

**PROGRAM DIVISION  
BULLETIN**

**2008-03**

**February 4, 2008**

**Introduction of COMMERCIAL CASUALTY  
“QWIKNOTES”**

Attached with this distribution, we are sending our first edition of Commercial Casualty “QwikNotes”. Similar in content to the Commercial Property and Commercial Umbrella “QwikNotes”, this is meant to be a quick and comprehensive reference guide to general underwriting guidelines as well as providing specific company procedures and resources.

This document will also be posted at the AIG Programs Underwriting website at [www.lexingtoninsurance.com](http://www.lexingtoninsurance.com) for your future reference.

**THIS MANUAL DOES NOT REPLACE YOUR SPECIFIC CASUALTY GUIDELINES, BUT IS A REFERENCE TOOL TO BE USED IN CONJUNCTION WITH YOUR CURRENT GUIDELINES**

If you have any questions, please contact your Program Manager.

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**QWIK NOTES  
FOR  
CASUALTY**

**2008**

## QWIK NOTES FOR CASUALTY

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The purpose of this guideline is to set forth the policy and philosophy of the AIG Program Division regarding Commercial Casualty business whether written on a mono-line or package basis. This is intended to provide a general reference guide and an underwriting strategy for commercial casualty business. It is not meant to be an exhaustive resource used exclusively to underwrite and price commercial business.

The guidelines contained within this document are minimum requirements and are superseded by individual program underwriting guidelines. Refer to your specific Program guidelines or Industry Vertical guidelines for authority and exceptions to the guidelines presented here. Refer to the Program Administrators Manual for process and procedure guidelines.

# QWIK NOTES FOR CASUALTY

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### **Program Underwriting Philosophy**

Our long range approach to commercial business is positive. We recognize that there will be cyclical variations in all lines of business at one time or another and that will temper the extent of our aggressiveness. Through all phases of the cycles, we intend to adhere to sound underwriting principles and practices reinforced with the knowledge that the best base for aggressive and imaginative underwriting is an underwriting profit.

We will maintain this attitude within the following framework.

- Our efforts will be primarily directed toward the medium size risks with limited exposures to high hazards.
- We will consider risks only within our underwriting, claims, loss control and service capabilities.
- We are analytical underwriters – we must have adequate information before committing the company on a risk.
- Our underwriting must be based upon the facts and good judgment. Not every decision needs to be supported by statistical information.
- Our pricing must be intelligent, knowledgeable and realistic. It must be based upon individual risk characteristics.
- We will cross sell other lines of business where there are complementary exposures and risks. However, each line of business must be able to stand on its own underwriting merits.

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## RISK SELECTION

The fundamental role of any underwriter is the assumption of the risk which is transferred to the insured by the original risk bearer or another. In the long run, the degree of success or failure of the carrier depends upon how well the underwriter chooses which risks to accept and which to reject and how well it sets the price it charges for bearing the risk being transferred.

**It is the task of the underwriter to select and price risks submitted to the carrier. Such decision-making is the very essence of the underwriting function.**

The two decisions required in the underwriting transaction, selection and pricing are distinct yet inseparable. Consider that even good risks will be unprofitable if written at inadequate pricing levels.

Risk selection is not a precise science. It is not a processing function nor a rating function. It is a decision-making function. It requires of the underwriters a high level of curiosity, excellent decision making skills and, above all, good judgment. "Common Sense" and an understanding of "how things work" are integral to an underwriter's ability to determine the risk exposure for an insured.

In order to determine what risks to insure and on what terms, it is essential that the underwriter know all the exposures of each risk being submitted. The exposures then are considered in the context of the coverages being offered or requested, rate levels, deductibles, hazards and loss controls of the same, price and other pertinent factors bearing on the individual risk. External elements such as public fire protection, judicial climate, state statutes and similar terms are also important considerations.

Losses are reviewed in the context of what they tell us about the past control of hazards. Are there frequency patterns? Has the risk taken steps to prevent reoccurrence? Are there any indications of excessive carelessness? Loss free accounts with poor control of key hazards are **not good risks. They are lucky risks – so far.**

How does one master the art of risk selection (that is always related to price, exposures and terms & conditions) which strives to be objective yet so dependent upon subjective judgment?

Experience gathered not merely from sitting at the job, but years spent acquiring knowledge about all the facets of underwriting – coverages, statutes, jurisdictions, risk and class characteristics, rate making, processes and operations of a multitude of businesses and more. It is years spent learning to recognize differences between risks, some so subtle as to be almost imperceptible, yet, at times, of great importance. It is years spent sharpening the talent for probing for the necessary information and honing analytical skills.

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## RISK SELECTION

But all the experience and study possible will not, alone, result in superior risk selection unless the individual underwriter possesses the personal qualities cited earlier that are necessary to be a good underwriter.

In addition to all of the above, one other element is needed to provide a framework and consistency to the underwriting function – a disciplined approach to risk selection. We call this approach the Underwriting Technique.

The Underwriting Technique guides the underwriter through the necessary steps from the gathering of information to the implementation of the decision. It is not just a learning tool. It is inherent in the proper conduct of the risk selection process. It is used automatically and intuitively by the most proficient of underwriters with years of experience.

The steps of the Underwriting Technique include:

1. **Information** – The underwriter must gather ALL the necessary facts.
2. **Analysis** – The various components of the risk's situation must be analyzed.
3. **Evaluation** – The significance and the value of each component and the total risk situation must be weighted with the exercise of keen judgment.
4. **Decision** – Make the final decision to accept or reject. Do not equivocate.
5. **Action** – Make the final decision.

The underwriting function is the selection and pricing of risks. It is unique to our industry and is the pivotal point of the insurance transaction.

Although proper underwriting is essential to our success, it does not have the exactness of a science. Yet, to underwrite successfully requires the exercise of a certain mental discipline that every good underwriter practices. That discipline is evidenced in the use of a sound Underwriting Technique. If it is not followed, then the job of underwriting is nothing more than the clerical task of processing paper with the results left to chance. If it is practiced, then the underwriter's role is intelligent decision making in the selection and pricing of risks, thus increasing the probability of success beyond mere chance.

Let's look at these individually, in more detail.

### **INFORMATION**

Our information comes from many sources and is of various types.

We should be using all of the sources listed below and most of them with regular frequency. Neither the sources nor the types listed below are exhaustive. The types of information particularly, might be expanded, but most additional specific kinds of information would fall into one of the major categories shown.

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## RISK SELECTION

### Sources of Information

- Application
- Agent/Broker
- Brochures/Web sites
- Loss Control Surveys
- D&B Report
- Financial Statement or balance sheets
- Prior carrier contacts
- Our file information for renewals – claims, audit, loss control
- Underwriting Guide
- Bests Underwriting Guides
- Industry Data
- Association Data

### Types of Information

- Exposures
- Hazards
- Prior loss experience
- Management characteristics
- Physical characteristics
- Financial characteristics

### Gathering Practical Information

All sources of information are not needed to underwrite every risk. The underwriter's objective is to collect enough information to understand each risk and allow: 1) grading-in-class; 2) assessment of management quality; and 3) pricing to exposure. If collection of particular information will not change decisions to accept risk, or alter pricing for specific coverages, it may serve no practical purpose and most likely should not be collected.

The amount of information needed to make informed decisions is affected by:

**Complexity of the operation:** As processes become more intricate, consider investigating qualifications of employees as well as additional quality control measures that may be necessary to control losses. Consider that highly trained specialists may be needed to design and control processes, plan for emergencies or react to loss producing situations.

**Newness of technology:** Risks that employ new technology (possibly unknown loss consequences for years) may have exposures that are difficult to identify. Additionally, operations and activities may continue to evolve, or be tweaked, and case law may not have addressed issues associated with loss producing conditions created by technology hazards. The consequences of insuring them may not be known for quite some time.

**Inherently volatile risks:** Intrinsically volatile risks may require intensive review. Verification of adequate controls over hazards and exposures is usually required through numerous information sources provided by technical/loss control representatives. Inherently volatile risks are catastrophe prone or have high expected frequencies of



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## RISK SELECTION

losses and/or high anticipated values for individual claims and are associated with processes that are explosive or have the potential to release toxic substances, collapse, etc.

**Note:** Review your individual Program Guidelines to determine the eligibility of such risks.

## SOURCES OF INFORMATION

### Applications: ACORD or Program Applications

Consider this information as a starting point for any business underwritten for Programs that have custom, in-depth applications created by Program Management. Generally, the most useful information provided by applications:

Insured's name, subsidiaries, holding companies, etc.

Length of time in business

Operation's locations

Description of operations – generally only a brief or inadequate description that almost always need enhancement

Prior carriers and how often the insured moves coverage

Loss information – usually accompanied by copies of loss runs from prior carriers

### Broker Template Submissions

Usually provides more in-depth history of the entity, backgrounds of key employees, information on subsidiaries, ownership, locations of physical plants, jobsites, large loss information, etc.

### Broker or insured's photographs

Generally used to verify uncomplicated, outside building maintenance.

### Internet Sites

**Insured's Website** may provide company background and history, its focus for providing services or selling products, biographies of executives, names of contacts, lists of products, quality control measures, product recalls, problems associated with products sold, Material Safety Data Sheet (MSDS forms), locations and facilities, etc. Check for links to product manufacturers or business partner websites.

**Manufacturer's Websites** may provide in-depth information concerning products sold by insureds/policyholders. Underwriters will most likely find more in-depth information than may be found on the insured's website (the seller of the product). Check the insured's website for links to the product manufacturer's websites.

**Association Websites** provide information relating to membership as well as why the association exists. Many focus on quality issues and set requirements members must meet to remain in the association. Underwriters may be able to relate these requirements to loss control and quality initiatives for services or products sold by insureds when they are association members.

**Search Sites** such as Yahoo, Ask, Google, etc., or even internet browsers, will search for information relating to words typed into the address/search area. For many insureds, underwriters should perform a quick search to determine if there are any issues associated with the entity or operation.

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**Learning Sites** may have articles that explain how certain products work and may discuss problems of concern with the manner in which products operate. Some of the more notable sites:

[www.howstuffworks.com](http://www.howstuffworks.com)

[www.refdesk.com](http://www.refdesk.com)

**Government Websites** track product recalls, list problems or concerns with foods, agriculture, poisoning, etc. The USDA, FDA and CDC are examples. Access the index to government websites here:

[http://firstgov.gov/Agencies/Federal/All\\_Agencies/index.shtml](http://firstgov.gov/Agencies/Federal/All_Agencies/index.shtml)

List of Products – (may be found on website)

Provides list of all products sold and helps relate insured to other risks assigned the same class code. Consider obtaining this from the insured through the Producer.

List of Services or Projects Completed

Provides specific locations of work and indicates the type of activity or work performed. Helps assess insured's qualifications relating to work necessary to complete or future projects. Consider obtaining this form insured through the Producer.

Company Brochures and Pamphlets

Normally lists insured's products or services, locations, hours of operation, etc. Consider obtaining from the insured through the Producer.

Company Advertisements

Provide information relating to the products sold, service provided, or may even address public concerns with activities of the insured. Consider obtaining this form the insured through the Producer.

List of Product Recalls

This information may be on the insured's website or available on a government website. Generally, underwriters will learn what specific products have been recalled and why, as well as how insureds are handling the recall.

