

Commercial Auto Insurance

Chapter Objectives

- Understand the purpose of the different commercial auto forms
- Understand the sections of the policy
- Understand the symbols that trigger the coverage
- Know the various coverages
- Understand the purpose of the various coverages under the policy
- Become familiar with the definitions
- Become familiar with the purpose of the endorsements
- Understand the purpose of the trailer interchange endorsement
- Know the garage liability sections and pay particular attention to the purpose of garagekeepers legal liability coverage

I. Introduction to Commercial Auto Insurance

There are four different types of commercial auto forms designed to cover the insured's business exposures. These are:

- The Business Auto Coverage Form
- The Garage Coverage Form
- The Truckers Coverage Form*
- Motor Carrier Form

***Note:** The Truckers Coverage Form was deleted by ISO in 2010. However, many testing vendors are still testing on this form. Therefore, it remains in this chapter. Those risks are now being covered by the Motor Carrier Form.

Businesses purchase liability (bodily injury and property damage) and property (physical damage) coverage for losses that may arise out of autos owned by and/or used in the business such as cars, trucks, trailers and buses. Virtually any type of licensed-for-road-use vehicle can be insured under the commercial auto forms. Garage policies are used for companies in various auto-related businesses such as dealerships, parking lots, gas stations, and auto repair shops.

II. The Business Auto Coverage Form

The Business Auto form is designed to insure all types of private passenger autos, pickups, vans and all sizes of trucks and trailers used on public roadways. This policy is not designed to cover vehicles covered under the Motor Carrier form such as trucks for hire, garage risks or public livery conveyances, taxis, limousines and buses. The Business Auto form is divided into the following sections:

- **Section I** – Covered Auto Symbols
- **Section II** – Liability Coverage
- **Section III** – Physical Damage Coverage
- **Section IV** – Business Auto Conditions
- **Section V** – Definitions

Business Auto Policy (BAP) - Section I – Covered Autos

A “covered auto” for each coverage in the policy is designated by a symbol, depending on the extent of coverage the insured purchases. A series of symbols are defined in Section I of the policy, as follows:

1. **Symbol 1** – Any auto
2. **Symbol 2** – Owned autos only
3. **Symbol 3** – Owned private passenger autos only
4. **Symbol 4** – Owned autos other than private passenger autos
5. **Symbol 5** – Owned autos subject to no-fault benefits
6. **Symbol 6** – Owned autos subject to compulsory uninsured motorists law
7. **Symbol 7** – Specifically described autos only
8. **Symbol 8** – Hired autos only
9. **Symbol 9** – Non-owned autos only
10. **Symbol 19** – Mobile equipment subject to compulsory auto financial responsibility requirements

On the Declarations page, a symbol appears next to each coverage being provided to indicate the autos that will be considered “covered autos” for that coverage. Symbol 1 would provide the broadest coverage and is usually only applied to liability because it includes “any auto.”

Symbol 7 provides more narrow coverage; the coverage only applies to “specifically described autos only.” For any coverage with Symbol 7, an insured has only 30 days to report newly acquired vehicles to the insurer in order to maintain that coverage.

Symbol 8, “hired autos only” designates liability and/or physical damage coverage only. It is only used for autos the **insured has leased, hired, rented or borrowed**. It does not include autos rented or borrowed from employees or members of their households.

Symbol 9, “non-owned autos” can provide coverage as a result of an employee using their personal vehicle on company business. In this circumstance, if an accident occurs, both the driver (the employee) and the employer can be held liable. Non-owned auto coverage protects

the employer from such liability but **does not** cover the employee who owns and is driving that vehicle. Symbol 9 is available only in conjunction with liability coverage.

