**II. In-Depth Insurance Coverage Outline**

1. **Review of the Auto Insurance Policy**
2. **Declarations**

The Declarations pages of the auto policy are the pages personal to each insured—they list the specific, such as dates of inclusive coverage; who is insured; what vehicles are covered; what coverages are extended; and in what amounts; as well as the premium for each coverage; and, any endorsements added to the policy.

Always get your client’s policy (and if you can, any other policy which may provide coverage) to review the coverages available. As a plaintiff’s attorney I am always reviewing for UM and Medpay, and if property damage is at issue you want to make sure your client has comprehensive and collision.

“Don’t worry Mr. Lawyer, I have ‘full coverage.’” Often when I asked the client to bring their own policy to the initial meeting, they tell me this. In the words of the great Inigo Montoya “that word does not mean what they think it does.” “full coverage” turns out to mean anything from liability only to liability, plus comp and collision. Unfortunately, I have found many agents do not consider UM to be part of “full coverage.” In that respect, if you are an insurance agent, please don’t tell your clients they do not need UM. I often hear from clients without UM, that their agent told them they don’t need UM if they have medpay or if they have health insurance. That can be tragic advice. I can tell you from my perspective as Plaintiff’s lawyer, UM is the most important coverage you can sell your customer. UM is so important, I tell my clients to purchase higher liability limits even though they may be “judgment proof,” just so they can access the matching higher UM limit. Why is UM so important: (1) most drivers out there have minimum limits (if any coverage); (2) UM does not just pay medical bills, but also lost wages, pain and suffering, permanent disability—in short, anything a fully insured tortfeasor would pay; (3) UM, unlike liability, carries with it the first-party coverage “bad faith hammer;” (4) UM has an obligation to evaluate and pay a claim (liability does not owe that duty to an injured third party). The most common problem I encounter in big injury auto cases is insufficient coverage. Sell UM and lots of it. Please.

Beware, an insurance company may change the terms of coverage at any policy renewal anniversary. They must send notification of the changes, but having sent the notice, the insured accepts the changes by virtue of paying the premium on the renewal policy. My own insurance has on more than one occasion tried to drop coverages, even claiming in the “notice” I had requested the change (on one occasion they even tried to drop my UM this way—glad I caught that “change”). So in addition to checking your client’s declarations when a claim arises, suggest they check the Decs at every renewal to avoid any nasty policy changes.

1. **Jacket**

This is the “meat and potatoes” of the insurance contract. This is where you find the insuring agreements, exclusions, conditions, and definitions. Important to keep in mind here is you only need to review the provisions pertinent to the particular coverage at issue (with respect to auto coverage: Liability, Comprehensive/Collision, UM, and Medpay), as well as those provisions that apply to all coverages (Conditions and Definitions, typically). So, if you are dealing with a UM claim, you can usually ignore the sections pertaining to liability, comp and collision, and medpay, unless perhaps, you are attempting to provide definition to an ambiguity, in which case it may help to see if the ambiguous term is used elsewhere in the policy.

1. **Endorsements**

Endorsements are amendments or additions to the existing policy that change the terms or scope if the policy of the original policy and that are attached as an addendum to the policy (as opposed to actually deleting and replacing the amended or changed language from the policy jacket). An endorsement supersedes the policy language it purports to replace. So, if for instance, you have a coverage provision that says there is coverage for “X” and then an endorsement that says: “section such and such is replaced with the following endorsement: ‘there is NO coverage for “X,’” the endorsement removes coverage for X, without creating an ambiguity. See, e.g., 36 O.S. § 3621. If, though, the endorsement does not purport to replace the language that provided coverage for X, then the language of the endorsement that purports to remove coverage for X probably does create an ambiguity by virtue of a conflict in policy language.

1. **Common Policy Sections**
2. **Definitions**

The Definition section contains any specially defined words as used in the policy. If the policy provides a definition for a word, that definition will control even if it is opposed to how the word is more commonly used. *If a word is not specially defined in the policy, it is given its ordinary, lay, meaning.* See, e.g., *London v. B3 Inc.,* 2011 OK CIV APP 96, 262 P.3d 397.