Media Articles

Newspapers, Magazines and Trade Magazines may address insureds and refer to potential expansion, location closings, worker layoffs, financial conditions, technological advances competitors actions, etc. Of major interest are advertisements in these magazines (Trade) because they are aimed at insureds and typically address operational issues, new equipment or solutions to production problems.

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## RISK SELECTION

### Better Business Bureau

Determine the insured's reputation. Especially reliable if the insureds are members. Accuracy of complaints have been substantiated. Information is free, reports are read over the telephone and praise as well as complaints are reported.

### Loss Control Reports

Consider the following:

Full Reports generally cover the entire operation and address all coverages

Focused Narratives concentrate on specific underwriting concerns

Job Site Surveys specifically cover off-premises hazards and exposures, and are used to spot check conditions at selected locations based on anticipated activities

Specialist Reports are usually available for risks that have unusual, complex or unique exposures and hazards, e.g., industrial hygiene, food quality, property sprinkler systems and other fire suppression systems, etc.

Drive Bys used when there are no unusual risk exposures and quick verification of outside premises maintenance or adjoining hazards is needed

Telephone Surveys – Loss Control representatives call insureds to obtain better understanding of operations and hazards associated with business activities.

### Other Underwriting Files

Underwriters may find useful information for evaluating liability exposures in these files if they are available for review. Most of our files are easily accessible, but you may wish to contact other AIG underwriters if other Divisions are providing coverage,

## **ANALYSIS**

The starting point of the underwriting process is a thorough description of all elements of the risk being considered. The underwriter must understand completely the nature of the risk. A brief general statement of the operations may not be sufficient in many cases. The underwriter should determine specifically, such as, the duties performed, processes used, chemical and machinery involved, locations and areas of operations, types of equipment, current and past products or services and their uses, average and maximum amounts of money kept on hand, and other similar specific data pertinent to the line of insurance and the type of risk under consideration.

Attention should be given to identifying every insured and the exposures represented by each, this is very important.

Information regarding limits and coverages should also be included in the initial fact gathering.

Unless the underwriter has the necessary information and a thorough understanding of the risk, it will be impossible to conduct a proper underwriting analysis and make an intelligent decision.

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## RISK SELECTION

### I - ACCURATE CLASSIFICATION

The proper classification of an exposure is the most important step in the underwriting process in order to ensure the correct price is to be charged for the exposure. The majority of risks will fall into basic classes however there are risks that perform more than one operation or do functions that are not easily classified. These are the risks that test your abilities as an underwriter!

Classification theory is based upon three separate areas - PROCESS - PRODUCT - ANALOGY.

PROCESS theory is the original attempt to classify based upon placing risks which have similar operational hazards in the same group.

PRODUCT theory recognizes that the end product is an excellent clue as to the risk's operational hazards.

ANALOGY theory states that if the operations to be insured are not described by one or more classifications, the exact operations shall be stated upon the Declarations Page followed by the code to which the operations most closely resemble.

Sources for proper classifications are:

- ISO Commercial Lines Manual
- D&B Classes
- SIC Codes
- NAICS Codes
- Workers Compensation Scopes Manual
- Best's Underwriting Guide
- Loss Control
- WC Classes

### II - HAZARDS AND CONTROLS

Hazards can be classified into two categories:

- a. Those that are inherent to almost all risks in a given class;
- b. Those that are peculiar to the individual risk under consideration.

Those hazards that are peculiar to a given risk may arise from operations which are somewhat different than those usually found in the class, location, management and other factors. The degree to which hazards are controlled has a significant bearing on the desirability of the risk, although certain catastrophe exposures will generally be unacceptable to us under ANY circumstances. Other factors, of course, also must weigh in the final determination of desirability.

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It is impossible to have knowledge of every conceivable hazard in every industry. The good underwriter will be familiar with the hazards in many industries, especially those with an unfamiliar type of exposure, the underwriter should seek out information from all available sources to learn what hazards are present. Curiosity is the underwriter's best tool.

### III - MANAGEMENT

One of the most important elements for an underwriter to consider is that of the quality of management of the risk being reviewed. Other elements such as hazards and their control and prior loss experience are extremely important but actions of management affect every part of the operation.

In one sense, an analysis of management could well include many of those items discussed here under separate treatments -e.g.-financial condition or physical condition, but the separation was made for the sake of emphasis.

1. Experience - experience in a particular trade or business should not necessarily be equated with management experience. For example, one who has operated a bulldozer for several years and then decides to start their own company does not, at that point, have management experience as a contractor. The problems and the requirements of management are different than those of an employee.

Similarly, management in one line of business does not necessarily qualify a person to manage another kind of business successfully.

Management experience in the same industry is what counts and, preferably, in the same company. Firms that have evidenced stable and profitable operations in the same line of business over several years are, other things being equal, better risks as a group than even the most promising new ventures.

2. Employees - The type of employees is frequently a reflection of the kind of management being practiced, although other factors such as location and type of work affect the labor force of an organization. Transient or casual labor, low education levels, extremes of young and old employees, part time or seasonal workers all may represent an increase in hazard compared to a more typical stable workforce.

3. Selection, Training and Supervision of Employees - The practices of management in each of these important areas is a direct reflection on the quality of management. The use of employment applications, reference checks and pre-placement physicals for certain types of work are positive signs. The absence of these and similar practices may result in a marginal group of employees.

Adequate training is necessary. The lack of training is directly related to loss experience. It affects such things as the safe operation of machines by employees, the exercise of care in the product quality control programs, safe driving habits and other actions that have an impact on safety.

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## RISK SELECTION

Proper supervision, or the lack of it, will also have a definite effect on loss experience. This applies to all Marine, Multi-Peril, Casualty lines as do the other comments contained in this section.

4. Attitude - This refers to the overall attitude toward safety, loss control and insurance. Is there an active Safety Committee or an operating Safety Program? Is management receptive to reasonable recommendations to reduce the probability of loss? Is there an extreme emphasis on production at all costs? It is the way management has demonstrated their attitude in the past on these matters that is the true indication of their real attitude toward safety and loss control.

Promises do not necessarily indicate a valid concern. Over the past several years a great deal of effort has been expended to promote safe driving, products quality controls, safety of the public, crime prevention, safe places of employment and other safety and loss control measures. If a firm has not already demonstrated a positive attitude by means of significant and concrete actions in line with such efforts, then it is usually wishful thinking to assume that management is suddenly going to turn over a new leaf. Moreover, if management is ignorant of all the efforts toward these ends by the insurance industry, government, consumer groups, industrial trade groups and others, then we rightfully should question the basic caliber and commitment of the management.

### **IV Prior Loss Experience**

This is an absolute must. No marine, multi-peril or casualty risk should be acceptable, even on a binder, until the underwriter has received and has analyzed the loss experience for prior years.

Detailed loss experience is more useful than totals and, in many cases, is not only desirable but necessary to properly analyze the past experience. At least five years losses should be obtained, including the current year. We can obtain loss information through applications, prior carrier loss runs, loss control inspections or phone surveys and our own claims loss data.

The underwriter should be looking for patterns in the causes of loss, dates of loss, location, operations involved, drivers involved and any employees as claimants as well as noting the size of losses. Reserves should never be disregarded or explained away as 'shock losses'. The claims reserving of almost all companies is based upon accepted methods and should be set by competent adjusters. In recent years pressure has been on many carriers to adjust their open reserves to properly reflect the ultimate potential pay-out.

That 'frequency breeds severity' is an axiom that is generally accepted as being true, and with good reason. If the loss experience reflects frequency, you can be sure that severity will strike even though the loss ratio may be acceptable in the prior years. Frequency may well indicate uncontrolled hazards, indifferent attitude toward safety, inherently dangerous operations, poor quality control of a host of other things.

Relate the loss experience to the type of risk. Some operations have characteristics of severity or catastrophe. A lack of frequency in a risk with an inherent catastrophe exposure does not in itself indicate an acceptable risk. In fact, we will often be unwilling to insure risks with a catastrophe exposure even when the past loss experience has been good. Our concern is with the loss potential of a risk.

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## RISK SELECTION

On occasion, we may see a risk with poor loss ratio for a year or two that is an acceptable risk. The key is to find the reason for the poor loss ratio and then determine if the cause has been removed so that there is a low probability of a reoccurrence. Generally, though, an operation that has had poor or even marginally good loss experience for three of the last five years is not acceptable to us.

### V. Analyzing General Liability Claims

The first step is to imagine what types of losses may be encountered and consider what is expected for the average risk for the rating class code used for pricing the risk.

Next, examine the prior loss history and consider the following relative to pricing for the risk.

1. Collect the policy year loss data for the risk from a reliable source; preferably 5 years.
2. Sort the data, i.e., separate claims into coverage groups; i.e., premises, operations, products, completed operations, contractual, personal injury and include indemnity payments, reserves and ALAE.
3. Develop and trend all losses. Development is a reality and no one can predict from account to account which losses will develop versus close at a reserve set by claims representatives. In order to reasonably predict the actual outcome of individual policy periods, average trend and development factors must be used. Not doing this presents a false and highly suspect picture of the final outcome of closed claims, which, for general liability, may take many years.  
NOTE: Development factors are averages that take into account all claims, including Medical Payments. Therefore, if any claims are excluded or removed when projecting/developing a claims history, reliability will be compromised.
4. Where appropriate, review and assess the claim data:
  - a. Verify the types and amounts of losses are what is expected for the type of operation. Similar types of losses, especially when within the same dollar range, are excellent candidates for deductibles.
  - b. Look for losses that occur within a particular dollar range, i.e., up to \$1,000; \$1,000 to \$2,500; \$2,500 to \$5,000; etc., and how often they occur.
  - c. Look for frequencies of similar types of losses and note the dollar amounts. Attempt to determine the cause(s) of the loss(es). Track the number of recurring claimants as well as the types of claims.
  - d. If the claims are increasing or decreasing in frequency, determine why. Also determine if relative claim size is trending up or down. If possible, relate this characteristic to steps insureds have taken to control exposures (or a change in activities).
  - e. Determine if multiple claims have been filed due to one occurrence.
  - f. Investigate any unusual or unexpected (or out-of-place) losses relative to the operation or activities of the insured.
  - g. Separate fortuitous losses from expected/frequency losses. Insurance is meant to provide cover for the fortuitous loss. Review the fortuitous/large losses and consider their relative significance.
  - h. Note the number and type of "closed without payment" (CWP) claims. While indemnity payments were not made, claim handling expenses were most likely incurred which may have been considerable.

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## RISK SELECTION

- i. Determine if the type of claims required outside legal assistance from specialist attorneys. Certain types of claims, fungus and chemical, for example, may produce considerable ALAE expenses.
  - j. Examine loss descriptions to determine if specific loss control techniques may be employed to alleviate the losses.
5. Where appropriate, consult with Claims Representatives relative to: a) reserve adequacy of other insurer's data; and b) advice concerning the outcome of lawsuits or potential for significant litigation.
6. Consider discussing losses and loss types with Loss Control to obtain ideas concerning claims reductions or exposure elimination.
7. Examine the total dollar amount and number of losses for each policy year. Relate the dollar amount to prior premiums. Compare the data to the Experience Modification Worksheet to insure it was included in the calculation of the modifier.
8. Relate the claim history to what was expected for the type of risk and compare this analysis to loss costs calculated using the class code. Decide whether additional funding is necessary based upon the evaluation.

