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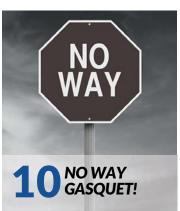




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IIABL NAMED LABI ECONOMIC DEVELOPMENT PARTER OF THE YEAR

2020 FREE ENTERPRISE AWARDS

The Louisiana Association of Business and Industry (LABI) announced this month the nine companies and individuals selected as winners of its 2020 Free Enterprise Awards. The Independent Insurance Agents & Brokers of Louisiana, represented by IIABL Past President, Lee Schilling, was humbled to accept the Economic Development Partner of the Year award on our behalf.

"It is a tremendous honor to be recognized as LABI's 2020
Economic Development Partner of the Year," said Jeff Albright, IIABL CEO. "LABI and IIABL made a fantastic team passing significant tort reform through the Louisiana Legislature this year! IIABL provided valuable insurance expertise, and LABI provided the broad-based political grassroots of the business community. Together, we made important improvements in the Louisiana legal and business environment."

LABI serves as Louisiana's state chamber of commerce and manufacturing association. They proudly represent over 2,200 large and small companies across industry sectors and every region of

Louisiana, working daily to promote free enterprise, economic growth and shared prosperity in our state. The LABI Free Enterprise Awards serve as the annual opportunity to recognize LABI members and partners who demonstrate sustained commitment to this mission as evidenced by the exemplary contributions to the state's business climate and to their local community.

"In a year that has brought so many unexpected challenges to Louisiana's business community, LABI is honored to recognize this group of leaders who are truly impacting our state's economy and helping open the doors of opportunity," says LABI President and CEO, Stephen Waguespack, in a prepared statement.

The winners were formally recognized at the Free Enterprise Awards Reception, presented by Exxon Mobil, in Baton Rouge on November 12. In conjunction with the Free Enterprise Awards, LABI also honored those legislators recognized in their annual scorecard as Most Valuable Policymakers for their support of pro-business legislation during the Legislature's regular session and first special session of 2020.

2020 FREE ENTERPRISE AWARD RECIPIENTS:

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Company of the Year (more than 100 employees)
STINE LUMBER CO.

Manufacturer of the Year (fewer than 100 employees) THOMAS PUMP & MACHINERY

Manufacturer of the Year (more than 100 employees) SHELL

Workforce Innovator of the Year DANOS

Economic Development Partner of the Year THE INDEPENDENT INSURANCE AGENTS & BROKERS OF LOUISIANA



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LEAVE DIFFERENT: GASQUET AGREEMENTS & WHAT INSURERS NEED TO KNOW

By: Collin J. LeBlanc, Keogh Cox Law Firm

As part of its travel pitch, Louisiana tourism once used the slogan: "Louisiana. Come as you are. Leave different." If an out-of-state insurer writes in Louisiana and does not understand the ramifications of "Gasquet," then they may leave different, very different.

The term "Gasquet" comes from the case of Gasquet v. Commercial Union Ins. Co., 391 So. 2d 466 (La. App. 4th Cir. 1980). The case considered how a settlement of the plaintiff's claims against the primary carrier and a partial settlement of claims against the tortfeasor/insured impacted the excess carrier.

In Gasquet, the plaintiff alleged serious personal injury. Prior to trial, he settled with the primary insurer, Commercial Union, for \$200,000, even though it had a \$300,000 policy limit. In the deal, the plaintiff fully released Commercial Union. He also released the tortfeasor/insured from all liability not insured by the excess carrier, Stonewall Insurance. The insured therefore remained in the lawsuit as a "nominal defendant" to allow the plaintiff to pursue the excess carrier.

After settlement, the excess carrier denied the claim and asserted that payment by the primary carrier of less than policy limits did not trigger its policy, which required that the primary policy be "exhausted." Without exhaustion, the excess carrier argued that it could not be called upon to respond under its policy language. The court rejected this argument and held that the plaintiff was entitled to a direct action against the excess carrier who would, in turn, receive a credit for the full limits of the primary policy. The "Gasquet release" has since become a staple of Louisiana litigation.

