonging to the person that comes into the producer's possession as a result of acting as a producer for or binding coverage for the Fund.

A producer's authority to bind coverage may be terminated after **10 days** advance written notice if the bond is not filed with the Fund in a timely manner or continuously maintained in effect while the producer has authority to bind coverage in the Fund. **(20-511)**

Producer Commissions

For private passenger auto insurance. Fund producers are paid a commission of 10% of the total premium for the policy. For any other insurance issued by the Fund, commissions are paid at a rate determined by the Fund, but not more than 10% of the total premium.

The Fund may not pay a commission on a fully earned basis. A commission may not be paid if a prospective insured fails to qualify for coverage or if a prospective insured's initial premium payment is not honored.

If a policy issued by the Fund is cancelled, the Fund will refund any unearned commissions. **(20-512)**

Actions Against Producers

The Fund may refuse to accept further applications from a producer, terminate the producer's authority to bind coverage, or both if the producer violates Fund regulations concerning the binding of coverage or fails to pay money owed to the Fund. **(20-5 13)**

Rejections and Cancellations

The Fund may cancel a policy for nonpayment of premium at any time. The Fund may reject an application if the applicant owes unpaid premium on an expired or cancelled policy. The Fund may reject an application or cancel a policy at any time if it is found that the applicant's or policyholder's license has been suspended or revoked (except for suspension for a first offense of driving with an alcohol concentration of 0.10 or more).

The Fund must notify the applicant or policyholder promptly after it rejects an application or cancels a policy. If a person does not have a valid driver's license or is otherwise ineligible to be insured, the Fund may issue the appropriate policy with an excluded driver endorsement for that person. **(20-516)**

Appeal of Rejection or Cancellation

A decision to reject an application or cancel a policy for a reason other than nonpayment of premium may be appealed to a special board within 10 days after receiving notice of rejection or cancellation. The special board may affirm, reverse, or modify the decision. The current policy remains in effect until the appeal is decided. **(20-5 17)**

Maryland Insurance Code

§ 12-301.

(a) In this section, "insurable interest" means an actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance against loss, destruction, or pecuniary damage or impairment to the property.

(b) A contract of property insurance or a contract of insurance of an interest in or arising from property is enforceable only for the benefit of a person with an insurable interest in the property at the time of the loss.

(c) An insurable interest in property is measured by the extent of possible harm to the insured from loss, injury, or impairment of the property.

(d) (1) This subsection applies only to an automobile insurance policy that is procured by an independent insurance producer.

(2) Upon renewal of an existing automobile insurance policy, if the insured or a person holding an insurable interest in the subject of the policy requests proof of insurance, an authorized insurer shall provide:

- (i) a copy of the automobile insurance policy declarations; or
- (ii) written proof of the automobile insurance that consists of:
 - 1. the name and address of the insured and insurer;
 - 2. a description of the vehicle, including the vehicle identification number, that is the subject of the insurance policy;
 - 3. a description and the amount, if applicable, of the insurance coverage including applicable deductibles;
 - 4. the inception and expiration dates of coverage;
 - 5. the name and address of the person with an insurable interest; and
 - 6. the premium for the applicable coverage.

(e) An insurer may require written authorization from the insured before providing proof of insurance under this section to a person other than a financial institution.

§ 12-302.

(a) A guardian of a minor may insure for the minor property that the minor owns.

(b) A property insurance contract issued to a guardian under subsection (a) of this section has the same effect as if the minor were an adult and had made the property insurance contract.

A change of interest on the death of the insured does not void property insurance and the property insurance passes to the person taking the interest in the property.

§ 12-304.

(a) If an insurer issues and delivers a policy to a lender on property of a borrower that has been pledged, mortgaged, or is subject to a conditional contract of sale, the insurer must issue a certificate to the borrower or owner of the property in accordance with subsection (b) of this section.

(b) The certificate issued under this section shall set forth:

- (1) the coverages provided in the policy;
- (2) the amount of premium charged for the policy;
- (3) the date the policy takes effect; and
- (4) the date the policy expires.

§ 12-305.

(a) A claim for damage to property resulting from a motor vehicle accident may not be denied or payment of the claim delayed because the claimant, or another person, has a claim pending for bodily injury that may have arisen from the same or another accident.

