

Index

References are to sections.

A

Absolute Pollution

Bacteria in food, 5.218
Bat guano, 6.42
CGL exclusion, 5.203–.220
Carbon monoxide, 5.220
Chemicals to remove mold, 5.219
Fire, 5.211
Fuel spill, 5.214
Groundwater, 5.93
Paint chips, 5.216
Product fouled, 5.210
Property insurance exclusion, 6.37–
.40
Sewer backup, 5.217
Sick building, 5.213

Actual Cash Value

Aftermarket parts, 6.51
Broad evidence rule, 6.47
Cattle, 6.48
Crops, 6.48
Diminished market value, 6.50
Evidence of causation, 6.52
New York rule, 6.49
Property insurance, 6.45–.52
Salvaged parts, 6.51
Wisconsin rule, 6.49

Adhesion Contract

See Contract of Adhesion

Advertising Injuries

See also Personal and
Advertising Injuries
Advertising defined, 5.232

Causation requirement, 5.234,
5.238
Copyright infringement, 5.236–
.239
Coverages, 5.231–.244
Definition of, 5.232
Economic loss, 5.25
Misappropriation, 5.240
Patent infringement, 5.235
Piracy, 5.235, 5.247
Title infringement, 5.222, 5.233,
5.235, 5.240, 5.243
Trade-dress infringement, 5.244
Trademark infringement excluded,
5.243
Unfair competition, 5.241
Use of another’s advertising idea,
5.242

Affirmative Warranty

Definition of, 12.52

Agents, Insurance

Generally, 1.5, 13.1
Agency agreement cancellation and
cancellation of policy, 11.50
Apparent authority of, 11.72–.77
Authority of, 11.68–.71
Breach-of-contract claim against,
1.69
Brokers, 11.67, 13.3, 13.7
Captive agents, 1.5, 13.17
Causation, 13.31
Claims against, 6.72
Classes of, 13.3
Conduct of, reformation of contract
and, 1.65

- Damages for agent negligence, 13.54
 - Definition of, 13.3
 - Dual agents, 13.8
 - Duty to insured, 13.9–.31
 - assumption of duty, 13.20
 - establishment of, 13.11–.15
 - exclusions, no duty to explain, 13.24
 - explanation of contract not required, 1.67
 - informing, 13.16–.20
 - knowledge of business, 13.28
 - knowledge of required insurance, 13.27
 - maintenance of policy in force and effect, 13.23
 - misrepresentation, 13.29
 - notification of rejection, 13.30
 - oral contract, 13.12
 - request for best available coverage, 13.19
 - solvent insurer, 13.25
 - special circumstances, 13.16–.21
 - specific coverage requested, 13.22
 - timeliness of claim handling, 13.26
 - Duty to insurer, 13.38–.53
 - advise regarding nature of risk, 13.50
 - authority, not to exceed, 13.43
 - binding authority, 13.44
 - canceling a policy promptly, 13.45–.47
 - diligence, 13.41
 - full disclosure, 13.41, 13.49
 - good faith, 13.41
 - instruction following, 13.42
 - insured’s prior loss record, 13.51
 - notify of all liability accepted, 13.52
 - provide copy of certificate of insurance, 13.52
 - provide information about insured, 13.48–.52
 - reasonable skill and diligence, 13.42
 - unauthorized conduct, 13.43
 - E-mails, 13.13
 - Estoppel, 13.36
 - Implied authority to appoint subagents, 13.39
 - Indemnify insurer, 13.52
 - Independent agents, 1.5, 13.17
 - Insurance company liability for acts of, 11.65–.77
 - For insurer, 13.6
 - Insurer not identified, 13.14
 - Knowledge imputed to insurer, 12.12, 12.18
 - Liability avoidance, 13.55
 - Licensing of, 13.3
 - Misrepresentation by, 13.29
 - Notice to, 5.13, 11.66, 12.12, 12.18
 - Oral contracts, 13.12
 - Remedies of insurance company, 13.54
 - Remedies of insured, 13.32–.37
 - Responsibilities of, ch. 13
 - Risk acceptable to insurer, 13.53
 - Role of, 13.4
 - Telephone calls, 13.13
 - Types of, 13.3
 - Vacation by, 13.47
- Alcoholic Beverages**
CGL exclusion, 5.188
- Ambiguity in Contracts**
Generally, 1.46–.55
Change in policy language, 1.54
Contextual ambiguity, 1.48, 3.57, 3.63, 3.69, 4.67, 4.76–.80, 4.82
Construed against insurer, generally, 1.28, 1.47
Contra proferentum, 1.55
Defined, 1.48, 1.49
Dictionary definitions, 1.49
Effect if not ambiguous, 1.52
Genuine, 1.48
In insurance applications, 1.43

Lack of definition, 1.51
 Other jurisdictions, 1.55
 Other-insurance clause and, 3.64
 Parol evidence, 1.53
 Remote interpretation prohibited,
 1.50
 UIM insurance, 4.73–.74, 4.76–.80,
 4.82

American Rule

Attorney fees, 7.76–.78, 9.42

Apparent Authority of Agent

Generally, 11.72–.77
 Definition of, 11.73
 Elements of, 11.74
 Reasonable reliance on, 11.75

Applications

Ambiguity in, 1.43
 Delay in acting on by insurer, 12.58
 Insured duty to read, 12.8–.10
 Misrepresentation in, 12.35–.58
 —after application submitted,
 12.54
 —automobile insurance, 12.45–.48
 —conditional receipts, 12.58
 —effect of, 12.47
 —“good health” provision, 12.57
 —intent to deceive, 12.53
 —knowledge of insured, 12.51
 —limiting number of questions,
 12.56
 —materiality, 12.50
 —policy attached to application,
 12.41–.44
 —reliance on, 12.52
 —statutory limitations, 12.36–.44
 —subsequent information, 12.54
 —volunteering information, 12.55
 —warranties, 12.52

Appraisals

Property insurance, 6.49, 6.68

Approval Conditional Receipts

Generally, 12.58

Arbitration

Authority of arbitrators, 3.96
 Costs, 3.95
 Issues of law, 3.94
 Judicial estoppel and, 3.92
 Presumption of impartiality, 3.96
 Sanctions, 3.97
 UIM/UM insurance, 3.91–.97
 UIM and statute of limitation, 3.83
 Waiver, UM insurance, 3.93

Arson

Advance payments, 6.98
 Burden of proof, middle, 6.88
 Denial letter, 6.96
 Examination under oath, 6.89–.92
 Fairly debatable, 9.24
 Incendiary origin, 6.87, 6.95, 9.24
 Innocent insureds, 6.93
 Insurance company procedure,
 6.94–.99
 Investigation of, 6.95
 Mortgage clause, 6.97
 Proof requirement, 6.87

Attorney-Client Privilege

Application of, 9.49, 9.51
 Cooperation of insured and, 12.33

Attorney Fees

American rule, 7.76–.78, 9.42
 As damages, 5.255
 Bad faith, 5.255, 8.29, 9.42
 Collusion and conspiracy, 12.32
 Duty to defend and, 7.73–.79
 —coverage litigation, 7.76–.78
 —liability assumed by insured,
 7.79
 —no obligation before tender, 7.74
 —underlying defense fees, 7.75
 Fair Housing Act, 5.255
 Settlement and, 10.90–.93

Subrogation, 10.59, 10.147
 Wholeness determination, 10.59

Attorneys

See also Attorney-Client
 Privilege; Attorney Fees
 Advice from, 9.50
 CMS actions against, 10.127
 Conflicts of interest, 7.105
 Denial letter, 9.49
 For insured, 9.51
 Roles of, 7.84, 9.48–51
 Selection of, 7.42, 7.95–97
 As witness, 9.49

Automobile Liability Insurance

See also Underinsured Motorist
 Insurance (UIM); Uninsured
 Motorist Insurance (UM)
 Additional insureds, coverage, 2.56
 “Arising out of,” 2.49, 2.50, 2.52
 Business use of automobile, 2.36
 Car rental agencies, 2.57
 Commercial fleet policy, 2.5
 Common carriers, 2.90–94
 Cooperation by insured, 12.26–29
 Coverage, 2.2–6, 2.75
 Drive-other-car exclusion, 2.34,
 2.72, 3.17, 3.77–79
 Exclusions, 2.77–83
 —business use, 2.36
 —carrying persons/property for
 fee, 2.81
 —coemployee, 2.79
 —drive-other-car, 2.34, 3.17, 3.77–
 .79
 —family, 2.3, 2.80
 —racing
 —regular use, 2.35
 —use of vehicle for unlawful
 purpose, 2.82
 —worker’s compensation, 2.78
 Extraterritorial clause, 2.85
 Financial-responsibility statutes,
 2.3, 2.86–89
 —future accidents, 2.89

—past accidents, 2.88
 —proof of financial responsibility,
 2.89
 —SR-21 filing, 2.88
 —SR-22 filing, 2.89
 First-party insurance and, 2.75
 Garage-operations provision
 —generally, 2.6
 —customer, 2.6
 Handler of motor vehicle, coverage
 for, 2.6
 Intent to insure vehicle, 2.4
 Lawful possession of vehicle, 2.27
 Liability limits, 2.58–76
 —active negligence, 2.68
 —emotional distress, 2.64
 —estate claims, 2.62
 —loss of consortium, 2.63
 —mandatory liability limits, 2.87
 —occurrence, single, 2.66
 —per occurrence, 2.65–69
 —per person, 2.59–64
 —society and companionship
 claims, 2.63
 —split-limit endorsements, 2.61
 —stacking, 2.70–76
 —vicarious liability, 2.69
 Loading and unloading, 2.1, 2.51,
 2.92
 Maintenance, use, and operation of
 vehicle and, 2.47–54
 —“arising out of,” 2.49, 2.50, 2.52
 —attached equipment and, 2.53
 —completed-operation test, 2.51
 —contemplation-of-the-parties test,
 2.50
 —inherent-use-of-the-vehicle test,
 2.50
 —loading and unloading, 2.51
 —pollution and causation, 2.52
 —use of vehicle, 2.50
 Mandatory insurance, 2.87
 Misrepresentation, 12.45–48
 Motorcycles, 2.54
 Motor vehicle handlers, 2.6
 Named operator policy, 2.89

