



# Insurance

Torts  
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## Terminology ...

**Insurance:**

Insurance is an arrangement whereby some firm or agency guarantees compensation in the case of some specified loss or damage that is possible in the future — not because of fault, but because of the agreement to do so, generally in exchange for a payment called a premium.

**Insurance coverage:**

"[I]n the insurance context, coverage is defined as the '[i]nclusion of a risk under an insurance policy; the risks within the scope of an insurance policy.'"

Southern-Owners Ins. Co. v. Easdon Rhodes & Assocs. LLC, 872 F.3d 1161, 1165 (11th Cir. 2017) (quoting Black's Law Dictionary, 10th ed.)

## Some key things you should know about insurance:

- endorsements
- incentives
- regulation

### What is an endorsement?


“[T]he meaning of the word "endorsement" in the insurance context is well-known ... 'a provision added to an insurance contract altering its scope or application[.]’”

Van Erden v. Sobczak, 271 Wis. 2d 163, 178 (2004)  
(quoting Webster's Third New International Dictionary)

## Why care about endorsements?

- Contracts sometimes include an obligation to procure insurance from a third-party insurance company.
  - This might be part of a tort-liability risk management strategy.
  - For example, your client, a toy store, will only agree to sell a new toy if the manufacturer will put the toy store on its products liability insurance policy. As a result, the negotiated contract between the store and the manufacturer provides for this.
- Such a contractual obligation can be worthless if breached!
  - Consider that if your client just wanted the contracting party to cover a loss, the contract could have just provided for that. The benefit of an insurance policy is that there's a financially solvent third-party insurance company that can pay the claim.
- To protect the client's interest in getting the benefit of insurance, you must get the endorsement from the insurance company.

POLICY NUMBER: 10 CSE C 1218  
EIST. 67

THE HARTFORD 

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY

**ADDITIONAL INSUREDS - EMPLOYEES ENDORSEMENT**

IT IS AGREED THAT THE "PERSONS INSURED" PROVISION IS AMENDED TO INCLUDE ANY EMPLOYEE OF THE NAMED INSURED WHILE ACTING WITHIN THE SCOPE OF HIS DUTIES AS SUCH.

THE INSURANCE AFFORDED BY THIS ENDORSEMENT ALSO APPLIES TO ANY STUDENT OR STUDENT TEACHER WHILE ACTING AT THE DIRECTION OF THE NAMED INSURED AT THE NAMED INSURED'S HEALTH CARE FACILITIES OR OTHERWISE ACTING ON BEHALF OF THE NAMED INSURED.

This endorsement does not change the policy except as shown.

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Form IH 12 01 11 85 Printed in U.S.A.

POLICY NUMBER: 10 CSE C. 121E  
ENDT. #7



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY**

**ADDITIONAL INSURED - EMPLOYEES ENDORSEMENT**

IT IS AGREED THAT THE "PERSONS INSURED" PROVISION IS AMENDED TO INCLUDE ANY EMPLOYEE OF THE NAMED INSURED WHILE ACTING WITHIN THE SCOPE OF HIS DUTIES AS SUCH.

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## About incentives ...

- There is generally an asymmetry of incentives and bargaining power between insurance companies and consumers.
- Insurance companies often have the bargaining power to set the terms of the policy.
- Insurance companies have incentive to
  - Sell more policies
  - Avoid paying claims
- Insurance companies can do this by being clever about "fine print" in the insurance policy and by dragging their feet on paying claims,

### About incentives ...

- Insurance customers have the incentive to
  - Not buy insurance until they need it
  - Avoid seeming risky
  - Take less care when insured
- IOW, both sides have incentives:
  - to hide what they know
  - otherwise take the risk out of risk

### About regulation ...

- Insurance is heavily regulated at state level
- Regulation limits "fine print" subversions of bargain by insurers
- Regulation may compel insurers to pay claims without litigation

## About regulation ...

- Regulation may force customers to purchase insurance in order to:
  - Keep premiums affordable
    - (e.g., original Affordable Care Act's individual mandate)
    - Rationale: If only ultra-risky people buy insurance, premiums will be ultra high.
  - Provide a source of payment for third parties
    - (e.g., auto liability insurance)

## Review question:

- Hexetron Mfg's sales contract with Geno's General Store obligates Hexetron to add Geno's to its products liability policy with IIG Insurance Co.
- Hexetron never follows through on this.
- Geno's incurs a huge products liability judgment. And now Hexetron is insolvent. Can Geno's recover from IIG?

### Review question:

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- Hexetron never follows through on this.
- Geno's incurs a huge products liability judgment. And now Hexetron is insolvent. Can Geno's recover from IIG?
- **NO. Geno's should have gotten the endorsement! Without it, Geno's is not insured and gets no benefit of insurance.**