(b) The amount payable for a claim for damage to property is due and owing immediately and shall be paid promptly by an insurer or by a self-insurer that is approved under § 17-103(a) of the Transportation Article if:

- (1) the insurer or self-insurer has provided the coverage for the liable party; and
- (2) there is no significant dispute about:
 - (i) the liability for the payment of the full property damages; or
 - (ii) the monetary amount of those damages, including:

§ 12-306.

A settlement made by an insurer or a self-insurer approved under § 17-103(a) of the Transportation Article under a motor vehicle liability insurance policy of a claim arising from an accident or other event for damage to or destruction of property owned by another person:

- (1) may not be construed as an admission of liability by the insured or recognition of liability by the insurer or self-insurer with respect to another claim arising from the same accident or event; and
- (2) does not preclude a claim for bodily injury or other claims outside the scope of the settlement.

(a) In this title the following words have the meanings indicated.

(b) "Credit health insurance" means insurance on a debtor that provides indemnity for payments that are due on a specific loan or other credit transaction while the debtor is disabled as defined by the policy.

(c) "Credit involuntary unemployment benefit insurance" means insurance on a debtor that provides indemnity for payments that are due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined by the policy.

(d) "Credit life insurance" means insurance on the life of a debtor in connection with a specific loan or other credit transaction.

(e) "Creditor" means:

- (1) a lender of money or vendor or lessor of goods, services, or property rights or privileges for which payment is arranged through a credit transaction;

- (2) a successor to the right, title, or interest of the lender, vendor, or lessor;
 - (3) an affiliate, associate, subsidiary, director, officer, or employee of the lender, vendor, or lessor; or
 - (4) any other person in any way associated with the lender, vendor, or lessor.
- (f) (1) "Debtor" means a borrower of money or purchaser or lessee of goods, services, or property rights or privileges for which payment is arranged through a credit transaction.
- (2) "Debtor" includes the husband or wife or both, as specified in the certificate of insurance, if the husband and wife are jointly liable under a contract of indebtedness.
- (g) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

§ 13-102.

- (a) The purpose of this title is to promote the public welfare by regulating credit life insurance, credit health insurance, and credit involuntary unemployment benefit insurance.
- (b) This title is not intended to prohibit or discourage reasonable competition.
- (c) This title shall be construed liberally.

§ 13-103.

- (a) Except as provided in subsection (b) of this section, all credit life insurance, all credit health insurance, and all credit involuntary unemployment benefit insurance are subject to this title.
- (b) This title does not apply to insurance if:
- (1) the insurance is in connection with a loan or other credit transaction for which premiums are payable for more than 10 years; or
 - (2) the issuance of the insurance is an isolated transaction by an insurer that is not related to an agreement or plan for insuring debtors of the creditor.

AUTO INSURANCE TEST

1. The most difficult problem in the operation of guest hazard statutes is that of determining the...
 - a. the status of the rider.
 - b. determining the number of passengers in the automobile.
 - c. determining the law in that state.
 - d. determining who cause the accident.

2. Most states will suspend licenses for the following reasons except for
 - a. driving while intoxicated
 - b. reckless driving
 - c. conviction of a felony
 - d. failing to stop at a stop sign

3. The ownership or operation of an automobile involves three possibilities of loss except for
 - a. Legal liability
 - b. Injury to the insured or members of his family
 - c. Damage to, or loss of, the automobile
 - d. using the automobile during a bank robbery

4. What is the purpose of the Maryland Automobile Insurance Fund?
 - a. To provide automobile insurance to eligible drivers who were unable to obtain auto coverage in the private market.
 - b. To encourage every driver in the USA to obtain auto insurance
 - c. To provide auto insurance to eligible people at very reduced rates
 - d. To insure "low risk" drivers

5. What rate of commission does MAIF pays to producers who place private passenger auto insurance through the Fund?
 - a. 20%
 - b. 30%
 - c. 10%
 - d. 25%