- Newly acquired automobiles, 2.55
- Omnibus statute of Wisconsin, 2.2–.6, 2.67–.69, 3.26
- Other-insurance clauses, 2.57, 11.2–.8
- Owner of vehicle
 - definition of, 2.4
 - establishing ownership, 2.31
 - knowledge of use, 2.19
 - named insured same as, 2.5, 2.28
 - permission from, 2.27
 - termination of ownership, 2.32
- Permissive use of automobile, 2.1, 2.7–.29
 - adult member of household, 2.28
 - burden of proof, 2.9
 - employee use of personal automobile, 2.29
 - express permission, 2.14
 - first permittee, 2.23
 - giver of permission, 2.25–.29
 - implied permission, 2.15–.21
 - in emergency, 2.21
 - mere deviation rule, 2.23
 - owner of vehicle, 2.27
 - policy language, 2.10–.13
 - reasonable belief and, 2.11
 - scope of permission, 2.22–.24
 - second permittee, 2.24
 - sponsor of driver, coverage for, 2.12
 - statutory basis, 2.8
 - underinsured motorists and, 2.13
 - uninsured motorists and, 2.13
- Personal and portable, 2.5, 2.72, 2.75
- Policy forms, ISO, appendix B–G
- Pool of vehicles, 2.36
- Regular use of automobile, 2.35
- Resident of same household, 2.37–.45
 - children as, 2.43
 - domicile, 2.39
 - factors determining residency, 2.40
 - family member as, 2.42
 - household, 2.39
 - “in the care of” an insured, 2.45
 - marital status of, 2.41
 - relative as, 2.42
- Sponsor of driver, 2.12
- Stacking, 2.70–.76
 - case law, 2.73–.76
 - legislation, 2.72
 - policy language, 2.71
- Subrogation, 10.157
- Temporary substitute automobile, 2.46
- Territorial limitation, 2.84
- Title, motor vehicle, 2.4
- Uninsured vehicles, 2.33–.36
- Unlisted vehicles, coverage for, 2.5
- Use of vehicle, 2.50
 - loading and unloading of vehicle, 2.51, 2.92
 - permissive, 2.7–.29

B

Bad Faith

- See also* First-Party Claims; Third-Party Claims
- Allowed when contract claim barred, 9.9
- Comparative bad faith, 9.47
- Definition of, 9.4, 9.16
- Directed verdict, 9.7
- Elements of, 9.4
- Good faith and fair dealing, 8.3
- Insured claims for failure to defend, 7.60, 7.63
- Investigation of claim, 8.15, 9.6
- Objective test of, 9.5
- Reverse bad faith, 9.47
- “Strangers” to insurance contract and, 9.29
- Subjective test of, 9.5
- Title insurance, 9.10
- Worker’s compensation, 9.11

Beneficiaries, Third-Party

Generally, 1.71

Binders

Definition of, 1.5, 11.52, 13.4,
13.44

Bodily Injury

Claims-made policies, 5.4
Definition of, 5.18, 5.84
Emotional distress, 2.64, 3.36,
5.83–86
Physical injury absent, 5.86
Physical injury present, 5.85
Subrogation, 10.47

Breach of Contract

Advertising injury and, 5.249
Damages, 11.139
General liability and, 5.175
Insurance agent, 13.33
Insured claims for failure to defend,
7.59, 7.62, 7.63
Occurrence policies, 5.26–40

Brokers, Insurance

Agents distinguished, 11.67, 13.3
Definition of, 13.3
For insured, 13.7

Builder's Risk Policy

Generally, 5.158

Business Pursuits

CGL exclusion, 5.176

Business Risks

Generally, 5.28, 5.154–.157
Breach of contract, 5.156
Builder's risk policy, 5.158
Coverage litigation, 5.157
Damage to your product, 5.167
Damage to your work, 5.168–.171
Economic loss doctrine, 5.167
Exclusions, 5.159–.173

Impaired property
—generally, 5.167, 5.173
—exclusion 2.m., 5.172
Named insured's products
exclusion, 5.167
Product damage (exclusion 2.k.),
5.167
Products-completed operations
hazards, 5.160, 5.166, 5.170
Property damage (exclusion 2.j.),
5.159–.166
—abandoned premises, 5.162
—loaned property, 5.163
—occupied property, 5.161
—operations on property, 5.165
—owned property, 5.161
—personal property, 5.164
—premises given away, 5.162
—rented property, 5.161
—restorations to property, 5.166
—sold premises, 5.162
Recall of products (exclusion 2.n.),
5.173
Sistership exclusion (exclusion
2.n.), 5.173
Work, damage to (exclusion 2.l.),
5.168–.171
—completed operations, 5.170
—subcontractor exception to
completed-operations exclusion,
5.171
—by subcontractors, 5.171
—“your work” defined, 5.169

C

Cancellation of Policy, 11.43–.64

Agency agreement cancellation
and, 11.50
Automatic lapse provisions, 11.53
Binders and, 11.52
By insured, 11.60
Mid-term cancellation, 11.46
Notice of, 11.55–.58, 11.66, 11.71
—additional insured and, 11.56

- Premium payment and, 11.62–64
—if accepted, 11.63
—NSF check, 11.64
Proof of mailing, 11.58
Remedy for violation of section
631.36(4)(a), 11.58
Rescission for fraud, 11.47
Statutory requirements, 11.44–54
- Car Insurance**
See Automobile Liability
Insurance
- Car Rental Agencies**
Insurance requirement for, 2.57
UIM insurance, 4.33
UM insurance, 3.23
- Centers for Medicare and
Medicaid Services (CMS)**
Medicare administration, 10.117,
10.120, 10.123–125
Secretary of Health and Human
Services, 10.124
- Certificate of Insurance**
Copy of to insured, 13.52
Definition of, 13.4
- Choice of Law**
See Conflicts of Law
- Claims-Made Policies**
Generally, 5.2, 5.4
Breach-of-contract claim, 5.4
Claim defined, 5.5–8
—“professional services,” 5.6
—“wrongful act,” 5.6
Demand
—for money or services, 5.7
—for some action, 5.8
“Legally obligated to pay,” 5.4,
5.16, 5.18, 5.28, 5.84
Notice to insurance agent, 5.13
Notice to insurer, 5.6, 5.9–13
- Professional liability, 5.4, 5.6, 5.10,
5.12
Request for information, 5.8
Retroactive date, 5.4, 5.14
“Wrongful act,” 5.4, 5.6, 5.30
- Collateral-Source Rule**
Subrogation and, 10.30, 10.70,
10.94, 10.139
Underinsured motorist coverage
and, 4.111
Uninsured motorist coverage and,
3.71, 3.89, 3.90
- Commercial/Comprehensive
General Liability (CGL)
Insurance**
See also Business Risks; Claims-
Made Policies; Environmental
Liability; Intentional-Acts
Exclusion; Occurrence
Coverage; Property Damage
Generally, 5.1, 5.2
Additional insureds, 5.62–82
—duty to give notice and tender
defense, 5.75
—construction of endorsements,
5.76
—employment relationship, 5.77–
.82
—endorsements, 5.64
—establishing endorsement is in
effect, 5.65–68
—limitations on, 5.69–72
—negligent supervision, 5.78, 5.79
—other-insurance provisions, 5.74
—release of employee, 5.82
—reservation of rights, 5.73
Advertising injury coverage,
5.221–.223, 5.231–.252
Alcoholic beverage exclusion,
5.188
Attorney fees, 5.255
Automobile exclusion, 5.178–.186
—concurrent causation, 5.180,
5.181

- forklift, 5.184
- negligent entrustment, 5.182
- recreational land motor vehicle, 5.183
- riding lawnmower, 5.185
- use of automobile, 5.179
- watercraft, 5.186
- Bodily injury, 5.4, 5.83–86
- Business-pursuits exclusion, 5.176
- Contest or exhibition exclusion, 5.190
- Contractually assumed liability exclusion, 5.175
- Covered persons, 5.61
- Damages, 5.253–.255
- Employment in violation of law exclusion, 5.177
- Exclusions
 - absolute pollution, 5.203–.220
 - alcoholic beverages, 5.188
 - automobiles, 5.178–.186
 - business pursuits, 5.176
 - business risk, 5.154–.173
 - contests, 5.190
 - contractually assumed liability, 5.175
 - criminal acts, 5.153
 - employee, 5.191
 - employment in violation of law, 5.177
 - exhibitions, 5.190
 - injury to insureds, 5.187
 - intra-insured, 5.187
 - intentional acts, 5.98–.152
 - liquor, 5.188
 - professional services, 5.189
 - property damage, 5.87–.96
 - property owned or controlled, 5.97
 - tractors as “motor vehicles,” 5.192
- Injury to insureds exclusion, 5.187
- Insureds, defined, 5.61
- Personal-injury coverage, 5.221–.230, 5.245–.252
- Policy form, ISO, appendix H

- Professional services exclusion, 5.189
- Punitive damages, 5.254
 - constitutionality of, 5.254
 - insurability of, 5.254

Common Carriers Liability

Insurance

- Generally, 2.90–.94
- Bobtail coverage, 2.94
- Dead haul, 2.95
- Deadheading, 2.95
- Insurance recovery from insured, 2.93
- Interstate commerce, 2.94
- Leasing agreement, 2.94
 - dead haul, 2.95
 - deadheading, 2.95
 - shifting losses between lessor and lessee, 2.95
 - trip lease, 2.95
- MCS-90 endorsement, 2.95
- Motor carrier, defined, 2.94
- Motor Carrier Act of 1980, 2.94
- School bus as common motor carrier, 2.92
- Shifting losses, 2.95
- Trip leases, 2.95
- Truckmen’s endorsement, 2.94
- Use or operation, 2.92

Common Fund Doctrine

- Generally, 10.91, 10.103, 10.147, 10.148

Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA)