In Louisiana, unlike many states, a primary insurer owes no general duty to the excess carrier under Great Southwest Fire Ins. Co. v. CNA Insurance Companies, 557 So. 2d 966 (La. 1990). This creates a dynamic not present in states where the primary carrier is duty bound to consider the interests of the excess carrier. This lack of duty magnifies the vulnerability of the excess carrier's position in Gasquet-friendly Louisiana.

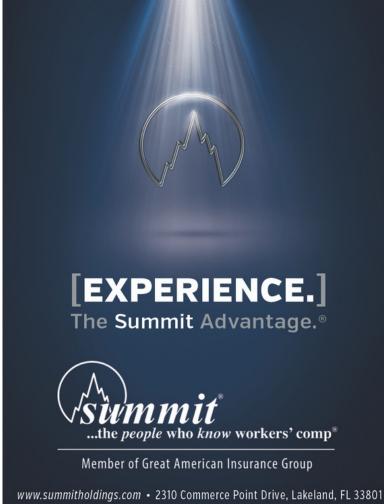
An excess carrier in Louisiana should measure its reliance upon a primary carrier who can independently settle out with the plaintiff, sometimes on the eve of trial. If the excess carrier relied upon the primary carrier to defend the case, the excess carrier could be placed in the unenviable position of scrambling to defend a case where the insured (protected by Gasquet) may be suddenly disinterested in the outcome. Excess carriers with real potential exposure need to stay involved in the litigation and be prepared.

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Following Gasquet, permutations have developed such as a "reverse-Gasquet," where the excess carrier settles with the plaintiff and then pursues the primary insurer to recoup its payment. So, come to Louisiana, but know that we are sometimes different.

Collin LeBlanc is a Keogh Cox partner and experienced litigator who concentrates in injury, commercial, and legal malpractice disputes.



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NO WAY GASQUET!

Policy language considerations to prevent a Gasquet issue.

When determining an insurer's duty to its insured, one must first determine what type of coverage the policy provides. An underlying primary policy provides the first layer of insurance coverage and is triggered immediately upon the happening of an occurrence, or when a claim is made. In contrast, an excess policy provides coverage above the underlying policy's limit. While an excess policy increases the amount of coverage available for an insurable loss, it does not increase the scope of coverage. Further, an excess insurer's limits do not become exposed unless the underlying insurers limits are exhausted by judgment or settlement. While these principles appear simple on their face, they are called into question when an insured and its underlying insurer have settled a claim for less than the policy's limits.

This raises a significant question: would the underlying policy be considered "exhausted," such that the obligation of the excess insurer may be called upon? In Louisiana, this type of settlement, which effectively releases the insured and its

underlying insurer from any further obligations under the claim, allowing the claimant to pursue additional claims against the excess carrier, is often referred to as a "Gasquet Release."

Gasquet v. Commercial Union Ins. Co.

In Gasquet v. Commercial Union Ins. Co., 391 So.2d 466 (La. Ct. App.1980), the court found that settlement with the primary insurer was of no consequence to the excess insurer, whose liability was fixed as the time of the loss, as long as the excess insurer received a credit for the full amount of the underlying limits, regardless of the actual settlement amount. Similarly, in Zeig v. Massachusetts Bonding & Ins. Co., 23 F.2d 665 (2d Cir.1928), the court did not require that the insured actually collect the limits of its primary policy before triggering the excess layer. Instead, the court reasoned that the word "payment" in the exhaustion clause was not limited to payment in cash, but could include settlement of the claim as well. Essentially, both the Gasquet court and the Zieg court addressed the same concern: the language in the excess insurer's exhaustion clause was ambiguous, and subject to multiple interpretations. Of course, this calls into auestion effectiveness of policy language imposing a condition precedent within the excess insurer's policy requiring actual payment of underlying policy limits to trigger coverage by the excess policy.

