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1.) **"Risk Pooling"** : A term to describe how insurance companies predict their legal obligations by creating a large group of insureds. Within the large group, insurance companies calculate each insureds level of risk and they base their policies and premium rates based off of that risk, this allows for the insurance company to use risk management by sharing the costs of catastrophic risk evenly in the "pool". For example: Elderlies are given higher premiums in life insurance policies due to the higher risk of losing life, thus insurance companies lower the premiums for younger persons to attract more insureds. Then, the insurance company spreads the costs from each pool, just in case a financial catastrophic loss occurs from a claim within the company.

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"Risk Allocation" is a term to describe how the insurance company assigns its insureds within their risk levels. Each risk is generally given similar rates depending on their risk level. This allows for insurance companies to remain in control of their accounting and rates to manage their expenses and costs for insurance. For example: Young drivers are generally given higher automobile premiums than adult, this is because young drivers are inexperienced and tend to have accidents more than adults.

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2.) **Standard policy form *benefits*** :

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a.) Insurers: Insurance companies compete for rates, utilizing a standard form for the type of insurance they offer. This allows for the companies to have security in certain rates which ultimately keeps the competition, stable or at a minimum. Also, the rate bureau ISO creates these *standard forms* by using risk pool management, this allows for companies to use the *standard forms* as reference, when creating their own policy.

many

loss costs

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That means less work/expenses for the insurance company , had there not been these *standard forms*.

(5)

b.) Insureds: Because most insurance companies use these forms outright or to construct their own, this creates somewhat uniformity between policies. This is an advantage because it allows for the insureds to price shop and compare specificities within policies. This also allows for state/federal regulators to enforce legislation designed to protect insureds by mandating required provisions within all forms, thus making them *uniform/standard.*

3.) Insurance contracts are contracts of adhesion

(15)

Courts have held that ambiguities within an insurance are reasonably construed in favor of the insured. An ambiguity can be found in a property owner provision such as:

" Any direct or physical loss or damage to the property."

--Example of *what and how the ambiguity* would apply in a realistic example.

If this policy was bought by a Tire Factory owner, and there was a release of *ammonia* rendering the factory unfit for its intended purpose anymore; the insured would argue that there was in fact a direct loss to the property due to inability to occupy the building.

The insurance company would argue that their provision clearly states there must be a direct loss or damage to the property, not persons occupied within the building.

The court would likely find in favor of the insured because the provision can be construed to mean a direct loss due to a release of a deadly pollutant within the property rendering a loss to the complete use/possession of his property. This is the very reason why the insured bought the contract. it is reasonable to find the ambiguity of "direct" in favor of the insured because the

Questions - Would the pollution exclusion (if in the policy) negate this issue?
- Does the release of ammonia equal property damage?

property was unfit for normal human occupancy due to direct loss or damage, an unintended, unforeseen release of a deadly toxicant.

4.) **"Unfair Discrimination":** In the context of insurance regulation, generally applies to the prevention of calculating employer pension plans based on gender in violation of Title 7 of the Civil Rights act of 1964 which requires equal employment opportunity. This can also apply to workers compensation and other work benefits.

(5)

Applies broadly to most all insurance

--The book also mentions of race and religion discrimination in underwriting policies, it states that the minority populations of lower credit scores than the rest of the population. The book then seems to correlate that to limited access to insurance by making premiums too expensive to "vulnerable groups". I am not sure if there is any evidence of this link or clear clarification of such in the book -thus, I cannot accurately opine on the issue. I do know that America does have a history of racism, slavery, and discrimination against minorities, it is not far-fetched to think that *history* is still currently perpetuated in the insurance business and its services to the population at large.

✓ Fair discrimination is when the insurance company bases their underwriting on sound scientific, or actuarily justified.

5.) **First Party and Third Party Property Casualty Insurance:**

(10)

Insurance policies are contractual and they contain language that creates the insurance companies privity to the insured and sometimes, third-parties. Privity is a legal relationship between parties.

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a.) First party insurance is a policy that contains language that allows for the insured to make a claim directly to the insurer. If a party is a property owner, they would likely

✓

make a claim for any loss or damage to their property which is insured under their policy. If the loss/damage is "excluded" within the contract, the policyholder will likely not be insured. Again insurance contracts are ones of adhesion, the exclusion provisions cannot contain ambiguities and will be construed narrowly and strictly too its terms. "Perils" or "Acts of God" are also very common first party claims under property/casualty policies. This is because first party claims are generally created for "loss and damage".

b.) Third party claims are when a party who is not in privity with the Insurance company, files a claim against the insured's policy. The most common claim is a liability claim. Because the claimant is not a party or policy holder with the insurance company they make claims outside of the policy. Within property/casualty context, the policy holder may be liable for : death, disability, loss of wages, pain and suffering, and personal injury. Thus, the insured would be covered by the insurance company, the second party against the third party victim in which the insured caused any of the aforementioned claims.

The insurance company has a fiduciary duty with whom it insures and must settle their claims first as fast as possible. Some jurisdictions have held that the third party must sue the insured in court, and then the insured may assign their liability to the insurance company.

