Navigators Insurance Group
Property Casualty
Insurance Contracts

Basic Requirements of Contracts

- All contracts require the following:
  - **Offer and Acceptance.** One party must make an offer. Another must accept it.
  - **Consideration.** An inducement to enter into an agreement. Value to each party.
  - **Competent Parties.** Must have legal capacity to enter binding contract.
  - **Legal Purpose.** Cannot violate a law or be contrary to public interest.

Question

- A company requested insurance and was given a quote of $22,000 for the premium.
- The company requested a reduction to $15,000.
- The insurer responded with an offer of $18,000. Before the company could respond, a loss occurred that was covered by the policy.
- Is the policy in effect?

Question

- A company purchased a $300,000 fire insurance policy on a warehouse and paid a premium of $3,000.
- After binding the contract, the agent said the company would also cover $20,000 of the inventory stored in a nearby barn.
- Later, the barn burned down.
- Does the insurer have to pay for the inventory loss?

Material Fact

- This is an aspect of a risk that is significant when assessing the exposure in an insurance policy. The risk can be:
  - Sufficient to affect the terms of an insurance policy.
  - Sufficient to cause an insurer to deny coverage.

Representation

- Utmost good faith requires the insurer and insured to disclose material facts affecting insurance coverage. Representation is:
  - A statement concerning a material fact made by an applicant in the process of obtaining an insurance policy.
  - Made to induce the insurer to provide coverage.
  - Oral or written, it must be true to the **best knowledge of applicant**.

Misrepresentation

- This is a statement that is false with respect to a material fact. If intentional, it can be the basis for an insurer to void a policy at a future time.

Concealment

- This is the failure to voluntarily disclose a material fact.
  - It goes beyond simply answering questions that are asked.
  - Insured has affirmative burden to disclose material facts that can affect coverage.
  - Concealment is basis for voiding policy.

Warranty

- This is a statement made to secure insurance coverage that must be absolutely and strictly true.
  - It is not enough to be true to the best knowledge of the insured.
  - It does not have to involve material fact.

Fraud

- This is an intentional deception to cause a party to give up property or a lawful right:
  - Fraud exists when an insured makes willful false representation, concealment, or deliberate action to harm the insurer.
  - It is the basis to void a policy.
  - If a serious harm is possible, fraud may violate criminal as well as civil law.

Utmost Good Faith

- Contracts may have two different legal standards for disclosure:
  - **Let the Buyer Beware.** Each party to a contract should investigate the situation and be responsible for knowing all terms and conditions.
  - **Utmost Good Faith.** Both parties must make a full and fair disclosure of all facts affecting a contract. **This is the requirement for insurance policies.**

Question

A company has refineries in Kuwait and Qatar.

- It applied for insurance on the Qatar facility and completed a form provided by the insurer.
- The form did not ask about the safety record of other refineries.
- The company did not report the suspension of Kuwait refinery due to poor safety practices.
- An explosion resulting from apparent employee negligence damaged the Qatar refinery.
- Is the policy voidable?.

Answer

- Maybe. Issues are:
  - Is the information a material fact related to the Qatar refinery?
  - Is it concealment to be silent on the Kuwait situation?
  - Is a failure to add to the questions on the form a violation of utmost good faith required for insurance contracts?

Adverse Selection

- This refers to the tendency of persons with high chances of loss to seek insurance at average rates.
- Insurers investigate whether a party fits the criteria for coverage.
- It seeks to exclude adverse selection.

Assignment

- An insurance policy is a personal contract:
  - **Assignment**. The right of a party to transfer a claim, right, or property to another party. **Consent.** Permission to assign a contractual right.
  - **Personal Contract.** Assignment of the rights under an insurance policy requires consent of other party.

Waiver

- The relinquishing of a known right. Two forms:
- **Intentional.** An individual or organization can consciously surrender a right to which it is entitled.
- **Unintentional.** By taking actions that the law or a court would consider the failure to protect a right, a party can waive the right without a conscious decision to do so.

Void and Voidable Contracts

- **Void.** An agreement that has no legal force.
- **Voidable.** An agreement that can be made void
- At the option of one of the parties.
- When circumstances make it impossible to perform the contract.

Question

- How do we determine whether a contract is voidable? Whether it is void?

Answer

- Voiding is always at the option of one of the parties.
- **Contingency Occurs**. If a party is unable to perform, it may declare a contract to be void and a court may agree.
- **Permitted in Contract.** If a court agrees that the contractual condition occurred, the court will void of the contract.

Contract of Adhesion

- An agreement prepared by one party and accepted or rejected by another party without modification.
- An agreement not reached by negotiation.
- As insurance companies draw up the insurance policy, it will be treated as a contract of adhesion.

Expectations Principle

- Refers to the interpreting of a contract of adhesion to meet the expectations of the party that did not draw it up.

- **Impact.** Fine print or tricky language will not invalidate insurance coverage.

Question

- A city buys $500,000 of standard fire coverage. On page 19, the policy contains the wording *"Coverage will not be provided if the employer hires anyone with a prior criminal conviction."*
- A fire occurs. It was started by a convicted felon who was employed by the city. Will the insurance company have to pay for the loss?