## VI. Physical Characteristics

Physical characteristics are an important part of the risk and must be considered for each risk. There are varying degrees of housekeeping. Certainly, the poorer the housekeeping, the poorer the risk. Perfect housekeeping does not equate to a perfect risk. Housekeeping is only an indication of the type of management and must be weighed with the other variables and characteristics.

Housekeeping, maintenance of machinery and equipment, maintenance schedules for vehicles and machinery and upgrades to electrical and plumbing all have a direct bearing on the physical nature of the risk. Pictures help to communicate and confirm the physical conditions of the premises.

## VII. Financial Characteristics

If a business does not have adequate financial resources, it will eventually reflect in the loss experience. In such circumstances, the emphasis is on production even at the expense of safety. Quality controls are loosened or abandoned, inexperienced employees are hired, in general, safety precautions are ignored. As the financial squeeze continues, it will affect the housekeeping, maintenance, updates of systems or worn out machinery and even the quality of the employees. The temptation to cut costs is strong. New ventures are particularly susceptible to such pressures.

The best sources of financial information are outside reviews by independent services such as Dun & Bradstreet, TRW, CAB and others. While all of the services will provide data regarding slow payments, lien actions or prior bankruptcy filings it is difficult to get accurate information on small businesses especially sole proprietorships. Risks that are entered into the AIG eStart



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## RISK SELECTION

reservation system will generate 'alerts' if a risk's financial stress score is 4 or 5 by D&B. The underwriter should become familiar with the financial ratios that are acceptable.

After having used all available sources to obtain the necessary information and after a thorough analysis of all components of the risk, the underwriter is ready to make an evaluation of the total risk situation.

The impact of each element on the desirability of the risk must be weighed. Are deficiencies in control of hazards serious enough to make the risk unacceptable? Can the deficiencies be readily overcome by recommendations? What is the attitude of management toward the necessary corrective actions? Do we have the capabilities to handle the risk?

How does the total risk compare to the coverage and limits requirements? Will deductibles or self insured retention improve the results? Can we offer suggestions for improving their insurance program?

### **IX. Pricing**

One of the important points to be considered is rate adequacy. There are times when otherwise good risks become unacceptable because of inadequate rates/pricing. This can occur when the effects of severity have been diluted in the experience rating formulas, when credits are allowed for deductibles where the severity or catastrophe potential is present, when the risk has been misclassified, when the risk is under priced on their expiring policy and we are being asked to 'beat the price'.

The evaluation of each line of business must consider the entire account. Are we looking at all of their lines of insurance or only 'selected' portions? Account underwriting means that each line is considered as a part of the total account. It does not mean that we should insure a line of business that is poor or marginal simply to support a more desirable line of business. It is proper to consider the entire account to sustain otherwise unacceptable losses in a single line when the following conditions exist:

- Overall loss ratio remains good even in spite of such losses and;
- There is no potential for large losses because of limitations of coverage, exposures and limits.

### **DECISION**

Only after going through the above process can the underwriter make an intelligent decision. In some cases it will take only several minutes for the whole process, in other cases it may take more research. The basic decisions involve acceptance or rejection. If accepted setting the proper price level. Of course other decisions must be made regarding coverages, terms, deductibles, recommendations, loss control. All are important.

Your decision should be firm. This does not mean additional information or amendments to terms and conditions will not be considered. It does mean that the underwriter has followed a sound underwriting technique and has arrived at a knowledgeable, intelligent decision with reasonable confidence in that decision.

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### RISK SELECTION

#### **ACTION**

Arriving at a decision is not the final step in the underwriting process. It must then be implemented. The policy must be processed to reflect the terms and conditions as negotiated. If commitments were made to comply with recommendations or subject to favorable loss control these must be followed up to ensure compliance. Implementation of decisions require skill and discipline.

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## CLASSES OF BUSINESS

### RISK GRADES

An Underwriter cannot possibly know all there is to know about all classifications of business. There are useful guides that can focus the Risk Selection process into orderly components. The AM Best Company publishes a number of periodicals and reference guides. One of the most useful is the Best's Underwriting Guide which includes the Best's Hazard Index. The Underwriting Guide covers approximately 570 different industries. The Hazard Index identifies the relative degree of risk for each line of business for each classification. The ranges are (Low 1-3, Medium 4-6, High 7-9 and Very High 10) These Hazard Indexes should be used to identify which lines of business may require additional study before writing. These numbers normally reflect both the frequency and severity potential for loss within that classification and for that line of business.

Underwriting Comments can also be included within the Hazard Index number. These will call attention to factors that may modify the loss potential or the Hazard Index number, either positively or negatively. Other available sections of the Underwriting Guide include Related Classifications, Special Exposures and Risk Description – Process or Service and Materials and Equipment. All of these sections will help build the Underwriters' knowledge of the loss potential from these exposures. Note that an Underwriters' Checklist is also included.

### PRICING

Division 66 writes business on both an Admitted and Non-Admitted basis. Regardless of the basis, the integrity of our pricing philosophy is key to the growth and sustainability of a profitable portfolio. With changing market cycles, adherence to a sound and responsive approach to pricing is an essential part of our Underwriting Process. Coupled with Risk Selection, the skills and logic we apply to these make a difference. Whether the rating engine is one supplied by AIG Programs or another approved source, ISO – based or a unique rating formula, matching the rate to the exposures and historic or projected loss ratios is an integral part of our underwriting.

When writing business using the Admitted Companies, our filed loss costs and loss cost multipliers as well as all the rules and procedures will be complied with. Schedule debits and credits as well as experience rating follow the eligibility rules established by ISO and adopted by AIG Programs. We work with our Actuaries and Program Management to determine the pricing targets for a particular portfolio.

When writing business in our Surplus Lines or Non-Admitted Companies, we have more flexibility with the rates, but that flexibility is tempered with the need to meet profitability requirements for that particular line of business or Program. We work with our Actuaries to develop a rate need for a given portfolio. This is an overall rate need for the whole book of business and does allow for

## QWIK NOTES FOR CASUALTY

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### PRICING

individual account variations. However, it is the responsibility of the underwriters and their Program Managers to make certain that the pricing integrity of the Program attains the indicated rate need on an overall basis.

There are some useful tools for rating larger guaranteed cost accounts. Composite rating can be used in Commercial General Liability, Hospital Professional Liability, Commercial Automobile Liability, Commercial Auto Physical Damage Liability, Crime and Fidelity insurance either individually or in combination. There are specific premium thresholds that must be met in order to use this approach. Composite rates for a risk may be established on one or more special exposures in lieu of the regular underwriting bases and company rates in the various manuals. Make certain that you are aware of the premium eligibility requirements. These range from a low of \$5,000 for Crime or Fidelity up to \$80,000 for Commercial General Liability for basic limits. Please refer to your underwriting manuals for further direction.

### DEDUCTIBLES

Deductibles can be used as an underwriting and pricing tool. It is important to distinguish the reason chosen for using a deductible and the expected results. A deductible can enable an Insured to reduce the premium and, hopefully, apply that premium saved to loss control expenditures. The frequency and severity of losses will also have an impact on the amount of the deductible and its impact on the projected loss ratio. The ability of the deductible to be funded by the Insured and our ability to collect those funds from the Insured is part of the analysis. Most of our middle market accounts will have a "standard" deductible or no deductible. There are various approaches to using deductibles, and many are sound. The question is; will this deductible reduce the premium and the losses to the Carrier in an equitable manner? Or will it just reduce the premium, leaving the volatile losses to be funded by the Carrier from a smaller premium base? The size of the deductible, the number of claims, the nature and severity of loss and claims handling costs, and the financial stability of the Insured will determine if the Carrier will require collateral to be posted guaranteeing the loss within the deductible. On the assumption that that the Insured's deductible contains "expected" losses, the reduction of the overall premium can be significant.

A Self Insured Retention (SIR) is another similar approach to a Deductible with a couple of significant differences. In a deductible, the Carrier pays the claims expense and bills the Insured for the Deductible amount. The issue here is collecting the funds from the Insured on a timely basis. The plaintiff in a such claim scenario has been settled. In an SIR, the Insured pays the retained amount first and will be responsible for the defense of claims and their attendant costs. Be mindful that this will require the Insured to obtain counsel, satisfactory to both the Insured and the Carrier. As with a deductible, the Carrier may require collateral posted to protect defined losses within the coverage. Again, our middle market segment is not usually involved with Self Insured Retentions. We do not encourage them due to the needed oversight and costs involved.

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## MANDATORY FORMS

Within the Underwriting Guidelines distributed to all Programs for both Admitted and Non-Admitted companies there are listings of Mandatory Forms. These are common to all Programs, but are not a complete listing. Individual Programs will have specific line-of-business or industry-specific endorsements that will also be deemed to be mandatory. Care should be taken by each Underwriter to understand the application of these forms to the business being underwritten.

### Mandatory Forms for General Liability Admitted and Non-Admitted Programs

POLICY FORMS MUST BE EITHER ISO OR AIG FILED AND APPROVED FORMS UNLESS SPECIFICALLY LISTED.

#### MANDATORY ENDORSEMENTS

58332 – AIG Total Lead Exclusion (except RI, MA,VT)

69928 – AIG Asbestos exclusion ( not required if end. 86563 CGL Enhancement end. Or 82540 are used)

78689 – AIG Fungus exclusion ( not in AK,MA,WA, not required if end. 86563 CGL Enhancement end. Is used )

79277 – AIG Fungus exclusion – WA only

79379 – AIG Fungus exclusion – MA only

82540 – AIG Asbestos and Silica exclusion (do not attach 69928, 64003, 78697 or CG2951 if using this end.)

64003 – AIG Silica exclusion ( not required if end. 82540 is used)

87295 – AIG Violation of Statutes exclusion

CG2146 – Abuse of Molestation exclusion

CG2147 – Employment Practices exclusion (do not attach if using 86563 CGL Enhancement end.)

CG2155 – Total Pollution exclusion with exception for hostile fire

(for Construction/Contractors)

69196 – AIG Continuing and Progressive endorsement

74959 – AIG Land Subsidence and Condemnation exclusion

74960 – AIG UREA Formaldehyde exclusion

87096 – AIG Water Intrusion Exclusion

Again, there are specific filed forms and Program forms that may be applicable. All forms used must be approved and have either an ISO number, AIG number or a Program number assigned.

# QWIK NOTES FOR CASUALTY

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## SPECIFIC UNDERWRITING ISSUES

There are several industry segments where our underwriting experience is built upon a sizeable knowledge base. The following is a summary overview of several key issues involving these segments. These are not meant to be exhaustive nor replace complete guidelines or the specific underwriting expertise of our staff.

### Contractor and Construction Issues:

Litigation surrounding Construction Defects on residential construction has had a profound impact on the insurance industry. The boom in residential construction in the “growth states” of the US, coupled with increased litigation and changes in the courts’ interpretation of contracts forced changes in the coverage being provided to contractors. This litigation has not slowed down, it is spreading into other states. The states in question include; Arizona, California, Colorado, Nevada, Washington, Florida, Louisiana, New Mexico, Oregon, Texas and Utah. Specific endorsements must be used when writing sub-contractors in these jurisdictions. These include, but are not limited to the following. Refer to your own Underwriting Guidelines or Program Manager for more information on how these apply.