Business Auto Policy (BAP): Section II – Liability Coverage

Section II of the Business Auto Policy covers legal liability of the insured up to the liability limit, plus unlimited defense costs and supplementary payments for “auto accidents” which occur during the policy period. Pollution damage will be covered if pollution is caused by an accident, and involved a substance that was necessary for normal functioning of the auto. Consider this example: A covered vehicle is involved in an accident causing the gas tank to rupture spilling gas on the highway. The Business Auto Policy would pay to cleanup the pollution caused by the gas spill since it was caused by a substance that was used for the normal operation of the vehicle and spilled as a result of the accident. However, some states have eliminated this pollution limitation and require blanket coverage for pollution.

The following are considered “insureds” under the BAP:

- Named insured while owning or operating a covered auto;
- Others, including any employee, while using a covered auto with permission;
- Others who become liable for the conduct of an insured; and
- Employees while loading or unloading property to or from a covered auto.

The following are NOT covered under the BAP:

- A person working in an auto-type business unless that is the business of the insured.
- Persons other than an employee or lessee while moving property to or from a covered auto (loading and unloading);
- The owner of a hired or borrowed auto (this exception does not apply to the owner of a hired or borrowed trailer attached to the insured’s covered vehicle); and
- Partners and members of a LLC are not insureds for any auto owned by the partner or member or for any auto owned by a member of their households. For example: a partner that borrows his spouse’s car for company business is not an insured under the Business Auto coverage form while driving that car on company time.

Supplementary Payments: These payments do not reduce the limit of liability

- All expenses we incur;
- Up to \$2,000 for the cost of bail bonds including bonds for related traffic offenses required because of an accident. The insurer is not required to furnish the bond;
- Bonds to release attachments in any suit the insurer defends;
- Reasonable expenses incurred by the insured including loss of earnings up to \$250 per day; and
- Accrued interest in any judgment including prejudgment interest until the judgment or settlement is paid.

Out of State Coverage Extensions:

- Increases the limit of liability coverage to meet the limits specified by compulsory or financial responsibility laws of the jurisdiction where the covered auto is being used including no fault coverage.
- Applies when the covered auto is away from the state where it is licensed

Business Auto Liability Exclusions:

- Liability assumed under any contract or agreement, except for liability assumed under an “insured” contract as defined in the policy definitions;
- Employee injuries; employer’s liability or responsibilities under worker compensation or similar law or the liability of one employee to another in the course of employment;
- Also excluded are claims for consequential damages brought by relatives of an injured fellow employee;
- Damage to property owned or transported by or in the care, custody or control of the insured;
- Liability resulting from the handling of property, before it is moved from the place where it is accepted by the insured for movement to a covered auto, or after its removal from a covered auto to the place where it is finally delivered by the insured;
- Liability from the movement of property by a mechanical device (other than a hand truck) that is NOT attached to a covered auto;
- Liability for pollution or contamination, unless arising from the normal operating fluids of the vehicle (transmission fluid, gasoline, oil, etc.);
- Liability arising **out of the operation** of certain mobile equipment such as cherry pickers, air compressors, pumps or generators;
- Expected or intended injury;
- Completed operations, meaning the insured’s liability for bodily injury or property damage arising out of the insured’s work after it has been completed or abandoned.
- Injuries or damage arising from the use of covered autos in (or while practicing for) organized racing, stunting or demolition contests; and
- War.

Limit of Insurance:

The limit of insurance shown on the Declarations page for liability coverage is the most that will be paid for all damages and covered pollution costs resulting from any one accident regardless of the number of covered autos, insureds, premiums paid, claims made or vehicles involved in the accident.

Business Auto Policy (BAP): Section III - Physical Damage Coverage

The physical damage coverage of the policy covers accidental direct damage to covered autos and their equipment, as follows:

1. **Collision** – Overturn of the covered vehicle or collision with another object.
2. **Comprehensive** – Any loss, **other than collision** or overturn that is not otherwise excluded. This would include glass breakage or hitting an animal.
3. **Specified Causes of Loss** – Is similar to Comprehensive Coverage but is more limited. Specified perils are named peril coverages which include the following: fire, lightning, explosion, theft, windstorm, hail, earthquake, flood, mischief or vandalism, and the sinking, burning, collision or derailment of a conveyance transporting the covered auto (such as a ship). Note that glass breakage and falling objects are not covered perils.