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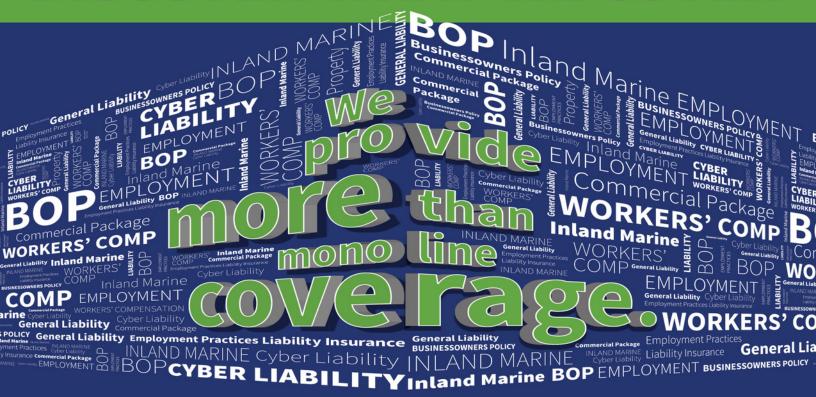
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An examination of the legal doctrines espoused in Zeig, Gasquet and their progeny suggest that this is far from becoming a well settled issue of law. Although many courts throughout the United States still follow the holdings in Zeig and Gasquet, a host of cases in recent years have reinforced the basic principles of contracting: that the parties are free to impose conditions precedent to payment of excess policies. These cases provide some insight into how exhaustion requirements may be phrased, such that excess policies would not be triggered where below limit settlements have been entered into with underlying insurers.

For example, in Great American Ins Co v Bally Total Fitness Holding Corp, No 06 C 4554, 2010 US Dist LEXIS 61553 (ND III June 22, 2010), the insureds sought coverage from their third and fourth level excess insurers after having settled below limits with their primary, first and second level excess insurers. In ruling in favor of the third and fourth level excess insurers. he court held that based on the policy language, coverage under the policy would apply only if all underlying insurance had been exhausted by payment of the total underlying limit of insurance. The holding in JP Morgan Chase & Co v Indian Harbor Ins Co, 947 NYS2d 17, 21 (NY App Div 2012) also provides insight into policy language that may be sufficient to require payment of underlying

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DISCOVER WHAT WE COVER



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limits in full to effectively trigger coverage under the excess policy. JP Morgan Chase & Co involved multiple policies, all of which contained differing terms and conditions in their exhaustion clause. While one stated it would apply only in the event the underlying limit was "exhausted by actual payment," a second policy required the total underlying limit be "paid in legal currency", and the third policy stated it would attach only when the underlying insurer has "paid or ha[s] been held liable to pay, the full amount of the underlying limit."

While this issue remains far from settled, it is becoming clear that courts throughout the country are finding that an excess insurer may craft specific language within the exhaustion requirement of its overlying policy which could eliminate that insurer's obligation to pay under the policy. Of course, this may lead to unintended consequences as an insured and its underlying insurers, who might otherwise settle a claim for less than full limits to avoid costly litigation, may find they have no choice but to litigate the matter to judicial conclusion to thwart the possibility of the insured losing the benefit of the excess insurance it bargained for.

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ELECTION RESULTS: PROPERTY DAMAGE **COVERAGE ISSUES**

News reports from across the country tell of retailers boarding up their buildings in attempts to curtail damage from rioters post election. From an insurance perspective, are there any coverage issues these retailers should consider?

Insurance coverage questions asked over the past several days in preparation for the election have center around several common terms:

- Riot
- Civil unrest
- Insurrection, and even
- War

Each read similarly, "If my insured's property is damaged by (fill in the blank from above), is there coverage? Understand that no (or very few) coverage question(s) is/are answered with a simple "yes" or "no." There is always a "however."

But where possible, the "however" is avoided in this short article. Simply put, yes, there is coverage in the Insurance Services Office (ISO) Causes of Loss – Special Form (CP 10 30) for any loss caused by disgruntled groups following the election – regardless which of the above terms is used.

