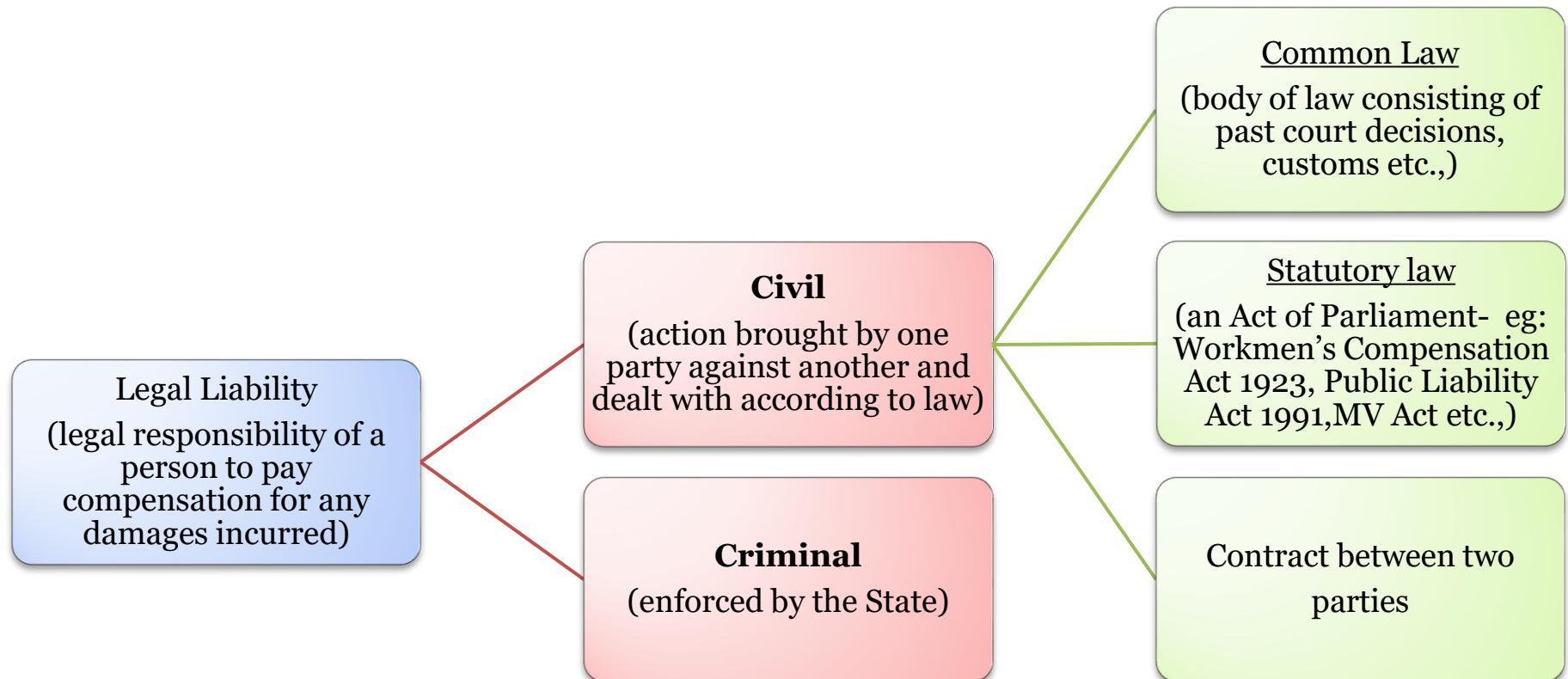


LIABILITY INSURANCE

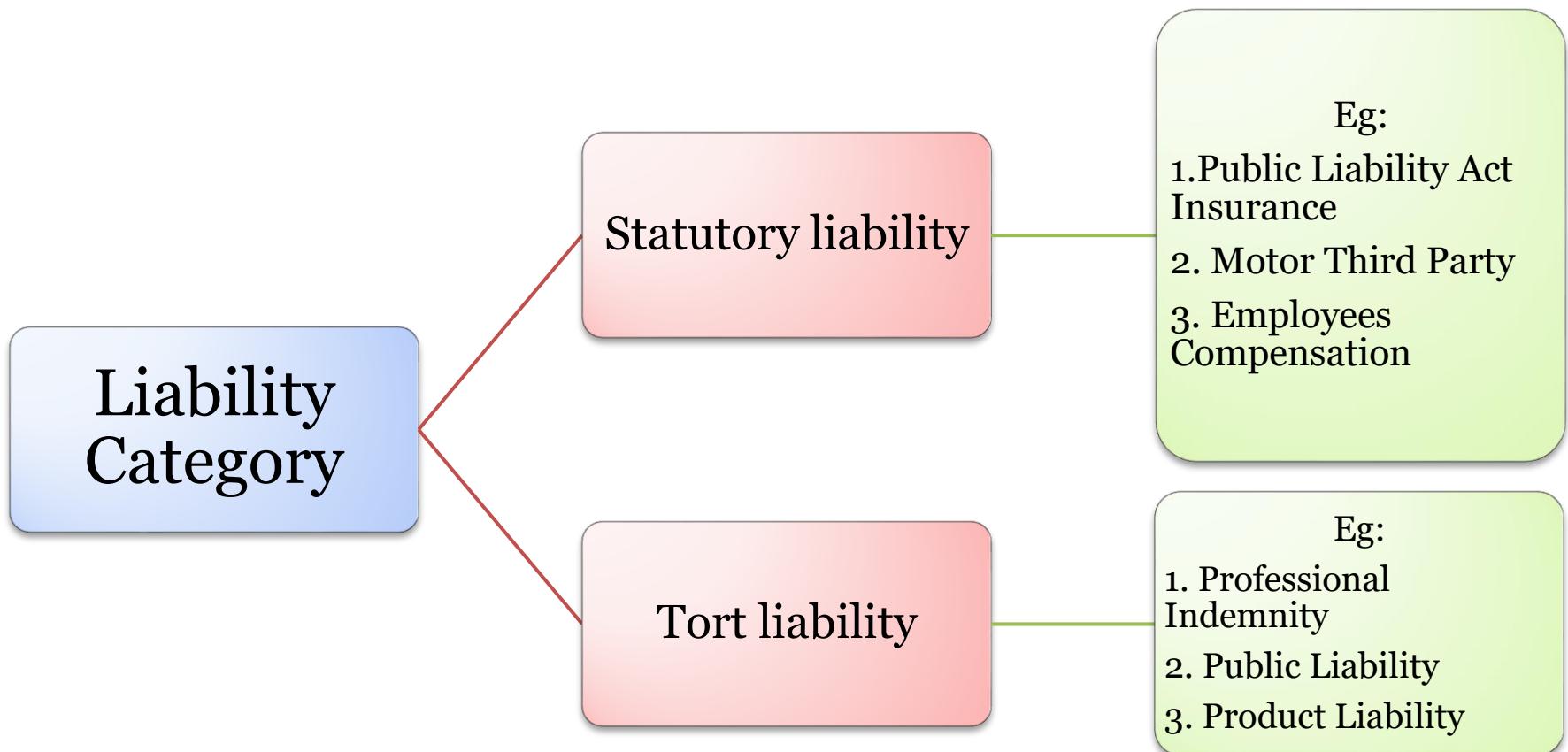


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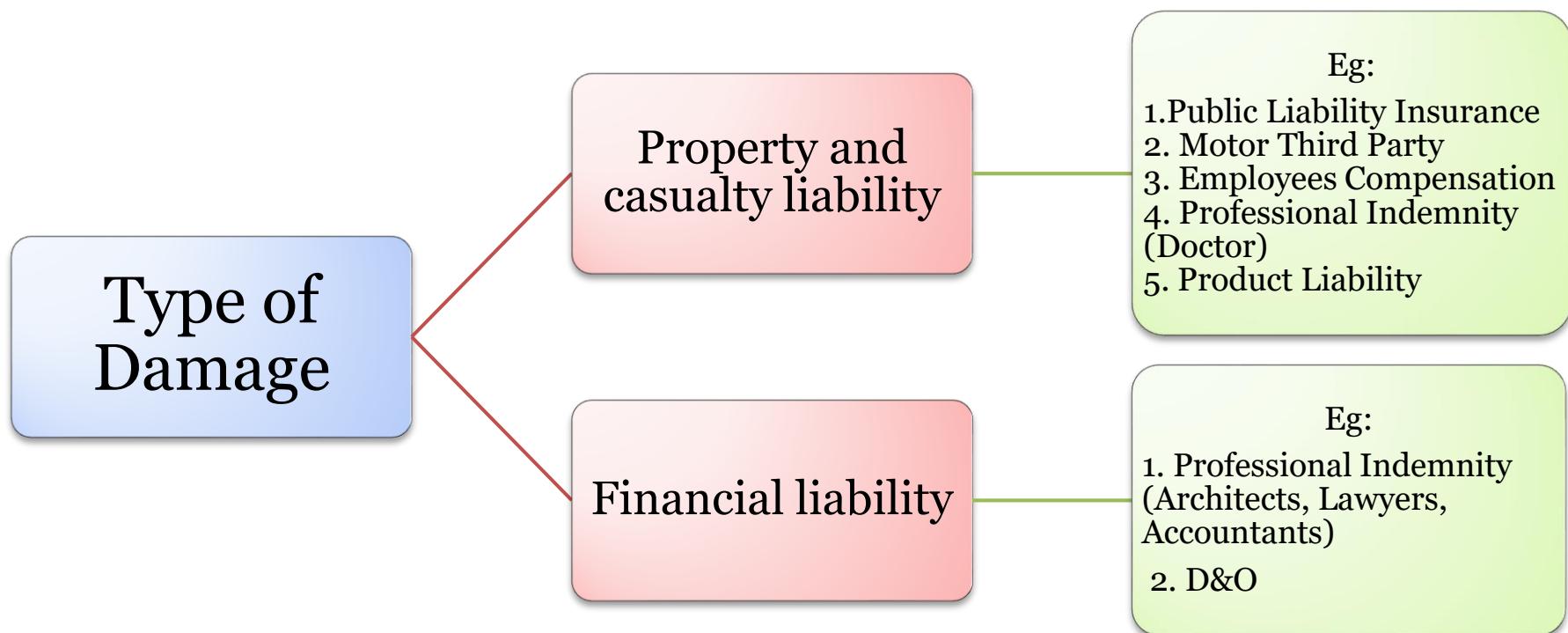
Intro to Legal Liability