Coverage Extensions:

- a. **Transportation Expenses** - The insurer will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by the insured because of the total theft of a covered auto of the private passenger type. The insurer will pay only for those covered autos for which the insured carries either Comprehensive Coverage or Specified Causes of Loss Coverage. The insurer will pay for temporary expenses incurred during the period beginning **48 hours after the theft** and ending, regardless of the policy's expiration, when the covered auto is returned to use or the insurer pays for its loss.
- b. **Loss of Use Expenses** - For Hired Auto Physical Damage, the insurer will pay expenses for which an insured becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. Coverage of \$20 per day up to a maximum of \$600 is available. The insurer will pay for loss of use expenses if caused by:
 - Comprehensive Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered auto;
 - Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered auto; or
 - Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered auto.

Physical Damage Exclusions

The physical damage section of the Business Auto Policy excludes coverage for loss or damage:

1. Caused by or resulting from nuclear hazards, war or military action;
2. To any covered auto while used in, or being prepared or practicing for, any professional or organized racing or demolition contest or stunting activity;
3. Caused by or resulting from wear and tear, freezing, mechanical or electrical breakdown, blow-outs, punctures or other road damage to tires. As an example, a tire blows out causing the pickup truck to swerve and strike the cement highway divider. The policy would pay for the collision damage caused by striking the divider but not pay for the blown out tire. However, if the blowout or puncture is a result of covered loss, the tire would be covered. For example: An insured's pickup truck slides on the snowy road and strikes the guardrail causing a puncture to the tire and other body damage. The damage to the tire is covered as a result of the accident. This exclusion does not apply if the damage is caused as a result of the entire vehicle being stolen;
4. To tapes, records, disks, or other similar devices designed for use with audio, visual, or data electronic equipment;
5. To equipment used for radar or laser detection;
6. To any electronic equipment and related accessories that receives or transmits audio, visual, or data signals and that is not designed solely for the reproduction of sound. However, **this exclusion does not apply to any of the following:**
 - Sound reproduction equipment and accessories permanently installed in the covered auto, or such equipment if it is removable from a permanently installed housing unit and is designed to be operated solely by use of power from the auto's electrical system;
 - Electronic equipment that is necessary either to the normal operation of the vehicle or the monitoring of the vehicle's operating system;
 - Electronic equipment that is an integral part of the same unit housing any sound reproducing equipment, and is permanently installed in the opening of the dash or console used by the manufacturer for the installation of a radio; and
7. To diminution in value due to the covered vehicle being involved in an accident.

Note: The **Limit of Insurance** provision states that, in the event of a total loss, depreciation and physical condition will be considered when determining actual cash value. If a repair or replacement results in better than like kind or quality, the amount of the betterment is not covered.

\$1,000 is the maximum payable for electronic equipment that is permanently installed in the auto in a location that is **not normally used** by the auto maker for such equipment. As an

example, an insured removes the rear seat and installs a \$5,000 speaker system in its place. If damaged in a covered accident, the maximum payable would be \$1,000 for the speaker system.

Payments under physical damage coverage will be reduced by the applicable deductible for that coverage shown in the Declarations.

Business Auto Policy (BAP): Section IV – Conditions

The Conditions section of the BAP includes the most common conditions. Common conditions listed are the duties of the insured following a loss, subrogation, liberalization, policy periods and coverage territory. (Note that Mexico is not within the coverage territory of the standard policy.)

The premium audit condition specifies that the due date for the final or retrospective premium is the one shown on the bill sent to the first named insured.

The loss payment/physical damage coverages condition states that a loss payment will include any applicable sales tax.

These forms provide worldwide liability coverage for private passenger autos the insured hires, leases, rents, or borrows without a driver **for a period of 30 days or less**. The insured's liability must be determined in a settlement agreed to by the insurer or in a suit filed in the United States or its territories or possessions, Puerto Rico or Canada.