### MANDATORY ENDORSEMENTS: ALL CONTRACTORS

PRG 3160 (03/06)	Amendatory Endorsement
PRG 6007 (07/04)	Accident Insurance Endorsement
69186 (10/01)	Continuing or Progressive Damages Amendment
CG 2243 (07/98)	Architects & Engineers Exclusion
CG 2279 (07/98)	Contractors Professional Liability Exclusion
PRG 3181 (6/06)	Cross Suits Exclusion
CG 2147 (10/93)	Employment Related Practices Exclusion
CG 2154 (01/96)	Exclusion - Designated Operations Covered By A Consolidated (Wrap-Up) insurance program
74860 (01/00)	EFIS Exclusion
PRG 3159 (03/06)	Fungus/Mold, Asbestos, Lead and Silica Exclusionary Endorsement
CG 2135(01/87)	Medical Payments Exclusion
PRG 3183 (6/06)	Prior & Pending Litigation Exclusion
74959 (01/00)	Subsidence Exclusion
74960 (02/00)	Urea/Formaldehyde Exclusion

## QWIK NOTES FOR CASUALTY

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### MANDATORY ENDORSEMENTS FOR SPECIFIC CONTRACTORS

PRG 3099 (09/04)	Torch work exclusion (applies to all roofers)
PRG 3098 (09/04)	Professional Services Liability (For Fire Sprinkler Contractors. Any other application to be referred.)
PRG CC 03 04 99	Defense Inside the Limits
PRG CC 04 04 99	Deductible Amendment Defense Inside the Limits
CG 21 34 01 87	Exclusion – Designated Work – Prior Residential Work (See fill in verbiage.)
CG 21 53 01 96	Exclusion-Designated Ongoing Operations (Any work on condominiums or townhouses)
CG 21 34 01 87	Exclusion-Designated Work (Any work on condominiums or townhouses)
CG 21 53 01 96	Exclusion – Designated Ongoing Operations (any work on a new residential construction of more than * units in a development) (See fill in verbiage.) * See Grid for number of units.
CG 21 34 01 87	Exclusion – Designated Work (Prior Residential Work Exclusion) (any work on a new residential construction of more than * units in a development) (See fill in verbiage.) * See Grid for number of units.
PRG 3198 (10/06)	Condominium and Townhouse Limitation

### OPTIONAL ENDORSEMENTS AVAILABLE TO ALL CONTRACTORS

76163 (06/00)	Employee Benefits
CG 24 04 (10/93)	Waiver of Rights of Recovery- Blanket (as required by written contract and with no prior action over claims.)(See fill-in verbiage.)
CG 25 03 (11/85)	Per Project Aggregate (as required by written contract.) (See fill in verbiage.)
LX 0480 (04/90)	Stop Gap (Surcharge 5%)
CG 2010 (10/01)	Additional Insured Endorsement (See fill in wording.)
CG 2033 (07/04)	Additional Insured Endorsement
CG 2037 (10/01)	Additional Insured – Owners, Lessees or Contractors, Completed Operations As required by written contract and with no action over claims. Not available for residential contractors. Not to be used on a blanket basis. Specified projects only.
71709 03/04	Composite Rating Plan Premium Endorsement
PRG 3171 (03/06)	Additional Insured required by written contract. Must be accompanied by Designated Work Exclusion CG 2134 (excluding work in residential developments of 10 or more units.)
PRG 3011	Pesticide or Herbicide Applicator Coverage

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Our intent is to remove ourselves from the types of litigation that arise from the construction of large residential projects such as condominiums, town homes and large developments of individual homes. We have found that by limiting our involvement and the coverages that we provide to sub-contractors, our portfolio has developed more profitably. We continue to monitor our results as well as changes in the tort system on a state-by-state basis annually through our Construction Defect Claims office in San Ramon, California and amend our approach accordingly.

Other areas that have been problematic for contractors include New York state and Cook County Illinois. New York has a labor law that imposes strict liability for any injury resulting from a fall. This fall does not have to be from a significant height, falling from a step stool has triggered this type of litigation. Cook County has had adverse development of losses for a number of years. We continue to monitor these and other jurisdictions for signs of any changes.

It is important to remember that Construction risk and the contractual risk transfer utilized in this segment requires a solid understanding of the coverages and state legal rulings updated at least annually. This business can be written profitably, but it requires specialized knowledge and specifically crafted coverages to assure this.

### ADDITIONAL INSURED ISSUES

Nothing causes more confusion than the issues surrounding additional insured status and contractual liability coverage. There are valid reasons for one party to require another party to add it as an additional insured under their coverage. Indemnity agreements may require direct rights under the policy for the additional insured. Additional Insured status does provide defense costs up front as well as paying these costs in addition to the policy limits (depending on the policy form being used). Contractual liability, on the other hand, has numerous conditions that must be met in order to provide the same defense costs if there is no additional insured status.

Contractual Liability coverage protects insureds against liability assumed through hold harmless or indemnity clauses under contracts or agreements. With respect to contractual liability;

- The CGL Coverage Form generally provides protection for hold harmless agreements to the extent that there is coverage for bodily injury or property damage (however, facts for each claim will be considered relative to the loss before coverage is determined to exist);
- Bodily injury and/or property damage must occur subsequent to the execution of the contract or agreement;
- Agreements are covered whether oral or written;
- Contractual liability may be excluded by endorsement;
- Depending upon the state, it may be against public policy to transfer certain obligations to others.



# QWIK NOTES FOR CASUALTY

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## Understanding the idiosyncrasies of Indemnity Clauses

Hold Harmless Agreements may transfer liability to the point that operational exposures are no longer what is expected for individual insureds. In addition, insureds may not understand that hold harmless agreements, what they mean to their operation or legal obligations, and may, in some instances, be uninsured. Consider that some, or even many, indemnity clauses:

- Contractually transfer obligations that are not covered by the CGL policy;
- May not contain limitations on dollar amounts of loss or defense that insureds agree to assume, therefore, limits of liability may be insufficient to satisfy the highest anticipated judgments;
- Are not generally limited by time, i.e., there are no dates which signify an end to the liability assumed, which may continue indefinitely;
- Create a means by which insureds may become obligated to pay liability claims for injury to their employees (commonly known as third-party-over claims);
- Will most likely be interpreted in court, especially after a substantial loss or accident. Defense costs may be substantial.

## Analyzing the Indemnity Clause

Liability assumed by insureds may vary substantially between contracts. To understand hold harmless agreements (and not all contracts contain these agreements), it is helpful to highlight certain words in order to bypass jargon inserted by legal counsel. Read the following indemnity clause (hold harmless agreement) in its entirety, then read only the words that are bolded and italicized:

***Seller agrees to indemnify*** and hold each of said ***buyers*** harmless ***from*** any and ***all actions***, suits, or proceedings of any nature and character in any way attributable to or brought against buyers for the recovery of damages, or ***which the buyer may be required to pay for the injury, illness and/or death of any person*** caused or alleged to have been ***caused by the use*** or existence ***of any product*** or equipment ***purchased from*** or provided by the ***seller regardless of*** cause or fault or ***legal responsibility***.

The preceding paragraph illustrates how eliminating many of the words of a hold harmless agreement creates a product that is more easily interpreted, allowing underwriting assessments of liability obligations.

## CONTRACTUAL LIABILITY

The following discussion of contractual exposures contemplates the use of the automatic coverage provided within the ISO CGL form.

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## CONTRACTUAL LIABILITY

### Underwriting Contractual Liability

A contract, regardless of whose favor the terms benefit, may contain acceptable hold harmless arrangements if pricing capably reflects/funds for potential claims from liability assumed by insureds. Business size, relationships, laws, etc., enable certain members or parties of contracts to exercise greater control over the terms and conditions of indemnity clauses.

Consider gathering the following information to the extent necessary to make appropriate decisions relative to contractual liability exposures posed by individual insureds and document the underwriting file.

#### Information needed to assess hazards and exposures.

1. Determine whether insureds sign or require others to sign contracts containing hold harmless or indemnity clauses.

2. Understand the contractual obligations of the Insured:

Determine if the insured knows/understands what constitutes a hold harmless or indemnity agreement.

If necessary, obtain copies of contracts signed by insureds.

#### Special hazards or exposure considerations:

- May work off oral contracts.

The following examples are offered to provoke thought and may have pricing or insurability considerations:

- Assuming the liability of product manufacturers (consider that insureds normally do not design or set specifications for products or decide on physical properties of products);
- Assuming the liability of an equipment rental firm who provides operators or setup services;
- Assuming liability where insureds do not control or supervise job sites (potentially high third-party-over claims exposure);
- Assuming the liability of independent contractors hired to perform service at insured premises;
- Assuming liability for the actions of security forces, guard dog services, body guards, etc.;
- Assuming liability for personal & advertising injury of apartment or dwelling management firms;
- Insureds assuming liability for any situation outside their span of control or supervision.

# QWIK NOTES FOR CASUALTY

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## CONTRACTUAL LIABILITY

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3. Determine whether insured employ or seek Legal Counsel (prior to signing contracts) to interpret and negotiate contractual language as well as the extent to which others are held harmless from claims or loss.

- Insureds have different levels of understanding and ability to interpret contracts containing hold harmless agreements and capably relate assumptions (of liability) to their liability exposures;
- Prudent insureds may refuse to sign hold harmless agreements or offer to sign revised agreements.

4. Determine whether insureds protect themselves through hold harmless/indemnity clauses and require others to protect them against claims that may arise from their activities or operations. Obtain copies of standard documents insureds initiate that reduce/increase liability.

### Investigate:

- Purchase order agreements (insured's or suppliers)
- Sales Agreements
- Invoices
- Rental Agreements
- Lease Agreements (equipment, machinery, bulk storage, tanks, gas cylinders, real property especially warehouses, etc.)
- Turnkey Agreements
- Construction Agreements
- Maintenance Agreements
- Service Agreements
- Performing Agreements
- Any contractual obligation, not mentioned, that has the ability to alter the insured's legal liability for claims or loss.

5. Determine whether insureds use addenda to contracts that clearly identify indemnity responsibility.

Rather than embedding indemnity agreements in contracts where they may be overlooked or ignored, addenda clearly stand out and are easier to defend in court.

## QWIK NOTES FOR CASUALTY

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### CONTRACTUAL LIABILITY

6. Price the difference between:

Exposures and hazards prior to insureds signing (or agreeing to) hold harmless agreements, versus potential legal obligations for injuries or damages from exposures and hazards after signing hold harmless agreements.

And

What is expected with respect to assumption of liability for the average or typical risk for the rating class(es) versus what insureds may have assumed purposely, inadvertently, unintentionally or involuntarily (signed under pressure to win a contract).

Insureds may have suffered contractual losses that have influenced the size of the experience modifiers. Consider additional pricing through:

- Tier Rating/Company Deviations
- Schedule Rating/application of debits/credits
- (a) rating the increased exposure – Use Rule 34, a. when insureds sign hold harmless agreements that appear/have potential to substantially increase exposures well beyond what is usually contemplated by the class.

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

Personal and advertising injury liability is not usually a major underwriting concern. There are, however, instances when underwriters should allocate time and effort to identifying exposures, controls, and special pricing needs.

Internet usage and other means of electronic communication may place a burden on Personal and Advertising Injury coverage that did not previously exist. Issues concerning internet, individual's rights of privacy, and the obligation of users to maintain certain levels of security over access to data (especially financial and medical personal data) are continually evolving. Concerns are rapidly emerging relative to the legal issues associated with electronic communication as well as ability of others to readily and legally obtain information on individuals without their knowledge.