1. **Comprehensive and Collision**

These are the property damage coverages available for the insured’s own (first-party) losses (as opposed to liability coverage, discussed next, which provide coverage for third-party losses). Collision coverage pays for loss to the insured’s vehicle caused by MVA. Comprehensive pays for loss to the insured’s vehicle caused by any covered cause other than collision (so comprehensive covers theft loss, damage from falling objects, etc.). I’m sure somewhere in the sands of time there is an explanation for why we have comprehensive and collision as separated coverages as opposed to simply “property coverage” that pays for all such covered damage.

If you have a loss under the comprehensive or collision, the insurance should pay for repairs until repair costs exceed 60%, in Oklahoma (47 O.S. § 1105—other states used percentages from 50% to 100%, or even the “Total Loss Formula” where repair costs plus scrap value must equal pre-wreck value) of the market value. Once that threshold is reached the vehicle is considered a total loss and the insurance should pay “market value” of the vehicle in its pre-loss condition (and the vehicle will be issued a “salvage title”).

Excluded from comprehensive and collision coverage will be things like wear and tear, mechanical breakdown, faulty workmanship, war and nuclear attack. Some of these policies cover custom equipment and some exclude such items.

usually found in the definition of “insured or covered vehicle” will be language that extends the coverage to include either a replacement vehicle or a newly acquired vehicle for 30 days after the insured acquires the vehicle. After that, there is no coverage for that vehicle unless the insured has officially added it to the policy. During that interim period, a replacement vehicle will be extended the same coverage as the car it replaces and a new vehicle will be the broadest coverage extended for any vehicle under the policy.

1. **Liability**

This is the coverage for property damage or bodily injury, that the insured causes others. Liability coverage should pay for most common elements of damage owed by a negligent insured to the damaged claimant (property damage, medical bills (past and future), lost income (past and future), pain and suffering (past and future) and permanent disability—all up to the available limit under the policy.

Liability coverage is mandated by statute under the compulsory insurance laws found in Oklahoma, under Title 47. Oklahoma requires minimum limits of $25,000 bodily injury coverage per injured person, up to $50,000 per incident (for multiple claimants), and $25,000 property damage coverage. This coverage, by statute, is “omnibus” in that is covers not only persons named in the policy, but also anyone using the vehicle with the permission (expressed or implied) of a named insured. Also, because liability coverage is statutorily mandated, very few exclusions are permissible—at least up to the minimum coverage mandate. It is permissible in Oklahoma, thus, to exclude coverage, even as to the minimum limits, for a specific named individual (“Named Driver Exclusion”) based on a bad driving record, and to exclude coverage for injury caused by someone who has taken the vehicle without the permission of an insured. Other exclusions are permissible but will only be effective against coverage exceeding the minimum required limits.

As a defense lawyer, whether for the insurance company or as a private lawyer for a defendant, you will want to see, of course, what coverage your client has available in order to know how to defend the claim. As a Plaintiff’s lawyer, you’ll want to know the at-fault driver’s coverage limits. But you will also want to know if there are any pertinent exclusions (before you invest time and energy in suit). You may find yourself in a situation upon making a claim that the adjuster or lawyer for the defendant claims there is no coverage for your particular claim. Depending on the nature of that defense, you will want to see the pertinent language yourself to see if perhaps the carrier is misinterpreting its policy (or if there is an ambiguity that runs in favor of your client).

Also keep in mind, a liability claimant is a “third-party beneficiary” of the insurance policy and “steps into the shoes of the insured” (once a claim is established), to enforce the policy terms and contest denials of coverage. E.g., *Bossert v. Douglas,* 557 P.2d 1164 (Okla. Ct. App. 1976, cited by the Oklahoma Supreme Court in *Zahn v. General Ins. Co. of America,* 1980 OK 79, 611 P.2d 645). This rule does not, in Oklahoma, though, allow a third-party claimant to sue for bad faith. *Allstate Ins. Co. v. Amick,* 1984 OK 15, 680 P.2d 362. Though the insured may sue for bad faith upon being hit with a verdict in excess of policy limits (assuming the plaintiff has issued a time-limited limits demand), and that bad faith action runs to the benefit of the third-party claimant by providing a source for recovering the excess verdict.