Business Auto Policy (BAP): Section V – Definitions

This section of the BAP gives the full meaning of terms included within the policy. These terms include: "accident", "auto", "bodily injury", "loss", "trailer," etc.

An **auto** is a land motor vehicle, trailer or semi trailer designed for travel on public roads. It generally does not include mobile equipment. An exception is made under the policy's liability coverage when mobile equipment is being towed or carried by a covered auto. This provision fills an insurance gap, because the Commercial General Liability policy excludes coverage for mobile equipment while it is being transported by an auto that is owned or operated by an insured. Other exposures arising out of mobile equipment are covered under Commercial General Liability insurance.

Bodily injury means bodily injury, sickness or disease, including death resulting from any of these.

Property damage means damage to or loss of use of tangible property.

Covered Pollution Cost or Expense means costs arising out of any order by a government authority demanding that the insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or respond to or assess the effects of pollutants. It does not include the costs arising out of the escape of pollutants that are the property being transported or towed

by, handled into, onto or from the covered auto, or otherwise in the course of transit by the insured, or being stored, disposed of, treated, or processed in or on the covered auto. Also excluded are pollutants released before the property is moved to the place where they are accepted by the insured for movement into the covered auto, and after the pollutants are delivered by the insured. This **exclusion does not** apply to fuels, lubricants, fluids, exhaust gases, or other pollutants necessary for or resulting from the normal operation of a covered auto or its parts.

Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Diminution of value means an actual or perceived loss in market or resale value that results from a direct, accidental loss.

Temporary worker is a person who is furnished to the insured to substitute for a permanent employee who is on leave or to meet seasonal or short-term workload conditions.

Accident - With commercial auto coverages an “accident” includes **continuous or repeated exposure** to the same conditions resulting in “bodily injury” or “property damage.”

Business Auto Endorsements

The following coverages can be added to the Business Auto Policy (BAP) by endorsement:

1. **Uninsured Motorist** – Pays the insured and occupants of the insured vehicle against bodily injury and property damage which they are legally entitled to recover resulting from an auto accident with:
 - An uninsured motorist;
 - Insureds carrying less than a financially responsible amount of coverage;
 - Hit and run drivers; and
 - Insured who’s insuring company denies coverage or becomes insolvent.
2. **Underinsured Motorist** – Provides coverage for the insured when he is involved in an accident with a driver who has auto liability insurance but the limit of this insurance is not sufficient to pay for the insured’s damage. This coverage allows the insured to go back against his own policy to collect sums the other driver is legally liable to pay for bodily injury or property damage.
3. **Medical Payments and/or Personal Injury Protection (PIP)** - Payment for reasonable and necessary expenses for medical, chiropractic, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses resulting from the accident and incurred **within three years** after the date of the accident. This coverage is for the named insured and for relatives who are members of his household and anyone else other than an employee.

4. **Drive Other Car Coverage** - This endorsement extends the commercial auto coverage to insure the non-business exposures of named individuals who may not own an automobile and may not carry personal auto insurance. This endorsement changes the liability coverage to insure the named individual and spouse while using any non-owned auto for both business and personal use. It changes the physical damage coverage to make any non-owned private passenger vehicle a covered auto when used by the named individual or spouse.
5. **Individual Named Insured** – This endorsement may be used to add an individual and his or her family members to business auto insurance. It is used primarily when the insured business wants to include that individual's owned auto to the business auto policy.
6. **Employees As Additional Insureds** – If a business has broad coverage for all autos, it would be covered in any suit arising out of an accident involving owned, hired, borrowed, or nonowned autos, including autos owned by employees while used for business purposes. Although the employees are insured under the Business Auto Liability section while driving autos owned by the business, they **are not** insured while driving their own cars in the course of business. If a suit against a business also named an employee as the driver and owner of a vehicle, the Business Auto coverage form would only protect the business. If the employee had Personal Auto coverage, it would provide some protection, but claims resulting from a business-related accident might involve amounts well above the employee's coverage limits. Employees can be protected under the Business Auto coverage form with this endorsement. It states that any employee is an insured while using an auto the business does not own, hire or borrow when the autos are used in the business or personal affairs of the named insured. This coverage insures employees for the business use of their own autos or autos owned by family members. It does not protect other family members who may own a vehicle being used by an employee.
7. **Additional Insured/Lessor Endorsement** – Leased vehicles can be considered owned vehicles for coverage purposes by attaching this endorsement.
8. **Specified Hired Auto** – This endorsement may be used to add coverage for specified hired autos as if they were covered autos owned by the named insured. When attached to a policy, the hired autos scheduled in the endorsement will be treated as if they were covered autos owned by the named insured.
9. **Mobile Equipment Endorsement** – When this endorsement is attached, mobile equipment is considered a covered auto.