Following is an individual yet very quick review of each potential "cause" presented previously. This review explains why coverage does exist.

RIOT

Notice that riot is not excluded in the CP 10 30. In the This term is not found in any ISO cause of loss form, as Special Form, a loss is covered unless it's specifically excluded. As further proof, the Broad Named Peril form (CP 10 20) specifically COVERS damage caused by riot; it's illogical to think that a named peril form would provide more coverage than an open peril form. Thus, damage caused by riot is covered in the unendorsed CP 10 30.

CIVIL UNREST

covered or excluded. Since it's not excluded, any damage arising out of "civil unrest" must be covered. But what is "civil unrest"? Essentially, it can be classed with riot. The broad named peril policy uses the term civil commotion - which is specifically covered. Again, damage caused by civil unrest (civil commotion) is covered by the unendorsed CP 10 30.

WAR & INSURRECTION

These exclusions raise a few eyebrows because both causes are specifically excluded within the Special Form (CP 10 30):

f. War And Military Action

- 1. War, including undeclared or civil war;
- 2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

Can the actions of malcontents be considered war? It is unlikely that such actions meet the intent or meaning of the war exclusion.

War is defined, in part, by Black's Law Dictionary to mean, "Hostile conflict by means of armed forces, carried on between countries, states or rulers...."

Notice that a war involves and requires organized and armed governmental authorities with a common agenda.

Participants in these protests and riots are largely unrelated groups without a common leader, direction or goal. The actions do not appear to be within the meaning of war, nor do they appear to active the war exclusion.

But do these acts qualify as an "insurrection" triggering the insurrection part of the exclusion? First, what is an insurrection and who is an insurrectionist?

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• Insurrection: A violent revolt against an oppressive authority, usually a government. "Insurrection is distinguished from rout, riot, and offense connected with mob violence by the fact that in insurrection there is an organized and armed uprising against authority or operations of government, while crimes growing out of mob violence, however serious they may be and however numerous the participants, are simply unlawful acts in disturbance of the peace which do not threaten the stability of the government or the existence of political society." (Black's Law Dictionary)

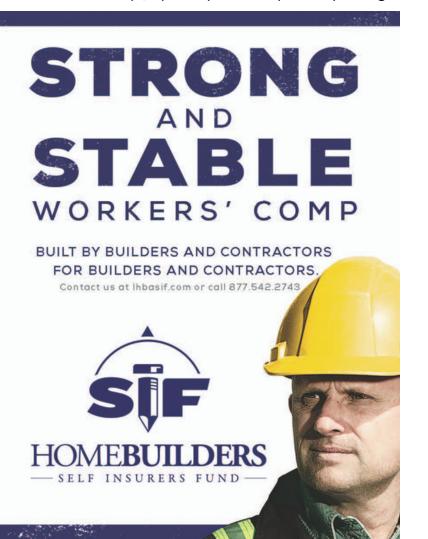
• **Insurrectionist:** A person who takes part in an armed rebellion against the constituted authority (especially in the hope of improving

conditions) freedom fighter, insurgent, rebel.

Based on the supposed purpose of the threatened protests, the acts do not appear to qualify as acts of insurrection, nor are the participants insurrectionist. The various groups are not necessarily organized and often don't have a singular goal. Note again the meaning of "insurrection" taken from Black's Law Dictionary.

Two legal concepts also apply to limit the application of the insurrection exclusion: Noscitur A Sociis and/or Ejusdem Generis. Both concepts essentially state that a term within a list is judged by the words around it and are not given their broadest possible meaning. More specifically, these concepts are defined as follows:

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- **Ejusdem Generis:** Latin meaning, "of the same kind." In the construction of contracts, when certain things are enumerated, and then a phrase is used which might be construed to include other things, it is generally confined to things of the same type. General words are not to be construed in their widest extent but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.
- Noscitur A Sociis: Latin for, "the meaning of a word may be known by its accompanying words." The word or phrase is defined in its context.