- Cleanup costs as damages, 5.194, 5.197

Condition Precedent Conditional Receipts

- Generally, 12.58

Condition Subsequent**Conditional Receipts**

Generally, 12.58

Conditional Receipts

Types, 12.58

Conflicts of Interest

Attorneys, 7.105

ERISA plan administrator, 10.148

—presumptive bias, 10.148

Insurance companies, 7.106

Conflicts of Law

Generally, 1.72–.75

Choice-influencing considerations theory, 1.73

Examples of, 1.74

Foreign cause of action, 1.75

Lex loci rule, 1.73**Construction**

Builder's risk policy, 5.158

Damage to your work, 5.168–.171

Delay in completion, 5.92

Property damage, 5.165, 5.166

Subcontractors, 5.171

Contests

CGL exclusion, 5.190

Continuing Damage

Generally, 5.54–.57

Environmental cases, 5.56

Stray voltage, 5.55

Contract of Adhesion

Generally, 1.13, 1.14, 1.16, 1.19

Conditional receipts, 12.58

Contracts, Insurance*See also* Breach of Contract

Generally, 1.3

Absurd results avoided, 1.34

Ambiguity in, 1.35, 1.46–.55

“An” insured exclusion, 1.59

“Any” insured exclusion, 1.59

Burden of proof, 1.26

Conflicts of law, 1.72–.75

Construction by parties, 1.28, 1.32

Contract of adhesion, 1.13, 1.14,

1.16, 1.19

Distribution of losses and, 1.22

Ejusdem generis, 1.41

Endorsements, 1.42

Equity and, 1.21

Exclusions, 1.19, 1.56–.59

—exceptions to, 1.58, 5.16

—narrow construction, generally, 1.57

—operate independently, 1.48

Fortuity and, 1.9, 1.21

Four corners of policy, 1.36

Intent of parties, 1.29–.32

—generally, 1.30

—construction by parties, 1.32

—industry custom, 1.31

—premium amount v. claimed risk, 1.30

Interpretation, 1.7, 1.12–.23

—like other contracts, 1.7, 1.19, 1.28

—not like other contracts, 1.22

—three-step process, 1.25

Issues of fact and, 1.35

Issues of law and, 1.35

Methodology, 1.25

Permissive provisions, 1.45

Premiums, 1.4, 1.34, 1.37, 1.44, 1.48, 1.66, 1.69

Public policy and, 1.21, 1.23

Reasonable expectations, 1.15–.20

Reasonable lay person standard, 1.27

Reasonable meanings in, 1.37

Reasonable person in the position of the insured, 1.19, 1.27, 1.30, 1.47, 1.48, 1.52, 1.57

Reformation of policy, 1.60–.70

Required provisions, 1.44

Review of in entirety, 1.36

Rewrite by construction, 1.14, 1.19,
1.34, 1.49, 1.52
Riders, 1.42
Rights fixed at time of loss, 1.40,
6.65
Risk coverage, 1.38
Specificity and, 1.33
Standards, 1.24–29
Statutory construction and, 1.39
“The” insured exclusion, 1.59
Third-party beneficiaries, 1.71

Contributory Negligence
Made-whole doctrine and, 10.49–
.57

Copyright Act of 1976
Copyright definition, 5.237

Copyright Infringement
Advertising injury, 5.236–.239
Causation, 5.238
Damages, 5.239

Counsel
See Attorneys

Criminal-Acts Exclusion
Generally, 5.153

D

Damage to Property
See Property Damage

Damages
After policy period, 5.58
Allocation among primary and
excess insurers, 11.38
Allocation for multiple policies,
2.66, 11.40–.42
Apart from contract, 9.40
Attorney fees, 9.42, 5.255
Before policy period, 5.59
Borrowing money, 9.40

Breach of contract, 11.139
Consequential damages, 7.59, 7.61,
7.63
Continuing, 5.54–.57
Copyright infringement, 5.239
Emotional distress, 9.39
Environmental liability, 1.59,
5.194, 5.197, 5.200
Failure to defend, 7.61
Fairly debatable, 9.26
First-party bad-faith claims, 9.37–
.43
Future installments, 9.43
Insurance agents, 13.37, 13.54
Insurance company recovery of,
13.54
Insured recovery of, 13.37
Lost premiums, 13.54
Punitive, 3.87, 5.254, 8.29, 9.41
“Substantial other damages,” 9.39
Third-party bad-faith claims, 8.29
UM insurance, 3.87

Defend, Duty to
See Duty to Defend

Descriptive Warranty
Definition of, 12.52

Direct Action
Generally, 11.110–.117

Direct Insurance
Generally, 1.6

Discrimination
Coverage, 5.227

Disparagement
Coverage, 5.225

Duty to Defend
Generally, 7.1
Attorney fees, 7.73–.79
Basis of, 7.23
Claim or suit, 7.10–.19

- Claims arguably covered under policy dismissed, 7.103
 - Claims not covered under policy, 7.81–.84
 - costs apportioned, 7.83
 - damages apportioned, 7.85–.88
 - defense counsel role, 7.84
 - entire action defended, 7.82
 - insurer’s options, 7.88
 - Commencement of, 7.8–.20, 7.25
 - Complaint test, 7.21–.33
 - ad damnum* clause, 7.23
 - contribution claims and, 7.29
 - duty to investigate and, 7.25
 - exceptions to test rejected, 7.27
 - facts alleged, 7.28
 - fairly debatable, 7.30–.33
 - four corners of the complaint, 7.23, 7.27
 - indemnification claims and, 7.29
 - intentional-acts exclusion, 7.27
 - prayer for relief, 7.23
 - Conflicts of interest, 7.104–.106
 - segregation of liability and coverage files, 7.106
 - Consequential damages, 7.59, 7.61, 7.63
 - Control of defense, 7.93
 - Costs incurred before tender, 7.20
 - Counsel, selection of, 7.42, 7.95–.97
 - truly independent counsel, 7.97
 - Counterclaims, duty to pursue, 7.80
 - Coverage contested, 7.34–.55
 - attorney fees, 7.76–.78
 - denial, 7.41
 - free defense, 7.40
 - illusory, 7.23
 - insurance company alternatives, 7.54
 - insured alternatives, 7.55
 - reservation of rights, 7.41, 7.43, 7.54
 - right to appeal nonfinal order, 7.48
 - separate declaratory-judgment action, 7.23, 7.44–.53
 - time to react, 7.44–.47
 - when defense required, 7.35–.43
 - Duty to indemnify and, 7.37, 7.54
 - Duty to investigate and, 7.25
 - Estoppel and, 11.100
 - Existence of policy, 7.2–.7
 - best evidence rule, 7.4
 - burden of proof, 7.5
 - duty to look for documents, 7.6
 - Fairly debatable, 7.30–.33
 - Guidelines suggested, 7.18
 - Insured claims for failure to defend, 7.56–.79
 - bad faith, 7.60, 7.63
 - breach of contract, 7.59, 7.62, 7.63
 - damages, 7.61
 - estoppel, 7.65, 7.67–.71
 - waiver, 7.66, 7.72
 - Limits of policy and, 7.98–.103
 - Notice requirement, 7.7, 7.12, 7.17, 12.11–.18
 - Prejudice to insured and, 7.92
 - Reimbursement of defense fees, 7.94
 - Reservation of rights, 7.41, 7.43, 7.54, 7.89–.94
 - Stay required, 7.39
 - Tender of defense, 7.10–.20, 7.74
 - Tender of limits, 7.98–.102
 - pay-and-walk provisions, 7.101, 7.102
 - “tendered for settlements” language, 7.100, 12.6
 - Trigger events, 7.8–.20
 - Waiver of rights, 7.91
 - Withdrawal of defense, 7.99–.103
- Duty to Indemnify**
- Attorney fees, 7.78
 - Duty to defend and, 7.37, 7.54
 - Voluntary payments by insured and, 12.34

E

Economic Loss Doctrine

Generally, 5.41–.46
 Business risks, 5.28, 5.154–
 .1735.167
 Disappointed performance
 expectations, 5.42
 Environmental liability, 5.200
 False advertisements and, 5.25
 Fraud-in-the-inducement exception,
 5.45
 Integrated systems, 5.42, 5.43, 5.44
 Service contracts, 5.46
 Subcontractors, 5.44

Ejusdem Generis Principle

Generally, 1.41
 Personal injuries, 5.227

Emotional Distress

Automobile liability insurance,
 limits on liability, 2.64
 Bad-faith damages, 9.39
 Bodily injury, 2.64, 3.36, 5.83–.86
 Negligent infliction of, 7.23
 Witnessing death or serious injury
 of relative, 2.64

**Employee Retirement Income
Security Act (ERISA)****Payments**

Agent's knowledge, 10.145
 Attorney fees, 10.147
 Checklist, 10.148
 Common fund doctrine and,
 10.147, 10.148
 Equitable relief, 10.146
 Made-whole doctrine and, 10.146,
 10.148
 Plan administrator discretion,
 10.143
 Plan language, 10.142, 10.143,
 10.147, 10.148
 Preemption, 10.142
 Reimbursement, 10.144

Stop-loss insurance and, 10.142,
 10.144, 10.146
 Subrogation, 10.140–.148

Endorsements

Insurance contracts, 1.42

Environmental Liability

Generally, 5.193
 Absolute pollution exclusion,
 5.194, 5.203–.220. *See also*
 Absolute Pollution
 Burden of proof, 5.199
 Cleanup costs as damages, 5.194,
 5.197
 Continuing damages, 5.56
 Damages recoverable, 1.59, 5.194,
 5.197, 5.200
 Fire, 5.211
 Fortuity, 1.8–.11, 5.201
 Fuel spill, 5.214
 Groundwater, 5.93, 5.202, 5.215
 Known loss, 1.8–.11, 5.201
 Loss in progress, 1.8–.11, 5.201
 Owned-property exclusion, 5.202
 Paint chips, 5.216
 Personal-injury coverage, 5.197
 Potentially responsible party (PRP),
 5.194, 5.196, 5.197
 Product fouled, 5.210
 Public trust doctrine, 5.194
 Remediation, 5.28, 5.56, 5.194,
 5.196, 5.197, 5.202, 5.214, 5.215
 Sewer backup, 5.217
 Sick building, 5.213
 Soil damages, 5.93
 Sudden and accidental exception,
 5.195
 Suit defined, 5.196