III. Garage Form

This coverage is very similar to the Commercial General Liability policy, covering the premises/operations, products/completed operations hazards as well as providing automobile coverage liability.

Automobile-type business including car dealerships, service stations, valet services and parking garages/lots are eligible to be covered under the Garage Policy. These types of businesses have the property of customers in their care, custody and control, which is an exclusion under the Business Auto Policy. Separate garagekeepers coverage must be added to cover damage to customers' vehicles in the insured's care custody or control. These types of businesses also have "garage operations" exposures that are covered under the Garage Policy.

Garage Policy: Section I – Covered Autos

Garage coverage applies only to those autos that are identified as "covered autos" in the Declarations of the form. The "covered auto" symbols in the Garage Policy are similar to those used for the Business Auto Policy. The symbols start at 21 and are as follows:

21. Any auto;
22. Owned autos only;
23. Owned private passenger autos only;
24. Owned autos other than private passenger autos only;
25. Owned autos subject to no-fault benefits;
26. Owned autos subject to compulsory Uninsured Motorists laws;
27. Specifically described autos;
28. Hired autos only;
29. Non-owned autos used in garage business;
30. Autos left with the insured for service, repair, storage and safekeeping; and
31. Dealer's autos and autos held for sale by nondealers or trailer dealers (physical damage coverages).

Garage Policy: Section II – Liability

Garage liability coverage is broader than the BAP liability coverage because in addition to the normal automobile liability protection, it **includes** the Premises/Operations hazard and the Products/Completed Operations hazard.

Exclusions to Garage Liability:

1. Any watercraft or aircraft, except watercraft while on the premises;
2. Injuries that fall under workers compensation;
3. Liabilities for damage caused by pollution;
4. Loss of use of property, if not physically damaged, if it was caused by a delay or failure of the insured to fulfill the terms of a contract or agreement;
5. Claims for product or work recall; and
6. Liability for real or personal property in the insured's care, custody and control.

Garage Policy: Section III – Garagekeepers Liability

Garagekeepers insurance is a type of bailee coverage (protecting the business for damage to the property of their customers) available to automobile repair shops, service stations, valet services and parking lots or storage garages. This coverage can be written either on a **legal liability basis** or a **direct and primary basis**. The legal liability basis requires the customer to prove the garage was negligent in the damage to his or her car. Some garages choose the direct and primary basis. In this case any damage to a customer's auto without proving negligence is covered while in the care custody or control of the insured.

Claims are classified under either Collision or Comprehensive. Deductibles are per auto with a maximum per loss.

The need for garagekeepers insurance arises from the fact that **garage liability** insurance does not cover property damage losses to automobiles in an insured's care, custody or control.

Specified peril coverage, an alternative to Comprehensive, is also available.

- Examples include fire, explosion, theft of the entire automobile, and vandalism/malicious mischief.
- Comprehensive and collision coverage are also available. If collision coverage is added, the insured will be protected against losses arising out of the use of elevators and to customers' autos on an automobile servicing hoist.
- All are subject to a deductible.

Losses not covered under the garagekeepers policy are those stemming from:

- Theft by an insider (by the name insured, employees, or shareholders, employee dishonesty);
- Contractual liability;
- Products or work loss;
- Sound reproducing or receiving equipment, unless permanently installed in the auto (radar detectors are not covered); or
- Other losses not covered such as those caused by war, rebellion, racing, etc.