### Privacy Issues

An alarming trend with respect to gathering and using information is prompting state and federal governments to enact new privacy laws and regulations. Currently, emphases are geared toward protecting the privacy of individuals and concentrating on financial and medical issues, however, businesses may soon receive similar attention.

Consider the following with respect to definitions "d" and "e" of the Personal and Advertising Injury Definitions chart and the potential violation of individual's rights of privacy:

- Personal information may, in many instances, be legally collected and sold to others who use it to make decisions regarding marketing, credit, insurability, etc. "Profiling" by marketing individuals, law enforcement organizations and others is under scrutiny due to its invasive nature, potential misuse of information and security issues relating to invasion of privacy.
- Technology is rapidly improving information collection and allowing unparalleled application focused on individuals.
- Even if information is not sold or distributed to others, obtaining it and retaining it in files leaves it open to security issues, i.e., access by outside sources or potential distribution to an incorrect source.
- Dishonest employees may use company equipment or files to obtain access to personal client or customer information (unknown to employers) and sell it to others for profit. Charges of: a) failure to properly supervise; b) performing insufficient background checks; or c) insufficient security or safe-guarding of files may follow. Even if Personal Injury claims are groundless or false, or employees are deemed to have operated outside of the course of employment, defense costs may be considerable.
- There is intense legal activity aimed at protecting medical information for individuals. Currently, the following are medical/health conditions that require a great amount of security to ensure that it is not made public:
  - Drug and alcohol abuse.
  - Information derived from genetic tests
  - HIV/AIDS
  - Communicable and sexually-transmitted diseases
  - Mental health
  - Abuse, neglect, domestic violence, sexual assault

## QWIK NOTES FOR CASUALTY

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### PERSONAL INJURY AND ADVERTISING INJURY

In the “electronic world”, insureds must ensure adequate and appropriate security measures exist to protect information relative to personal lives of customers and clients, especially when the information is financial or medical in nature. Security breaches of data may constitute violations of individual’s rights of privacy and insureds may have coverage under the CGL. Measures must, in certain cases, include safeguards such as:

- Securing sites where electronic information is stored by limiting access, distribution and providing protection against hackers. The protection of these files must remain state-of-the-art through on-going updates or servicing by outside security resources.
- Securing paper files by limiting access and distribution.
- Even if information is not sold or distributed to others, obtaining and retaining it in files leaves it open to security issues, i.e., access by outside sources or potential distribution to an incorrect source.
- Appropriately supervising employees, performing background checks, monitoring e-mail, restricting information distribution routes, etc.
- Assessing and/or auditing security measures of business partners, especially when information is provided to them to perform certain tasks.

[Note that “AIG Corporate Identity Protection” may be available through National Union Insurance. Having this coverage, however, does not preclude the potential of suits to the CGL. Refer to your Program Manager if there is interest.]

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Underwriting Personal and Advertising Injury

When assessing the Personal and Advertising Injury potential for individual risks, consider the usefulness of the following steps:

1. Use the Personal and Advertising Definitions chart to help assess exposures. All risks, to some degree, exhibit characteristics under definitions "a." through "g."
2. Decide whether the risk's susceptibility to Personal and Advertising claims is what is expected, i.e., typical or unremarkable for the class, endeavors or activities. Refer to the Grading-in-Class topic which follows if help is needed for this assessment. Typical exposures for the majority of classes may need little, if any, investigation. Consider evolving issues of internet usage and electronic communication related to current privacy issues and trends.
3. Classes displayed in the Class Code Concerns chart should be scrutinized more thoroughly. Consider investigating exposures and researching controls initiated by insureds to protect against personal injury claims. These classes have unusual or higher exposures, that, in some cases, may be principal underwriting concerns.
4. Consider documenting pertinent issues in a permanent section of the underwriting file.
5. Consider pricing ramifications for each risk, and, if appropriate, make adjustments. There is little ability under the General Liability rating plans (particularly for Admitted Companies) to affect pricing for Personal and Advertising Injury. Document pricing decisions if exposure assessments indicate anything other than "typical" or "unremarkable". Consider:

- Personal and Advertising claims activity is included in Experience Rating Modification calculations and may have influence the size of the credit or debit;
- Schedule rating, specifically "Peculiarities of Classification" is appropriate for pricing Personal and Advertising Injury;
- Use Rule 34, a. of the General Liability section of the ISO Commercial Lines Manual, ("the manual rate or applicable classification is clearly demonstrated to be inappropriate because of a unique or unusual feature of the risk.") to price exposures when they are obviously affected by current trends relative to privacy and security issues, or if any other feature of the risk is unusual and deserving of increased pricing. {Again, if the insured purchased AIG Corporate Identity Protection it may lessen the need for such a pricing approach.}

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Personal and Advertising Injury Definitions

#### Personal and Advertising Injury Exposures

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a. False arrest, detention or imprisonment

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b. Malicious prosecution

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c. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.

#### Characteristics of Insureds Potentially Exposed

- 
- Municipalities/police departments
  - Provide security for others, such as security force agencies
  - Have custody or the responsibility for the safety of large numbers of individuals, such as schools, colleges, stadiums, arenas, etc.
  - Have sales floor normally attracting large numbers of shoppers
- 
- Any risk with characteristics under exposure "a"
  - Municipalities/police departments
  - Entities that collect debts, especially on behalf of other businesses.
- 
- Businesses who rent living or office space to others such as apartments, rental dwelling, offices, etc.
  - Businesses who rent short term occupancy such as hotels, motels, bed and breakfasts, mission houses, halfway houses, etc.
  - Any rental space provided to others for occupancy such as warehouses or storage spaces, retail space.
  - Any business that utilizes surveillance cameras in rooms that are provided to customers or the public for various reasons, such as dressing rooms in department stores, bathrooms, locker rooms or showers, etc.
  - Businesses that give customers a right to possess seats, tables, space, etc. for exchange of money or as general public access, etc.



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### PERSONAL INJURY AND ADVERTISING INJURY

#### Personal and Advertising Injury Definitions

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d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a per

- Any business or organization that handles or is privy to sensitive personal material of customers or clients. Financial and medical data is the current focus. Currently, the most protected medical conditions are:
  - Drug and alcohol abuse
  - Information derived from genetic tests
  - HIV/AIDS
  - Communicable and sexually-transmitted diseases
  - Mental health
  - Abuse, neglect, domestic violence, sexual assault
  
- Businesses that create reports for others that refer to credit worthiness, financial status, reputation, experience, abilities, etc.
- Businesses that accumulate information on clients or customers and that report the information to bureaus or organizations that sell the information to others.
- Any political endeavor
- Special interest groups that typically identify businesses or individuals that produce products or engage in activities contrary to the group's interests
- Any business with a Human Resources Department that retains applications and other information on prospects (especially when "interview sheets" are completed by interviewers)

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Personal and Advertising Injury Definitions

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e. Oral or written publication, in any manner, of material that violates a person's right of privacy.

- 
- Any risk with characteristics referred to under "d" above.
  - Any business that faxes or e-mails sensitive or private data
  - Consider the vicarious liability (from a breach of security or confidentiality) of AIG insureds when reports/information are provided to them to other businesses to perform activities or tasks on their behalf.

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f. Use of another's advertising idea in an advertisement.

- 
- Any risk with characteristics referred to under "d" above.
  - Any business that faxes or e-mails sensitive or private data.

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g. Infringing upon another's copyright, trade dress or slogan in an advertisement

*Trade Dress:* The manner in which a product is shaped, wrapped or packaged for display and sale.

- 
- Any business that advertises their own products.
  - Any business with a web page may be considered (would be fact-intensive for establishing coverage) to be in the business of advertising. Review the web page.

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Identifying Special Exposures

The following displays General Liability rating class codes that *may* have higher than normal or unusual exposures for Personal and Advertising Injury, some of which are of less concern when appropriate controls are initiated by insureds. Underwriters *may* find it necessary to perform more intensive investigations concerning these classes. The small letter designations following each class correspond with exposures displayed in the Personal and Advertising Injury Definitions chart above, and the classes are deemed to have these exposures to some degree.

### Class Concerns List

Rating class codes that may have unusual/special Personal and Advertising Injury exposures:

#### Accounting Services – d, e

- Coverage may be more appropriately addressed under E&O.
- Failure to maintain a certain level of security concerning client files/information
- Inadvertent release of client information.

#### Apartments – a, c, e

- May provide or contract for security services – vicarious liability
- May order credit history – privacy, distribution or access issues
- Maintenance of skeleton keys/access issues
- Premises inspections
- Appropriate eviction notice process

#### Armored Car Service – a

- Severe potential hold harmless consequences if using non-ISO Limited Contractual Coverage Forms.

#### Banks, Savings and Loans, Credit Unions, etc. – normally classified as “Buildings or Premises” – b, c, d, e.

- Should have procedures to follow for individuals that constantly miss payment schedules or will not negotiate a debt to conclusion.
- Foreclosure for non-payment of loans and claims of wrongful eviction for dismissal of rental agreements.
- Potential letters containing “debtor” remarks or comments made by employees to individuals or businesses.
- Security breach of files or outside source gaining access to on-line data bank, or hard copy files, etc. [Note prior comment on AIG Corporate Identity Protection]

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## PERSONAL INJURY AND ADVERTISING INJURY

### Class Concerns List

Collection Agencies – a, b, d, e. Major issues stem from purchasing debt and the accuracy of data with respect to payments.

- Coverage may be more appropriately addressed under E&O
- Should have procedures to follow for individuals that constantly miss payment schedules or will not negotiate a debt to conclusion.
- Potential letters containing “debtor” remarks or comments made by employees to individuals or businesses.
- Security breach of files or outside source gaining access to on-line data bank or hardcopy files, etc.

Computer Data Processing – e

- Security of files or outside source gaining access to on-line data bank, etc.

Copying and Duplicating Services – retail – e.

- Delivery or release of copies to incorrect client

Credit Reporting Agencies – d, e

- Failure to maintain a certain level of security concerning client files/information
- Accuracy of information provided to others
- Misdirection of personal information

Department or Discount Stores – a, b, c, e (large stores)

- Arrests of apparent shoplifters; may contract security
- Should have procedures to follow for individuals that constantly miss payment schedules or will not negotiate a debt to conclusion
- Unwarranted removal of individuals from premises, possibly for mischief, rowdiness, etc.
- Placement of cameras and extent of surveillance
- Security breach of credit files or outside gaining access to on-line data bank, etc.

Detective or Investigative Agencies – d, e

- Agency employees seeking personal information beyond contract specifications
- Spying, snooping, stalking, etc
- Investigative reports concerning individual's activities

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## PERSONAL INJURY AND ADVERTISING INJURY

### Class Concerns List

#### Diagnostic Testing Laboratories – d, e

- Failure to maintain a certain level of security concerning client files/information
- Misdirection of personal information.

#### Drugstores – d, e

- Failure to maintain a certain level of security concerning client files/information.

#### Employee Benefit Plans – d, e

- Usually separately incorporated
- Failure to maintain a certain level of security concerning client files/information
- Misdirected information

#### Employment Agencies – d, e

- Advising clients concerning prospective employees/applicants
- Failure to maintain a certain level of security concerning client files/information.
- Electronic files and internet resumes
- Accuracy of information provided to others

#### Financial Institutions – refer to “Banks”

#### Governmental Subdivisions – a, b,c, e ma contract for security

- Police, sheriff or other governmental security and protective measures
- May seek to “punish” individuals who constantly challenge laws
- Errors in eviction processes
- Surveillance cameras and face recognition instruments
- Newsworthy items concerning individuals leaked to the press

#### Healthcare Facilities – d, e

- May provide or contract for security services – vicarious liability
- Security breach of files or outside source gaining access to on-line data bank, etc.
- Inadvertent release or distribution of client information.

