

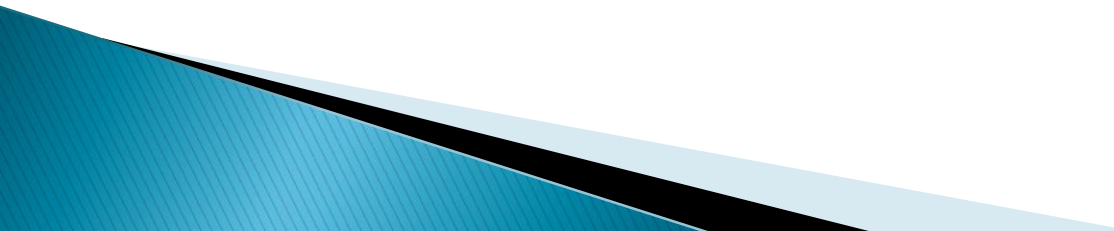
# *Chapter Nine*

## **Liability Loss Exposures and Policy Provisions**

# Legal Liability

- ▶ “ A person or an organization’s status as legally responsible for injury or damage suffered by another person or organization.”
  
- ▶ **Sources of Law:**
  - 1) **Constitutional law:** “ The constitution itself and all the decisions of the Supreme Court that involve the constitution.”

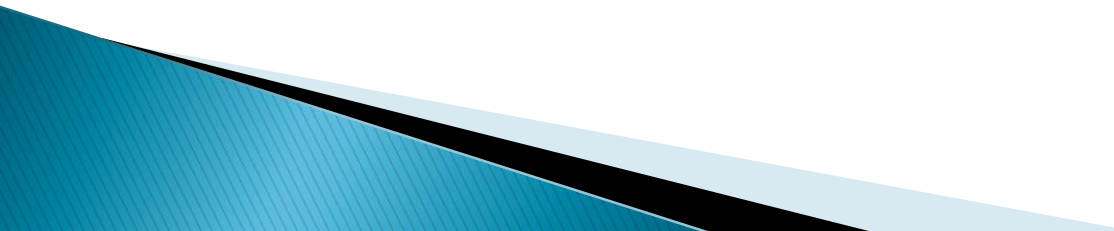
# Legal Liability

- 2) **Statutory Law:** “ The formal laws, or statutes, enacted by federal, state, or local legislative bodies.”
  - 3) **Common Law, or case law:** “ A body of principles and rules established over time by courts on a case-by-case basis.”
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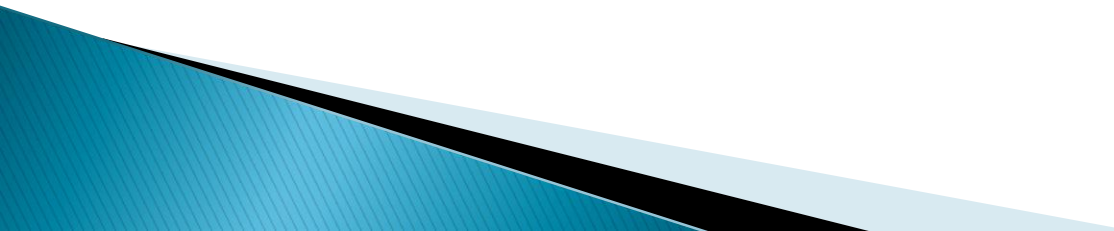
# Criminal law versus civil law

- ▶ **Criminal law:** “ The category of law that applies to wrongful acts that society deems so harmful to the public welfare that government takes the responsibility for prosecuting and punishing the wrongdoers.”