Equality-of-Consideration Test

Third-party bad faith, 8.9

Estoppel

Arbitration, 3.92
 Coverage clause, 11.84

Creation of coverage with prohibited, 11.83
 Duty to defend and, 11.100
 Expansion of coverage with prohibited, 11.83
 Failure to defend, 7.65, 7.67–.71
 Forfeiture clause, 11.84
 Insurance agent statements, 13.36
 Judicial, 3.92
 Medical examination, 11.102–.109
 Pleading requirements, 11.91
 Policy limits, 11.92–.94
 Requirements, 11.82
 Statute of limitation, 11.86–.90

Excess Insurance

Generally, 11.13–.17
 Coincidence, 11.15
 Damages allocation, 11.38
 Defense costs payment, 11.36
 Drop down coverage, 11.39
 Duty of excess insurer, 11.28–.30
 Duty to defend, 11.39
 Following form, 11.16
 Specific, 11.14, 11.16
 Subrogation and, 11.26
 True excess, 11.7, 11.17, 11.21, 11.24, 11.32, 11.35

Exhibitions

CGL exclusion, 5.190

F

Family Members

Automobile use permission by adult member of household, 2.28
 Children, 2.43
 Definition of, 2.42, 3.32, 3.35
 Exclusion, prohibited, automobile policies, 2.80, 3.25
 Marital status of, 2.41
 Related by blood, marriage, or adoption, 2.42, 3.25
 Relative, defined, 2.42

Residents of the household, 2.37–.45
 UIM insurance, 4.37–.38
 UM insurance, 3.32–.36

Federal Motor Carrier Safety Administration (FMCSA)

Responsibilities, 2.94
 Website, 2.94

Fiduciary Duty

First-party contracts and, 9.12–.16
 Good faith and fair dealing and, 9.13

Fire Insurance

See also Property Insurance
 Actual cash value, 6.45–.52
 Arson, 6.86–.99
 Constructive total loss, 6.58
 Fixtures coverage, 6.11
 Perils covered, 6.22–.27
 —Alteration, 6.27
 —Collapse, 6.24
 —Explosion, 6.25
 —Forgery, 6.27
 —Theft, 6.26
 —Windstorm, 6.23
 Statute of limitation, 6.69–.73
 —inception of the loss, 6.70
 —waiver, 6.73

Fires

See also Arson; Fire Insurance
 Cause-and-origin expert, 10.105, 10.110, 10.111
 Intentional acts, 5.105, 5.110
 Pollution, 5.211
 Spoliation, fire investigation, 10.106, 10.110

First-Party Claims

Generally, ch. 9
 Application of standard, 9.17–.27
 —change of insurer's position, 9.22
 —conduct of insured, 9.24

—evidence destroyed, 9.23
 —evidence removed, 9.24
 —expert testimony, 9.21
 —inflated claim, 9.24
 —issue of law fairly debatable at time of denial, 9.18
 —lowballing, 9.19
 —negotiations for policy, 9.25
 —neutral investigation, 9.20
 —reformation, 9.27
 —UM/UIM coverage, 9.26
 Attorney role in, 9.48–.51
 —advice, 9.50
 —insured’s attorney, 9.51
 —witness, 9.49
 Bad faith, 9.2–.11
 —contract claim barred, 9.9
 —directed verdict, 9.7
 —elements, 9.4
 —evaluation of claims, 9.4, 9.6, 9.8
 —fairly debatable standard, 9.4, 9.7, 9.16, 9.18, 9.20, 9.24, 9.26
 —investigation of claims, 9.4, 9.6, 9.8
 —objective test, 9.5, 9.6, 9.7
 —“strangers” to insurance contract, 9.29
 —subjective test, 9.5
 —third-party bad faith and, 9.8
 —title insurance, 9.10
 —worker’s compensation, 9.11
 Bifurcation, 9.45
 Damages, 9.37–.43
 ERISA beneficiaries assertion of, 9.36
 Expert testimony, 9.21, 9.46
 Fiduciary obligations, 9.12–.16
 HMO participant assertion of, 9.33
 Insured’s obligations, 9.24
 —duty of good faith, 9.47
 Liability insurance and, 2.75
 Life insurance beneficiary assertion of, 9.32
 Loss payee assertion of, 9.31
 Mortgagee assertion of, 9.30
 Reform, insurer’s failure to, 9.27

Statute of limitation, 9.44
 Statutory interest, 11.132–.137
 Third party assertion of, 9.34

Following-Form Coverage

Generally, 11.16

Fortuity, Principle of

Generally, 1.8–.11
 Environmental liability, 1.8–.11, 5.201
 Fraudulent claims and, 12.65
 Property insurance, 6.6
 Reasonable expectations and, 1.21

Fraud

See Misrepresentation

Fund Doctrine

Generally, 10.91, 10.147

G

General Liability Insurance

See Commercial/Comprehensive General Liability (CGL) Insurance

H

Hit-and-Run Vehicles

Flee from scene, 3.47
 Highway debris, 3.47
 Hit, 3.47
 Physical contact, 3.37
 Run, 3.47
 UM insurance, 3.5, 3.47, 4.5
 Unidentified motor vehicle, 3.47

Homeowner’s Insurance

Policy form, ISO, appendix I

I

Indemnification Agreements

Characteristics of, 10.32
 Collateral-source rule, 10.30
 Indemnification defined, 10.19
 Investment contracts compared, 10.29
 Limitations of, 10.82–.85
Rimes hearing, 10.85
 Subrogation with, 10.28–.32
 Validity of, 10.83

Indemnify, Duty to

Attorney fees, 7.78

Insurance Agents

See Agents, Insurance

Insurance Company

See also Duty to Defend;
 Responsibilities of Insurance Company
 Agents for, 13.6
 Arson procedures for, 6.94–.99
 Conflicts of interest for, 7.106
 Damages recovery by, 13.54
 Insolvency of, 3.49
 Insurance agent duty to, 13.38–.53
 Reformation claims against, 13.33
 Sophisticated, 7.19

Insurance Contracts

See Contracts, Insurance

Insurance Policies

See also Contracts, Insurance;
 Reformation of Policy
 Cancellation of, 11.43–.64
 Direct insurance, 1.6
 Errors and omissions policies, 1.69, 5.6, 5.96, 5.254, 6.24, 11.84, 13.29
 Excess coverage, 11.13–.17
 Existence of, establishing, 7.2–.7
 Function of, 1.2–.7

Index of coverage, 3.69
 Insured duty to read and examine, 12.2–.10
 ISO, appendix B–G
 No-action clauses, 11.111
 Primary coverage, 11.12
 Reinsurance, 1.6, 11.19
 Renewal of, 11.48, 11.49, 11.53
 Shifting risk, 1.4
 Surplus-lines insurance, 11.20
 Types of, 11.10–.20
 Umbrella coverage, 11.7, 11.18

Insurance Services Office (ISO)

Automobile policy, appendix B, C, D
 CGL policies, 5.2, 5.89, appendix H
 —Coverage B, 5.222, 5.223
 —Exclusion 2.j., 5.159–.166
 —Exclusion 2.k., 5.167
 —Exclusion 2.l., 5.168–.171
 —Exclusion 2.m., 5.172
 —Exclusion 2.n., 5.173
 Homeowner's policy, appendix I
 UIM endorsement, appendix F, G
 UM endorsement, appendix E

Insured

See also Remedies of Insured;
 Responsibilities of Insured
 Additional insureds
 —bad faith and, 9.29
 —cancellation and, 11.56
 —in CGL policies, 5.62–.82
 —coverage, 2.56
 —misrepresentation and, 12.47
 —pay-and-walk provision and, 7.102
 —subrogation and, 10.66
 —types of insurable interests and, 6.65
 Agent duty to, 13.9–.31
 Cancellation of policy by, 11.60

- Claims for failure to defend, 7.56–79
 - bad faith, 7.60, 7.63
 - breach of contract, 7.59, 7.62, 7.63
 - damages, 7.61
 - estoppel, 7.65, 7.67–.71
 - waiver, 7.66, 7.72
 - Communication with
 - of excess claim, 8.16
 - failure to keep, 8.26
 - of settlement offer, 8.17
 - of statute of limitation, 11.90
 - Defined, UM coverage, 3.31–.42
 - Duty
 - be specific, 13.15
 - read policy, 13.21
 - Election by, 1.69
 - Employee of, 2.79
 - General liability policies, 5.61
 - High deductible, 8.30
 - Injury to, general liability, 5.186
 - Innocent, 6.93, 12.67
 - Multiple, 8.38
 - Omnibus insured, 2.68
 - As party to direct action, 11.112
 - Property damage to insured’s property, 5.97
 - Reasonable insured, 1.19, 1.30
 - Sophisticated, 7.12, 7.19
 - Subrogation
 - insurer, 10.65–.68
 - obligations, 10.112–.114
 - Tenants as, 10.67
- Insurer**
See Insurance Company
- Intentional-Acts Exclusion**
 General, 5.20, 5.100
 Any injury or harm, 5.101
 Assault and battery and, 5.111, 5.147
 Burden of proof for, 5.134
 Complaint test and, 7.27
 Conspiracy to fire gun and, 5.109
- Conversion and, 5.115
 - Criminal conduct and, 5.107–.110
 - Defamation, negligent, 5.120, 7.23
 - Employment
 - conduct of insured-employer, 5.119
 - discharge of employee, 5.118
 - employer/employee, 5.150
 - respondeat superior, 5.130, 5.146, 5.150
 - wrongful termination, 5.106
 - Fires, setting, 5.105, 5.110
 - Fortuity, 5.148
 - Fraud and, 5.116
 - General liability, 5.98–.152
 - Hitting and, 5.112, 5.113
 - Intoxication and, 5.141–.143
 - Language of policy, 5.102
 - Liability of others and, 5.145–.152
 - culpability of insured, 5.149
 - nature of conduct, 5.148
 - risk excluded, 5.147
 - Matter of law, 5.136–.139
 - Mental capacity, 5.144
 - Parental liability for acts, 5.117
 - Public policy, 5.135, 5.148
 - Resisting arrest and, 5.114
 - Robbery and, 5.108
 - Self-defense and, 1.20, 5.112, 5.140
 - Setback violation, 5.121
 - Sexual assaults and, 5.122–.132
 - conduct after assault, 5.132
 - coverage not contemplated, 5.129
 - culpability of insured, 5.149
 - failure to warn, 5.130
 - guilty plea, 5.133
 - on minors, 5.124
 - professional liability coverage and, 5.127
 - public policy, 5.135, 5.148
 - sexually transmitted diseases, 5.125
 - supervisor awareness, 5.128

—by teacher, 5.131
 —use of premises, 5.126
 Uninsured motorists, 3.88

Interest

Insurance coverage, 11.138
 Late payment of, insurance claims,
 3.86
 Liability claims, 11.126–.131
 Payment of, 10.135–.148
 Preverdict, 10.42
 Statutory interest, 11.132–.137
 On total award, 11.128

Interest of Insured

Definition of, 6.61
 Fixed at time of loss, 6.65
 Mortgagee, interest of, 6.66
 Pecuniary, 6.62
 Relationship to property, 6.62
 Tenant insured, 6.63
 Type of insurable interests, 6.65
 Value of insurable interest, 6.64

Intermediary, Insurance

Definition of, 13.3
 Determining, 13.39
 Dual agent, 13.8
 Managing general agents, 13.3
 Reinsurance brokers, 13.3
 Reinsurance managers, 13.3
 Surplus lines agents/brokers, 13.3

Interstate Commerce

Commission (ICC)

Common carrier regulations, 2.94,
 2.95
 MCS-90 endorsement, 2.94, 2.95

Invasion of Privacy

Coverage, 5.230

Investigation

Arson, 6.95
 Fire investigation, 10.110

First-party claims, 9.6, 9.20
 Third-party claims, 8.15

K

Keeton, Professor Robert E.