Garage Policy: Section IV – Physical Damage

The physical damage coverage is virtually identical to the Business Auto Policy. For dealerships, rather than scheduling each of the specific vehicles for sale, a "blanket limit" can be provided to cover the entire inventory. A monthly or quarterly inventory report will be required to verify the fluctuating values of inventory. A premium audit will be done at the end of the policy period to adjust the final premium to reflect the changing inventory values over the previous policy period. Like garagekeepers coverage, claims are classified as Collision or Comprehensive. Deductibles apply per auto with a maximum per loss. If a covered auto is driven or transported **more than 50 miles** from the point of purchase or distribution, Collision coverage will be excluded.

Garage Policy: Endorsements

PIP, UM and Medical Payments are not standard in the garage policy but may be added by endorsement.

Drive Other Car Coverage is an endorsement that is commonly attached to the policy to cover the liability of an owner of the business and the family members when driving a non-owned vehicle. Oftentimes the owner does not own a vehicle but routinely drives a vehicle held for sale with a dealer's tag.

False Pretense Coverage is an optional coverage. It covers the theft of a vehicle when the dealership voluntarily parts with the property because of a trick or scheme. (For example, someone steals a vehicle under the pretense of test driving the vehicle.) It would also cover the dealership for acquiring vehicles from a seller that did not have clear title to it.

Dealer's Drive-Away Collision Coverage is an endorsement that removes the "50 miles" exclusion for collision coverage provided that the reporting form report includes points of origin, destination and factory price of each covered auto and at the time of the loss, the last report must include a sufficient value to cover all transported covered autos.

IV. Truckers Form

The Business Auto Policy excludes businesses that haul the goods of others. Therefore, the Truckers Form was introduced to meet the needs of the trucking industry. This form has been discontinued but some states are still testing on the Truckers Form so it is included in this discussion.

The Truckers Coverage Form

The liability coverage is the same as the BAP except that there is an addition to who is considered an insured. This expanded definition includes anyone from whom a vehicle is hired or borrowed and being exclusively used in the named insured's business.

Symbols – The Truckers Form uses symbols 41 through 49 instead of 1 through 9. Symbols 48 and 49 describe coverage applying to trailers in the insured's possession under a written Trailer Interchange Agreement. The Trailer Interchange Coverage is legal liability coverage for damage to trailers owned by others and the damage is caused by a covered peril under one of the following:

- Collision,
- Comprehensive; or
- Specified Causes of Loss coverage.

V. Motor Carrier Coverage Form

This form is offered by ISO as the alternative to the Truckers Form. A motor carrier is anyone who transports property by auto in a commercial enterprise, regardless of whether he or she was hired for that purpose. One distinction that can be drawn between this definition and the definition of “trucker” found in the truckers form is that a “trucker” is someone engaged in the business of transporting property by auto for “hire” while a “motor carrier” may be engaged in transporting **property or passengers**. This would include vehicles such as trucks, taxis, buses, limos, etc. A carrier is classified as a common carrier when it dedicates its property to public use in such a manner that its services are available to the public on a **regular basis**. Common carriers hold themselves out to the public as engaged in the business of transporting persons or property from site to site for compensation or a fee.

Coverages are “triggered” by using symbols 61 through 71 and coverage is written to address the individual needs of the insured. In most respects the Motor Carrier and Truckers Forms are the same. The liability coverage, coverage extensions, and exclusions are the same. Trailer interchange coverage and physical damage coverages are the same as well as most of the policy conditions and definitions.

The Trailer Interchange Agreement is described in symbols 69 and 70 under the Motor Carrier Form. Symbol 69 provides coverage for trailers listed under a trailer interchange agreement that are **left in the insured’s possession**. Symbol 70 provides coverage for your trailers when listed under a trailer interchange agreement that are **in the possession of another trucker**.