Intro to Liability Insurance (Cont.,)



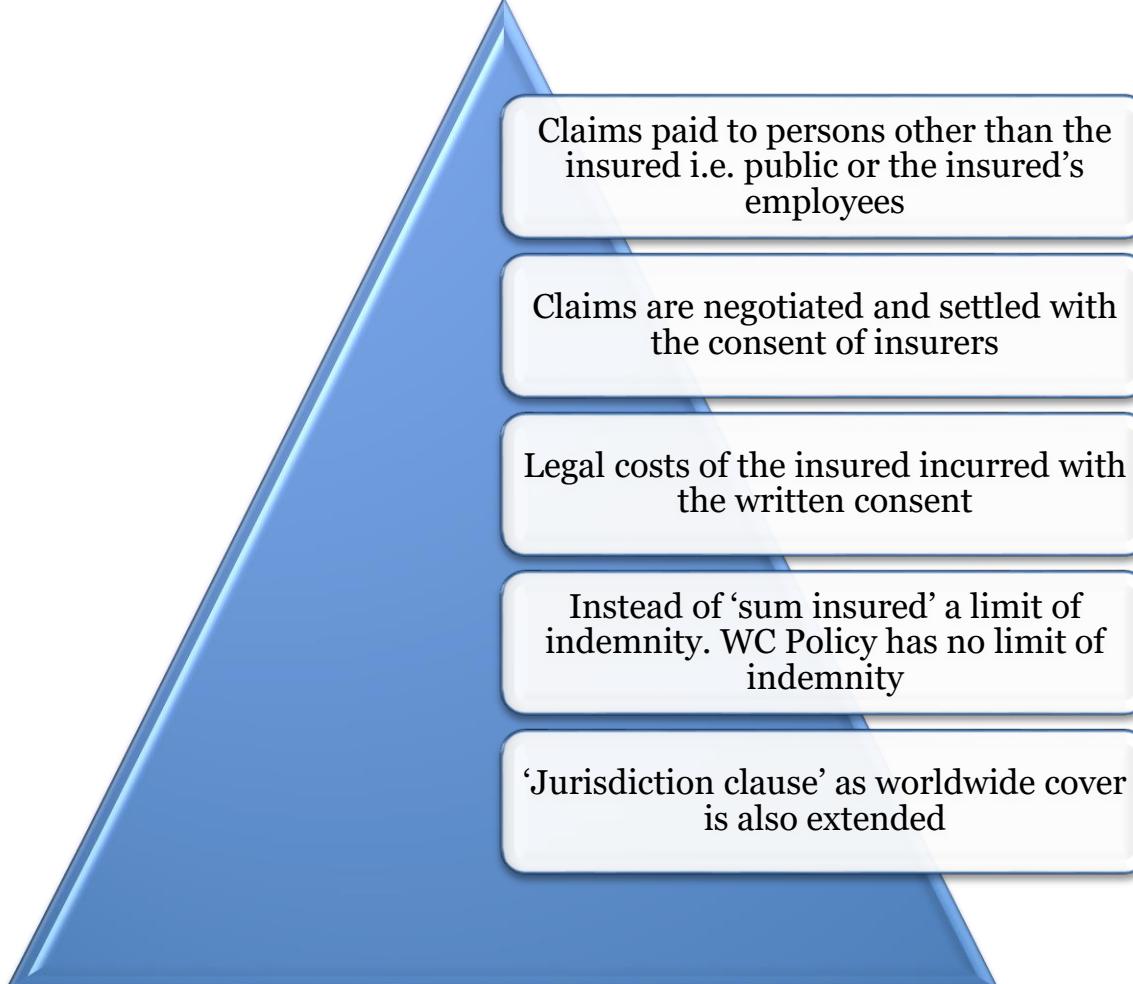
Intro to Liability Insurance (Cont.,)



APPLICABILITY OF PRINCIPLES OF INSURANCE

- **Insurable interest**
 - Potential liability in the subject matter of insurance
 - Insurable interest in the financial loss that may be caused to him due to legal liability
- **Indemnity**
 - Strictly observed in liability insurances
 - Protection against the financial consequences of legal liability.
 - Any One accident limit (AOA) & Any One period/year limit (AOP/AOY)
 - Payment to third parties or employees.
 - Legal costs and expenses within indemnity limit
- **Subrogation**
 - Eg: Application in Product Liability – Retailer & wholesaler
- **Contribution**
 - Each insurer pays their own rateable share of loss.
- **Utmost good faith**
 - Contractual duty of utmost good faith in liability insurance.
 - Applied with warranty/condition - no liability for any claim if there has been material misstatement or non-disclosure of any material information

SPECIAL FEATURES



Claims paid to persons other than the insured i.e. public or the insured's employees

Claims are negotiated and settled with the consent of insurers

Legal costs of the insured incurred with the written consent

Instead of 'sum insured' a limit of indemnity. WC Policy has no limit of indemnity

'Jurisdiction clause' as worldwide cover is also extended

LEGAL TERMS

TORT - Civil wrong arising out of a **breach of some duty** which leads to a civil cause of action and for which damages or compensation are recoverable



- Defaming another person in publication, writing or broadcast of false statement in a permanent form



- Similar to libel but in a verbal form



- Unlawfully perpetrating bodily harm to a person by another person.

	TORT	CRIME
Grounds	Civil wrongdoing	Criminal wrongdoing
Victim	Individuals	Society
Examples	Assault, defamation	Murder, burglary
Initiating party	Victim	The State
Action	Taken Suits in court	Prosecution by State
Purpose	Compensation to injured	Punishment to criminal
Law	Common law	The Penal Code
Standard of proof	Balance of probabilities	Beyond all reasonable doubt

	TORT	Breach of contract
Duty	Arises from law	Arises from agreement of parties
Application of duty	All members of the society	Definite person or persons
Connection between parties required	No	Yes
Law for determination of damages	Reasonable foreseeability	Reasonable contemplation of the parties

Liability insurance is mainly concerned with two types of 'torts'

- Negligence
- Nuisance.

NEGLIGENCE

1. Existence of duty of care

- Donoghue v. Stevenson (Wholesaler/distributor)
- Not to injure their legal neighbor who could reasonably be foreseen as likely to be affected by their acts or omissions
- Lord Atkin's '**neighbor principle.**'

2. Breach of that duty

- Guard against **reasonable probabilities**
- Breton v. Stone (cricket ball travelled 100 yards over a fence 17 feet high and hit the plaintiff walking on the road nearby)
- **Degree of care** required from owners or occupiers of real property (i.e. land, building, etc.) varies according to the different classes of persons –Trespassers, Licensee, Invitees, Passers-by, Children.