Doctrine of reasonable
 expectations, 1.16

Known-Loss Doctrine

Generally, 1.8–.11
 Environmental liability, 1.8–.11,
 5.201

Known-Risk Doctrine

Generally, 1.9

L

Leflar, Professor Robert

Choice-influencing considerations
 theory, 1.73

Liquor Liability

CGL exclusion, 5.187

Loss in Progress Doctrine

Generally, 1.8–.11
 Environmental liability, 1.8–.11,
 5.201

Loy Releases

Generally, 11.21–.24
 Effect of, 11.25–.27

M

Made-Whole Doctrine

Generally, 10.55
 Agreements between insurer and
 insured, 10.93
 Attorney fees and, 10.59
 Bodily injury, 10.47

Compete for available funds, 10.61
 Contributory negligence, 10.49–.57
 ERISA plan and, 10.146
 Funds to pay both insured and insurer, 10.62
 Government claims, 10.137
 Property damages, 10.46, 10.58
Rimes hearing, 10.47, 10.85
 Wholeness defined, 10.48
 Wrongful death claims, 10.61

Malicious Prosecution

Coverage, 5.228

Managing Insurance Agents

Generally, 13.3

Medicaid Payments

Costs of recovery, 10.133
 Joinder of agency, 10.132
 Notice requirements, 10.131
 Release against liable party, 10.130
 Subrogation, 10.128–.134

Medicare Payments

Attorneys, actions brought against, 10.127
 Conditional payments, 10.117
 Cost of collection deducted, 10.125
 Double payment, 10.123
 First payor, 10.120
 Government actions, 10.121
 Legislative history, 10.118
 Lien, 10.119
 Mandatory reporting requirements, 10.122
 Medical Secondary Provider (MSP) provisions, 10.117
 Payment for beneficiary, 10.126
 Penalty, 10.122
 Preemption, 10.119
 Reimbursement, 10.123
 Right of subrogation, 10.117
 Subrogation, 10.116–.127

Misappropriation

Advertising injury, 5.240

Misrepresentation

By insurance agents, 13.29
 By insured
 —after loss, 12.59–.68
 —applications, 12.35–.58
 —automobile insurance, 12.45–.48
 —burden of proof, 12.68
 —concealment clause, 12.61, 12.67
 —effect of, 12.47, 12.64–.67
 —materiality of, 12.50, 12.63
 —mortgage policy, 11.47
 —overvaluation, 12.69–.74
 —sale of property, 5.96
 —statutory limitations, 12.36–.44
 Rescission, 12.38–.40
 Void policy, 12.65, 12.66
 —deny liability for single claim, 12.66
 —“entire policy is void,” 12.65

Motor Carrier Act of 1980 (MCA)

Generally, 2.94

Motor Vehicle Insurance

See Automobile Liability Insurance

Municipalities

Subrogation, 10.15
 UIM insurance, 4.34
 UM insurance, 3.5, 3.24, 4.5
 Waiver of liability limits, 11.85

N

Negligence

Automobile liability insurance
 limits on liability, 2.68
 Bad faith and, 8.19
 Contributory, 10.49–.57

Insurance agent, 13.33
 Subrogation and, 10.138

Noscitur a Sociis

Generally, 1.41

Notice

Generally, 12.11–17

As soon as reasonably possible,
 12.12

As soon as practicable, 12.12,
 12.14

As soon as practical, 12.14,
 appendix E

Belief in coverage, 12.14

Burden of proof, 12.13

Cancellation, 11.55–.59, 11.71,
 12.39

Claims-made policies, 5.6, 5.9–.13
 —compared to occurrence policies,
 5.10, 5.11

Denial of coverage by insurer,
 12.17

Duty to defend trigger, 7.7, 7.10–
 .18

To insurance agent, 5.13, 11.66,
 12.18

Knowledge of insured, 5.12

Medicaid payments, 10.79, 10.131

Occurrence policies, 5.10, 5.11

Participant in accident, 12.14

Prejudice, 12.16

—ability to settle, 12.16

—determination of coverage,
 12.16, 12.17

—effective defense, 12.17

—memories fresh, 12.14, 12.16

—witnesses available, 12.14, 12.16

Reasonable time, 12.14

Rejection by agent, 13.30

By sophisticated business, 12.14

Subrogation and, 10.79, 10.88,
 10.89

Suit, 7.8–.20, 12.15

UIM coverage, 4.27–.30

Wisconsin Statute § 631.81, 12.12

O

Occurrence Coverage

All-risk policies, 5.16

Automobile liability insurance,
 2.65–.69

—active negligence, 2.68

—occurrence, defined, 2.66

—vicarious liability, 2.69

Bodily injury defined, 5.18

Breach of contract, 5.27

Business risk, 5.28

Continuing damage, 5.54–.57

—environmental cases, 5.56

—mistagged seed corn, 5.57

—rules, 5.47–.52

—stray voltage, 5.55

Continuous-trigger approach, 5.52

Contracts and, 5.26–.40

Damage after policy period, 5.58

Damage before policy period, 5.59

Definition, occurrence, 2.66, 5.16–
 .21

—accident, defined, 5.19, 5.31

—conspiracy, 5.19

—defamation, 5.21

—fraud, 5.19

—intentional conduct, 5.20

—lack of intention, 5.19

—negligent acts resulting in
 damage to third parties, 5.18

—unexpected and undesirable
 event, 5.19

—unforeseen event, 5.19, 5.34

—unknown or remote causes, 5.31

Economic loss doctrine, 5.36, 5.41–
 .46

Events compared, 5.18

Exposure theory, 5.49

General liability, 5.2, 5.4, 5.15–.40

Injury-in-fact theory, 5.51

Manifestation theory, 5.50

Misrepresentation, 5.22–.25

—causation nexus, 5.23

—false advertisement, 5.24, 5.25

—volitional acts, 5.23

Mistagged seed corn, 5.57
 Multiple occurrences, 5.60
 Notice, 5.10, 5.11
 Number of occurrences, 11.42
 Occurrence, establishing, 5.32–.40
 Property insurance, 6.9
 Single occurrence, 2.66, 5.60
 Triggering events, 5.47–.53
 Triple-trigger theory, 5.52

Office of the Commissioner of Insurance (OCI)

Valued property law, 6.59

Omnibus Statute

See Automobile Liability Insurance

Other-Insurance Clauses

Ambiguity and, 3.64
 Automobile liability policies, 2.57, 3.26, 11.2–.8
 Escape clauses, 11.6
 Excess clauses, 11.4, 11.5
Lamb-Weston doctrine, 11.3
 Pennsylvania rule, 11.8
 Pro rata clauses, 11.6
 Pro rata distribution, 11.4
 Property claims, 11.8
 Umbrella coverage, 11.7

Overvaluation

Damage to insurer, 12.71
 Good faith, 12.74
 Misrepresentation, 12.69–.74
 Presumption of fraud, 12.73
 Willful misrepresentation, 12.72

P

Patent Infringement

Advertising injury, 5.235

Personal and Advertising Injuries

See also Advertising Injuries; Personal Injuries
 Advertising defined, 5.222
 “Arising out of your business,” 5.222, 5.234
 Definition of, 5.222
 Exclusions, 5.223, 5.245–.252
 —breach of contract, 5.251
 —contractual liability, 5.223
 —copyright, patent, trademark, or trade-secret infringement, 5.223
 —criminal acts, 5.250
 —distribution of material in violation of statutes, 5.252
 —electronic chatrooms or bulletin boards, 5.223
 —knowing violation of rights of another, 5.247
 —material published before policy period, 5.249
 —material published with knowledge of falsity, 5.248
 —media and Internet-type business insureds, 5.223
 —performance of goods, 5.223
 —pollution-related, 5.223
 —unauthorized use of another’s name or product, 5.223
 History of coverage, 5.222
 Offenses covered, 5.222

Personal Injuries

See also Personal and Advertising Injuries
 Coverage, 5.224–.230
 Discrimination, 5.227
 Disparagement, 5.225
 Environmental CGL coverage, 5.198
 Malicious prosecution, 5.228
 —abuse of process and, 5.228
 Privacy invasion, 5.230
 Slander of title, 5.226
 Wrongful entry or eviction, 5.229

Pierringer Releases

Generally, 10.60

Policies*See* Insurance Policies**Pollution***See* Absolute Pollution;
Environmental Liability**Primary Insurance**