Based on these legal concepts and given the context of the term "insurrection," it's apparent that the exclusion applies only when there is armed conflict in an attempt to revolt and/or overthrow a government by the actions of another recognized government or militia. Even if the "overthrow of the government" is a stated goal of one of these protest groups, they are not a government or state-sanctioned group, they are just malcontents mad because they didn't get their way.

As stated earlier, there does not appear to be any specific exclusion in ISO's unendorsed CP 10 30 (Causes of Loss – Special Form) applicable to any protests arising out of the election results. Don't let news media accounts of "insurance issues" scare clients.



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WILL THE PANDEMIC IMPACT YOUR DREAMS OF AGENCY PERPETUATION?

John D. Rockefeller once observed that "a pessimist is one who sees a disaster in every opportunity. An optimist sees opportunity in every disaster." Rockefeller reportedly spoke these words while playing a round of golf. He may have been commenting on the infernal difficulty of the game, but his words certainly ring true in today's business environment.

Optimism is the predominant mood among agency owners I talk to about selling or perpetuating their business, even during the pandemic. Despite the slowdown in merger

and acquisition (M&A) activity, there is every reason to feel good about the fundamentals of agency ownership, especially those agencies that are well run and have solid financials.

Agencies Are Still Attractive

Sure, revenue and earnings are big question marks right now, but agencies remain sound investments. They are still attractive to both internal and external buyers. In uncertain times, it helps to remember what drives agency values. Think of independent agencies as cash-flow engines, powered by recurring revenue from steady, renewable premiums. Buyers are betting on the continued perpetuation of those cash flows well into the future. Good agencies are able to generate solid returns for their owners year after year — and that's what makes them so appealing to acquirers.

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ANYTHING BUT BASIC



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The pandemic has raised concerns that buyers may think twice about acquisitions or perhaps offer less for agencies. This is understandable, and some deals have been put on hold for now. At the same time, some sellers have decided to postpone their exit from the business. And that makes sense, too.

But retirements and exits can't be postponed forever. The same caveats that applied prior to the pandemic will apply in the coming months — better agencies will fetch better prices. Agencies that haven't kept up with technology, modernized their operations, hired top producers or perfected their marketing will not fare as well.

It's like selling your house. If you've kept up your property, made improvements over the years and your home has good curb appeal, you can sell it for top dollar. But if you've neglected your house, and it needs a lot of work, you may have a hard time finding a buyer.

What Determines Value Hasn't Changed

The means of evaluating an agency's potential earning power haven't changed. It's still a matter of analyzing the inputs that affect value. What are the risks to your cash flow going forward? Understand that a buyer is basically purchasing the future predictability of those cash flows.

If there are greater risks now because of COVID-19, they will be reflected in the outputs in the valuation model. Do you expect changes in retention levels? Will growth be lower? Will your loss experience increase? What about carrier relationships? All these factors can introduce a degree of uncertainty, which means more risk to your cash flow. And that, in turn, can affect what a buyer is willing to pay.

A buyer will look beyond your earnings to understand the source of your cash flow and its volatility or risk. What's the risk of those earnings diminishing? The indicators here might be trends in retention and loss ratios, the geographic location of your agency (is the population declining or aging?), the market you are in, the companies you represent and the types of customers you serve.

Disruption in the market due to the pandemic may well impact the quality of your cash flow and your future earning power. Expect to see more due diligence as acquirers grapple with these unknowns. If customers aren't able to afford homes or buy cars, personal lines revenue will decrease. Commercial insurance customers may also cut back on coverage. Benefits and workers compensation could be affected as well. A lot will depend on the markets you serve and the demographics of those markets. If your business is heavily dependent on travel. hospitality, entertainment, construction or energy, for example, your risks are obviously higher.