NEGLIGENCE (Cont.,)

3. Injury or damage

- Death or bodily injury and associated pain and suffering, economic losses such as loss of actual earnings or earning capacity etc. (monetary / non-monetary)
- Damage to property

4. Causal connection between the breach of duty and the injury or damage.

- Liability for any type of damage which is reasonably foreseeable as liable to happen
- **Wagon Mound** Case – Accidental fire damage due to spillage of bunkering oil in sea water

NEGLIGENCE (Cont.,)

5. Onus of proof of negligence

- Majority under Common Law: Burden of proving negligence rests with the claimant
- Rule of '**res ipsa loquitur**' - the thing speaks for itself - mere fact of the accident constitutes *prima facie* evidence of negligence

6. Employer's liability for negligence of employee

- '**Respondent superior**' - Employer is liable for the negligence of his employee
- Cover for contractors employees (Duty of care under common law)

NUISANCE

- Acts or omissions which unlawfully interfere with another person's use or enjoyment of land or of some right in connection with it

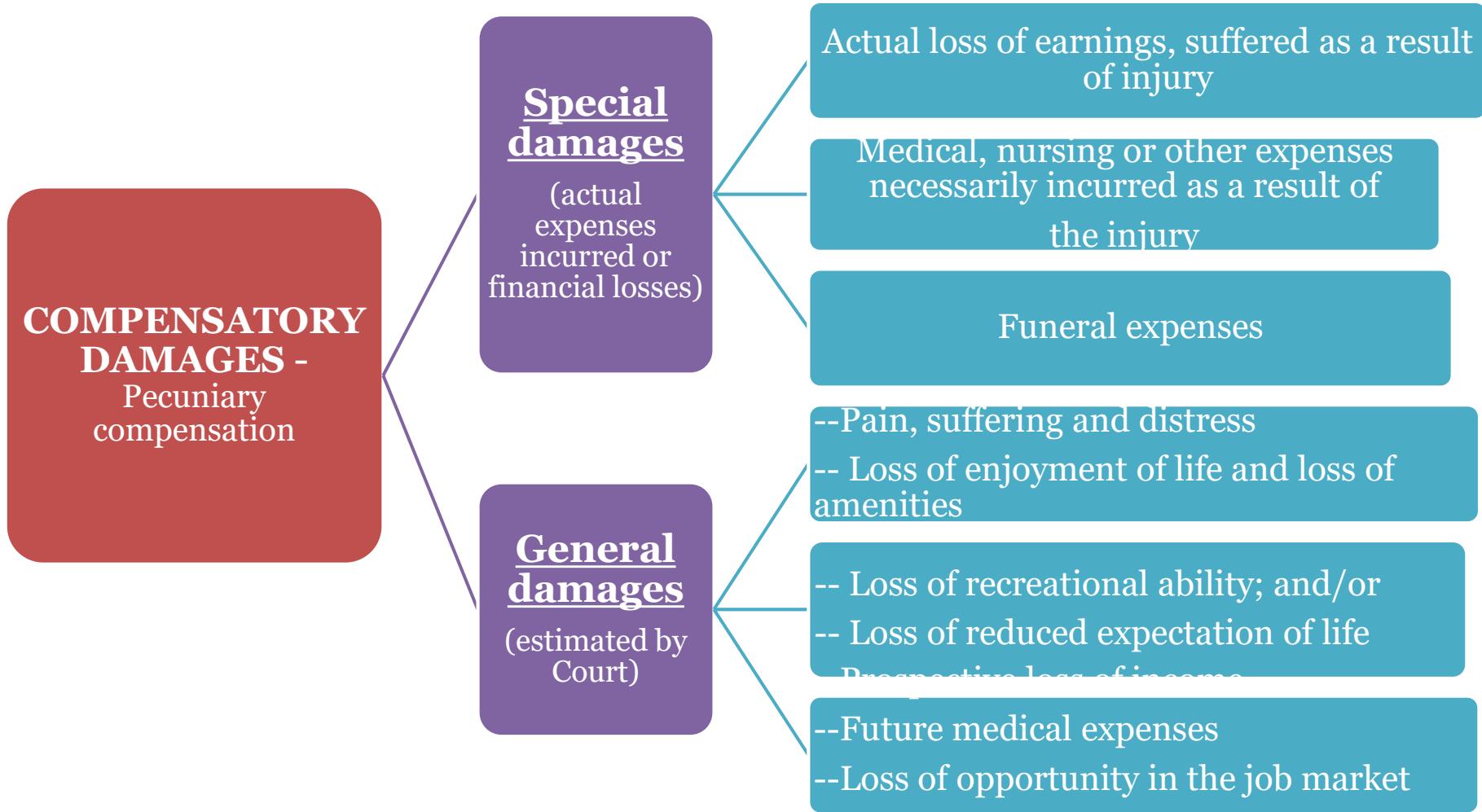
Nuisance

Public nuisance - common injury, danger or annoyance to the public or to the people in general → **Crime Liability**

Private nuisance-cause physical injury to the property of another or interfere with his health or Comfort → **Civil Liability***

Duty on the part of the wrong doer is **absolute and liability arises if damage is proved – Eg.: **Pollution Liability***

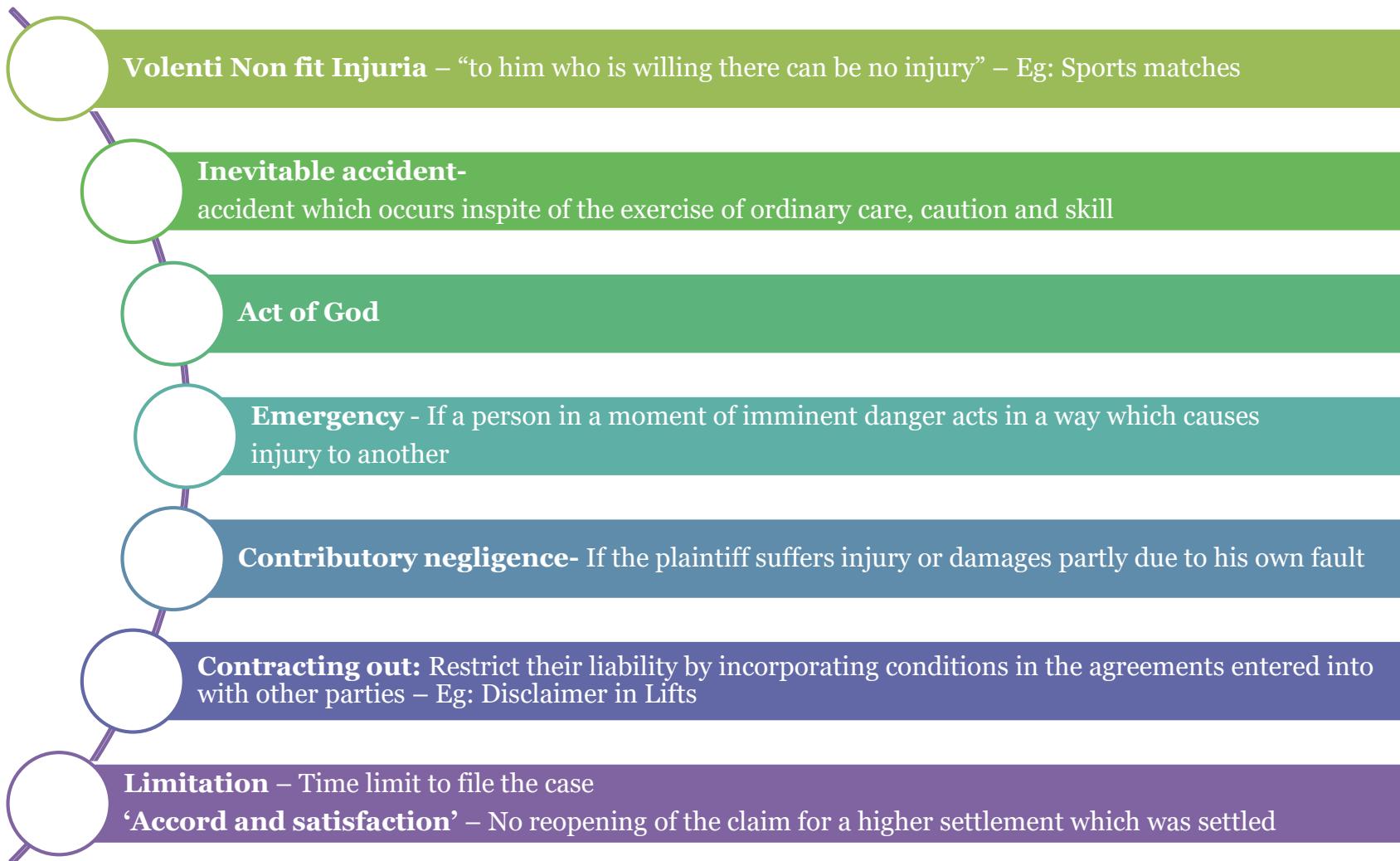
DAMAGES



DAMAGES (Cont.,)

- The value of future losses is suitably adjusted by the courts, **upwards or downwards**, to reflect investment income, succession to properties, Inflation etc.,
- **Property damage:** Replacing or repairing the property
- **Punitive (Exemplary/Multiplier) damages:** Awarded by way of punishment and warning to others. Specifically **excluded** from the cover under liability insurance policies.
- **Structured settlements:** Payment of compensation for damages in instalments rather than in a lump sum.