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Class Concerns List

#### Health Maintenance Organizations – e

- Failure to maintain a certain level of security concerning client files/information
- Inadvertent release or distribution of client information.

#### Housing Projects – c, e

- Appropriate eviction notice process
- Maintenance of skeleton keys/access issues
- Security breach of files or outside source gaining access to on-line data bank, etc.
- May provide or contract for security services – vicarious liability

#### Insurance Agents – d, e

- Professional/E&O overlap issue
- Written and electronic correspondence with company underwriters, loss control representatives, claims individuals, etc.
- Failure to maintain a certain level of security concerning client files/information

#### Insurance Company – normally classified as Building or Premises – e

- Underwriting information and security over access
- Personal information collection and retention, such as;
  - Applications and claim history for executives covered under D&O, E&O
  - MVR's and accident history for individuals
  - Health examination results for Life or Accident & Health
- Distribution/retention of loss information containing information on individuals, breach of security
- Vicarious liability for privacy of information provided to business partners

#### Investment Advice – e

- Failure to maintain a certain level of security concerning client files/information.

#### Lawyers Offices – b, d, e

- Professional liability overlap issues
- Failure to maintain a certain level of security concerning client files/information.

#### Loan Agents, Brokers and Correspondents – e

- Accuracy of information provided to others
- Failure to maintain a certain level of security concerning client files/information.

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Class Concerns List

#### Medical Offices – e

- Security breach of files or outside source gaining access to on-line data bank, etc
- Inadvertent distribution or release of client information

#### Mortgage Loan Brokers – d, e

- Potential letters containing “debtor” remarks or comments made by employees to individuals or businesses
- Failure to maintain a certain level of security concerning client files/information

#### Pension, Health and Welfare Plans – e

- Failure to maintain a certain level of security concerning client files/information

#### Political Campaign Headquarters – d

- Slander/libel

#### Real Estate Agents – d, e

- Maintenance of skeleton keys/access issues
- Failure to maintain a certain level of security concerning client files/information

#### Real Estate Property Managed – b, c, d, e

- May provide or contract for security services – vicarious liability issues
- Appropriate eviction notice process
- Security breach of files or outside source gaining access to on-line data bank, etc.
- Maintenance of skeleton keys/access issues

#### Schools – all – a, b, e

- May provide or contract for security services – vicarious liability issues
- Possible malicious prosecution issues
- Pictures or camera surveillance in locker rooms, showers, etc
- Security breach of files or outside source gaining access to on-line data bank, etc.
- Inadvertent release of student information

# QWIK NOTES FOR CASUALTY

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## PERSONAL INJURY AND ADVERTISING INJURY

### Class Concerns List

#### Security and Patrol Agencies – a, e

- Arrest and detention issues
- Security breach of files or outside source gaining access to on-line data bank, etc
- Snooping, spying, etc.

#### Shelters, Mission, Settlement or Halfway House – c, e

- May provide or contract for security services – vicarious liability
- Security breach of files or outside source gaining access to on-line data bank, etc

#### Deletion of the Contractual Liability Exclusion

Brokers request the deletion of exclusion “e. Contractual Liability” from Personal and Advertising Injury Liability. In many instances, simply deleting the exclusion may be a dangerous amendment to the Commercial General Liability form. Pricing ramifications may be considerable in order to fully fund for potential losses.

ISO provides an endorsement to delete “e. Contractual Liability” from Personal and Advertising Injury Liability. After performing thorough investigations of exposures and review of contracts, Underwriters should strongly consider using this form **CG 22 74 10 01** (rather than simply deleting the exclusion) if deemed appropriate.

*Note: Insureds holding others harmless for Personal and Advertising Injury claims is not typical for most classes. Underwriters should consider pricing ramifications and, if necessary, charge for the increased exposure.*

Underwriters should investigate contractual obligations paying particular attention to the following special situations or exposures.

**Security Firms** – When these firms are hired to provide security and/or guards to protect customers, tenants, students, etc., it is generally the security firm’s decision to arrest, detain or prosecute. The manner in which forcible measures are taken to protect against property damage and injury to others is also their decision. Camera surveillance may also be installed and used. The hired security firm selects camera locations and usually monitors them. They maintain contact with security guards and it is typically the security force’s sole decision to take action, i.e., arrest or to detain.

**Credit Bureaus, Mortgage Loan Brokers** – When these firms provide information to insureds, they (insureds) are relying on the accuracy and correctness of the information in order to make decisions concerning customer credit worthiness. The accuracy of the information, which may be distributed to other firms with whom services are coordinated, may be questionable.

**Real Estate Property Managed** – These firms are hired to manage property, thereby relieving owners from the hassles of building and equipment maintenance, managing tenant occupancy, collecting and accounting for rent, etc. Realistically, the managing firm makes all decisions, and is responsible for security, evictions, credit investigations and privacy issues.



# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

The guidelines for Products Liability apply to all classes of business with products exposures. Document underwriting files to the extent necessary to provide an understanding of exposures and their relationship to pricing. Consider using the following information as a guide to collect information. It is not necessary to respond to all categories or sections. Underwriters should consider using this to provoke thought in identifying those exposures that may affect loss or the potential for loss.

Understand the following information to the extent necessary to accept or decline risks and to make appropriate pricing decisions relative to exposures.

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Potential products information needed to assess hazards and exposures:

Consider the purpose of the product and why it was designed, built or exists.

Consider the product's application or use.

Consider the following:

- Need for engineers – Civil, Chemical, Electrical, Mechanical, Structural, etc.
- Whether product is a component part of another product and may, for example:
  - Help connect two products
  - Serve as a case or cover for other products or component parts
  - Control another product's function
  - Enhance or function in conjunction with another product
  - Serve as a safety mechanism to another product.

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Consider the level of education, skill, knowledge or ability required to design the product. Consider whether appropriate employees exist that meet these qualifications. Consider reviewing the resumes of key employees.

Consider the level of skill and special training needs required of employees to manufacture, assemble, operate equipment, etc., to produce safe products.

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Insured may employ:

- Engineers – Civil, Chemical, Electrical, Mechanical, Structural, etc.
- Technicians
- Specialists

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

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Consider under what conditions this product is used and whether it is, or is likely to be, modified by consumers or users

If the insured is a distributor or retailer, consider if products are sold using the insured's own label. Consider investigating design, manufacturing and contractual arrangements.

Consider ensuring directions and instructions are adequate for intended users. Consider technical expertise and physical conditions required relative to directions, instructions and warnings provided by manufacturer.

Several types of products are mentioned below with examples of issues underwriters may consider:

### Machinery or Equipment

- Adequacy of instructions, directions and warnings
- May be sold as used equipment
- May be modified or adapted for specific use – once modified, the original manufacturer may have limited liability
- Upgrades or improvements may call attention to prior deficiencies
- On-going improvements may be necessary for safety shut-down and cut-off systems
- Maintenance may be required for continued safe operation
- May be used for or under emergency conditions requiring reliable and exemplary performance

### Food – consumption by humans or animals

- May need quality control program that addresses:
  - Foreign objects in the final product, i.e., nuts, shells, machinery parts, rodents, insects, pesticides, etc.
  - Labeling and declaration of all ingredients (individuals may have egg, peanut, salt, etc., intolerance and rely on labels)
  - Quality of ingredients from suppliers
  - Growth of bacteria and mold during processing, after packaged and during storage
  - Adequacy and cleanliness of containers

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

- The food product may be used as an ingredient in another manufacturer's product (potentially major property damage issues)

### Tobacco Products

- Note. Should not be written. Must be excluded if any exposures

### Clothing – adult, child, infant

- Little, if any, defense for injuries to infants and children (SIR/deductible and pricing issues)
- Flammability and fire retardant issues
- Buttons, ribbons, cords and other objects that can be removed unintentionally and lodge in throat or strangle
- Inappropriate dyes, sizing, starches and other allergenic chemicals may be used
- Packaging may cause more injuries than the clothing, i.e., plastic bags, plastic clips, pins, hangers, etc
- Foreign made, distributor may be held accountable for injuries

### Pharmaceuticals or Medications – pills, ointments, lotions, salves, liquids, fluids, etc

- Human (bodily injury), or pet or livestock (property damage only claims) application
- Possibly injected, bypassing natural bodily defenses
- Extreme purity may be required
- Possible long term use problems or damage to organs
- Failure of user to follow directions

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

### Building Materials, Lumber and Wood Products

- Refer to Construction Defect topic for additional information
- May utilize newly developed materials that eventually prove to be inadequate or inappropriate for the application
- Chemical treatment of wood products to reduce flammability, rot, fungal growth, insect damage, etc, may lead to unusual claim and loss patterns

### Chemicals and Chemical Products

- There are approximately 55,000 chemicals in use throughout the world with a variety of exposures possibly requiring special assessment
- Certain businesses use extremely pure chemicals in processes
- Chemicals have different levels of toxicity, flammability and stability
- Public's perception is that chemicals are bad
- Combinations of certain chemicals may produce horrific injuries, especially in home use products
- Injuries may occur when chemicals get to the site of action (liver, heart, lungs, etc., for example) and exceed a certain duration, have a certain toxic effect, and exceed a certain dose
- Labels, warnings and MSDS forms may be required and must be accurate and updated on a regular basis
- Chemical products are under constant attack by lawyers or special interest groups who file class action lawsuits (many time groundless but requiring large defense expenditures)

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

### Instruments, Equipment or Appliances

- Adequacy of instructions, directions and warnings
- Possible external application to the human body
- Possible internal or invasive application to the human body
- Analytical or analysis of human bodily functions, such as EKG's
- Guidance systems
- Warning systems
- Controls functions of other equipment
- Products may be used under the following conditions:
  - Emergency to prevent loss of life or property damage
  - Warning to prevent loss of life or property damage

### Toys, Games, Play Area/Playground Equipment

- Consider defense for injuries to infants and children (SIR/deductible and pricing issues)
- Children may find a way to injure themselves no matter what effort was put into design
- Foreign-made, distributor may be held accountable for injuries

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

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Consider the complexity of the product, its components as well as the complexity of construction.

Consider what special materials are necessary to make/build the product.

Consider consequences if insured employs new materials that may eventually prove to be inadequate or inappropriate for application

Consider:

- External moving parts, quickness with which they move and requirements for safety guards, automatic shut-down and braking systems. Consider:
  - Pulleys
  - Chain or belt drives
  - Levers
  - Swinging objects
  - Rotating blades or other parts
  - Sharp, blunt, flexible, etc.
- Internal moving parts and maintenance requirements
  - Some machinery or equipment requires maintenance while operating
  - Openings may allow access while operating
- Safety guards and shut-down systems
  - Owners may purposely defeat safety systems
  - May be removed and not replaced
  - May malfunction or break down
  - Design may be defective or deficient
- Useful life and maintenance requirements
  - Product may be resold multiple times creating need for updates
  - Laws directed toward design adequacy and ability to function or perform as intended
- Assembly requirements-complexity and special techniques

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

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- Operating temperatures and heat sources
- Mobility of product
  - Human occupants/passengers
  - Operational speeds, i.e., autos, golf carts, bicycles, scooters, etc.
  - Ability to carry, lift, dig, etc.
  - Flight, road, track, etc., travel
  - Safety restraints, braking systems, etc.
  - Stability
- Product used as protection
  - From cold or heat
  - To safe-guard body parts
  - To reduce impact

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Consider if the product will be consumed by or injected into humans, farm animals, dogs, cats, etc., or applied topically.