# Criminal law versus civil law

- ▶ **Civil law:** “ The category of law that deals with the rights and responsibilities of citizens with respect to one another; applies to legal matters not governed by criminal law.”
  - ▶ **Contract Law:** “ The branch of civil law that deals with contracts and settles contract disputes.”
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# Criminal and Civil consequences of the same act

- ▶ Criminal and civil law do not necessarily deal with entirely different matters. A particular act can often have both criminal and civil law consequences.
  - ▶ The differing circumstances influenced the practical effectiveness of each type of legal action.
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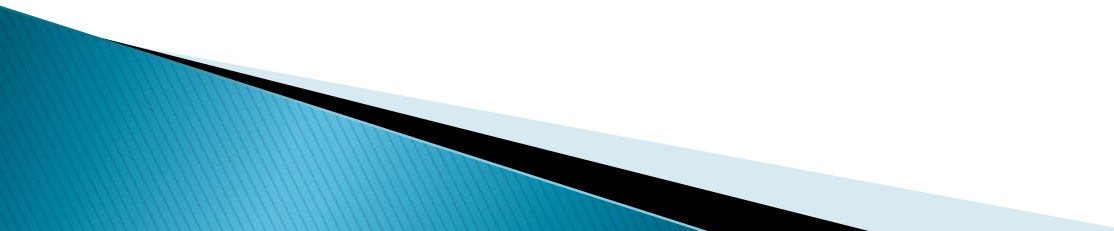
# Elements of a liability loss exposure

## *a) The Basis for legal liability:*

**Tort:** “ A wrongful act, other than a crime or breach of contract, committed by one party against another.”

**Tort law:** “The branch of civil law that deals with civil wrongs other than breaches of contract.”

**Negligence:** “A person or an organization’s failure to exercise the level of care that a reasonably prudent person would have exercised under similar circumstances.”

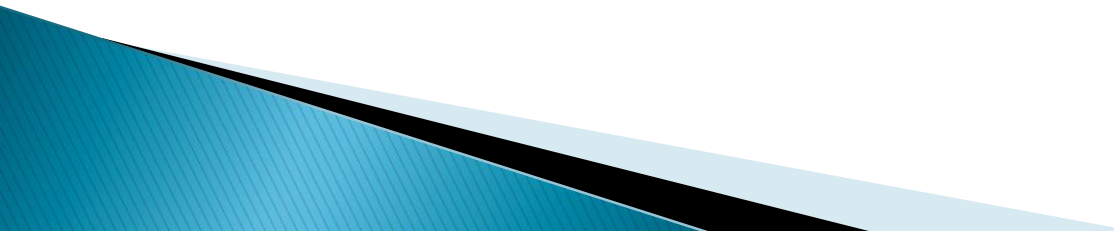


# Elements of a liability loss exposure

- ▶ *A liability judgment based on negligence requires proof of all four of the following elements:*
  1. A duty owed to another.
  2. A breach of that duty.
  3. Injury or damage.
  4. Unbroken chain of events between the breach of duty and the injury or damage.

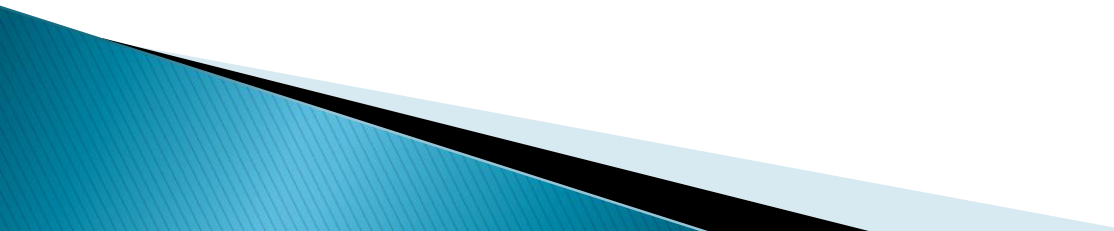


# Elements of a liability loss exposure

- ▶ *Strict Liability or absolute liability:* “ Legal liability that arises from inherently dangerous activities or dangerously defective products that result in injury or harm to another, regardless of how much care was used in the activity. Also used to describe the liability imposed by certain statutes, such as workers’ compensation laws.”
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# Elements of a liability loss exposure

## ***Contracts:***

- ▶ **Hold-harmless agreement:** “ A contractual provision that obligates one party to assume the financial consequences of legal liability for another party.”
  - ▶ **Warranty:** “ A promise, either written or implied, such as a promise by a seller to a buyer that a product is fit for a particular purpose.”
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# Elements of a liability loss exposure

## *Statutes:*

- ▶ **Statutory Liability:** “ Legal liability imposed by a specific statute or law.”