DEFENCE



VARIOUS LAWS AND STATUTES RELEVANT TO LIABILITY

FATAL ACCIDENTS ACT, 1855

- If the death of a person is caused by wrongful act, neglect or default, an action for damages is maintainable by the legal heirs of the deceased against the party causing injury.
- Civil action for damages does **not end with the death of the victim**

LAW OF STRICT LIABILITY

- **Rylands (Contractor) v. Fletcher**— Reservoir flooding nearby mines.
- There must be an escape (eg., dam water, industrial waste) from the land

LAW OF ABSOLUTE LIABILITY

- **M.C. Mehta (Shriram Foods and Fertiliser Industries) V. Union of India**
- Applicable for hazardous or inherently dangerous industry

VARIOUS LAWS AND STATUTES RELEVANT TO LIABILITY (Cont.,)

LAW OF LIMITATION

- Timeline for filing a claim
- The Limitation Act, 1963

DIRECTORS' AND OFFICERS' PERSONAL LIABILITY

- **Civil liability of corporation** for torts also attached to directors and other officers of the Corporation who are thus subject to personal civil liability for corporate torts.
- Necessity of Directors and Officers liability policy.

Statutory Liability

- Eg: The Public Liability Insurance Act, 1991 imposes '**no-fault**' liability in respect of handling of hazardous substances as specified in the Act.

VARIOUS LAWS AND STATUTES RELEVANT TO LIABILITY (Cont.,)

THE CONSUMER PROTECTION ACT, 1986

- District forum: Complaints <Rs.50Lacs
- State Forum: Complaints >Rs.50Lacs & <= Rs.2Cr
- National Forum (Appellate/supervisory) :Complaints > Rs.2Cr
- Powers of a Civil Court
- Time limit for filing a complaint is 2 years from the date of incident causing loss

OTHER STATUTES

- Water (Prevention and Control of Pollution) Act, 1974
- Air (Prevention and Control of Pollution) Act, 1981
- The Environment (Protection) Act, 1986
- The Factories Act, 1948
- The Central Motor Vehicles Rules, 1989 and further amendments

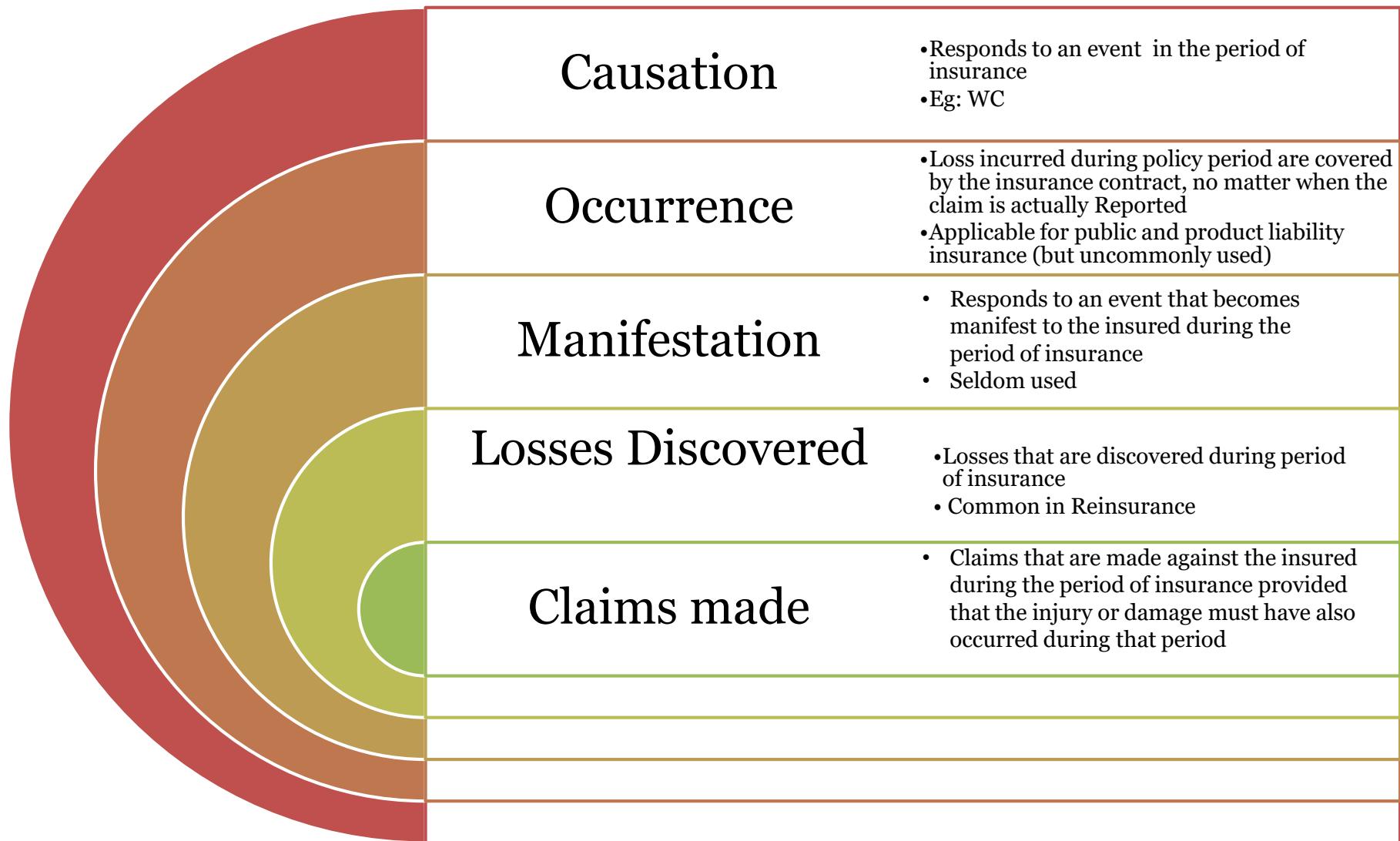
LIABILITY UNDERWRITING PROCESS

- **Physical risk evaluation –**
 - Proposal form: Nature of business, Claims history incl. frequency & severity, Insurance history, Estimated annual turnover, Period of insurance, Limit of liability
 - Risk inspection –Public liability and product liability policies
- **Legal risk evaluation**
 - Factors: Jurisdiction, Litigious societies, Class actions

OPERATIVE CLAUSE

- ‘**Long tail**’ policies - Time gap between the creation of liability, to the discovery of the liability, and up to the settlement or discharge of the liability
- High level of latency - ‘incurred but not reported’ (IBNR) between its creation and discovery
- ‘Trigger’ in the operative clause -> to minimize the known latency exposure

OPERATIVE CLAUSE (Cont.,)



OPERATIVE CLAUSE (Cont.,)

• CLAIMS MADE BASIS

- Most commonly used trigger in liability policies
- limit their exposure to latency losses because at the end of the policy period insurer is certain that no further claim can be made against that policy
- ‘Retroactive cover’ - to cover losses which occurred before the inception of the policy
- Claims made –retrospective / Occurrence-Forward looking

	Claims made	Losses occurring
Limits of coverage	<p>Loss must occur and be reported while the policy is in force.</p> <p>If retroactive period is incorporated, the loss should occur within that period.</p>	Loss must occur while the policy is in force but it may be reported at any further time.
Extended Reporting or Tail coverage	Extended reporting coverage - ensure that future claims from the period the policy was in effect will continue to be covered	<p>No extended reporting</p> <p>Coverage – Reason?</p>
Cost	Comparatively lower than occurring basis policy	Higher
CASE SCENARIO	<p>Policy Period: 01/01/2024 to 31/12/2024</p> <p>Retroactive date:01/01/2020</p> <p>(1) Claim Made on 01/06/2024 for a loss on 01/03/2024</p> <p>(2) Claim Made on 01/04/2024 for a loss on 25/12/2023</p> <p>(3) Claim Made on 01/04/24 for a loss rolling back to 12/2019</p> <p>(4) Claim Made in 2023 Policy for a loss on 25/12/2023</p>	<p>Policy Period: 01/01/2022 to 31/12/2022</p> <p>Retroactive date:-NA-</p> <p>(1)Claim Made on 01/06/2024 for a loss on 01/03/2024</p> <p>(2)Claim Made on 01/04/2024 for a loss on 25/12/2022</p>



PUBLIC LIABILITY INSURANCE ACT, 1991

- **Mandatory insurance** – Industries handling hazardous substances as listed in the ACT.
- Does not apply to employees of the organisation handling hazardous materials
- As per the latest amendment, Insurance shall be not less than the amount of the paid-up capital of the undertaking, being the minimum AOA limit.
- Maximum revised indemnity limit **INR 250 Cr: INR 500 Cr**
- Equivalent amount of premium to be credited to the Environment Relief Fund (ERF) established under the Act → **Environment Relief Fund**
- **No fault liability**
- Nil deductible