6. On or before December 31 of each year, each existing producer shall file with the Fund a bond in what amount?

- a. \$ 5,000
- b. \$ 10,000
- c. \$ 15,000
- d. \$ 20,000

7. What is the minimum liability coverage in Maryland?

- a. \$ 5000/\$10000
- b. \$ 20,000/ \$ 40,000/ \$ 15,000
- c. \$ 20,000/ \$ 50,000/ \$ 25,000
- d. \$ 50,000/ \$ 100,000

8. The policy provisions give insurers _____options in loss settlement.

- a. one
- b. two
- c. three
- d. four

9. Medical payments coverage has been available in one form or another in the automobile policy since _____.

- a. 1919
- b. 1929
- c. 1939
- d. 1949

10. Under Medical Payment Coverage Division ____ provides coverage for persons other than the named insured and members of his household.

- a. one
- b. two
- c. three
- d. four

11. The traditional classification system classifies private passenger automobiles according to ___ factors:

- a. one
- b. two
- c. three
- d. four

12. The rates for automobile insurance are based on _____.

- a. averages
- b. federal law
- c. court decisions
- d. public opinion

13. In Maryland Uninsured motorist coverage must be at least equal to the minimum amounts required for bodily injury liability insurance - \$ _____ per person and \$ _____ per accident.

- a. \$ 20,000 - \$ 40,000
- b. \$ 20,000 - \$ 50,000
- c. \$ 10,000 - \$ 20,000
- d. \$ 10,000 - \$ 40,000

14. There are how many conditions to the Family Automobile Policy?

- a. 10
- b. 15
- c. 18
- d. 20

15. The Family Automobile Policy has a limited cancellation provision. The company's right to effect cancellation is limited after the policy has been in force for ____ days.

- a. 30
- b. 40
- c. 50
- d. 60

16. Tort recovery for pain and suffering is allowed if medical and funeral expenses exceed \$ ____.

- a. 500
- b. 600
- c. 1,000
- d. 2,500

17. The physical damage coverage under both comprehensive and collision is on an _____.

- a. cash basis
- b. accrual basis
- c. cost basis
- d. none of the above

18. The Special Automobile Policy pays for

- a. fire
- b. flood
- c. lightning
- d. all of the above

19. *Columbia Report* was completed in

- a. 1930
- b. 1932
- c. 1942
- d. 1952

20. MAIF producers may not require an insured or prospective insured to purchase any add-on coverage as a condition of purchasing the related policy issued by the Fund, or sell add-on coverage or any combination of add-on coverages in an amount that exceeds \$_____ per covered vehicle.

- a. 100
- b. 200
- c. 300
- d. 400

21. A decision to reject an application or cancel a policy for a reason other than nonpayment of premium may be appealed to a special board within ___ days after receiving notice of rejection or cancellation.

- a. 5
- b. 10
- c. 20
- d. 30

22. Maryland 's PIP minimum coverage for medical, hospital and disability benefits must be up to _____

- a. \$ 1,000
- b. \$ 2,000
- c. \$ 2,500
- d. \$ 3,000

23. Under Maryland PIP, a policy may set a period of not less than _____ months after the date of the motor vehicle accident within which the original claim for benefits must be filed with the insurer.

- a. 6
- b. 12
- c. 18
- d. 24

24. MAIF must notify the applicant or policyholder _____ after it rejects an application or cancels a policy.

- a. within 10
- b. within 15
- c. promptly
- d. within 30

25. A change of interest on the death of the insured does not void property insurance and the property insurance passes to the

- a. decease spouse
- b. decease heirs
- c. decease creditors
- d. the person taking the interest in the property

**PERSONAL PROFILE
(PLEASE PRINT CLEARLY)**

COURSE NAME: AUTO INSURANCE

YOUR NAME.....

SOCIAL SECURITY.....

AGENT'S LICENSE #

TELEPHONE #.....FAX.....

ADDRESS.....

CITY.....STATE.....

COMPANY'S NAME.....

TELEPHONE.....

.....

SIGNATURE (SIGN IN INK ONLY)

.....

DATE

AUTO INSURANCE

AGENT'S NAME.....

SOCIAL SECURITY #

PHONE #

1.... **21....**

2.... **22....**

3.... **23....**

4.... **24....**

5.... **25....**

6....

7....

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FAX YOUR PERSONAL PROFILE AND ANSWER SHEET TO 1-410-734-7966