6.) Standard Fire Policy Laws: California requires all fire insurance to use a Standard Form **California Standard Form Fire Insurance Policy [2070 - 2085]**

a.) the insured to notify its insurance company of any fire that caused loss/damage to their property within the 30 days of discovery. Fraud/Concealment is specifically prohibited from being covered.

Fire is presumed to be a *peril*, but the form specifically excludes these perils caused directly or indirectly by:

- Enemy attack by armed forces , Rebellion , Revolution, Civil War, usurped power, any civil authority property destruction for fire prevention, neglect of the insured to use *all reasonably means to preserve the property before/after the fire,* any neighboring fire, or theft.

This allows for property owners to be covered by any damage/loss caused by peril so long as the aforementioned exclusions did not occur. But what if earthquake is not a covered cause of loss, but a fire results?

7.) Insurable interest:

An insurable interest exists when one has an interest in another's continued existence. In life insurance, this interest would be continued existence of another living, and if they were to die, it would cause a financial hardship/loss to the one who holds the interest. A substantial endangerment to love/affection due to their relationship will also justify an insurable interest. This interest is presumed in life insurance policies when lineal descendants of the insured, the holders of such interests are *Beneficiaries.*

A.) Assign a life insurance policy: An insured policy holder who is in privity with the insurance company may assign (transfer) their interests to an assignee as collateral for a loan. The assignee need not be related or kinship to the policy holder. They must notify their insurance company, and the assignment must *Substantially Comply* with the formalities specified in the policy. This generally means evidence of a reasonable step, whether formal or informal, and expressed intention will allow for the insurance company to pay out the amount assigned upon death first to the assignee.

B.) Beneficiaries must have an insurable interest, thus one stranger cannot take a policy out on another and then kill them to receive the payout. The beneficiary must have some interest in the continued life of the policyholder that would end if the life ceased to live.

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8.) Duty to Defend vs Duty to Indemnify

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A.) Duty to Defend: This means that the insurance company has a duty to defend against any 3rd party claim. The insured need only show that there is a potential for coverage to enforce the duty to defend against the claim. This makes the duty to defend the broadest because even if the claim is ultimately uncovered, the duty to defend is still enforceable.

B.) Duty to Indemnify: Indemnification is the legal obligation to pay another for a future liability. This is privity between the insurance company and the insured, a first party claim. The fees paid usually do not include attorney's fees, settlement agreements, or providing a full investigation/defense. Some indemnification agreements include legal costs, but it does not go as far as providing full legal team for every aspect of the matter.

9.) When an insurer receives a CGL claim covered in part, and excluded in part.

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a.) The insurance company can seek a declaratory judgement to see if the duty to defend will be enforceable on the claim it does not believe is covered.

--Most CGL policies are "~~claim-made~~" occurrence policy meaning the company will cover the wrongdoing if the claim was ~~made~~ during the policy terms, ~~regardless of when the wrong doing occurred~~. occurrence giving rise to the

reservation of rights

For the excluded part of the claim, **the insurance company should give prompt notice** to the claimant and insured regarding such. If the insurance company wants to alleviate the court of time and expenses, it may allow for the insured to settle the claim and pay its liability. But there is an implied covenant of good faith and fair dealing charged to both the insured and claimant. After assessing its probability of coverage the company could opt to settle and pay the claimant instead of undergoing litigation.

--The insurance company may also settle the third party claim, courts have allowed for a "good-faith" rule. California Civil Jury Instructions (CACI) 2330 *Implied Obligation of Good Faith and Fair Dealing* states:

what about Declaratory relief actions and Conflict of interest?

> In every insurance policy there is an implied obligation of good faith and fair dealing that neither the insurance company nor the insured will do anything to injure the right of the other party to receive the benefits.

--Thus, the insurance company should allow for the insured to undergo a settlement agreement with the claimant because it does acknowledge that at least part of the claim is covered. The company should notify the insured that it will only indemnify for claims that are covered. This would limit the insurance costs to settlements costs.

b.) Although the insurance company would alleviate itself of time and legal expenses of litigation, there is a possibility that the claimant may not settle the case. Then the insured might bring the company into litigation for it's duty to defend. Also, if the claimant settles with the insured and the payout is more than the insurance company found *fair* , it is taking a gamble for paying costs that it may not have been liable for.

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10.) Conflict of interests between Insurer vs Insured

a.) Because the Insurance company is only in privity with the insured, it has a fiduciary duty to defend the insured any claims that might be reasonably covered, as aforementioned. It is important to note, the insurance company need not consult with the policy holder when settling, they only need to pass the CAC 2330 requirements , the "reasonable-offer" test. (*Crisci*) test.

When the Insurance company receives an offer to settle, it's interest in ending the claim and avoiding legal fees for costs on claims that may not have been covered is undeniable. But that same interest is conflict with the insured's right to a full legal defense against all third party liability

b.) If the insurer declines an offer within the policy limits, there is a chance that the insured will file a separate lawsuit against the company for its failure to abide the duty to defend law. This would then allow for Punitive Damages against the company by the insured, as the court would want to deter similar conduct in the future. The company may also be taking a risk by going through litigation and incurring all costs regarding the claim.

Conclusion