



The Personal Auto Policy A Friendly Little Fella Until He Isn't Liability Discussion

Presented by:
**Samuel T. Bennett, CIC,
AFIS, CPRM, CRIS, CPIA**
samueltbennettcic@gmail.com

This presentation is the sole property of its author and is presented as opinion thereof. Please do not construe this material as legal advice. When legal questions arise, consult competent counsel. Any Reproduction without permission is prohibited. All copyrighted material is used with permission of its owner(s).

I. Introduction:

The Personal Auto Policy (PAP) is the most often written insurance policy in our industry. If a person has only one insurance policy, it is very likely a Personal Auto Policy. This coverage form is an incredibly important part of a personal risk management plan for each and every personal lines client because of their liability exposures. Even if a client does not own an auto, a Personal Auto Policy should be considered.

The PAP provides broad liability protection, but careful review of its Insuring Agreements, exclusions and conditions must be undertaken by the insurance professional to make certain that it truly is ‘A Friendly Little ‘Fella’.

Part A – Liability Coverage

1. Insuring Agreement

**PART A – LIABILITY COVERAGE
INSURING AGREEMENT**

A. We will pay damages for "bodily injury" or "property damage" for which any "insured" becomes legally responsible because of an auto accident. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this Policy.

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 3 of 14

The Insuring Agreement is the policy’s ‘Promise To Pay’



- A. The ‘promise to pay’ is made by We
1. To pay damages for “bodily injury” or “property damage” for which any “**insured**” becomes legally responsible

DEFINITIONS

B. "We", "us" and "our" refer to the company providing this insurance.

D. "Bodily injury" means bodily harm, sickness or disease, including death that results.

H. "Property damage" means physical injury to, destruction of or loss of use of tangible property.

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 1 of 14

2. Because of an *auto accident*
3. To settle or defend, as we consider appropriate, any claim or suit asking for these damages
4. *In addition to our limit of liability*, we will pay defense costs we incur
5. The promise IS NOT ACTIVE for any claim not covered under this Policy
 - All exclusions and conditions **MUST** be reviewed in order to determine the presence (or not) of liability coverage in the event of an auto accident



- B. The definition of “insured” in Part A – Liability Coverage must be understood
1. The promises made in the liability Insuring Agreement are made **only** to “insureds”
 2. Although exclusions and/or conditions can limit or even eliminate coverage for an “insured”, any person or organization that is not afforded “insured” status is promised **NOTHING** in this coverage part –

NO “INSURED” STATUS = NO COVERAGE = NO DEFENSE

PART A – LIABILITY COVERAGE

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision **(B.4.)** applies only if the person or organization does not own or hire the auto or "trailer".

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 2 of 14

DEFINITIONS

F. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household. This includes a ward or foster child.

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 1 of 14

2. Exclusions

A. Part A – Liability Coverage has what can be viewed as two sets of exclusions. Exclusions A.1. – A.10 apply to “insureds” while exclusions B.1- B.5. apply to vehicles

B. Exclusion Set Number One – Applying to “insureds”

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

1. Who intentionally causes "bodily injury" or "property damage".
2. For "property damage" to property owned or being transported by that "insured".
3. For "property damage" to property:
 - a. Rented to;
 - b. Used by; or
 - c. In the care of;that "insured".

This exclusion (**A.3.**) does not apply to "property damage" to a residence or private garage.

4. For "bodily injury" to an employee of that "insured" during the course of employment. This exclusion (**A.4.**) does not apply to "bodily injury" to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**A.5.**) does not apply to:

- a. A share-the-expense car pool; or
 - b. The ownership or operation of a vehicle while it is being used for volunteer or charitable purposes.
6. While employed or otherwise engaged in the "business" of:
 - a. Selling;
 - b. Repairing;
 - c. Servicing;
 - d. Storing; or
 - e. Parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (**A.6.**) does not apply to the ownership, maintenance or use of "your covered auto" by:

- (1) You;
- (2) Any "family member"; or
- (3) Any partner, agent or employee of you or any "family member".

Exclusion Set Number One – Applying to “insureds”

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

7. Maintaining or using any vehicle while that "insured" is employed or otherwise engaged in any "business" (other than farming or ranching) not described in Exclusion **A.6.**

This exclusion (**A.7.**) does not apply to the maintenance or use of a:

- a.** Private passenger auto;
- b.** Pickup or van; or
- c.** "Trailer" used with a vehicle described in **a.** or **b.** above.

8. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This exclusion (**A.8.**) does not apply to a "family member" using "your covered auto" which is owned by you.

9. For "bodily injury" or "property damage" for which that "insured":

- a.** Is an insured under a nuclear energy liability policy; or
- b.** Would be an insured under a nuclear energy liability policy but for its termination upon exhaustion of its limit of liability.

A nuclear energy liability policy is a policy issued by any of the following or their successors:

- (1)** Nuclear Energy Liability Insurance Association;
- (2)** Mutual Atomic Energy Liability Underwriters; or
- (3)** Nuclear Insurance Association of Canada.

10. For the ownership, maintenance or use of "your covered auto" while:

- a.** Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
- b.** Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Pages 3 & 4 of 14

Discussion of Exclusion A.9. Nuclear Energy Liability

Property of International Risk Management Institute (IRMI) – Used With Permission

This exclusion is designed to preclude coverage for payment of bodily injury or property damage claims that may arise from certain nuclear hazards. These nuclear hazards are the radioactive, toxic, and explosive tendencies of nuclear material. The exclusion gives the insurer a basis on which to deny coverage when an insured either has purchased a nuclear energy liability policy, is an insured under such a policy, or is entitled to receive indemnity from the U.S. government. To be excluded, bodily injury or property damage has to occur due to a loss caused by a "hazardous property" of nuclear material.

In particular, this exclusion precludes coverage for an insured covered under a nuclear energy liability policy or who would have been covered except that coverage was terminated due to the exhaustion of the policy limits. A nuclear energy policy is defined as one issued by the Nuclear Energy Liability Insurance Association, the Mutual Atomic Energy Liability Underwriters, or the Nuclear Insurance Association of Canada (or any of their successors). It is not the intent of the personal auto policy (PAP) to duplicate any coverage found under one of these policies.

C. Exclusion Set Number Two – Applying to vehicles

EXCLUSIONS

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

1. Any vehicle which:

- a. Has fewer than four wheels; or
- b. Is designed mainly for use off public roads.

This exclusion **(B.1.)** does not apply:

- (1) While such vehicle is being used by an "insured" in a medical emergency;
- (2) To any "trailer"; or

2. Any vehicle, other than "your covered auto", which is:

- a. Owned by you; or
- b. Furnished or available for your regular use.

3. Any vehicle, other than "your covered auto", which is:

- a. Owned by any "family member"; or
- b. Furnished or available for the regular use of any "family member".

However, this exclusion **(B.3.)** does not apply to you while you are maintaining or "occupying" any vehicle which is:

- (1) Owned by a "family member"; or
- (2) Furnished or available for the regular use of a "family member".

(3) To any non-owned golf cart.

4. Any vehicle, located inside a facility designed for racing, for the purpose of:

- a. Participating or competing in; or
- b. Practicing or preparing for;

any prearranged or organized:

- (1) Racing or speed contest; or
- (2) Driver skill training or driver skill event.

5. Any vehicle which is designed or can be used for flight.

JUST BECAUSE A PARTICULAR EXCLUSION DOES NOT APPLY DOES NOT MEAN THAT NO EXCLUSION APPLIES

Loss Scenarios

Lon Moore has his personal auto policy in your agency. Lon is a manager with Jiffy Lube. As part of his job description, he is required to go by the other three local Jiffy Lubes each morning on his way to his facility in order to pick up the previous day's credit card receipts. One morning, while traveling between locations in his 2020 Ford F150, a vehicle listed in the Declarations of his PAP, he is negligent in an auto accident. He pulls into the path of another driver, causing damage to that driver's vehicle and slightly injuring that driver.

Questions:



1. Explain how Lon's PAP will respond to this accident
 - ✓ For damage to the other driver's vehicle?
 - ✓ For injury to the other driver?
 - ✓ For loss of use expenses for the other driver?

Two weeks later, Lon is moving a customer's vehicle from the bay into the parking area. He negligently strikes another customer's parked vehicle, causing damage to both vehicles

2. How will Lon's PAP respond to this accident?
 - ✓ For damage to the customer's parked vehicle?
 - ✓ For damage to the vehicle he is driving?