Consider obtaining and reviewing product warnings, package labels, invoices and Material Safety Data Sheets (MSDS).

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Consider:

- The degree of purity necessary for safe products, and quality control and sampling testing efforts necessary to avoid contamination, for example, from:
  - Bacteria
  - Machinery and equipment parts (especially from processing parts)
  - Bones or shell fragments from seafood or nuts
  - Fungus/mold
  - Incorrect ingredients, colors/dyes, etc.
  - Chemicals and chemical products, especially insecticides and rodenticides
- Protection against potential product tampering, child proof packaging, etc.
- Potential spoilage, outdated ingredients and other composition changes

## QWIK NOTES FOR CASUALTY

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### PRODUCTS LIABILITY

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Consider determining whether insureds have envisioned potential misuse and applications of their product.

Consider reviewing whether appropriate measures have been taken to prevent or warn against misuse or a function for which the product was never intended.

- Consequences (or potential consequences for certain individuals) if combined with other products or ingredients
- Potential allergic reactions or side effects (possibly due to inadequate warnings or labels)
- Potential mislabeling, inadequate warnings, etc.

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Consider who will use the product.

Consider if the user of the product must have a certain level of coordination, physical stature, or technical skill/ability.

Consider ensuring directions and instructions are adequate for intended users. Consider technical expertise and physical conditions required relative to directions, instructions and warnings provided by the manufacturer. Instructions should be written so that the intended user understands what is required.

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Consider if:

- Technical user –expected to understand technical directions and have the training and knowledge to safely use this product.
- Professional user – expected to understand technical directions and have the training and knowledge to safely use this product.
- Athlete or sports authority – may need to protect against injury or harm, possibly against a devastating blow.
- Adult – private citizen. Consider age group. Geriatrics may be considered in the same class as children for care. Group is not expected to have highly technical skills or ability to comprehend detailed or complicated directions.
- Young adult/teenager – immature, they believe they are invulnerable and take chances.
- Child – no defense or injuries unless an adult intervenes.
- Infant – strict liability is most likely.



# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

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Consider determining whether insured have envisioned potential misuse and applications of their products.

Consider reviewing whether appropriate measures have been taken to prevent or warn against misuse of a function for which the product was never intended.

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Consider if there is an intervening force in the sale of the product. Understand the consequences of errors on their part.

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Individuals are extremely creative and will adapt many and unusual products to aid, enhance, reduce effort, etc.

Examples of some of the more notable adaptations are:

- Lawn mower to trim a hedge
- Plastic milk cartons as gasoline containers
- Knife as a screw driver
- Coin as a fuse

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Consider:

- Wholesaler/distributor-the following may be required and performed as a service to manufacturers or customers:
  - Assembly
  - Servicing/maintenance
  - Repackaging
  - Relabeling
  - Formulation
  - Refrigeration
  - Discarding outdated items
  - Customization/design
  - Training equipment or machinery operators
  - Adequacy of instructions and warnings
- Pharmacist
  - Possibly prepares/mixes preparation
  - Assesses compatibility based on knowledge of customer's other medications
  - Selects container, produces labels and advises concerning warning

## QWIK NOTES FOR CASUALTY

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### PRODUCTS LIABILITY

- Retailer
    - Assembly, possibly by untrained individuals
    - Repair
    - Servicing
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Consider what will occur if the product fails or malfunctions.

Consider how many individuals may be affected by failure or malfunction or what property damage may occur.

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Consider what quality control efforts or programs are necessary to produce safe products.

Consider where component parts or ingredients are obtained. Consider how they are delivered. Consider whether insureds are knowledgeable of supplier's quality control efforts, tracking ability, products recall planning, etc.

Consider:

- Type or extent of injuries to individuals
  - External nuisance type injuries of no real consequence
  - Injuries to eyes
  - Internal/external injuries, possible brain damage or injury to organs, broken bones, etc.
- Number of individuals from one occurrence
- Potential for multiple occurrences from single defect or misuse
  - Assembly, possibly by untrained individuals
  - Repair
  - Servicing
- Possible property damage
  - Small, nuisance claims
  - Catastrophe potential, major fires, explosions, etc.

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Contract haulers/delivery in tank trucks – prior products hauled in tank versus cleaning prior to hauling insured's products.

## QWIK NOTES FOR CASUALTY

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### PRODUCTS LIABILITY

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Consider whether a Products Recall Program is necessary. Consider analyzing the viability of the program relative to exposures presented by the product made or sold.

Determine if insureds have had prior recalls and for what purpose. Understand exactly what the problem was and why it occurred. Determine what steps were taken to correct the situation

Note: Division 66 is not a market for Products Recall coverage, but other AIG Companies do provide this coverage. Please contact your Product Line Manager or Program Manager for more information.

Consider:

- Products may be recalled for the following reasons:
  - Design flaw
  - Production defect
  - New scientific information concerning dangers from a product or materials previously thought safe
  - Accidental tampering
  - Unforeseen misuse
  - Failure to comply with safety standards
- Number of individuals injured from one occurrence
- Potential for multiple occurrences from a single defect or misuse
  - Assembly, possibly by untrained individuals
  - Repair
  - Servicing
- Possible property damage
  - Small, nuisance type damages
  - Catastrophe potential, major fires, explosions, etc.
- Generally, retailers and wholesalers may be included in the manufacturer's recall program unless foreign products manufacturers have a documented program. A Products Recall Program is difficult to administer if there is no company representative in the United States.
- Highly susceptible to recall (requiring an appropriate plan)
  - Home appliances
  - Autos/mobile equipment
  - Baby cribs, children's toys, clothing
  - Food processing, especially ground meat
  - Pharmaceuticals/over-the-counter drugs

# QWIK NOTES FOR CASUALTY

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## PRODUCTS LIABILITY

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Packaging, warnings, warning labels, alerts, MSDS, etc. should be appropriate for the product.

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Consider the extent to which each is needed and assess the adequacy of the current packaging, warnings, labels, etc.

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Consider the impact of foreign-made products or components.

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Consider to what extent insureds may be held accountable:

- When components are foreign-made
- When products are imported

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Contractual arrangements

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Consider:

- Component manufacturers
- Toll manufacturers (makes product on own account under license with patent owner)
- Contract manufacturer (makes product for others to sell, generally, those who hold patents but have no physical manufacturing plant)

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Determine if insured provides Vendors Liability coverage to wholesalers, distributors or retailers.

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Consider:

- Special training for vendors to handle, service or repair products; complexity of the product
- Demonstration of the product at the vendor's premises and who is exposed.
- Assembly or set-up and testing requirements at the vendor's premises.
- Inspection requirements and ability to repackage the product.

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Determine if insureds (wholesalers or retailers) are protected by Vendor's Liability.

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Consider:

- Pricing issues
- Exclusions based on exposures presented.

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Investigate past products exposures; discontinued products.

## QWIK NOTES FOR CASUALTY

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### FOREIGN PRODUCTS LIABILITY

#### Foreign-Made Product Sales

Many state laws may hold importers, or even sellers of foreign-made products accountable as manufacturers when individuals are injured. Because importers or sellers of foreign-made products may be held accountable as manufacturers, product pricing should reflect the increased loss potential. The greater the opportunity to access another Products liability policy, the less likely importers or sellers may be held accountable. Consider whether pricing should reflect this ability, or lack of ability, to successfully pass responsibility of claims to others.

#### Foreign-Manufactured Product Issues

Some of the difficulties insureds (especially importers) may face with respect to liability concerning the distribution of foreign-made products may stem from one of the following;

- The concept of Products Liability generally does not exist in foreign countries to the extent that it does in the United States and this is viewed by foreign manufacturers as an obstacle to doing business here.
- It may be difficult to verify Products Liability coverage for foreign manufacturers. Certificates of Insurance are sometimes written in foreign languages making it difficult to compare or identify coverage. Moreover, limits of liability may be displayed in foreign currencies, requiring the conversion to U.S. dollars. Fluctuations in currency exchange rates may also adversely affect coverage limits available to satisfy court judgments.
- Foreign insurance policies may not be written in ISO, or other standard U.S. contract language, making it difficult to compare coverage.

Issues concerning sales of foreign-manufactured products are:

1. Ability to get foreign manufacturers to respond adequately to products losses, claims and subpoenas;
2. Ability to get the importer of the product involved in losses or claims presented to the seller of the product; and
3. Higher costs associated with obtaining their (manufacturers or distributors) cooperation.

## QWIK NOTES FOR CASUALTY

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### FOREIGN PRODUCTS LIABILITY

#### Mitigating Exposures to Foreign-Made Products

If deemed appropriate, consider the various measures taken by insureds to protect against loss or to reduce the likelihood of losses which may include:

1. Certificates of Products Liability indicating sufficient coverage are obtained from sources (manufacturers, distributors, etc.) of foreign-made products, and files are maintained and updated annually. If sources (sellers such as importers or distributors) of foreign-made products are not located in the United States, insureds have documented evidence that foreign manufacturers will adequately respond to products claims or losses in the United States.
2. Insureds verify importers, or U.S. based distributors, carry sufficient Products Liability coverage including protection (for the insured/seller) under a Vendor's Liability endorsement.
3. Insureds use sales or purchase order contracts with their customers that incorporate disclaimers and hold harmless agreements in their (insured's) favor.
4. Insureds refuse to sign hold harmless agreements and do not assume liability with respect to foreign-made products sold.
5. For high exposure products, insureds maintain files that list buyers, mailing addresses, types of products sold, serial numbers, manufacturers and copies of all notifications such as warnings, problems, recalls, etc.

In addition, when insureds are direct importers of foreign-made products, consider verifying:

- Products imported/sold meet state-of-the-art standards for safety guarding and protection (Loss Control Service may be necessary to verify this) and are acceptable for their intended use.
- Warnings are provided to customers of dangerous operating conditions or the necessity for point guards to protect against injury.
- Materials used to build or make products are appropriate for their intended use (to illustrate, coffee cups made from clay containing lead are not appropriate for their intended use).

Note: There may be a practical limit at which protective measures (employed by insureds) become less effective, especially when considering/underwriting high hazard products (those capable of causing severe injury). Very high limits of liability may be required to satisfy judgments and importers/sellers of foreign-made products may be required to contribute to loss. At the very least, loss adjustment expenses (ULAE and ALAE) may be higher due to claim monitoring and evaluation tasks performed by the Claims Department as well as external legal costs.

## QWIK NOTES FOR CASUALTY

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### VENDORS LIABILITY

Individuals or organizations often request protection from Products Liability claims when selling products manufactured or distributed by others. Additional Insured – Vendor endorsements provide this protection when attached to CGL coverage forms.

The higher the potential for loss or injury, the more likely Vendor's coverage will be requested. Not only can it reduce insurance costs for sellers of products, but it can also save time and energy defending against claims and lawsuits. Bargaining power or leverage held by individual businesses usually determines whether or not coverage is available.