- **Environment Relief Fund :** Central Pollution Control Board is the ERF Fund Manager for 5 years w.e.f 01st January,2025
- For all Public Liability Act Policies, data of owner-insureds have to be collected as per **Form III** mandatorily and shared to RO on monthly basis for onward transmission to HO.
- **Claims Authority :** Collector/Revenue official having jurisdiction over the area in which the accident occurs → Powers of a Civil Court.
- **Compensation** in addition to any other right to claim compensation in respect thereof under any other law for the time being in force (e.g. under Common Laws).
- **Premium Factors:** AOA/AOY and the turnover
- **General Exclusions:**
 - wilful or intentional non-compliance of any Statutory Provisions.
 - fines, penalties, punitive and/or exemplary damages
 - damage to property owned leased etc. by the insured or in his custody
 - war and nuclear risks



ERSTWHILE RELIEF COMPENSATION

REVISED RELIEF COMPENSATION

1	Fatal Accident	Rs. 25,000/- per person
2	Permanent Total Disability	Rs.25,000/- per person
3	Permanent Partial Disability	The amount of relief on the basis of percentage of disablement as certified by an authorised physician i.e., a registered medical practitioner
4	Temporary partial disablement which reduces the earning capacity of the victim	Fixed monthly relief not exceeding Rs.1,000/- per month upto a maximum of 3 months (provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age.)
5	Actual Medical Expenses	Upto Maximum of Rs.12,500/- in each case under (i) to (iv) above
6	Actual Damage to property	Upto Rs.6,000/-

Loss Type	Relief Amount
Death due to fatal accidents	5,00,000/- per person in addition to reimbursement of medical expenses, if any, incurred on the person up to a maximum of Rs. 1,50,000/-;
PTD	(i) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 25,000/- in each case; and (ii) cash relief on the basis of percentage of disablement as certified by a registered medical practitioner in case of total permanent disability will be Rs. 5,00,000/-;
Loss of wages due to temporary partial disability	Fixed monthly relief will be actual amount not exceeding Rs. 25,000/- per month up to a maximum of 3 months
Damage to private property	Upto Rs.50,00,000/- or actuals whichever is less
Medical Expenses	Upto Rs.25,000/- or actuals whichever is less

PUBLIC LIABILITY INSURANCE ACT, 1991 (Cont.,)

1. **Compensation** in addition to any other right to claim compensation in respect thereof under any other law for the time being in force (e.g. under Common Laws).
2. Relief amount shall be reduced by the amount of relief paid under this Act.
3. **Compulsory insurance** - Amount not less than the amount of the paid-up capital (MV of assets/stocks) of the undertaking.
4. **Maximum aggregate liability** – Rs.250Cr :500Cr
5. Equivalent amount of premium to be credited to the Environment Relief Fund (ERF) established under the Act → Relief Fund
6. Relief Fund: Any award for relief which exceeds the amount payable under the insurance policy. Beyond Relief Fund – paid by owner/insured
7. **Exemptions** - The Central/State Government, Any Corporation owned or controlled by the Central /State Government, Any local authority.
8. **Public Liability Insurance Fund** –Fund equivalent to PL Act policy SI deposited in any nationalised bank.
9. **Claims Authority** : Collector/Revenue official having jurisdiction over the area in which the accident occurs → Powers of a Civil Court.

PUBLIC LIABILITY INSURANCE (ACT)

➤ Exclusions:

- Arising out of **wilful or intentional non-compliance** of any Statutory Provisions.
- In respect of **fines, penalties, punitive** and/or exemplary damages
- "Arising under any other legislation except in so far as provided for in Section 8, Sub-Section (1) and (2) of the Act -> Liability under common law excluded
- In respect of damage **to property owned leased etc.** by the insured or in his custody
- Risks related **to war and nuclear risks** are excluded.

PUBLIC LIABILITY INSURANCE (ACT)

➤ **Conditions**

- Notification
- Consent of the insurance company
- Time barred liability -5 years)
- Insured's Turnover
- Contribution
- Cancellation of policy by insured - short period
- Cancellation of policy by insurance company -pro rata
- Disclaimer by insurance company : civil suit in a court of law within 12 months from the date of such disclaimer; otherwise the claim becomes 'time-barred'
- Fraudulent claims
- Meaning of words / expressions – Precedence to the definition in Act/policy.
- Disputes resolution – within India

➤ **Premium** :Any one accident (AOA) and the turnover

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS)

- **Operative clause:** Legal liability (other than liability under the PLI Act, 1991, or any other Statute based on 'No-fault' liability) to pay compensation including claimant's cost etc. anywhere in India according to Indian Law.
- **Definition:**
 - **Product:** Tangible property after it has left the custody or control of the Insured, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired, by or on behalf of the Insured.
 - **Period of insurance:** Period commencing from the retroactive date and terminating on the expiry date as shown in the Policy Schedule. Eg: Policy Period: 01/01/24 to 31/12/24 Retroactive date:01/01/2020 → Period Of Insurance: From 01/01/2020 to 31/12/24
 - **Accident:**
 - Fortuitous event must be sudden, unexpected and unintentional → exact time and place of occurrence must be identifiable
 - Continuous, intermittent or repeated exposure arising out of the same fortuitous event → accidental pollution

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS) (Cont.,)

- **Notification extension clause:**
 - Notification of prospective claim in future → Claim shall be considered to be made as on date of notification
 - Extension is subject to the maximum time limit laid down in the Indian Limitation Act
- **Extended claim reporting clause:**
 - Extension of time limit for notification of claims upto **maximum of 90 days** from the date of expiry or cancellation of the policy. Subject to:
 - No other insurance is in force during the extended reporting period for the same interest
 - Claim date shall be considered as last day of the expiring policy period and subject to the limit of indemnity and its terms and conditions applicable as on that date
- **Indemnity to others:**
 - Indemnity extended to (1) Officials of the Insured (2) The officers, committees and members of the Insured's canteen, social, sports, etc.,
 - Clause extends the benefit of cover to officials when claims based on negligence etc. is made against the insured company's officials personally instead of the entity.

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS) (Cont.,)

- **Cross liabilities:**
 - Applicable when more than one Insured is covered under the Policy
 - Each such person is deemed to be a separate insured.
 - Total liability not exceeding the limit of indemnity stated in the Schedule
- **Defence costs:**
 - Payment of: a) Costs, fees and expenses of investigation, defence or settlement of any claim, and b) The costs of representation at any inquest, inquiry or other proceedings directly connected with the claim.
- **Claims series clause:**
 - A single accident may result in a series of claims → all such claims are added together and treated as one claim, for the purpose of application of limit of indemnity 'any one accident'
 - Claim is deemed to have been made on the day when the **first claim** in the series was made in writing
 - No coverage for claims arising from one specific cause which are made later than **3 years** after the first claim

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS) (Cont.,)

- **EXCLUSIONS:**

- ❖ Contractual liability
- ❖ Acts of God *
- ❖ Deliberate, wilful or intentional non-compliance of any statutory provision
- ❖ Pure financial nature such as goodwill, loss of market etc.,
- ❖ Personal injuries like libel, slander, infringement of copyrights etc.,
- ❖ Fines, penalties, punitive damages
- ❖ War and invasion risks
- ❖ Nuclear and radiations risks
- ❖ Third party liability under the provisions of the Motor Vehicles Act, 1988.
- ❖ Transportation of hazardous substances *
- ❖ Liability arising out of aircraft, watercraft or hovercraft
- ❖ Liability for damage to property owned or hired by the Insured or in his custody
- ❖ Injury/damage prior to the retroactive date
- ❖ Deliberate, conscious or intentional breach of a duty of care.
- ❖ WC Liability

In case of Public Liability (Non Industrial) → Liability under Public Liability Act is an additional exclusion.

* Can be extended as an add on

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS) (Cont.,)

- **EXTENSIONS:**

- **INDUSTRIAL RISK**
 - ❖ **Carriage of effluents** (outside the premises) – Additional premium for discharge point beyond 1 km from premise (or) if pollution risk is required additionally
 - ❖ **Pollution coverage** -- Directly or indirectly caused by seepage, pollution or contamination which is caused by a sudden unintended and unexpected happening. Clean-up costs are payable apart from any claims made for property damage/bodily injury. Excl.: Gradual pollution / fines & penalties
 - ❖ **Earthquake** risk
 - ❖ **Transportation** – Hazardous substances whilst being transported by rail/road/pipeline
 - ❖ **Technical collaborators** – Usually named
- **NON INDUSTRIAL RISK**
 - ❖ Property in the custody of the Insured -- Hotels, motels, club houses, restaurants etc.,
 - ❖ Sports facilities -- hotels, club houses, restaurants, schools, educational institutions
 - ❖ Food and beverages
 - ❖ Swimming pool
 - ❖ Other facilities (as specified) extension

PUBLIC LIABILITY (INDUSTRIAL / NON INDUSTRIAL RISKS) (Cont.,)