Damages allocation, 11.38

Defense costs payment, 11.33,
11.36

Definition of, 11.12

Duty of primary insurer to excess
insurer, 11.21**Privacy Invasion**

Coverage, 5.230

Product Damage

CGL exclusion, 5.164

Product Recalls

CGL exclusion, 5.173

Professional Services

CGL exclusion, 5.189

Promissory Warranty

Definition of, 12.52

Property Damage*See also* Environmental
Liability

Business risks, 5.159–.166

“Care, custody, or control,” 5.164

Claims-made policies, 5.4

Definition of, 5.89

Delay in completion, 5.92

Diminution in value, 5.90, 6.52

General liability, 5.87–97

Groundwater contamination as,
5.93

Insured’s property, 5.97

“Loaned to you,” 5.163

Loss of profits as, 5.95

—direct expenses, 5.95

Loss of use, 5.90

—fire suppression cost, 5.91

—not physically injured, 5.89,
5.90, 5.93, 5.167, 5.172

Misrepresentation and, 5.96

“Own, rent, or occupy,” 5.160,
5.161

Real property worked on, 5.165

Sale of property, 5.96

“Sell, give away, or abandon,”
5.162

Soil contamination as, 5.93

Subrogation, 10.46, 10.58

Tangible property, 5.23, 5.57, 5.84,
5.90, 5.93–96, 5.167, 5.169,
5.172, 5.194

Work incorrectly performed, 5.166

Property Insurance*See also* Automobile Liability
InsuranceAbsolute pollution and mold
exclusion, 6.37–40

Actual cash value, 6.45–.52

Aftermarket and salvaged parts,
6.51Additional living costs and loss of
rent (Coverage D), 6.8

All-risk policies, 6.4, 6.6, 6.10

—causation, 6.15–.21

—covered cause of loss, 6.32

Alteration coverage, 6.27

Appraisal, 6.68

Arson, 6.86–.99

Broad evidence rule, 6.47

—depreciation, 6.47

—market value, 6.47, 6.50

—obsolescence, 6.47

—replacement costs, 6.47

Business interruption coverage,
6.12

—use of business records, 6.12

—lost income, 6.12

- Cancellation, notice of, 12.38, 12.39
- Cattle, actual cash value of, 6.48
- Causation, 6.15–.21
- chain of, 6.19
 - contributing causes excluded, 6.19
 - direct loss, 6.16
 - efficient proximate cause, 6.16, 6.19
 - ensuing loss, 6.16, 6.18
 - evidence of, 6.52
 - multiple events, 6.16
 - occurrences, number of, 6.20
 - proximate cause analysis, 6.16
 - substantial factor test, 6.17
 - two-causation theory, 6.16, 6.17
- Collapse coverage, 6.24
- Cooperation of insured, 12.31
- Corrosion exclusion, 6.43
- Coverage types, 6.7–.14
- Crops, actual cash value of, 6.48
- Damages during policy period, 6.5
- Defect exclusion, latent, 6.24, 6.43
- Deterioration exclusion, 6.43
- Diminished market value, 6.50
- Direct physical loss requirement, 6.4, 6.8
- Earth movement exclusion, 6.19, 6.41
- Ensuing loss clause, 6.18, 6.33–.36
- Exclusions, 6.28–.44
- absolute pollution, 6.37–.40
 - earth movement, 6.41
 - ensuing loss, 6.18, 6.33–.36
 - governmental action, 6.44
 - mold, 6.30–.32, 6.37–.40
 - pollution, 6.42
 - rust, 6.43
 - water damage, 6.29
- Expert testimony, 6.52, 6.67, 6.95, 6.99
- Explosion coverage, 6.25
- External cause, 6.6, 6.16, 6.17
- Fixtures coverage, 6.11
- Forgery coverage, 6.27
- Fortuity, 1.21, 6.6
- Function of, 6.3
- Governmental action exclusion, 6.44
- Hail coverage, 6.23
- Independent concurrent cause rule, 6.17
- Insurable interest, 6.60–.66
- Liability insurance compared, 6.3
- Mold exclusion, 6.30–.32, 6.33–.36
- absolute pollution and, 6.37–.40
 - ensuing loss provisions, 6.33–.36
- Mortgage clause, 6.74–.85
- amount owed to mortgagee, 6.80
 - arson defense, 6.97
 - assignment of mortgage to insurer, 6.77
 - independent contract, 6.76
 - limitations on rights of mortgagee, 6.81–.84
 - loss-payee, 6.78
 - mortgagee not listed on policy, 6.85
 - payment of proceeds, 6.79
 - statutory basis, 6.75
- New York rule, 6.49
- Newly acquired location, 6.13
- Occupancy requirement, 6.57, 6.67
- Occurrences, 6.9
- Out of pocket, insured not, 6.49
- Perils covered, 6.4, 6.10, 6.22–.26
- Personal property (Coverage C), 6.8
- Pollution exclusion, 6.37–.40, 6.42
- Pre-existing loss, 6.6
- Private structures (Coverage B), 6.8
- Rainwater, 6.29
- Replacement costs, 6.47, 6.68
- Residence (Coverage A), 6.8
- Rust exclusion, 6.43
- Statute of limitation, 6.69–.73
- Surface water, 6.9
- Theft coverage, 6.26
- Theft of money, 6.14
- Valued policy law, 6.53–.59
- Water damage exclusion, 6.29

Windstorm coverage, 6.23
 Wisconsin rule, 6.49

Public-Trust Doctrine, 5.194

Punitive Damages

Bad faith, 8.29, 9.41
 General liability, 5.254
 UM and UIM insurance, 3.87,
 4.108

R

**Reasonable Expectations
 Doctrine**

Generally, 1.12–.23
 Conditional receipts, 12.58
 Distribution of losses and, 1.22
 Equity and, 1.21
 Fortuity and, 1.21
 Intentional acts, 1.19, 1.20, 1.21
 Objective intent, 1.16, 1.18, 1.19,
 1.23
 Other jurisdictions, 1.16
 Public policy and, 1.21
 Subjective intent, 1.16, 1.18–.20,
 1.23
 —contemplation of the parties,
 1.20
 —reasonable-insured standard,
 1.20
 Wisconsin, 1.17–.20

Recall of Products

CGL exclusion, 5.173

Reducing Clauses

Ambiguity in, 4.73–.74, 4.76–.80,
 4.82
 “Amounts otherwise payable,” 3.76
 Case law, 3.74, 3.76, 4.72–.81,
 4.84–.88
 Contextual ambiguity, 3.63, 4.67,
 4.71, 4.76–.80, 4.82
 —context of entire policy, 4.77

—endorsements, 4.77
 —“fully and fairly explained,” 4.76
 —hypotheticals not used, 4.80
 —organizationally complex, 4.76,
 4.80
 —“user friendly,” 4.76
 Contract, based on, 3.74
 Damages sustained but not
 recovered, 3.71
 Future medical expenses, 4.83
 Legally responsible, 3.74
 Legislation, 3.15, 3.71–.75, 4.71
 “Limit of liability,” 3.76
 “Occurrence” clause, 3.75
 Responsible party, 3.74
 UIM insurance, 4.7, 4.68–.88
 UM insurance, 3.7, 3.68–.76
 Worker’s compensation, 3.15, 3.69,
 3.71, 3.73, 3.76, 4.83

Reformation of Policy

Generally, 1.60–.70
 Burden of proof, 1.64
 Conduct of agent, 1.65
 Election by insured, 1.69, 13.33
 Equitable action, 1.63
 Explanation of contract not
 required, 1.67
 Failure to read policy, 1.68, 12.5
 As remedy, 13.33
 Requirements, 1.62
 Statements required, 1.66
 Summary judgment, effect on, 1.70

Reinsurance

Generally, 1.6, 11.19
 Brokers, 13.3
 Managers, 13.3
 Stop-loss insurance and, 1.6

Reinsurance Brokers

Generally, 13.3

Reinsurance Managers

Generally, 13.3

Relatives

See Family Members

Remedies of Insured

Generally, 13.32–.37
 Breach of contract, 13.33
 Damages, measure of, 13.37
 Disclosure of principal, 13.35
 Double recovery, 13.34
 Estoppel, 13.36
 Full compensation, 13.33
 Limitation, statute of, 13.33
 Lost premiums, 13.34
 Options available, 13.32–.37
 Reformation, 13.33

Renewal of Policy

See also Cancellation of Policy

Agent duty to maintain policy,
 13.23
 Lapse provisions, 11.53
 Less favorable terms, 11.49
 Right to renew, 11.48

Reservation-of-Rights**Agreements**

Need for, 7.96

Residents of the Household

See also Family Members

Automobile insurance and, 2.37–
 .45
 Children as, 2.43
 Domicile, 2.39
 Factors determining residency, 2.40
 Family members as, 2.42
 Household, 2.39
 “In the care of” an insured, 2.45
 Marital status, 2.41
 Relative, 2.42
 “Reside primarily with”, 2.44

Responsibilities of Insurance**Agents**

See Agents, Insurance

Responsibilities of Insurance**Companies**

See also Cancellation of Policy

Generally, 11.1
 Acts of agents, liability for, 11.66–
 .77
 —apparent authority of agent,
 11.72–.77
 —authority of agent, 11.68–.71
 —intermediary, 11.67
 —notice to agent, 11.66, 12.18
 Applications, to act on within
 reasonable time, 12.58
 Damages
 —allocation of, 11.38
 —breach of contract, 11.139
 Defense costs, allocation of, 11.31–
 .37
 —primary insurer pays, 11.33
 —pro rata, 11.33, 11.36
 Direct action, 11.110–.117
 —effect of insurer’s default, 11.117
 —insured as party, 11.112
 —liability limits not affected,
 11.116
 —parties in lawsuit named to jury,
 11.114
 —policies delivered or issued for
 delivery in Wisconsin, 11.111
 —procedural statutes, 11.111
 —relation back of pleadings,
 11.115
 —status when action commenced,
 11.113
 —statutory law, 11.111
 —substantive statutes, 11.111
 Escape clause, 11.6
 Estoppel, 11.82
 —coverage clause, 11.83
 —creating coverage prohibited,
 11.83
 —duty to defend and, 11.100
 —expanding coverage prohibited,
 11.83
 —forfeiture clause, 11.84