Motor Carrier Act of 1980

This legislation mandated that trucking operators must file proof of pollution liability insurance. New financial responsibility requirements were imposed on for hire and private transporters of certain hazardous cargoes in interstate or intrastate commerce. Financial responsibility requirements of the Act apply separately to three types of freight transport:

- **Type 1** - For hire transportation of nonhazardous property in interstate or foreign commerce the minimum limit is at least \$750,000.
- **Type 2** - For hire or private transportation (interstate or intrastate) of hazardous substances (e.g., compressed gas, explosives, poison gas, and radioactive materials) with a minimum limit of \$5 million.
- **Type 3** - For hire and private transportation of oil listed as a hazardous substance or any hazardous waste or substances not included in Type 2 with a minimum limit of \$1 million.

Motor Carrier Policies of Insurance of Public Liability Endorsement - This endorsement, Form MCS-90, may be attached to a policy under which the motor carrier is insured against auto liability claims. This endorsement is used to assure the vehicle has both pollution liability coverage and is provided at the proper limit. There are various limits used for the different exposure levels of cargo being transported.

Unless cancelled with appropriate notice or replaced by a new policy, coverage under Form MCS-90 remains continuously in effect. However, 35 days notice to the other party is required for cancellation of coverage under Form MCS-90 on the part of either the insurer or insured. If an insured is under Department of Transportation (DOT) jurisdiction, then 30 days notice must be given to the DOT.

Licensing Manual

Commercial Auto Insurance

Endorsement for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90
(ED. 1-90)

OMB NO. 2125-0074

Definitions as Used in This Endorsement

ACCIDENT includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

MOTOR VEHICLE means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

ENVIRONMENTAL RESTORATION means restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury, property damage, and environmental restoration. The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded for public liability does not apply to injury to or death of the insured's employees while engaged in the course of the employment, or property transported by the insured, designated as cargo.

It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company and compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

This insurance is primary and the company shall not be liable for amounts in excess of \$_____ for each accident. This insurance is excess and the company shall not be liable for amounts in excess of \$_____ for each accident in excess of the underlying limit of \$_____ for each accident.

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Whenever required by the FHWA or the ICC the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is:

_____.

Cancellation of this endorsement may be affected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date notice is received by the ICC at its office in Washington, DC).

Issued to _____ of _____
 Date at _____ this _____ day of _____, 19_____
 Amending Policy No. _____
 Effective Date _____ Countersigned by _____

 Authorized Company Representative
 Name of Insurance Company _____

The Motor Carrier Act of 1980 requires limits of financial responsibility according to type of carriage and commodity transported by the motor carrier.

It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

THE SCHEDULE OF LIMITS SHOWN BELOW DOES NOT PROVIDE COVERAGE.

The limits shown in this schedule are for information purposes only.

Schedule of Limits Public Liability

Type of Carriage 1	Commodity Transported	Minimum Insurance
(1) For-hire (in interstate or foreign commerce)	Property (Non-Hazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign or intrastate commerce)	Hazardous substances as defined in 49 CFR 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A or B explosives, poison gas (Poison A), liquefied compressed gas or compressed gas; or highway route controlled quantity radioactive materials as defined in 49 CFR 173.403	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce: in any quantity) or (in intrastate commerce in bulk only)	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but no mentioned in (2) or (4).	\$1,000,000
(4) For-hire and Private (in interstate or foreign commerce)	Any quantity of Class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in 49 CFR 173.403	\$5,000,000

NOTE 1. The type of carriage listed under numbers (1), (2) and (3) apply to vehicles with a gross vehicle weight rating of 10,000 pounds or more. The type of carriage listed under number (4) applies to all vehicles with a gross vehicle weight rating of less than 10,000 pounds.

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Review Questions

1. Which of the following statements is correct?
 - I. The Business Auto Policy uses 10 symbols to define covered vehicles
 - II. Symbols 30 and 31 apply to the Garage Policy.
 - A. I only.
 - B. II only.
 - C. Neither I nor II.
 - D. Both I and II.