# Elements of a liability loss exposure

## ***b) Potential Financial Consequences of liability loss exposures:***

- ▶ Damages
  - ▶ Defense Costs
  - ▶ Damage to reputation
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# Categories of Liability Loss Exposures

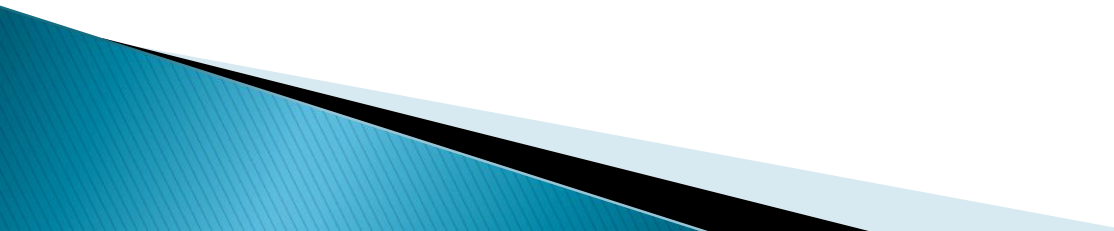
## **1) Automobiles and other conveyances:**

A significant liability loss exposure for almost all persons and businesses comes from the ownership, maintenance and use of automobiles. Generally, auto accidents produce the greatest number of liability claims

# Categories of Liability Loss Exposures

## 2) Premises:

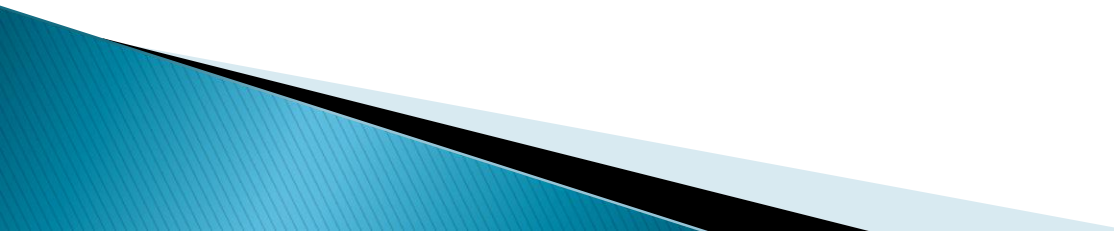
Anyone who owns or occupies property has a premises liability loss exposure. A business has a similar loss exposure arising from its premises.



# Categories of Liability Loss Exposures

## **3) Business operations:**

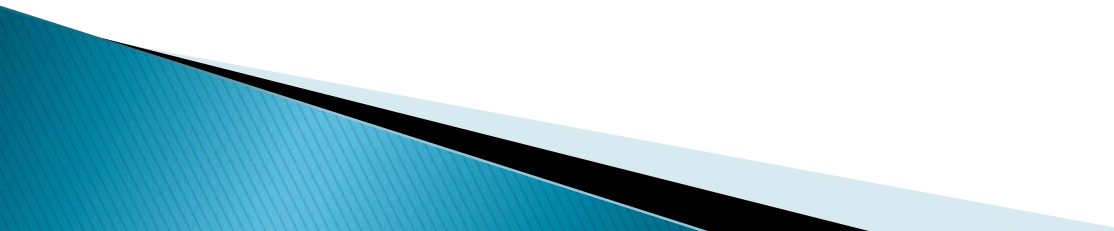
Businesses must be concerned not only about the condition of the premises but also about their business operations. Many business operations occur away from the organization's premises.