- medical examination, 11.102–.109
 - pleading requirements, 11.91
 - policy limits, 11.92–.94
 - statute of limitation, 11.86–.90
 - Excess clause
 - other excess clause and, 11.5
 - pro rata clause and, 11.4
 - Indemnification payments for multiple policies, 11.40–.42
 - all sums, 11.41
 - pro rata, 11.41
 - “time on risk,” 11.41
 - Wisconsin, 11.42
 - Inspections, 11.140
 - Interest payment, 11.125–.138
 - Loy* requirements, 11.27
 - Obligations between insurers, 11.9–.42
 - allocation of damages, 2.66, 11.38
 - allocation of defense costs, 11.31–.37
 - allocation of indemnification payments for multiple policies, 11.40–.42
 - duty of excess insurer, 11.28–.30
 - duty of primary insurer to excess insurer, 11.21
 - Loy* release and, 11.21–.27
 - types of policies, 11.10–.20
 - Other-insurance clauses, 11.2–.8
 - Property claims, 11.8
 - Renewal of policy, 11.48
 - lapse provisions, 11.53
 - less favorable terms, 11.49
 - Statute of limitation
 - estoppel, 11.86–.90
 - extended by payment, 11.118–.124
 - Umbrella coverage, 11.7, 11.18
 - Waiver, 11.81
 - coverage clause, 11.84
 - forfeiture clause, 11.84
 - pleading requirements, 11.91
 - policy limits, 11.92–.94
 - reservation of rights, 7.91, 11.95–.101
 - statutory limits for municipalities, 11.85
- Responsibilities of Insureds**
- See also* Misrepresentation
- Generally, ch. 12
- Arson claim, examination under oath, 6.91
- Cooperation, 9.47, 12.22–.34
- “assume any obligation,” 12.34
 - assumption of liability in contract or agreement, 12.34
 - attendance at trial, 12.30
 - attorney fees, 12.32
 - automobile insurance, 12.26–.29
 - collusion, 12.29, 12.32
 - conspiracy, 12.32
 - contractual duty, 12.27
 - contribution claims and, 12.28
 - discovery, 12.33
 - falsifying witness, 12.27
 - “incur any expense,” 12.34
 - privileged information, 12.31, 12.33
 - financial information, 12.31
 - material harm not required, 12.29
 - material question, 12.31
 - noncooperation defense, 12.26–.29
 - prejudice, 12.25, 12.29
 - property claims, 12.31
 - voluntary payment, 12.34
 - willful falsification, 12.24
- Good faith, 9.47, 12.74
- Notice, 7.8–.20, 12.11–.18
- as soon as reasonably possible, 12.12
 - as soon as practicable, 12.12, 12.14
 - as soon as practical, 12.14, appendix E
 - belief in coverage, 12.14
 - burden of proof, 12.13

- notice-only rule, 7.17
- one year, 12.13
- participant in an accident, 12.14
- prejudice, 12.16
- reasonable time, 12.14
- sophisticated business, 12.14
- of suit, 12.15
- Proof of loss, 9.24, 12.19–.21
- Protection of property, 12.75
- Read policy and applications, 1.68, 12.2–.10, 13.21
- false answer, 12.10
- life insurance policies, 12.6
- multi-page, esoteric document, 12.6
- negligence and, 12.10
- presumption that insured understood, 12.9
- reformation and, 12.5
- status of insured, 12.7
- technical terms, 12.6
- “tendered for settlements” language, 12.6
- time, examine within reasonable, 12.4
- type of policy, 12.6
- Underinsured motorists, settlement by, 4.100

Riders

Insurance contracts, 1.42

S

Secondary insurance

See Excess Insurance

Self-Funded Plans

Subrogation, 10.136

Self-Insurance

Generally, 11.12

As insurance, 11.5, 11.41

Settlement

- Affirmative duty to settle, 8.24
- Informing insured of offers, 8.17
- Offers, clarifying, 8.28
- Subrogation and, 10.77–.94
 - attorney fees, 10.90–.93
 - collateral-source rule, 10.94
 - fund doctrine, 10.91
 - indemnification agreements limited, 10.82–.85
 - notice to parties, 10.79, 10.89
 - rights, protection of, 10.78–.81
 - subrogation claims, 10.86–.89
- UIM insureds, 4.99–.103
- Vogt* notices, 4.101

Slander of Title

Coverage, 5.226

Specific Excess Coverage

Generally, 11.14, 11.16

Spoilation of Evidence

General, 10.104–.111

Stacking

- Antistacking legislation, 2.72, 3.60–.66, 4.52, 4.67
- Automobile liability insurance, 2.70–.76
- Case law, 2.73–.76, 3.62–.67
 - pre-1995 cases, 2.73–.76, 3.67, 4.48–.51
- Definition of, 3.57, 4.66
- Definition of coverage, 2.75
- Different policies, different insureds, 3.66
- Drive-other-car exclusion, 2.72, 3.57, 3.61, 3.77–.79
- Effective dates, 3.79, 4.67
- Highest coverage available, 3.63
- Highest single limit, 3.61, 3.63
- Insurance companies, 3.67
- Interpolicy stacking, 3.67
- Intrapolicy stacking, 3.67
- Legislation, 2009, 3.14

- Occupant insureds and, 3.40, 4.42
 Other-insurance clauses, 3.64, 11.3
 Policy language, 2.71
 Statutes, 2009, 3.59
 UIM insurance, 4.42, 4.48–.52, 4.65–.67
 UM insurance, 3.40, 3.56–.67
- Stare Decisis**, 3.47
- Statutes of Limitation**
 Estoppel, 11.86–.90
 Fire insurance claims, 6.69–.73
 First-party bad-faith claims, 9.44
 Payment extending, 11.118–.124
 Property insurance claims, 6.69–.73
 Remedies against agent, 13.33
 Subrogation, 3.84, 10.20, 10.69–.76, 10.100, 10.156
 Tolling, 10.71, 10.74, 10.75
 UIM insurance, 10.156
 UM insurance, 3.81–.84, 10.156
 Waiver of, 6.73
- Subrogation**
 Generally, ch. 10
 Attorney fees, 10.59, 10.90–.93, 10.147
 Bodily-injury claims, 10.47
 Collateral-source rule and, 10.30, 10.70, 10.94, 10.139
 Contractual subrogation, 10.26
 Contribution and, 10.18–.21, 12.28
 —definitions, 10.19
 —health maintenance organizations, 10.21
 —statute of limitation, 10.20
 Contributory negligence, 10.49–.57
 Conventional subrogation, 10.26
 Court costs, 10.102
 Definition of, 10.3, 10.19
 Equal equities, 10.12
 Equitable subrogation, 10.25, 10.28–.32, 10.107–.111
 Equity based, 10.8, 10.56
 ERISA, 10.140–.148
 Excess insurers and, 11.26
 Governmental payments, 10.115–.148
 Handling claim, 10.96–.101
 Indemnification and, 10.18–.21
 Indemnity contracts, 10.29, 10.32, 10.82–.85
 Independent claims, 10.75
 Insurance agent, 13.34
 Investment contracts, 10.29, 10.31
 Involuntary plaintiffs, 10.103
 Legal subrogation, 10.25, 10.28–.32
 Liability insurers, 10.14
 Limits on, 10.33–.44
 —amount paid, 10.40
 —cost adjustment, 10.41
 —default judgments, 10.43
 —multiple damages, 10.37
 —preverdict interest, 10.42
 —rights after payment, 10.38
 —rights of subrogee, 10.34–.36
 —separate limits, 10.39
 —unnecessary medical treatments, 10.44
 Loy release and, 11.26
 Made-whole doctrine, 10.55
 —agreements between insurer and insured, 10.93
 —attorney fees and, 10.59
 —bodily injuries, 10.47
 —contributory negligence, 10.49–.57
 —funds to pay both insured and insurer, 10.62
 —government claims, 10.138
 —property damage, 10.46, 10.58
 —*Rimes* hearing, 10.85
 —wholeness defined, 10.48
 —wrongful death claims, 10.61
 Medicaid, 10.128–.134
 Medical malpractice, 10.16
 Medicare, 10.116–.127
 Mortgagee, claim of, 10.17
 Motor vehicle medical payments coverage, 3.4, 10.157

Municipalities, 10.15
 Negligence and, 10.138
 Notice, 10.79, 10.88, 10.89
 —actual or constructive, 10.88
 Obligations of insured, 10.112–
 .114
 Obligations of parties asserting,
 10.95–.111
Pierringer release, 10.60
 Preservation of evidence, 10.104–
 .111
 —best evidence, 10.105
 —dismissal, 10.106
 —duty, 10.105
 —equitable subrogation, 10.107–
 .111
 —fire investigation, cause and
 origin, 10.105, 10.110
 —*Golke*, 10.106, 10.111
 —notice, 10.106–.111
 —spoliation, 10.107–.111
 Priorities, 10.45–.62
 Prohibited, 10.63–.68
 —against insured, 10.65–.68
 —against public policy, 10.64
 Property claims, 10.46, 10.58
 Purposes of, 10.4–.7
 Self-funded plans, 10.136
 Separate releases, 10.77–.94
 Settlements, 10.77–.94
 —attorney fees and, 10.90–.93
 —collateral-source rule and, 10.94
 —indemnification agreements
 limited, 10.82–.85
 —notice to parties, 10.79, 10.88,
 10.89
 —rights, protection of, 10.78–.81
 —subrogation claims, 10.86–.89
 Spoliation, 10.104–.111
 —sanctions, 10.104–.107
 Statute of limitation, 10.20, 10.69–
 .76, 10.100, 10.156
 Subrogees, rights of, 10.34–.36
 Tortfeasors and, 10.11
 Types of, 10.22–.32

UIM insurers, 3.84, 10.13, 10.149–
 .156
 UM insurers, 10.13, 10.149–.156
 Volunteers and, 10.9
 Waiver of, 10.99, 10.155

Surplus-Lines Insurance

Generally, 11.20, 11.61
 Agents, 13.3
 Brokers, 13.3

T

Third-Party Beneficiaries

Generally, 1.71

Third-Party Claims

Generally, ch. 8
 Application of standard, 8.21–.31
 Attorney fees, 8.29
 Bad faith, 8.3, 8.11–.20, 9.8
 Burden of proof, 8.20
 Communication with insured, 8.16,
 8.17, 8.26
 Coverage disputed, 8.27
 Diligence of investigation, 8.15
 Equality-of-consideration test, 8.9
 Failure to obtain release, 8.25
 Good-faith standard, 8.3, 8.8, 8.12–
 .18, 8.36
 Gross disregard, 8.5
 Insured's high deductible, 8.30
 Multiple claimants, 8.33–.37
 Multiple insureds, 8.38
 Negligence not standard, 8.8, 8.19
 Nondelegable duty, 8.23
 Punitive damages, 8.29
 Settlements, 8.24, 8.28
 Standards of other jurisdictions,
 8.4–.10
 Standing of third party, 8.32
 Wisconsin standards, 8.11–.20