1. **Uninsured/Underinsured Motorists Coverage**

As a Plaintiff’s lawyer, this is the coverage I really want to see. But, alas, UM is covered at length in the next topic, so we will not cover that here.

1. **Medical Payments (medpay)**

Medical payments coverage used to be pretty universal, but it seems to be falling out of favor. It used to be that we could count on there being $1000-5000 in medpay and sometimes as much as $25,000 or even $100,000. The nice thing about medpay is that it is no-fault coverage. As such, the only dispute likely to arise is whether the medical bills are “reasonable and necessary.” This dispute is much more commonly raised now than ever before with many carriers sending medical billing out for “third-party review.” This can give rise to action for bad faith as many of these policies don’t really provide for such review.

Also, medpay used to be written such that is was coverage belonging to the insured. If the insured incurred medical bills, they, not their providers, were entitled to their medpay. More and more we see medpay that is written such that the insurance has the right to deal directly with the providers and pay the medpay directly to the provider. If my client has medpay, I will usually write to the carrier and ask them to send the medpay directly to the client, or to me (once the client incurs medical bills). That way I can still negotiate discounts with the providers to benefit my client. We can then use the medpay (or other coverage) to pay on the discounted bills. Otherwise, if the carrier sends the medpay directly to the providers, the provider will apply it to the billing without discount. In these situations, the medpay thus may run only to the benefit of the providers with the insured client receiving no benefit for their premium. Unfortunately, too often, the carrier has already paid the medpay to the providers before the client hires the attorney. The carriers don’t explain to them that the medpay is theirs rather than the medical providers and can be used to leverage payback of discounted medical bills or ven retained by the insured.

I have never had a carrier inquire as to Medicare subrogation before paying medpay. I have looked at this before and do not see why Medicare would not be entitled to enforce its claim against medpay.

Keep in mind with medpay: (1) while there is no subrogation against medpay paid to a named insured (36 O.S. 6092), there is with respect to medpay paid to person insured under the medpay solely by virtue of occupancy of an insured vehicle. But, even there, the carrier must reduce the subrogation claim by the “procurement costs” (attorney fee and expense) of their insured having recovered their subrogation; and (2), by virtue of an Oklahoma Ethics Opinion, a lawyer may not take a fee for recovering uncontested medpay.

1. **General Provisions**

This section contains policy “conditions” applicable to every claim under the policy. Here will be territorial coverage provisions, “time to sue” provisions (kind of like contractual statutes of limitations—and sometimes, but not always, enforceable), cancellation provisions, and “Legal Action Against Us” provisions (no suit against the carrier until there has been judgment against the insured (or the carrier has agreed there is an obligation to pay)).

1. **Other Coverages**

This section contains incidental coverage such as rental car, towing, roadside assistance, loss of use, and windshield glass coverage.

1. **Identifying Ambiguous Contract Language**
2. **“Reasonable Expectations” Doctrine**

“We find that the reasonable expectations doctrine may apply to the construction of ambiguous insurance contracts or to contracts containing exclusions which are masked by technical or obscure language or which are hidden in policy provisions.” *Max True Plastering Co. v. U.S. Fid. & Guar. Co.,* 1996 OK 28, 912 P.2d 861, 863.

“Under the doctrine, if the insurer or its agent creates a reasonable expectation of coverage [by] the insured which is not supported by policy language, [that] expectation will prevail over the language of the policy.” *Max True Plastering Co. v. U.S. Fid. & Guar. Co.,* 1996 OK 28, 912 P.2d 861, 864

“. . . different rules of construction have traditionally been applied to insurance contracts because of their adhesive nature. Tribunals embracing the doctrine recognize that it is consistent with numerous other interpretive rules pertaining to adhesion contracts. Many of these rules are a part of Oklahoma law. For instance: 1) ambiguities are construed most strongly against the insurer; 2) in cases of doubt, words of inclusion are liberally applied in favor of the insured and words of exclusion are strictly construed against the insurer; 3) an interpretation which makes a contract fair and reasonable is selected over that which yields a harsh or unreasonable result; 4) insurance contracts are construed to give effect to the parties' intentions; 5) the scope of an agreement is not determined in a vacuum, but instead with reference to extrinsic circumstances; and 6) words are given effect according to their ordinary or popular meaning. Nevertheless, these rules of construction are often inadequate because they may fail to recognize the realities of the insurance business and the methods used in modern insurance practice.” *Max True Plastering Co. v. U.S. Fid. & Guar. Co*., 1996 OK 28, 912 P.2d 861, 865