# Categories of Liability Loss Exposures

## **4) Completed operations:**

Even after a plumber, an electrician , a painter or another contractor completes a job and leaves the work the site, a liability loss exposure remains. If faulty wiring or toxic paint leads to an injury, the person or business who performed the work may be liable.

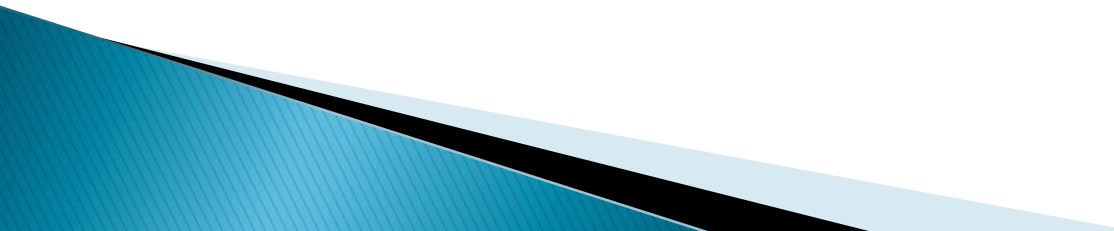




# Categories of Liability Loss Exposures

## 5) Products:

Liability resulting from products that cause bodily injury or property damage is a significant exposure for manufacturers. This exposure begins with the design of the product and might not cease until the product is properly disposed of by the ultimate consumer.

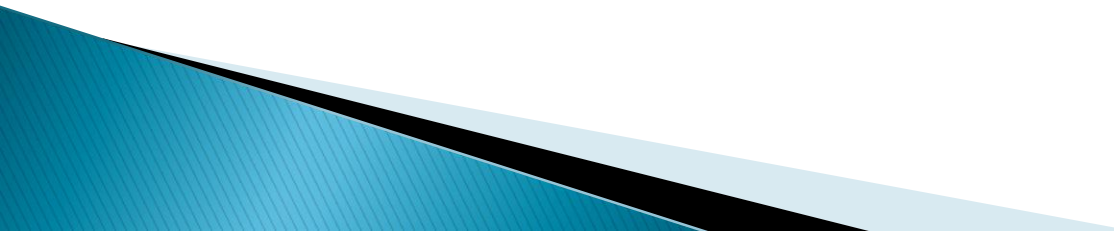


# Categories of Liability Loss Exposures

## 6) Advertising:

Business often include pictures of people using their products in their advertisements.

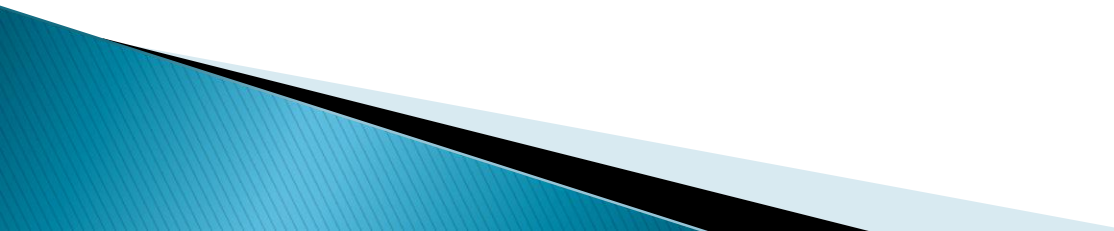
Publishing pictures of people using its products, for example, could lead to a law suit for invasion of privacy. Using another company's trade marked slogan or advertisement can also give rise to a liability claim.