Title Insurance

First-party bad-faith liability, 9.10

Trade-Dress Infringement

Advertising injury, 5.244

Transportation, Wisconsin**Department of**

Contract carrier filings, 2.92

SR-21 filings with, 2.88

U**UIM***See* Underinsured Motorist Insurance (UIM)**UM***See* Uninsured Motorist Insurance (UM)**Umbrella Coverage**

Generally, 11.7, 11.18

Drop down provision, 11.7

UIM coverage and, 4.57

UM coverage and, 3.27–.29

Unconscionability

Conditional receipts, 12.58

Underinsured Motorist Insurance (UIM)

Generally, 4.1

Amounts payable, 4.86

Apportionment of funds, 4.105

Arbitration, 3.83, 3.91–.97

Bad faith, 9.26

Business policies, 4.35

Car rental agencies, 4.33

Claims against tortfeasors, 4.98–.105

Class I insureds, 4.37, 4.38

Class II insureds, 4.37, 4.39–.43

Class III insureds, 4.37, 4.44

Collateral-source rule and coverage, 4.111

Communication of availability of, 13.18

Conditional advance payment to UIM insured, 4.104

Coverage, 4.20–.35

Covered auto, 4.18, 4.35, 4.37, 4.40

Damages, 4.13, 4.24

—uncompensated damages, 4.70

Defending claims, 4.112

Definition of, 4.13, 4.22–.25, 4.54

Derivative claims (Class III insureds), 4.37, 4.44

Double recovery, 3.71, 4.70

Duplicate payments, 4.94–.97

Employee of insured, 4.45

Employee-user of vehicle, 4.43

Exclusions

—duplicate payments, 4.94–.97

—motor vehicle with less than four wheels, 3.39

—owned by not insured vehicles, 4.89–.92

Exhaustion of liability policies, 4.93

Family members (Class I insureds), 4.37–.38

Fully compensated, 4.24, 4.70, 4.83, 4.87

Garage policies, 4.35

History of, 4.21

Hunting from vehicle, 4.58

Insured persons, 4.36–.45

Interest for late payments, 3.86

Interest payments, 11.136

Legally entitled to recover, 4.24, 4.26

Legislation, 2009, 4.10–.19, 4.24, 4.30, 4.53, 4.70

Limits conformed to law, 4.32

Limits of liability, 4.80, 4.86, 4.87, 4.97

Minimum limits, 4.12

Multiple injured parties, 4.60

Multiple liability policies, 4.55

Multiple UIM policies, 4.56

Multiple underinsured motorists, 4.64

Municipalities, 4.34

Named insureds, 4.37–38
 Notice requirement, 3.20, 4.8, 4.27–31
 Occupant insureds (Class II insureds), 4.37, 4.39–43
 Omnibus clause, not applicable, 4.43
 Out-of-state minimum limits, 4.62
 Owned but not insured vehicles, 4.89–92
 Per-person/per-accident limit, 4.59
 Permission to drive and, 2.13
 Policy form, ISO, appendix F, G
 Punitive damages, 3.87
 Reducing clauses, 3.7, 4.7, 4.68–88
 Required written offers, 4.30
 Settlement by insured, 4.99–103
 Single injured insured and multiple UIM coverages, 4.61
 Single per-accident limit, 4.59
 Stacking, 4.13, 4.24, 4.65–67
 —Class II insureds, 4.42
 —definition of, 4.67
 —legislation, 4.66–67
 —qualification by, 4.48–52
 Statutes of limitation, 3.81–84, 10.156
 Subrogation, 10.13, 10.149–156
 Territorial limitations, 3.85
 Umbrella policy and coverage, 4.57
 Underinsured motor vehicles, 4.46–64
 —definition of, 4.13, 4.24, 4.47
 —fully compensate the insured, 4.24
 —stacking to qualify, 4.48–52
 Vehicle oriented, 4.41
Vogt notices, 4.101
 Waiver, 10.155
 Windfall, 4.70
 Wrongful death claims, 3.89

Underwriters

Generally, 1.5, 1.32, 13.52

Unfair Competition

Advertising injury, 5.241

Uninsured Motorist Insurance (UM)

Generally, 3.2–9
 Antique cars, 3.52
 Arbitration, 3.91–97
 —authority of arbitrators, 3.96
 —costs, 3.95
 —issues of law, 3.94
 —judicial estoppel, 3.92
 —mandatory arbitration clauses, 3.92
 —presumption of impartiality, 3.96
 —sanctions, 3.97
 —waiver, 3.93
 Bad faith, 9.26
 Car rental agencies, 3.23
 Claims of UM insured, 3.80
 Class I insureds, 3.33–36
 Class II insureds, 3.36, 3.37–41
 Class III insureds, 3.42
 Commercial policies, 3.16, 3.25
 —fleet policies, 3.24, 3.25, 3.34
 Covered autos, 3.16, 3.25
 Derivative claims (Class III insureds), 3.42
 Dog tethered in vehicle, 3.51
 Double coverage, 3.38
 Double recovery, 3.71, 3.76
 Duplicate payments, 3.98, 4.94–97
 Exclusions
 —analysis, two-step, 3.21
 —owned but not insured vehicles, 3.77–79
 —validity of, 3.21
 Family members (Class I insureds), 3.32–36
 Fully compensated, 3.71, 3.76
 Government-owned vehicle, 3.5, 4.5
 Injured person not insured, 3.36
 Insured persons, 3.31–43
 Intentional acts, 3.89
 —“accident” and, 3.88

- Interest for late payment, 3.86
- Interest payment, 11.136
- Legally entitled to recover, 3.22, 3.71
- Legislative history
 - generally, 3.19
 - 2009 legislation, 3.10–.17
- Mandatory coverage, 3.18–.29
- Minimum limits, 3.4, 3.20, 4.4
- Motor vehicle handlers, 3.16
- Motor vehicles, defined, 3.50
 - dune buggy, 3.50
 - “farm type tractor,” 3.50
 - land motor vehicle, 3.50
 - snowmobile, 3.50
 - “use off public roads,” 3.50
- Municipalities, 3.24
- Named insured, 3.33–.36
- Occupant insureds (Class II insureds), 3.24, 3.32, 3.34, 3.37–.41
- Occupy a vehicle, 3.39, 3.52
 - “in or upon,” 3.39
 - “entering into,” 3.39
 - “alighting from,” 3.39
- Omnibus clause, 3.26
- Owned but not insured vehicles, 3.77–.79
- Passengers, 3.26
- Permission to drive and, 2.13
- Personal and portable, 3.22, 3.24, 3.25, 3.38, 3.52
- Phantom motor vehicle, 3.5, 3.47, 4.5
- Policy form, ISO, appendix E
- Punitive damages, 3.87
- Purpose of coverage, 3.22
- Reducing clauses, 3.7, 3.15, 3.68–.76, 4.7
- Resident relative, 3.33–.36
- Road rage, 3.88
- Stacking, 3.40, 3.56–.67
 - antistacking legislation, 3.60–.66, 3.67
 - case law, 3.62–.67
 - definition of, 3.57
 - insurance companies, 3.67
 - interpolicy stacking, 3.67
 - intrapolicy stacking, 3.67
 - other-insurance clause, 3.64
 - pre-1995 cases, 3.67
 - single highest limit, 3.63
 - statutes, 2009, 3.59
 - statutes, 2011, 3.6, 3.58, 4.6
- Statute of limitation, 3.81–.84
- Subrogation, 10.13, 10.149–.156
- Tailgating vehicle, 3.97
- Territorial limitations, 3.85
- Umbrella policies, 3.27–.30, 3.43
- Uninsured motor vehicles, 3.44–.55
 - antique cars as, 3.52
 - definition of, 3.5, 3.22, 3.46, 3.49, 4.5
 - demolition derby, 3.55
 - designed for use off public roads, 3.46, 3.50, 3.55
 - dog tethered in, 3.51
 - driven without permission, 3.48
 - hit-and-run vehicles, 3.47
 - driver insured but vehicle is not, 3.54
 - “independent third party,” 3.13, 3.47
 - insolvency of insurer and, 3.49
 - legally entitled to recover damages, 3.22
 - “owner or operator,” 3.53
 - policy provisions, 3.46
 - statutory requirements, 3.45
 - truck and trailer, 3.53
- Use of vehicle, 3.88
- Vehicle oriented, 3.39
- Windfall, 3.59, 3.71, 3.76
- Worker’s compensation, 3.15, 3.69, 3.71, 3.73, 3.76
- Wrongful death claims, 3.89
- “Your covered auto” defined, 3.32

V

Valued Policy Law

Generally, 6.54
 Commercial use of building and,
 6.59
 Constructive total loss, 6.58
 Dwellings, 6.54, 6.56
 —rental property, 6.54, 6.56
 —residence, 6.54, 6.56
 Occupancy by person requirement,
 6.57
 Wholly destroyed property, 6.55

Vehicle Insurance

See Automobile Liability
 Insurance

Vogt Notices, 4.101

W

Waiver

Arbitration right, UM insurance,
 3.93
 Coverage clause, 11.84
 Duty to defend rights, 7.91
 Failure to defend, 7.66, 7.72
 Forfeiture clause, 11.84

Nonwaiver agreement, 11.99
 Pleading requirements, 11.91
 Policy limits, 11.92–.94
 Requirements, 11.81
 Reservation of rights, 7.91, 11.95–
 .101
 Statute of limitation, 6.73
 Statutory limits for municipalities,
 11.85
 Subrogation rights, 10.99, 10.155

Warranties

Generally, 12.52

Work, Damage to

CGL exclusion, 5.168–.171

Worker’s Compensation

Automobile liability insurance
 exclusion, 2.78
 First-party bad-faith liability, 9.11
 Reducing clauses, 3.15, 3.69, 3.71,
 3.73, 3.76, 4.83
 Uninsured motorist coverage and,
 3.15, 3.69, 3.71, 3.73, 3.76

Wrongful Entry

Coverage, 5.229