- **CONDITIONS:**
 - ❖ Notification condition
 - ❖ Not to admit liability without the written permission of the company
 - ❖ **Right to Defend** Clause
 - ❖ Notification of material alterations in the risk
 - ❖ Indemnity limit – AOA/AOY
 - ❖ Interpretation condition
 - ❖ Turnover details
 - ❖ Contribution condition :- insurer to pay rateable proportion of loss
 - ❖ Indemnity for **excess Amount** in case of more than 1 policy covering the same public liability (eg: PL section in shopkeeper package & a separate PL policy)
 - ❖ The amount of claim paid or payable reduces the limit of indemnity per one year under the policy; the amount **cannot be reinstated** to its original level.
 - ❖ Limitation : **12 months from the date of disclaimer**, the claim is deemed to be abandoned by the Insured.
- **RATING FACTORS:**
 - ❖ Industrial : Turnover, ratio of indemnity limits, add-ons and the risk category
 - ❖ Non-Industrial :occupancy, ratio of limits of indemnity, turnover, seating capacity or number of students etc

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009

- **Employer's liability**
 - An employer is liable under law towards the employees to pay compensation in respect of injury or disease arising out of and in the course of employment
 - **Scenarios:**
 - Personal negligence of the employer
 - Negligence in failure to use reasonable care and skill in the provision and maintenance of suitable and safe plant, safe place to work and safe system of work
 - Breach of statutory regulations in regard to the safety of employees (e.g. Factory Acts etc.)
 - Personal negligence of fellow employees
 - Negligence of employees in the performance of their employment duties
- **Need for enactment of the Workmen's Compensation Act**
 - To ensure employees automatic right to claim compensation for employment accidents

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009 (Cont.,)

- **Employers' liability for compensation**

- **When the employer is liable to pay**

- Personal injury is caused to workmen by accident **arising out of and in the course of his employment**
 - Occupational disease accident arising out of and in the course of his employment

- **When the employer is not liable to pay (except in case of death)**

- Workman having been under influence of drink or drugs
 - willful disobedience of the workman to orders and rules
 - willful removal or disregard by the workman of any safety device

- **Liability in case of natural death**

- No liability attaches to the employer unless it is proved that the death was caused by strains and stresses peculiar to the particular employment.

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009 (Cont.,)

- **CASE LAWS**

1. Laxmibai Atmaram v. Bombay Port Trust – Natural Death due to work stress
2. N. L. Malhari v. Post Master General Bangalore - Arising out of and in the course of employment
3. Southern Railway vs. Karthiayani – Death due to consuming contaminated water in company premise
4. Koduri Alchayamma v. Palangi Alchamma -- Injury should not be foreign to the employment.
5. A.C. Roy & Co. (P) Ltd. v. Taslim - The employment **commences at the end of his journey from house** and **stops at the commencement of his return journey** (notional extension). A personal injury caused to the employee by accident in a **public street** or in a public place does not arise in the course of his employment unless the **employee is then rendering service to his employer** by the contract of employment.

- **Civil Court & WC ACT Compensation**

- Remedy under the W.C. Act is lost → Workman chooses to file a suit for compensation for injury in a Civil Court,
- Cannot file a suit in a Civil Court
 - If he has instituted a claim for compensation before a W.C. Commissioner* or
 - If an agreement has been reached between the workman and his employer in accordance with the provisions of the Act.

**Civil court has no jurisdiction. Commissioner has powers of a Civil court.*

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009 (Cont.,)

Claim Type	Compensation
Death	50% of monthly wages multiplied by the relevant factor (minimum Rs. 80,000/-) As per Employees Compensation Amendment Act 2009 - Rs. 1,20,000/-
Permanent total disablement	60% of monthly wages multiplied by the relevant factor (minimum Rs. 90,000/-). As per Employees Compensation Amendment Act 2009 - Rs. 1,40,000/-
Permanent partial disablement	Nature of disablement and the percentage of loss of earning capacity specified in the Act
Temporary disablement	Half-monthly payment equal to 25% of monthly wages of the workman. This is payable on the sixteenth day: <ol style="list-style-type: none">From the date of disablement where such disablement lasts for a period of 28 days or more, orAfter the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than 28 days; and thereafter half-monthly during the disablement or during a period of 5 years , whichever period is shorter.

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009 (Cont.,)

- **Review of half-monthly payments**

- Subject to review by the Commissioner, if desired by the employer or the workman, if there has been a change in the medical condition of the workman as certified by a qualified medical practitioner
- If the accident has resulted in permanent disablement, the payments can be converted to a lump-sum less any amount already received by the workman
- The half-monthly payments may be commuted by the payment of a lump-sum by agreement by the parties

- **Deposit with commissioner**

- Payment of compensation for death : Deposited by the employer with the Commissioner whose receipt shall be a sufficient discharge
- Commissioner empowered under the Act to distribute the compensation to the dependents of the deceased workman

- **Interest and penalty**

- Timely payment - compensation shall be paid as soon as it falls due.
- Provisional payment – Deposit provisional payment based on the amount which he accepts incase liability is not accepted
- Interest and penalty - Employer liable to pay interest If payment is not made within one month and in case the delay is unjustified, he has to pay further amount by way of penalty subject to a maximum of 50% of the amount payable

WORKMEN'S COMPENSATION ACT, 1923 / EMPLOYEES COMPENSATION, 2009 (Cont.,)

- **Contractor's workmen**
 - Principal shall be liable to pay compensation to workmen employed by the Contractor
 - Principal is entitled to be indemnified by the Contractor
 - Workman has a right to recover compensation from the Contractor
- **Insolvency of employer**
 - Insured rights under the insurance policy against the insurers are transferred to and vest in the workman who can recover the claim from the Company subject to the terms and conditions of the policy
- **Notice of the accident:** to the Commissioner within 2 years of the occurrence of the accident or 2 years from the date of death
- **Employee's Compensation Act, 1923 (Amendment Act 2009-45 of 2009)**
 - Reference to "Workmen" has been amended to "Employee"
 - **Death compensation:** Minimum compensation is enhanced to Rs. 120,000/-
 - **Permanent total disablement compensation:** Minimum is enhanced to Rs. 140,000/-
 - **Funeral expenses:** Enhanced from Rs. 2,500/- to Rs. 5,000/-.
 - **Minimum monthly wages:** Rs.15,000/-.
 - **Reimbursement of medical expenses:** Reimbursement of actual medical expenses incurred by the injured employee.

EMPLOYERS' LIABILITY INSURANCE POLICY

- **Operative clause :** Indemnity under a) The Law(s) set out in the schedule (WC Act & Fatal Accidents Act 1855) and b) At Common Law

- **Exceptions**

- War and nuclear risks.
- The insured's liability to employees of contractors to the insured.*
- Contractual liability
- Any compensation for diseases mentioned in Part C of the Schedule III of the Workmen's Compensation Act - 1923, which have been brought within the scope of that Act by the Workmen's Compensation (Amendment) Act, 1959.* → Occupational disease

**Can be covered as an extension*

- **Adjustment of premium :** If the actual wages so paid shall differ from the amount (estimated wages) on which premium has been paid, the difference in premium shall be met by a further proportionate payment of the company or by a refund by the company as the case may be.

- **Forms :**

- Table A : i. The Workmen's Compensation Act, 1923 and subsequent amendments of the said **Act prior to the date of issue of the policy** ii. The Fatal Accidents Act, 1855, and iii. At Common Law
- Table B: i. The Fatal Accidents Act, 1855, and ii. At Common Law

EMPLOYERS' LIABILITY INSURANCE POLICY (Cont.,)

- **Premium calculation:** Based on Estimated total annual wages and risk category/business or trade. Table A premium rate higher than Table B.
- **Employees State Insurance Scheme**
 - i. Social legislation for all **industrial workers** where notified
 - ii. All industries and organisation coming within the ambit of the scheme are required to be **registered**
 - iii. **Contributory scheme** and deductions towards membership are compulsorily deducted from enrolled employee wages
 - iv. Persons covered under the ESIS are **not eligible for WC benefits**
 - v. As per the amendment effective from 2010, all the factories employing 10 or more employees are eligible for this scheme irrespective of whether it is using power or not. The wage limit for eligibility is Rs. 15000/- per month (revised 21000/- per month)
 - vi. **Benefits:**
 - Hospitalisation treatment of the member and dependents
 - allowance for diseases and long term ailments
 - compensation for employment related accidents and occupational diseases

CARRIERS LEGAL LIABILITY INSURANCE POLICY

Applicability

- Road transporters absolutely liable for losses to cargo in their custody whilst in transit.