# Categories of Liability Loss Exposures

## 7) Pollution:

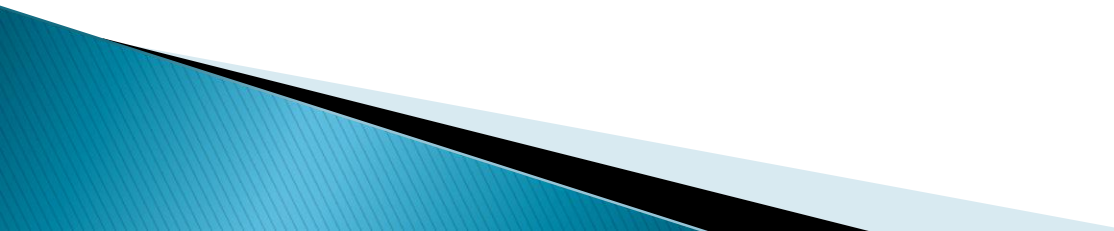
Many types of products pollute the environment when they are discarded. In addition, the manufacture of some products creates contaminants that, if not disposed of properly, can cause environmental impairment, or pollution.



# Categories of Liability Loss Exposures

## 8) Liquor:


Serious dangers when people consume too much alcohol. Intoxicated persons can pose a threat to themselves as well as to others. Providers of alcohol can be held responsible for customers or guests who become intoxicated and injure someone while driving drunk.



# Categories of Liability Loss Exposures

## 9) Professional Activities:

it is reasonable to expect that professionals with special competence in a particular field or occupation will exercise great care in performing their duties. Professional liability arises if injury or damage can be attributed to a professional's failure to exercise the appropriate standard of care. When professionals make errors, the injured party usually expects to be compensated.




# Liability insurance policy provisions

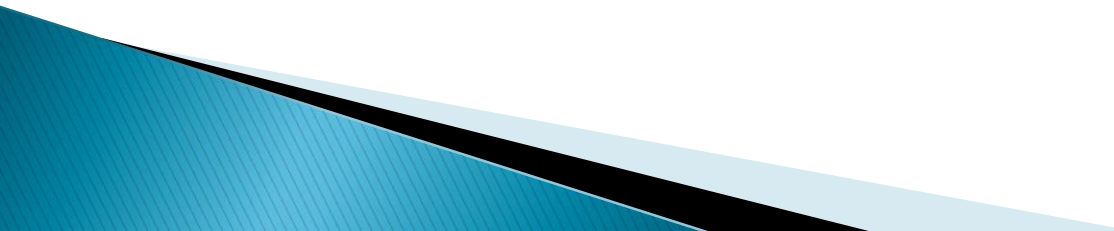
- ▶ **Liability insurance:** “ Insurance that covers losses resulting from bodily injury to others or damage to the property of others for which the insured is legally liable and to which the coverage applies.”

# Liability insurance policy provisions

*Liability insurance differs from property insurance in several ways as follows:*

- ▶ Property insurance claims usually involve only two parties
  - ▶ In property insurance, insurers typically pay claims to an insured when covered property is damaged by a covered cause of loss during the policy period. In liability insurance, insurers pay a third party on behalf of the insured against whom a claim has been made, provided the claim is covered by the policy.
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# Liability insurance policy provisions

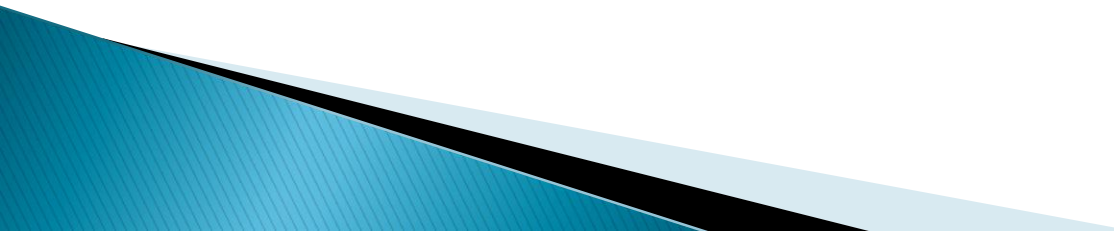
- ▶ Property insurance policies must clarify which property and causes of loss the policy covers. In contrast, liability insurance policies must indicate the activities and types of injury or damaged that are covered.
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# Liability insurance policy provisions

## ▶ Covered parties:

Liability insurance policies provide coverage for the named insured as well as others. It generally gives the broadest coverage to the named insured.