Follow Agency Best Practices

Regardless of what happens in the coming months, following agency best practices is critical to maintaining value. More than ever, you'll want to make sure your financial house is in order. Here's some advice to ensure your dreams of perpetuation can still come true:

 Increase the value of your agency through steady growth. Growth comes from a combination of investing in new sources of income and greater efficiency. When income can be earned with fewer expenses, it increases your cash flow and your agency's value. Increase your productivity and earnings potential by reducing the cost of servicing your accounts, utilizing CRM systems, PAGE 21 LOUISIANAAGENT

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digitizing records, taking advantage of social media and using your cash more efficiently.

- Invest in your people. Having a stable, reliable team makes all the difference in the world. This includes your top managers, producers and customer relationship staff. During the pandemic, it's especially important to take care of your employees. Make their safety and mental health your top priority. Check up on your team if they are working remotely. Make sure they have the computer, telephone and management resources they need to effectively service your customers.
- Manage your expenses. There may be additional stress on your working capital because of the pandemic.

- Put systems in place to monitor and control your expenses. Don't underestimate the cost of new equipment and software, training and marketing that may be required as a result of COVID-19. Always look for ways to reduce unneeded expenses. With each business decision, ask yourself: "How does this affect my cash flow?"
- Consider borrowing. The Fed has signaled it will keep interest rates low for the foreseeable future. Rather than draining your working capital, you may wish to borrow to pay for the cost of new office systems or hiring another producer. Well-run agencies with good cash flow will be able to access capital on more favorable terms than agencies that are deemed a higher risk.

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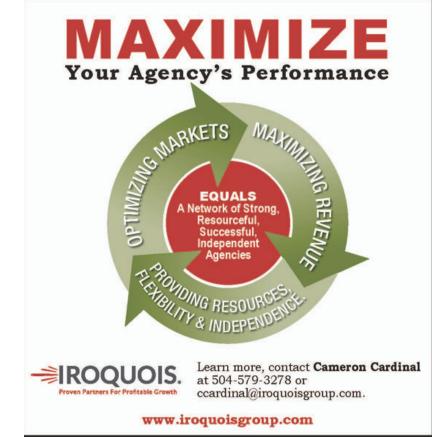
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- Create a digital presence. Agencies that are able to adapt to the new digital environment will be in a better position to weather the pandemic. That means engaging customers in new ways to provide added value. Invest in your data management systems. Knowing your customers and markets will allow you to be more nimble and to quickly assess new opportunities and identify unprofitable lines of business.
- Continue build to client relationships. Check on vour customers during the pandemic. For some clients, just receiving a phone further call can cement relationship with them. Invest more time in serving your clients and staying active in your community. Your involvement will pay off in referrals and goodwill. Pipelines get rebuilt that way, which leads to growth.
- Have a succession plan. Now's the time to groom a successor if you're planning to perpetuate and retire. Have a plan for how your agency will transfer ownership. It can be in stages over time to ease the exit and maximize tax advantages. important thing is to have a plan and to communicate it to your staff. Your exit strategy may be the single most important business decision make. Invest in your agency now, and you should have no problem selling it when it's time to retire. Continuing to

grow your agency organically is always a good strategy, especially in these uncertain times.

David Tralka is the president and CEO of InsurBanc, a division of Connecticut Community Bank N.A. He is responsible for keeping the bank focused on being an innovative provider of financial products and services for the independent agency community. An expert on agency mergers and acquisitions, agency perpetuation and financing, Tralka has presented at numerous venues nationwide.



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What Does DICE Have to do with Insurance?

There are many parts to an insurance policy that are all very important. This article discusses the pieces and parts, and how they work.

As an industry, insurance is detailed and complicated, and it takes time to understand the basics, let alone the nuances. There are a multitude of policies; commercial property, commercial liability, commercial auto, homeowners, tenants, personal auto to name just a few of the basic ones. There are new

terms and acronyms such as BOP, PAP, CGL, CPCU, E&O, D&O, and others to learn as well. There's one acronym that most people learn very early on in their insurance careers; that's DICE, which is used as shorthand for the parts of an insurance policy. While there are many types of policies, they generally consist of the same components, which are declarations, insuring agreement, conditions and exclusions.