#### Protection for the Insured

To ensure claims are effectively/appropriately passed to others, when evaluating individual insureds such as wholesalers, distributors or retailers, consider determining whether the suppliers (manufacturers or other distributors) protect them through Vendor's endorsements. If not, consider encouraging insureds to seek protection under Vendor's Liability Endorsement.

#### Evaluating the Protection

The adequacy of Vendor's coverage varies, and should be related to products pricing. There are several conditions to consider that may influence premiums charged for Products Liability coverage when insureds are protected by Vendor's Liability coverage. They are:

1. Manufacturer's Products Liability insurers should be financially sound with a Best's rating of A- or better.
2. Vendor's coverage does not provide separate liability limits, but is included in the policy occurrence limit. It is also subject to the aggregate limits applicable to Products Liability coverage. Based on the hazards associated with products sold, decide whether each of the following should affect pricing for the insured:
  - The occurrence limits of liability available to vendors should be sufficient to protect against claims expected from products sold; hazardous products require higher limits; less hazardous products require lower limits.
  - Aggregate limits should be sufficient to handle the total of all claims expected from all vendors of the manufacturer's products
3. Protection is typically available if injuries occur while risks are scheduled on Vendor's endorsements or are selling products under contract with the supplier. If risks stop utilizing suppliers, they are typically deleted from the endorsements or lose the protection. Past products sales and expected claim activity should be considered relative to pricing when Vendor's protection is no longer available. This is especially important when products are high hazard or produce loss frequency.

## QWIK NOTES FOR CASUALTY

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### VENDORS LIABILITY

#### Where Coverage is Most Desirable

In certain situations, it may be prudent to request risks to aggressively pursue protection from suppliers through Vendor's endorsements. Examples of situations where extra effort may be necessary are:

1. When risks distribute products that are manufactured by others except the insured's label is placed on the product (insured did not design or set specifications for the product);
2. When risks handle machinery, instruments, equipment or other products capable of, or expected to produce, losses with high values and where it is usual for all participants of the distribution system to be joined in suit;
3. When products are received from other distributors who are direct importers and there are no representatives of foreign manufacturers located in the United States.
4. When risks are distributing used products that have been altered, customized or redesigned by suppliers;
5. When insureds assemble, demonstrate or set up machinery or equipment prior to delivery to customers.

#### Effect on Products Pricing

When risks are protected by adequate Vendor's coverage, consider adjusting Products Liability pricing. Usually, small credits are applied to the vendor's policy (the insured benefiting from Vendor's protection) based on the likelihood of Vendor's Liability limits containing losses for individual products and the manufacturer of the product stepping in immediately to handle claims.

Products expected to produce high value claims warrant less credit unless Vendor's Liability limits are unusually high and provide adequate protection. Usual limits are \$1,000,000, however, some endorsements may provide higher limits, especially when Commercial Umbrellas are utilized.

#### Where Coverage is Most Desirable

In certain situations, it may be prudent to request risks to aggressively pursue protection from suppliers through Vendor's endorsements. Examples of situations where extra effort may be necessary are:

1. When risks distribute products that are manufactured by others except the insured's label is placed on the product (insured did not design or set specifications for the product);
2. When risks handle machinery, instruments, equipment or other products capable of, or expected to produce, losses with high values and where it is usual for all participants of the distribution system to be joined in suit;
3. When products are received from other distributors who are direct importers and there are no representatives of foreign manufacturers located in the United States;
4. When risks are distributing used products that have been altered, customized or redesigned by suppliers;
5. When insureds assemble, demonstrate or set up machinery or equipment prior to delivery to customers.



## QWIK NOTES FOR CASUALTY

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### VENDORS LIABILITY

#### When AIG Insured's Provide Vendor's Coverage

When asked to provide Additional Insured – Vendor endorsement, consider each of the following:

- Distributors wanting to protect retailers through Vendor's coverage should be scheduled as vendors on manufacturer's (the wholesaler's or distributor's supplier) Products Liability policies. Otherwise, distributors are accepting the responsibility of manufacturers; they may offer protection to customers that is denied to them by their own suppliers, thereby substantially increasing claim handling expenses. If it becomes necessary to provide Vendor's coverage under this condition, higher pricing for the endorsement is most likely necessary.
- Determine whether products are demonstrated by customers/vendors at their premises and understand what special protection and instructions are necessary for buyer's/customer's safety when operating or using the products. Injuries occurring during demonstration activities are covered by Vendor's endorsements when on the vendor's premises in connection with sales. Insureds must ensure vendors understand products and take precautions necessary to protect potential buyers while viewing or participating in demonstrations.
- Determine the extent to which customers/vendors must assemble or construct products in their premises prior to sale. This exposure is covered by the Vendor's endorsement. Technical aspects of performing assembly should be assessed as well as training from manufacturers or wholesalers (providing Vendor's coverage) to ensure adequate and safe products are produced.
- Know whether or not products must be unpacked for inspection, demonstration or testing, and then repackaged. This exposure is covered by the Vendor's endorsement. Insureds should confirm that customers/vendors can repackage products, especially when dealing with fragile instruments such as scientific or medical equipment.

#### Underwriting Considerations for Vendor's Liability

Consider the worthiness of Vendor's Liability under the following situations:

- The ability to identify original suppliers of products is necessary since some retailers or distributors (customers of insureds) may also receive similar (or even the same) products, materials or supplies from sources (manufacturers, distributors, etc.). The possibility of participation on claims may exist when other manufacturers or wholesalers (not insureds) provide AIG risks with similar, or the same products, making claim handling more complex. This is most likely a concern where suppliers compete over sales of familiar or popular consumer products.
- Distributors or sellers of used products may be treated by courts as manufacturers. Adding customers as Vendors to an insured's policy (when insureds sell or distribute used equipment) may eliminate, or at the very least, complicate the ability to pass claims to original manufacturers.

## QWIK NOTES FOR CASUALTY

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### VENDORS LIABILITY

- Distributors or wholesalers of products that are perishable, such as, drugs, seafood, etc., may not have the ability to determine the point at which products became dangerous once sold. Adding other entities/customers as Vendors, may place responsibility for losses on insureds, even though the product was safe, or in an acceptable condition, prior to delivery. Especially susceptible to this problem are insureds handling products that: 1) need refrigeration; 2) have "destroy" dates; 3) deteriorate with age; or 4) need special storage conditions such as products that are changed, destroyed or chemically altered by light, etc.
- Know whether or not products must be unpacked for inspection, demonstration or testing, and then repackaged. This exposure is covered by Vendor's endorsement. Insureds should confirm that customers/vendors can repackage products, especially when dealing with fragile instruments such as scientific or medical equipment, etc.
- In some instances, manufacturers may have gone out of business, leaving other members of the distribution chain as targets to satisfy claimants. Risks (especially distributors) providing Vendor's protection to retailers may become responsible for products losses when this condition exists.

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### USED MACHINERY OR EQUIPMENT SALES

Insureds may:

1. Take possession of used machinery or equipment as trade-ins for new purchases;
2. Specialize in used product sales; or
3. Sell owned equipment that has been replaced or updated.

The liability imposed on these risks may be no less than that of a manufacturer. Generally, businesses may be held accountable for injury or damage caused by products that are used, and have been resold by businesses, without the original manufacturer's knowledge. It may be necessary for the last vendor to ensure products meet current safety standards, and are brought up to current, state-of-the-art protection.

#### Pricing Considerations

Pricing for accounts selling used machinery or equipment should reflect the increased exposure of a manufacturer, i.e., possibly selling defective or insufficiently protected equipment. Consider discussing exposures with Loss Control representatives and Claims individuals who have expertise in Products Liability.

## QWIK NOTES FOR CASUALTY

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### Procedures That May Reduce Liability

Consider reviewing the insured operation against the following procedures and decide whether Loss Control should provide assistance. Insureds may protect themselves against claims arising from the sale of used machinery or equipment by either;

Selling the machinery or equipment to dealers or distributors (not brokers) who will then sell it to other businesses;

or

1. Using a purchase order agreement that includes an indemnity clause or hold harmless agreement protecting the insured from claims due to the use of, or defects in the machinery. Insureds should not sign agreements to hold buyers harmless and should not assume liability with respect to the machinery.
  2. Warning buyers in writing that equipment is used, is sold as is, was never modified, and should be checked by engineers or appropriate specialists prior to using, and ensure it is in safe operating condition, and the equipment should not be placed in operation prior to complying with the original manufacturer's requirements for safe use.
  3. Warning buyers in writing that the machinery or equipment may not meet current state-of-the-art protection standards, and safety devices or shut-down/automatic cut-off mechanisms may have been locked open or rendered inoperable, and that it is the buyer's responsibility to ensure equipment is brought up to current standards prior to allowing anyone to operate it. This notice provides even greater defense if signed by the buyer.
  4. Advising buyers to contact the original manufacturer of the machinery or equipment to inform them that they (the buyers) have purchased the machinery and want to be informed of recalls or advised of updates or identified deficiencies, and that they need installation, operation, service and maintenance manuals, precautionary labels, and requirements to make the machinery or equipment safe.
  5. Indefinitely maintaining files that list buyers, mailing addresses, types of machinery or equipment sold, serial numbers, manufacturers and copies of all notifications suggested above.
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## QWIK NOTES FOR CASUALTY

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### LOSS CONTROL

Loss control surveys are provided by AIG Consultants Program Division and its approved subcontractors. The purpose of the surveys is to verify information obtained on the application, improve/enhance the insured's risk management program and to identify "exceptions" or critical information requiring the underwriter's review.

The following guidelines have been developed to ensure consistency in the utilization of loss control throughout the underwriting of AIG Program Division accounts. Unless stated differently in program specific underwriting guidelines, the following loss control guidelines should be followed:

1. At inception of any program, the AIGC Program Division loss control staff will have assisted in the selection of an approved subcontractor and appropriate survey report based on program complexity and size, along with any Consultative services that may be deemed appropriate

**The following survey request parameters are applicable to all lines of business. Therefore, when determining the need for loss control the total account information should be considered along with the property exposures.**

2. The Program Administrator should request a telephone survey within seven days of the effective date on all new business and every three (3) years thereafter if any of the following applies:
  - a. Total combined premium is between \$25,000 and \$75,000
  - b. There is no loss control report in the file or there is but it is more than two years old
  - c. At the discretion of the underwriter; a telephone survey can be ordered more frequently and regardless of premium size if necessary.
3. The Program Administrator should request a physical survey on all new business and every three (3) years thereafter if any of the following applies:
  - a. Total combined premium is \$75,000 or greater
  - b. Property TIV \$1,000,000 or greater amount subject any one location. For accounts with multiple locations, develop a plan to complete location surveys within three years. The plan should be developed in conjunction with the Program Manager.
  - c. The underwriter has special instructions or questions they would like answered during the survey that are unique to the program or account.
  - d. At the discretion of the underwriter; a physical survey can be ordered more frequently and regardless of premium size if necessary.
4. The Program Administrator should review the survey report and recommendations (if any) within seven (7) calendar days of receipt. The underwriting file should reflect the review and the date it was done and any underwriting actions that may be necessary as a result of such review.
5. AIGC Program Division, is responsible for mailing the insured and agent the survey letter and recommendations requesting a response to *essential* recommendations (if any) within 14 days.
6. The underwriter is responsible for follow-up on *Essential* recommendations on or about day 45 that no response or a non-compliance response to *essential* recommendations was received.