# Liability insurance policy provisions

## ▶ Covered activities:

Under a liability policy, the insurer will pay damages only to those who suffer injury or damage for which the insured is legally liable if the harm arose from a covered activity.

Certain policies state the specific activity or source of liability covered. In contrast, general liability insurance covers all activities or sources of liability that are specifically excluded.

# Liability insurance policy provisions

- ▶ **Covered types of injury or damage:**

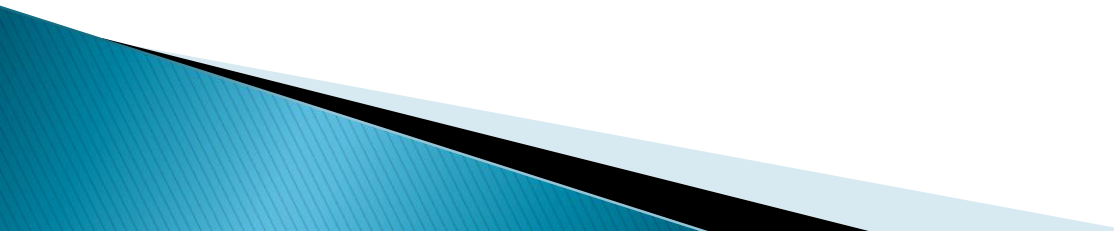
- ▶ **Bodily injury:** “ As defined in many liability policies, any physical injury to a person, including sickness, disease and death.”

- ▶ **Property damage:** “ Insurance term referring to physical injury to, destruction of, or loss of use of tangible property.”

- ▶ **Personal and advertising injury:**

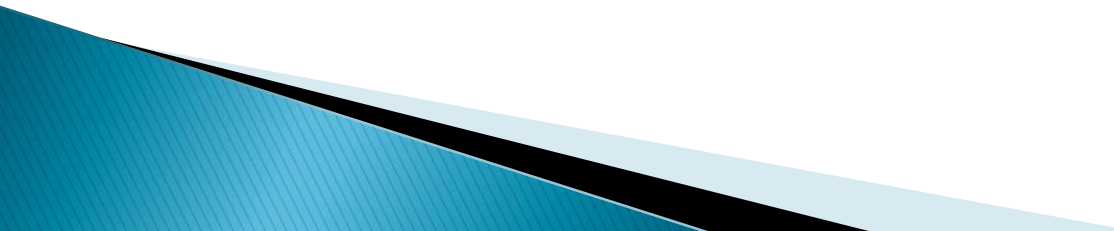
- ▶ **Personal injury:** “ Injury, other than bodily injury, arising from intentional torts such as libel, slander or invasion of privacy.”

# Excluded loss exposures

- ▶ *The exclusions in liability insurance policies generally fall into the following broad categories:*
    - ❖ To avoid covering uninsurable losses.
    - ❖ To avoid insuring losses that could be prevented.
    - ❖ To eliminate duplicate coverage.
    - ❖ To eliminate coverage that most insureds do not need.
    - ❖ To eliminate coverage for exposures that require special handling by the insurer.
    - ❖ To keep premiums reasonable.
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# Covered Costs

▶ *Liability insurance policies typically cover the following two types of costs:*