2. Which of the following is not a Business Auto endorsement?
 - A. Drive Other Car.
 - B. Change Other Driver.
 - C. Individual Named Insured.
 - D. Mobile Equipment.

3. Under the Business Auto Policy, each of the following is true about classification of “covered autos,” except:
 - A. “Any auto” is the broadest coverage classification.
 - B. An insured may select different classifications for different coverages.
 - C. All classes of newly acquired autos are automatically covered.
 - D. “Hired autos” includes autos the insured leases, hires, rents or borrows.

4. According to the Business Auto definitions, an “accident”:
 - A. Includes continuous or repeated exposure to the same conditions.
 - B. Must be sudden and unexpected.
 - C. Must be unexpected and unpreventable.
 - D. Is any event that causes injury or damage.

5. Joseph Young, who is insured under a Business Auto policy, is involved in an accident. He and the insurance company disagree on the amount to be paid for the damage to his car. Under the terms of the policy, which of the following statements is true:
 - A. Each party engages an appraiser, and the appraisers will select an umpire.
 - B. Mr. Young must accept the insurance company’s estimate.
 - C. Each party engages an appraiser, and the appraisers will decide the amount.
 - D. The estimates of both parties will be averaged.

6. Under Form MCS-90, a _____ notice to the other party is required for cancellation of coverage on the part of either the insurer or insured.
- A. 10 day
 - B. 72 hour
 - C. 14 day
 - D. 35 day
7. Which of the following is considered a “garage operation”?
- I. Ownership, maintenance or use of garage premises.
 - II. Sale of products or services in connection with garage operations.
 - III. Ownership or maintenance of covered autos.
 - IV. Production or support of racing or competitive operations.
- A. I and II only.
 - B. I, II, and III only.
 - C. I and III only.
 - D. I, II, III, and IV.
8. Which of the following would be covered under a Garage Liability Policy?
- A. Damage to property the insured is transporting to another location.
 - B. The use of covered autos leased to another party except as a replacement for a car under repair.
 - C. Products and completed operations.
 - D. Covered autos used in organized racing.
9. Which of the following pollution losses would be covered under the Garage Liability Policy?
- I. Escape of toxic sludge from a dumpsite the named insured utilizes to store garage waste.
 - II. Pollution of a creek caused by a gasoline leak from the ruptured fuel tank of a covered truck following a collision with another vehicle.
- A. I only.
 - B. Both I and II.
 - C. Neither I nor II.
 - D. II only.

10. Garagekeepers coverage excludes all of the following losses, except:

- A. Loss to a high-value stereo system permanently installed in a customer's auto.
- B. Loss to CDs from a covered auto.
- C. Faulty work performed by a mechanic.
- D. Theft of equipment from a covered auto by a garage employee.

(Note: Question #10 is almost always a question on the state exam.)

Review Answers

1. D. Both of these statements are correct regarding the symbols used to trigger the coverage.
2. B. There is no “change other driver” endorsement.
3. C. Not all classes of newly acquired autos are automatically covered. The symbols dictate the type of vehicles that would be covered.
4. A. In the business auto definitions the definition of an “accident” includes continuous or repeated exposure to the same conditions.
5. A. The appraisal clause works the same way in other insurance policies. Each party hires an appraiser and pays for their services. If they cannot agree then an umpire is chosen who attempts to settle the issue of the value of the damaged property. The two parties split the cost of the umpire.
6. D. A 35 day cancellation notice is required on the part of the insured or insurer.
7. B. The supporting of racing or competitive operations is not covered by the garage policy.
8. C. Like the CGL policy, the Garage Policy includes products and completed operations coverage.
9. D. Gasoline leaking from a gas tank when involved in an accident is a covered pollution expense.
10. A. The purpose of the Garagekeepers Liability form is to pay on behalf of the insured sums they for which they are legally responsible for as a result of being a bailee. The purpose of the form is to cover customer property. This can be done as either direct or primary covering any damage while in care custody and control or legal liability basis requiring there to be legal negligence on the part of the insured.