“A policy term is ambiguous under the reasonable expectations doctrine if it is reasonably susceptible to more than one meaning. When defining a term found in an insurance contract, the language is given the meaning understood by a person of ordinary intelligence.” *Max True Plastering Co. v. U.S. Fid. & Guar. Co.,* 1996 OK 28, 912 P.2d 861, 869

The reason we look for ambiguity is because, under the rules above, ambiguities create coverage where perhaps none was intended by the insurance company.

1. **Structural (Patent) Ambiguity**

There are different kinds of ambiguity. The first, structural ambiguity, includes those policy provisions that just make no sense in any context. They may contain typographical errors, or syntactical errors. For instance, I had a case not too long ago with a potential costly structural ambiguity for the insurance company. This was not an auto policy, but the involved provision (an exclusion) appeared to have been cut and pasted from another policy and it just did not make sense as pasted because the numbered exclusion did not follow structurally from the lead in language. The exclusion, a “physical abuse” exclusion, said, first, in some lead in language applied to the exclusion section as a whole: “This insurance does not apply to **claims** or **suits** for **damages**: . . . .” (and then in the particular exclusion:) “g. physical abuse . . . . .” Written like that, the exclusion was meaningless—had they added the word “involving,” they would have had an exclusion.

You may have noticed the exclusion quoted above has three **bolded** terms. Such terms are generally terms that are specially defined in the definitions section of the policy. Sometimes such terms are capitalized rather than bold. As set out in the previous section, where such terms are defined in the policy, that definition (if unambiguous—see the fun in this?), will control the meaning of that term as used in the policy. If such terms are not defined, they are instead given their “ordinary” meaning.

1. **Factual (Latent) Ambiguity**

The exclusion mentioned above also contained a factual ambiguity. The exclusion section of the policy had exclusions “a” through “v.” All but the pertinent, exclusion, the physical abuse exclusion, had a lead in that applied the exclusion to any claim “arising out of” the excluded conduct. Courts have interpreted that “arising out of” language very broadly to encompass anything involving the excluded behavior however remote its relation to the claim. E.g., *Federal Ins. Co. v. Tri-State Ins. Co.,* 157 F.3d 800 (10th Cir. 1998). There is a rule of contract construction (that mirrors one from the rules of statutory construction) that says that a drafter is thought to intend the language chosen. Had the case not settled, we would have argued the insurance company intended thus to write the physical abuse exclusion without the “arising out of” language, and that indicated it did not intend the exclusion to be so broadly applied as the other exclusions.

1. **Auto Insurance Liability Coverage Exclusions to be Aware Of**
2. **Rules of Policy Construction**

Words of coverage inclusion are broadly construed in favor of coverage while words of exclusion are strictly construed against the insurance company. (See above, *Max True Plastering*).

1. **Requirement of an “Accident” and the Intentional Acts Exclusion**

Starting some years ago, insurance contracts added a “requirement” written into the coverage terms of the policy that there be an “Occurrence,” or “Accident” in order to trigger coverage. Many courts have interpreted this “addition” as a new limitation on coverage, using it to distinguish older cases which more liberally found coverage in various scenarios. I think these courts miss the fact that a basic requirement of insurance, whether written into the policy or not, is the “fortuity requirement.” Fortuity has always been defined as an “accident,” such that the requirement of “an accident” has always been an unwritten part of every insurance agreement. See, e.g., *Bank of Oklahoma, N.A. v. Continental Cas. Co.,* 1992 OK CIV APP 128, 849 P.2d 1091.

1. **Not really an Exclusion, but nonetheless exclusionary—there is no coverage for damages caused by driver who did not have permission to use the auto.**

This is usually found in the policy definition of insured or in the liability coverage grant, and again in the exclusion, and it is, of course, also required in the Compulsory Insurance laws in Title 47.