1. The damage that the insured is legally liable to pay.
  2. The cost of defending the insured against the claim.
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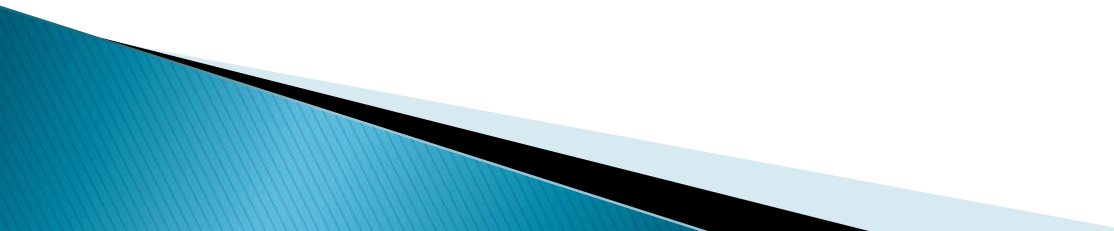
# Damages

- ▶ A person who suffered bodily suffered bodily injury, property damage or personal injury for which the insured is legally responsible may make a claim for damages. The claim is often settled out of court and the insurer pays the claimant on behalf of the insured.

# Damages

- ▶ ***Generally out of court settlements are attractive to both sides for the following reasons:***
  1. They resolve cases quickly
  2. They eliminate uncertainty about the outcome of a claim.

# Defense costs

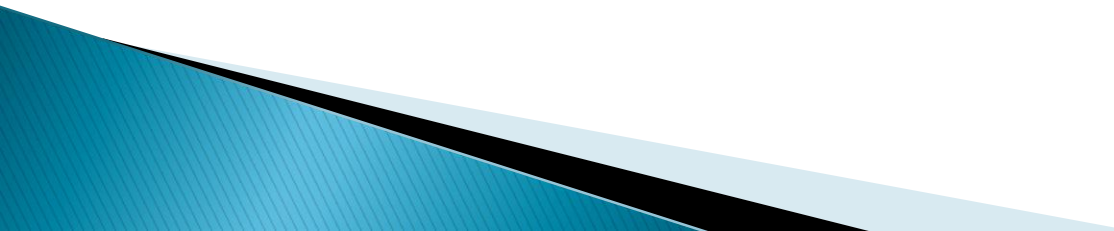
- ▶ It is sometimes said that an insurer's duty to defend insureds against liability claims is even more important than its duty to pay damages. If the defense is successful, the court delivers a judgment in favor of the defendant (insured) and no damages are awarded.
  - ▶ In other cases, damages may be awarded but an effective defense results in a lower award than the award sought by the plaintiff (the claimant).
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# Supplementary payments

- ▶ “ Various expenses the insurer agrees to pay under a liability insurance policy (in addition to the liability limits) for items such as premiums on bail bonds, loss of the insured’s earnings because of attendance at trials and other reasonable expenses incurred by the insured at the insurer’s request.”

# Supplementary payments

- ▶ ***Prejudgment interest:*** “ Interest that may accrue on damages before a judgment has been rendered.”
  - ▶ ***Post judgment:*** “ Interest that may accrue on damages after a judgment has been entered in a court and before the money is paid.”
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# Medical Payments

- ▶ “Coverage that pays necessary medical expenses incurred within a specified period by a claimant (and in certain policies, by an insured) for a covered injury, regardless of whether the insured was at fault.”

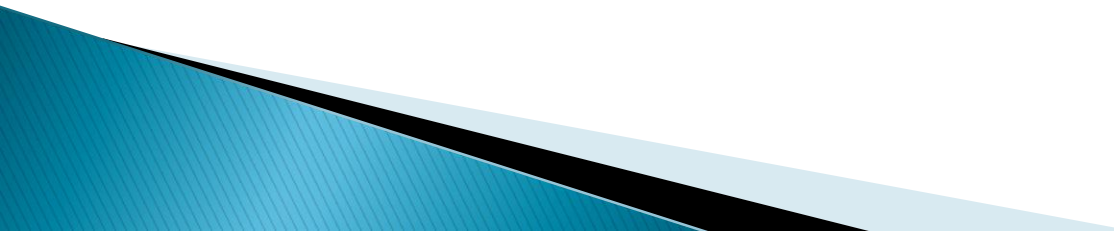
# Covered Time Period

- ▶ *A liability insurance policy states what must happen during the policy period to “trigger” coverage. Depending on the type of policy, coverage is usually triggered by either of the following:*
  - Events that occur during the policy period (in an occurrence basis policy).
  - Claims made (submitted) during the policy period (in a claims-made policy).