Lon sometimes transports customers to their jobs in his 2020 Ford F-150 when they drop their vehicles for service. When he does this, he maintains a mileage log and is reimbursed by his employer. In one of these instances, he is involved in an auto accident and the customer is injured. It is not clear if Lon is negligent, but the injured customer brings suit against Lon, the other party in the accident and Lon's employer, Jiffy Lube.

1. Will Lon's PAP provide defense for Lon as fault is determined?
2. If Lon is determined to be at least partially at fault, will his PAP pay on his behalf?
3. If the other party's insurance carrier subrogates against Lon, will his PAP protect him and pay on his behalf?
4. Will Lon's PAP provide defense for Jiffy Lube and, if found vicariously liable, will Lon's PAP pay on behalf of Jiffy Lube?

Part B – Medical Payments Coverage

5. How will Lon's PAP Medical Payments Coverage respond (his PAP Declarations indicate that he has Part B – Medical Payments Coverage with a \$5,000 limit)?

- ✓ For Lon's injuries?
- ✓ For his customer's injuries?
- ✓ For injuries to the other party involved in the accident?

PART B – MEDICAL PAYMENTS COVERAGE INSURING AGREEMENT

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of "bodily injury":

1. Caused by an accident; and
2. Sustained by an "insured".

We will pay only those expenses incurred for services rendered within three years from the date of the accident.

B. "Insured" as used in this Part means:

1. You or any "family member":
 - a. While "occupying"; or
 - b. As a pedestrian when struck by;
a motor vehicle designed for use mainly on public roads or a trailer of any type.
2. Any other person while "occupying" "your covered auto".

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 5 of 14

DEFINITIONS

G. "Occupying" means:

1. In;
2. Upon; or
3. Getting in, on, out or off.

PP 00 01 09 18

© Insurance Services Office, Inc., 2017

Page 1 of 14

**PART B – MEDICAL PAYMENTS COVERAGE
EXCLUSIONS**

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

1. Sustained while "occupying" any motorized vehicle having fewer than four wheels.
2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance.
This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.
This exclusion (2.) does not apply:
 - a. To a share-the-expense car pool; or
 - b. While "your covered auto" is being used for volunteer or charitable purposes.
3. Sustained while "occupying" any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the "bodily injury".
5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".

However, this exclusion (6.) does not apply to you.

7. Sustained while "occupying" a vehicle without a reasonable belief that that "insured" is entitled to do so.
This exclusion (7.) does not apply to a "family member" using "your covered auto" which is owned by you.
8. Sustained while "occupying" a vehicle when it is being used in the "business" of an "insured". This exclusion (8.) does not apply to "bodily injury" sustained while "occupying" a:
 - a. Private passenger auto;
 - b. Pickup or van; or
 - c. "Trailer" used with a vehicle described in a. or b. above.
9. Caused by or as a consequence of:
 - a. Discharge of a nuclear weapon (even if accidental);
 - b. War (declared or undeclared);
 - c. Civil war;
 - d. Insurrection; or
 - e. Rebellion or revolution.
10. From or as a consequence of the following, whether controlled or uncontrolled or however caused:
 - a. Nuclear reaction;
 - b. Radiation; or
 - c. Radioactive contamination.
11. Sustained while "occupying" any vehicle located inside a facility designed for racing, for the purpose of:
 - a. Participating or competing in; or
 - b. Practicing or preparing for;any prearranged or organized:
 - (1) Racing or speed contest; or
 - (2) Driver skill training or driver skill event.
12. Sustained while "occupying", or when struck by, "your covered auto" while:
 - a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
 - b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
13. Sustained while "occupying", or when struck by, any vehicle which is designed or can be used for flight.

Lon's wife, Fannie Moore, a Named Insured (and, therefore, a "you" on the previously mentioned PAP, is a delivery person for UPS. She regularly drives a large UPS brown delivery van. One morning, while making her appointed deliveries, she fails to notice a vehicle pulling beside her and negligently enters that vehicle's drive lane and sideswipes that vehicle.

1. Will Fannie's PAP respond for the property damage done to the other vehicle?
2. Will Fannie's PAP Part A – Liability Coverage respond for the physical damage done to the UPS delivery van?
3. Would this liability claim have been handled differently if, instead of the accident occurring in the mentioned vehicle, it had occurred in a Ford F150 pickup owned by UPS and used as a pool vehicle when there was an overflow of deliveries to be made?
4. How would Fannie's Medical Payments Coverage respond if she were struck by a vehicle when she was crossing the street on foot to deliver a package?