Coverage

- (a)**Basic** - fire, explosion or accident caused by negligence
- (b)**Wider** – Basic +
 - RSMD, burglary whilst goods are in carriers custody
 - Shortage due to theft and pilferage
 - Flood / water damage, damage by other cargo, breakage, leakage, damage due to improper handling

Exclusions

- a) Riot and strike (available as add-on), war perils, nuclear and radiation perils, contractual liabilities, liability to own, employees, agents and sub-agents and their properties and belongings
- b) Losses due to inherent defects, mechanical or electrical derangements
- c) Consequential losses
- d) Carriage of illegal, illicit or smuggled goods

CARRIERS LEGAL LIABILITY INSURANCE POLICY (Cont.,)

Duration of cover

- During transit, incidental storage, transshipments and upto seven days after reaching final place

Conditions

- Vehicle : road-worthy condition
- Comprehensive insurance for vehicle

Rating

- Premium based on indemnity limit
- Additionally, premium per vehicle is also charged, which is usually based on the GVW of the vehicle and the nature of the cargo carried

PRODUCT LIABILITY INSURANCE

- **Legal background :**
 - ❖ Insured: Manufacturer, wholesaler, retailer
 - ❖ Liability under:-
 - ✓ Indian Sale of Goods Act : breach of contract between seller & buyer (not insurable under PLI)
 - ✓ Law of Tort: Common Law
 - ✓ Consumer Protection Act 1986
- ❖ **Operative Clause:**
 - ✓ Against their legal liability to pay compensation (including claimant's costs, fees and expenses) in accordance with the law of the country
 - ✓ Excludes (1) payment or settlement made in countries which operate under the Laws of the U.S.A. or Canada (2) To any order made anywhere in the world to enforce such judgement etc. (3) unless the policy has 'North American Jurisdiction Extension Clause'
- ❖ **Indemnity:**
 - ✓ As in PLI policy except the product definition is modified to omit – “food and beverages supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit”
- ❖ **Identical Sections as in PLI:** Notification Extension Clause, Extended Claim Reporting Clause, Defence Costs and Limitation Clause.
- ❖ **Indemnity Limits :** Separate Excess are mentioned for different geographic locations

PRODUCT LIABILITY INSURANCE (Cont.,)

❖ **Claims Series Clause:**

- ❖ Series of two or more claims arising from one specific common cause which is attributable:
 1. To the same fault in design, manufacture, instructions for use or labelling of products or,
 2. To the supply of the same products and/or services, or
 3. To products and/or service showing the same defect
- ❖ Claims are clubbed together for applying LOI for AOA.

❖ **Exclusions:**

- ❖ Common to both products and public liability policies
 1. Deliberate non-compliance of any statutory provision
 2. Pure financial loss e.g., loss of goodwill
 3. Fines, penalties, etc.
 4. War and kindred risks
 5. Nuclear risks
 6. Injury and/or damage occurring prior to the Retroactive Date stated in the Schedule
 7. Deliberate disregard of the Insured's technical or administrative management of the need to take reasonable steps to prevent claims
 8. Injury to employees
 9. Contractual Liability

PRODUCT LIABILITY INSURANCE (Cont.,)

❖ Exclusions specific to products liability

1. Costs incurred in the repair, reconditioning, modification or replacement of any part of any product which is or alleged to be defective
2. Product Recall
3. Products pertaining to structure, machinery or control of any aircraft
4. Product Guarantee
5. Efficacy risk - failure of the goods or products to fulfil the purpose for which they were intended
6. Products which have left the custody/control of the insured prior to retroactive date
7. Property belonging to the insured or held in trust or in custody or control

❖ Conditions: Identical as in Public Liability **except the below clause is not present:**

- ❖ Indemnity for excess Amount in case of more than 1 policy covering the same public liability.
- ❖ “Policy does not cover liability which is insured by, or would but for the existence of this policy be insured by any other policy (but not a public liability policy), except in and respect of any excess beyond the amount which could have been payable under such policy.”

PRODUCT LIABILITY INSURANCE (Cont.,)

- ❖ **Rating Factors**
 - ❖ Product (as per classification of risk of groups)
 - ❖ Turnover
 - ❖ Limit of indemnity – AOY / Ratio of limit of indemnity – AOA:AOY
 - ❖ Extensions
 - ❖ Countries of export and their turnover (Domestic, U.S.A., & Canada, OECD Countries, Other countries)
 - ❖ Claims for past 3/5 years
- ❖ **EXTENSIONS**
 - ❖ Technical collaborators
 - ❖ Third party manufacturers (sub-contractors or licence manufacturers on insured's own brand name)
 - ❖ Vendor's clause
 - ❖ Applicable for exports
 - ❖ **Excl:** Liability arising due to Alterations, modifications, labelling/relabelling, failure to meet the maintain or service the product as per agreement
 - ❖ North American jurisdiction extension clause : (1) To include jurisdiction – USA & Canada (2) Specific retroactive date & compulsory excess
 - ❖ Product Recall – (1) Recall expenditure (customer notification, shipping costs and disposal costs) incurred by Insured (2) Applicable for manufacturers (3)

PROFESSIONAL INDEMNITY INSURANCE (Doctors/Medical Establishments)

- ❖ **Indemnity clause**
 - ❖ Bodily injury and/or death of any patient caused by or alleged to have been caused by error, omission or negligence in professional service rendered or which should have been rendered by Insured, Qualified assistants, Any Nurse or technician named in the schedule.
- ❖ **Identical Sections as in PLI:** Limit of Indemnity, Notification Extension Clause, Extended Claim Reporting Clause, Defence Costs and Limitation Clause
- ❖ **Claim Series Clause:** Series of losses and/or bodily injuries and/or deaths are attributable, directly or indirectly, to the same cause or error or omission in the discharge of professional services. Time limit- 3 years.
- ❖ **Doctor/Medical Establishment Specific Exclusions:**
 - Any act committed in violation of any law.
 - Services rendered while under the influence of narcotics or intoxicants.
 - Third party public liability.
 - Claims arising from/related to Acquired Immune Deficiency Syndrome (AIDS)
 - Claims arising out of genetic injuries caused by X-ray or radioactive treatment/diagnosis,
 - Professional services rendered prior to the Retroactive date.
 - Cosmesis, i.e. cosmetic plastic surgery, hair transplants, punch grafts and the like.

PROFESSIONAL INDEMNITY INSURANCE (Doctors/Medical Establishments) Cont.,

- ❖ **Not deemed to be cosmesis**
 - ❖ Anaesthetic, X-ray or other medical nursing or laboratory services provided in connection with the performance of cosmesis.
 - ❖ Plastic surgical repair of scar tissue being the result of previous surgery unrelated to cosmesis
 - ❖ Plastic surgery in connection with burns or other traumatic injury.
- ❖ **Additional exclusions in Doctor PI:**
 - ❖ Performance by dentists and dental surgeons of:
 - ❖ General anaesthesia, or
 - ❖ Any procedure carried out under general anaesthesia unless performed in a hospital
 - ❖ Use of drugs for weight reduction
- ❖ **Other general exclusions:**
 - ❖ Liability assumed under agreement
 - ❖ Loss of pure financial nature such as loss of goodwill
 - ❖ Personal injuries such as libel, etc.
 - ❖ Fines, penalties, punitive damages
 - ❖ Employer's liabilities
 - ❖ Deliberate disregard for the need to take reasonable steps to prevent claims
 - ❖ War, nuclear risks

PROFESSIONAL INDEMNITY INSURANCE - Others

- ❖ **Operative Clause:** The Insured is indemnified in accordance with operative clause for any breach of professional duty by reason of any negligent act, error or omission committed
- ❖ **Types of Professional risks**
 - ❖ Professional negligence resulting in financial loss – Accountants, solicitors etc.,
 - ❖ Professional negligence resulting in financial loss and/or bodily injury-- Architect etc.
- ❖ **Identical Clauses, Conditions as in other liability policies**
- ❖ **Exclusions:**
 - ❖ As in General Exclusions mentioned in Doctor PI
 - ❖ Any dishonest, fraudulent, criminal or malicious act or omission.
 - ❖ Deliberate, non-compliance with technical standards commonly observed In professional practice laid down by law or regulated by official bodies.
 - ❖ Conduct of any business other than that described in the Schedule.
 - ❖ Activities of the Insured as joint venture or as partner unless such joint venture or partnership is described in the Schedule. Liabilities arising out of pollution and/or contamination.
 - ❖ Claims for losses as a consequence of material or construction damage. e.g. loss of production.
 - ❖ Earthquake, flood, storm, etc.
- ❖ **Rating:**
 - ❖ Individuals – Indemnity limit
 - ❖ Organizations – Indemnity limit, annual fees or turnover and the staff strength, no. of patients as per the applicable risk

COMPUTER SERVICES AND SOFTWARE DEVELOPERS'- PI POLICY

KEY FACTS:

- ❖ **Coverage:** Legal liability of Insured to compensate for loss resulting from Insured's wrongful act in performance of computer services for other for a fee
- ❖ Rating Factors: Past claims history, contract value/gross revenue and duration, territory and jurisdiction of coverage, number of employees working on the project.