Answer

- Yes. The city expects insurance coverage separately from having to audit all its hiring practices.

Subrogation

- Refers to the right of an insurance company to be reimbursed for payments when a loss is caused by a third party.

Contract of Indemnity

- An insurance contract seeks to restore a prior financial position before a loss.
- Life insurance policies are an exception.
- U.S. health care policies are also an exception.

Industry Parties

- **Broker**. Arranges insurance coverage and advises on risk management.
- **Agent**. Performs many of the same services as brokers.
- **Claims**. Adjusters, lawyers, engineers, and others who investigate insurance claims.

Broker

- **Licensed**. By insurance regulators
- **Independent**. Can work with a variety of insurance buyers and insurers.
- **Representative of Buyer**. Accepts responsibility to understand risks facing organizations seeking insurance.

Agent

- **Licensed.** Like a broker.
- **Represents Insurer.** Not legally accountable for identifying the best insurance coverages for specific risks.
- **Exclusive or Independent**. Works for a single insurer or multiple insurers.
- **Agent Binding.** Can make a policy effective. Called binding the policy.

Question

- The Gilbert Insurance Services Company arranges coverage for wind and glass damage to commercial buildings.
- Most coverage is placed with three insurers, one each in London, Birmingham, and Paris.
- How would you tell whether Gilbert is a broker or agent?

Answer (1)

- Ask Gilbert. “Are you an employee of the insurer?” “Are you acting as broker or an agent in this transaction?”

- Why would you care if Gilbert is a broker or agent?

CGL Coverage Forms

- A CGL policy can be issued using two forms:
- **Occurrence**. A single event that causes a loss. Covers injury or damage that occurs during the policy period even if a claim is not made during the period.
- **Claims-made**. Covers claims made during the policy period regardless of when the injury occurred.

Occurrence Definition

- Dealing with occurrence forms can be tricky. The definition.
- **Time Period.** The term can refer to all losses in a fixed period, such as 72 hours.
- **Single Source.** An occurrence can be defined as coming from a single event.
- **Silence.** Sometimes policies are silent on the definition.
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Claims-made Policy

- A problem can arise with the renewal of a claims-made policy.
- Suppose an insured had a bad loss when it had a claims-made policy. If the claim is not filed, it is not covered.
- Insurers may not be willing to cover it when the policy is renewed or replaced.

CGL Claims-made Time Periods

- Three periods.
- **Basic Period**. Start and end time when a policy provides coverage for claims made.
- **Extended Period**. Up to 5 years after the basic period when claims may be filed.
- **Supplemental Period**. An unlimited period after the extended period converts to occurrence form.
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Question

- A visitor to a car dealership was hurt when the ceiling fell on him in September 2012.
- He left and sought treatment at a hospital.
- In April 2013 he filed a lawsuit.
- The dealer had a claims-made policy in 2012.
- It had an occurrence policy in 2013.
- Which policy covers the loss?

Answer

- Neither. The claim was not filed during the period of claims-made coverage. The occurrence did not occur during the time period of the occurrence policy.
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Presentation

- **Session 13**
- **Specialty Lines**

Specialty Line Market

- A segment of the insurance industry where individuals and organizations seek to cover difficult and unusual risks.
- Characterized by a high degree of specialization.
- Insurers have specialized expertise and experience.
- Brokers also have specific knowledge and experience.

Specialty Line Products

- The specialty lines market focuses on two types of products:
- **Unusual or Difficult Risk.** An example is professional liability for a trustee who manages or administers the estate of a wealthy person.
- **Higher Level of Danger.** An example is a firm that manufactures fireworks.
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Specialty Insurers

- The specialty lines market components as the result of a regulatory distinction:
- **Admitted Insurers.** Licensed in a jurisdiction.
- **Surplus Lines Insurers.** Not licensed.
- An insurance company can be an admitted and surplus lines carrier in a jurisdiction

Surplus Lines Regulation (1)

- State insurance departments regulate surplus lines insurers. Requirements:
  - **Availability of Coverage.** Restrictions if coverage available from licensed insurers.
  - **Solvency Requirements.** Insurer must be approved by the state regulators.
  - **Licensed Broker Involvement.** Insurance must be placed through licensed brokers

Surplus Lines Regulation (2)

- **Fees or Taxation.** Surplus lines brokers and insurers may be required to pay fees in lieu of taxes.
- **No Solvency Relief from State Guarantee Funds.** The states do not reimburse losses from insurer insolvency.

Non-admitted and Reinsurance Reform

- The Non-admitted and Reinsurance Reform Act of 2010:
- Forbids states from taking regulatory actions in violation of national standards.
- Makes use of standards of the National Association of Insurance Commissioners (NAIC).
- Covers specialty and surplus lines.

Specialty Coverages

- Many lines of insurance are covered as specialty lines.
- Boiler and machinery.
- Business interruption.
- Inland and ocean marine.
- Earth movement.
- Fine arts.
- Crime insurance.