Part C – Uninsured Motorists Coverage

Lon and Fannie have a daughter, Lilly who lives with her husband across town. Lon, Fannie and Lilly get together for a weekend getaway to accomplish some Christmas shopping. On the first evening, they decide to go out to dinner and elect to take an Uber instead of driving themselves. On the way to dinner, the car they are traveling in is involved in an accident in which another driver negligently runs a red light and strikes the car they are occupying, causing bodily injury to Lon, Fannie and Lilly. It is later determined that the driver is uninsured.

How will Lon and Fannie's Uninsured Motorists Coverage indicated in their PAP Declarations at a limit of \$300,000 respond to the following claims?

1. Lon spends the evening in the ER and is diagnosed with a slight concussion. He misses three days of work at the direction of the attending physician and is told to follow up with his PCP.
2. Fannie suffers a contusion to her forehead that is treated in the ER and will need minor plastic surgery in the near future.
3. Lilly is more substantially injured. She has immediate surgery for a broken tibia and spends three days in the hospital. Additional surgeries are likely and time off work will be required.

**PART C – UNINSURED MOTORISTS COVERAGE
INSURING AGREEMENT**

A. We will pay compensatory damages which an "insured" is legally entitled to recover from the owner or operator of an "uninsured motor vehicle" because of "bodily injury":

1. Sustained by an "insured"; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the "uninsured motor vehicle".

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

PART C – UNINSURED MOTORISTS COVERAGE

B. "Insured" as used in this Part means:

1. You or any "family member";
2. Any other person "occupying" "your covered auto"; or
3. Any person for damages that person is entitled to recover because of "bodily injury" to which this coverage applies sustained by a person described in 1. or 2. above.

C. "Uninsured motor vehicle" means a land motor vehicle or trailer of any type:

1. To which no bodily injury liability bond or policy applies at the time of the accident.

EXCLUSIONS

A. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained:

1. By an "insured" while "occupying", or when struck by, any motor vehicle owned by that "insured" which is not insured for this coverage under this Policy. This includes a trailer of any type used with that vehicle.
2. By any "family member" while "occupying", or when struck by, any motor vehicle you own which is insured for this coverage on a primary basis under any other policy.

B. We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

1. If that "insured" or the legal representative settles the "bodily injury" claim and such settlement prejudices our right to recover payment.
2. While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion **(B.2.)** does not apply:

- a. To a share-the-expense car pool; or
- b. While "your covered auto" is being used for volunteer or charitable purposes.
3. Using a vehicle without a reasonable belief that that "insured" is entitled to do so. This exclusion **(B.3.)** does not apply to a "family member" using "your covered auto" which is owned by you.
4. While "occupying", or when struck by, "your covered auto" while:
 - a. Enrolled in a personal vehicle sharing program under the terms of a written agreement; and
 - b. Being used in connection with such personal vehicle sharing program by anyone other than you or any "family member".
5. While "occupying", or when struck by, any vehicle which is designed or can be used for flight.

Part F – General Provisions

- A. These provisions can be seen as ‘rules’
- B. They are policy level conditions that affect ALL coverage parts – Liability, Medical Payments, UM/UIM and Physical Damage
- C. The most relevant General Provisions
 1. Changes
 - It is the decision of the company as to what changes are acceptable and any resultant premium changes will be determined by the company
 2. Fraud
 - Fraudulent statements or conduct will nullify coverage
 3. Policy period and territory - Policy applies to accidents & losses that occur
 - During the policy period; and
 - Within the policy territory
 - ✓ U.S., its territories & possessions
 - ✓ Puerto Rico
 - ✓ Canada
 - ✓ Transport of “your covered auto” between their ports

Loss Scenarios

Your long-time client, Ethel Zibinsky has **FINALLY** retired from her 40 year career as a junior high math teacher. Ethel has been widowed for many years and she and her husband, Luther were always diligent savers. As such, Ethel has a nice little nest egg and plans to leave as little as possible to her kids. As such, she and her best friend Lucy Lemon are taking a six week trip to Europe. Stop number one will be Ireland. Upon arrival in Ireland, Ethel rents a car and, as she soon discovers, good beer is readily available and in Ireland you drive on the wrong side of the car on the wrong side of the road. Ethel and Lucy are ‘on board’ for all of the above. What challenges might Ethel have as to her PAP for these activities?