When you're first learning about insurance, it's important to know how all these parts work together to form an insurance policy and provide coverage and exclusions as well as basic information about the insured and what is being insured. Let's look at the parts individually.

The declarations is formally called the declarations page and is often referred to as the *Continued on page 25.*









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dec page. It is usually the first page of the policy and it provides the details of who and what is being insured. It provides the insured's name and address, date the policy started and when it will end, type of policy, policy number, the agent's name and address, property address where the insured can be reached. what is being covered, coverage limits, premiums charged for each coverage, and a list of endorsements. Endorsements are forms that allow the insured or the insurer to modify the basic policy. For example, a homeowners policy will show the insured's name and address, address of the home, and show that the dwelling is covered for \$400,000, personal property is covered for \$200,000, loss of use and other coverages, liability limits of \$500,000 and medical payments of \$5,000 along with premiums and the deductible. If the

The next section is known as the insuring agreement. This is where the insurer states its agreement to provide certain coverages to the insured. It begins with language similar to this: We will pay for direct physical loss, or We will pay those sums for which the insured becomes legally obligated to pay as damages. It varies by policy, but the language is indicating that the insurer is agreeing to provide the outlined the coverages as in policy. Commercial policies then proceed to list the coverages the policy provides, such as injuries from an occurrence or physical damage to the insured's property caused by a covered cause of loss.

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Personal lines policies are a little different, and have a definitions section before getting into the coverages. Commercial lines policies have the definitions sections at the end of the policy. The personal lines policies go to the coverages after the definitions. In both types of policies, these coverages are part of the insuring agreement. For example, a commercial property policy will discuss what property is covered and provide description, such as that building means the building described in the declarations, and that it includes completed additions, fixtures, permanently installed machinery equipment, business personal property and other property. Different types of property that are covered will be described, and also property that is not covered will be described

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so the insured knows exactly what is and isn't being covered.

Note that the insuring agreement refers to the declarations; this is important to note, and most policies refer back to the declarations for descriptions of covered items. In many instances if something is not listed in the declarations then no premium has been collected for it, and there is no coverage.

Some insuring agreements will list covered perils as some policies only provide coverage for listed perils, known as named perils policies. Other types of policies provide coverage for every peril that is not excluded, so the perils are not listed, known as open perils policies.

Most policies don't totally follow the DICE acronym because the exclusions section generally comes next. The exclusions section details what is not covered in the policy. Insurance policies provide coverage for perils that are common enough for insurers to develop statistics as to chances of certain losses over time which allows for the development of premiums. Certain losses, such as earthquakes and floods, are not as common and affect much larger areas than a fire in an office building or a single home. Intentional loss caused by the insured, such as setting the factory on fire to collect the insurance money is always excluded, as are things like war, nuclear hazards, certain governmental actions, and things that are covered on different policies. For example, a commercial property policy will not provide coverage for autos. Those need to be covered by a commercial auto policy.



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Conditions is the last section to be discussed, and is generally at the end of the policy. The conditions describes duties of both the insured and the insurer in event of a loss. Insureds are to report claims promptly, describe what happened, when, what was damaged or who was injured, when it happened, assist in the investigation of the claim, inventory damaged property, notify the police in event of theft, and submit proof of loss notices. The conditions section also lays out loss settlement provisions, what an insured can do if he disagrees with the settlement offer, what the insurer is obligated to pay, how mortgagees are handled, when suit can be filed, and other such details.

So DICE is an acronym to describe the pieces and parts essential to any insurance policy. Without all these pieces, an entire policy does not exist. Having said that, some commercial policies will have separate causes of loss forms, allowing the insured to decide how broadly or narrowly he wants his coverage to be. In these situations it is a package policy, which means that multiple forms are combined to provide all the coverages to correctly insure the property or whatever is being covered.

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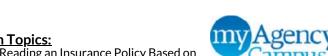
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