# Occurrence Basis Coverage

- ▶ “Coverage for liability claims that occur during the policy period, regardless of when the claim is submitted to the insurer.”

# Claims-made coverage

- ▶ “Coverage for liability claims that are first made against the insured during the policy period for covered events that occur on or after the retroactive date and before the end of the policy period.”
  - ▶ ***Retroactive date:*** “ The date in a claims-made policy on or after which injury or damage must occur in order to be covered.”
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# Factors affecting the amount of claim payments

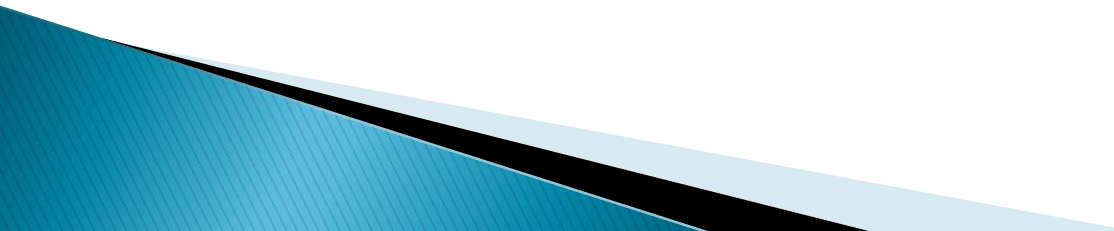
- ▶ *The extent of the insurer's payment depends on the following types of policy provisions:*

1–Policy limits

2–Defense cost provisions

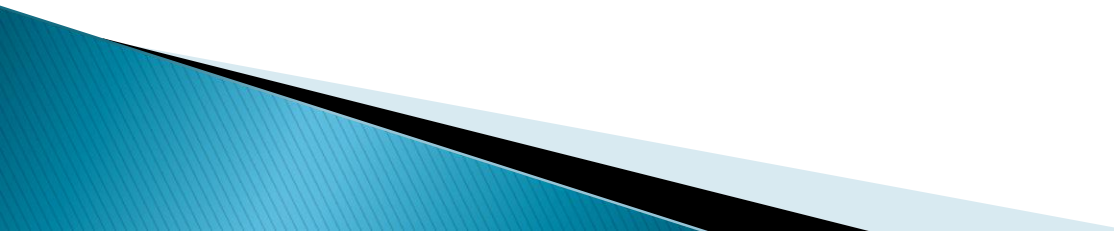
3–“Other insurance” provisions

# 1 – Policy limits

- ▶ *Each person limit.* “ The maximum amount an insurer will pay for injury to any one person for a covered loss.”
  - ▶ *Each occurrence limit.* “ The maximum amount an insurer will pay for all covered losses from a single occurrence, regardless of the number of persons injured or the number of parties claiming property damage.”
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# 1 –Policy limits

- ▶ **Aggregate Limit:** “ The maximum amount an insurer will pay for all covered losses during the covered policy period.”
  - ▶ **Split limits:** “ Separate limits for bodily injury and property damage liability coverage.”
  - ▶ **Single limit:** “ The maximum amount an insurer will pay for the insured’s liability for both bodily injury and property damage that arise from a single occurrence.”
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## 2-Defense cost provisions

- ▶ Most liability policies place no dollar limit on the defense costs payable by the insurer. The only limitation is that the insurer is not obligated to provide further defense once the entire policy limit has been paid in settlement or judgment for damages.

### 3–“Other insurance” provisions

- ▶ In some cases, two or more policies may cover the same claim. Like property insurance policies, liability insurance policies contain “other insurance” provisions to resolve this problem and preserve the principle of indemnity.
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