**4. Drivers under age 25—**Illegal exclusion (*Young v. Mid-Continent Casualty Co.,* 1987 OK 88, 743 P.2d 1084).

**5. Named Driver Exclusion—**Valid as to known bad driver (*Pierce v. Oklahoma Property & Casualty Ins.* *Co*., 1995 OK 78, 901 P.2d 819, but invalid when based on other than bad driving record, *Mulford v. Neal,* 2011 OK 20, 264 P.3d 1173).

**6.** **Household/Named Insured (as Passenger) Exclusion—**Illegal (*Nation v. State Farm Ins. Co.,* 1994 OK 54, 880 P.2d 877; *Hartline v. Hartline,* 2001 OK 15, 39 P.3d 765 but legal to exclude recovery of both liability and UM by family member/insured passenger. *Hartline*).

**7.** **Business Auto Exclusion**—Illegal (*Tapp v. Percival,* 2005 OK 49, 120 P.3d 480, but this exclusion is valid as to comprehensive and collision which are not compulsory coverages).

**8. Geographical Coverage Limitation—**Illegal exclusion (*Equity Mutual Ins. Co. v. Spring Valley Wholesale Nursery,* 1987 OK 121, 747 P.2d 947).

**9.** **Loaned Automobile Exclusion—**Illegal (*Ball v. Wilshire,* 2009 OK 38, 221 P.3d 717).

**10. Drop-Down “Exclusion”—**Drops limit down in certain situations (such as where injured passenger is also an insured on the policy—Valid (*Hartline v. Hartline,* 2001 OK 15, 39 P.3d 765).

**11. Business Use Exclusion (should now be called the “Uber exclusion”)—**Legal with respect to Comprehensive and Collision coverages, but not liability (i.e., *Tapp v. Percival,* 2005 OK 49, 120 P.3d 480).

**12. Workers’ Compensation Exclusion—**excludes coverage for claim also covered by workers compensation—Illegal as to minimum coverage (*Starrett v. Oklahoma Farmers Mut. Ins. Co.,* 1993 OK 30 849 P.2d 397.

**13.** **Pickup and Delivery/Livery Vehicle Exclusion—**Illegal up to Compulsory Limits. (i.e., *Tapp v. Percival,* 2005 OK 49, 120 P.3d 480).

**14.** **Property damage to property owned by or in care of insured—**Probably legal since not part of compulsory coverage (i.e., *Hartline v. Hartline,* 2001 OK 15, 39 P.3d 765).

**15.** **Punitive Damages Exclusion—**Valid (it is against public policy to ensure for direct (as opposed to vicarious) liability for punitive damages. *Dayton Hudson Corp. v. American Mut. Liability Ins. Co.,* 1980 OK 193, 621 P.2d 1155).

**16.** **Criminal Acts Exclusion—**Illegal up to minimum limits, except for liability for damages caused by someone who has stolen the car (by virtue of “omnibus” rules). I could not find the case, but recall a case not too long ago involving a woman who ran over her husband or boyfriend who then collected under the liability coverage despite the intentional, criminal act.

**17.****Off-Road Vehicle Exclusion—**Probably valid (see, e.g., *Haworth v. Jantzen,* 2006 OK 35, 172 P.3d 193).

**18.** **Owned Uninsured Vehicles/Available for Regular Use—**Probably valid since Compulsory Liability laws tie coverage to vehicles rather than people.

**19. Other Insurance Clauses—**Legal under some circumstances. Say an employee who causes injury while on the clock is insured under his own auto policy, as well as under the employer’s commercial auto policy, as an “additional insured,” under the omnibus coverage provision. The coverage on the auto will usually be primary, with the coverage on the “non-owned” policy being excess.

Beware, if the policy has (and it likely will) a “Limits of Liability Clause,” restricting total coverage to the “limits provided by the policy with the highest limits,” that will be enforced. *Gordon v. Gordon,* 2005 OK 5, 41 P.3d 391. That is because our compulsory insurance laws mandate only one legal limit of coverage.

But, if the policies have no “Limits of Liability Clause, but both have “other insurance clauses” making each “excess,” the provisions cancel each other out and both have pro rata primary coverage up to the cumulative limit. *Equity Mut. Ins. Co., v. Spring Valley Wholesale Nursery, Inc.,* 1987 OK 121, 747 P.2d 947.