- ❖ **Extensions:**
 - ❖ Loss of **documents** extension – arising due to destruction/damage /loss of documents pertaining to insured's customers which have been entrusted, lodged or deposited with the Insured
 - ❖ Loss of **data** extension covering legal liability arising out of destruction/damage/loss of data pertaining to insured's customers which have been entrusted, lodged or deposited with the Insured
 - ❖ Dishonesty of Employees
 - ❖ Infringement of IPR covering compensatory damages for unintentional IPR infringements
 - ❖ Technology liability extension to cover hacking, virus attack, denial of service attack

- ❖ **Specific Exclusions:**
 - ❖ Delay in performance or failure to perform any contract unless such claim is arising out of a wrongful act
 - ❖ Liability assumed under any contract or agreement by way of guarantee, warranty, penalty clause or any obligation deemed uninsurable under Law
 - ❖ Actual or alleged intentional non-performance or default of any of the Insured's contractual obligations

DIRECTORS AND OFFICERS LIABILITY

- Personal liability for financial losses arising out of wrongful **acts or omissions** in their capacity as directors or officers during the period of insurance
- **Forms of Liability:**
 - a. **Employees:** For unfair dismissal, etc.
 - b. **Shareholders:** For imprudent expansions or loans or investments, etc.
 - c. **Creditors:** For misrepresentation of financial conditions, etc.
 - d. **Government** regulatory bodies: For breach of legislation, etc.
 - e. **Public:** For financial loss following reliance on incorrect or inadequate or negligent statement of financial condition, etc.
- **Insuring clause:**
 1. Pay on behalf of the Directors or Officers of the company
 2. Pay on behalf of the company (“Company Reimbursement Provision”) → Applicable only when the obligation of the company to indemnify director/officer is expressly mentioned in the **Company’s Articles of Association**

DIRECTORS AND OFFICERS LIABILITY (Cont.,)

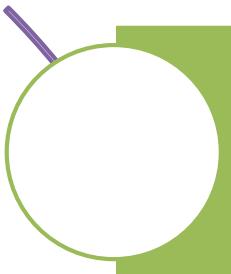
- **Exclusions:**
 - Legal action or litigation is brought in a court of law within the *Excluded Territories*
 - To the extent that an indemnity or payment is available from any source
 - Public Liability → Death/Injury & Material Damage
 - Actual or alleged seepage, pollution or contamination
 - *Dishonesty*, fraud or malicious conduct of the Directors or Officers
 - Director or Officer gaining any profit or advantage or receiving any *remuneration* to which he/she was not legally entitled
 - Professional Indemnity
 - Circumstances prior to policy inception date
 - Tax or fines or penalties or punitive or exemplary damages
 - Inefficiency to maintain insurance for the company
 - Libel, slander, infringement of copyright, infringement of patent
 - Product Liability
 - *Major shareholder exclusion*: Claims brought about by individual or entity that owns more than a specified percentage of share capital
- **Rating**
 - Turnover and gross assets, financial position of the company, organisation structure, trade activity
 - The geographical operations of the Company and jurisdiction
 - No. of directors and officers seeking cover
 - Whether the company is listed or unlisted, if listed, where
 - Past claims experience

DIRECTORS AND OFFICERS LIABILITY (Cont.,)

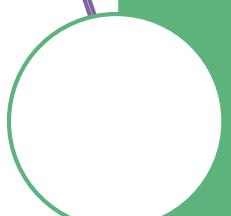
EXTENSIONS

- **Representation** at investigations and examinations
- **Outside directorships**
- **Employment** practices → actual or alleged unfair or wrongful employment practices like discharge, dismissal, termination, failure to promote, wrongful deprivation of career opportunities etc.
- **Libel** and slander
- Infringement of **IPR**
- Blanket Subsidiary cover or auto acquisition of **subsidiaries**
- **Pollution** defence cost extension
- **Joint Venture** Liability
- Public Offerings of Securities Insurance (**POSI**)
- Entity Protection for critical occurrence or Crisis Communication cover → cost related to **public relations consultant** in order to avert or mitigate a loss for which policy coverage applies.
- Extended reporting time for Insured persons
- Insured vs Insured cover (Std. clause in Public Liability) → Claims brought out by one director against another director
- **Kidnap Response** Cover

CLINICAL TRIALS LIABILITY

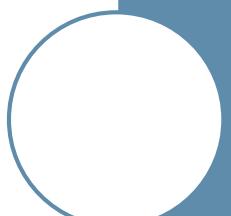


Clinical trials : Medical research studies - efficacy and safety of a drug



Phase I: Safety of the treatment → 20 healthy persons, dosage & side effects documented

Phase II: Workability → 300 persons with the same medical history, stage, safety and effectiveness is tested



Phase III: Comparison with existing treatment → 1000 persons across world, Efficacy and effectiveness is compared with existing (Step before obtaining marketing approval for drug)

Phase IV: Body of knowledge established, efficacy and effectiveness over long term usage.



Stakeholders (Insured):

- a) The sponsor whose product is being tested
- b) Contract Research Organisation (known as CRO) who monitor the trial
- c) Principal investigator or doctor who conducts the trial
- d) The hospital/institution where the trial is conducted
- e) Ethics committee that approves the trial

CLINICAL TRIALS LIABILITY (Cont.,)

- **Coverage**
 - Insured's Liability due to death or injury or any other adverse reaction in the body as a result of participation in clinical trial.
 - No fault principal policy
 - Single trial or multi trial policy
- **Underwriting**
 - Track record of the sponsor,
 - Single trial or multiple trial policy
 - Phase of trials involved, number of subjects, their age, details of drug etc..
- **Exclusions:**
 - Damages that are within permissible limits as are to be expected within such trials
 - Deliberate contravention of instructions by the subject
 - Deterioration in condition which would normally have occurred even without the trial
 - War and nuclear perils
 - Fines and penalties

Multimodal Transport Operator (MTO) Liability Insurance

(a) Governed by Multimodal Transportation of Goods Act 1993

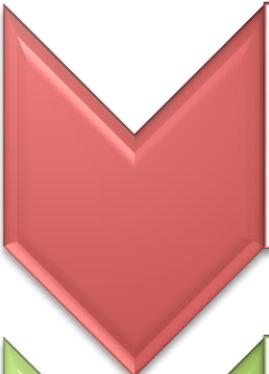
(b) Multimodal Transport Operator's (hereinafter referred to as MTO) License issued by the Director General of Shipping, India

- i. Cargo Liability cover
- ii. Third party property damage & bodily injury/death
- iii. Errors & Omission
- iv. Fines & Duties where Insurable by Law ..> unintentional breach of any regulation legal or statutory provision

Rating: (a) Gross Freight Receipt (GFR) b) Number of containers handled (in terms of 20 TEU)

Other Factors: Limit of Liability for Cargo & Third Party Liability, Past Claims Experience, Nature of Cargo handled, Destination of Cargo

FEW MTO EXCLUSIONS:



- The insured's, or its sub-contractor's or agent's, own illegal trade, dishonesty, infidelity or fraud, collusion, malicious, willful or deliberate act(s) or reckless conduct
- Mysterious disappearance or unexplained loss or shortage



- Any infringement of copyright, patent, service mark, registered design
- Inherent vice, patent or latent defects, ordinary leakage, ordinary loss in weight or volume



- Bullion, cash, bank notes, bonds, stamps, vouchers, tokens, negotiable instruments or securities of any kind.
- Seepage, pollution or contamination unless accidental

COMMERCIAL GENERAL LIABILITY

- Combined General Liability / Common General Liability / Commercial General Liability
- Combination of property and casualty liabilities and financial liability.
- Covers public, product and employer liabilities (on case to case basis)
- **Operative Clause:**
 - **Coverage A:** Bodily injury and Property damage liability → Wider cover as no limitation in premise
 - **Coverage B:** Personal and advertising injury liability
 - Personal Injury Forms: Libel and slander, Malicious prosecution, Invasion of privacy
 - Advertising injury Forms: Defamation, Unauthorized use, distribution of copyrighted material, Using another business's advertising idea:
 - Excl: Entities in advertisement/media business, Failure of product or goods or services to perform or quality as advertised, Wrong description of goods, products or services prices advertised
 - **Coverage C: Medical payments** → Bodily injury caused by an accident on premises owned or rented, on ways next to premises owned or rented, Because of operations (Excl. WC medical expenses)
 - **Coverage D: Supplementary payments for cover A & B**
 - Bail bonds, Defence cost, Prejudgement interest, Cost of bonds to release attachments
 - Additional Limit over & above indemnity limit in Cover A & B.

EMERGING LIABILITY POLICIES

- **Cybercrime liability**

- Liability arising due hacking, inadvertent virus transmission, copyright infringement, data breach.
- Lines of an errors and omissions policy to cover liabilities arising out of hacking email frauds, web developing, website maintenance and E-commerce etc.,

- **Stockbrokers Liability**

- Registered members of a stock exchange.
- Liable for wrong advice to clients and also failure to execute or wrong execution of clients' instructions to trade.
- Guided by the duties listed by stock exchanges and other concerned authorized authorities



THANK YOU