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## THE INSURANCE NEWSLETTER

Summer 2008

### Insurance for Rental Cars

Summer means vacations, travel, and, often, renting a car. Do you have the right insurance on that rental vehicle? What do you need?

Many business and personal auto policies already provide liability coverage for a rented car (check with us if you are not sure). Physical damage claims (collision and comprehensive) are another matter. Rental companies tell you you're responsible for damage to your rented vehicle. You may well have coverage either in your own policy or from the credit card company. These sources will usually pay the actual cash value (ACV) of the damage to a rented vehicle.

Most car rental companies have provisions to their contracts that make your liability greater than that. Take a look at your last car rental contract; chances are you'll find some of these provisions in it.

*Loss of use.* The renter loses the income it would have earned from renting your car while it's being repaired. That's your responsibility, regardless of fleet utilization rates. East Podunk Car Rental may only have three of their fleet of twenty cars actually rented on a given day, but they will still hit you with this charge. Many standard policies will pay for this, but only up to \$20 per day and \$600 maximum. You are responsible for any difference.

*Diminution in Value.* This is a charge the renter calculates for the reduction in the market value of a damaged car due to having been in an accident. When a repaired vehicle is sold, it brings a lower price. When you return a damaged vehicle, you'll get one bill for the repairs, another for this charge. Personal or business auto policies usually don't cover this charge.

*Before-and-After charges.* In a serious accident, the rental car company may decide not to repair the vehicle. Instead, they'll sell the car for salvage and charge the renter for the difference between the car's market value on the day before the accident and the amount the damaged car brought at auction. In one recently published example, a new car valued at \$25,000 was damaged in an accident. The rental company elected to sell the car as salvage rather than repair it. The salvage sale price was \$10,200; the renter was charged \$14,800, the difference between the value of the car before the accident, and the salvage price. His personal auto insurance company provided coverage for the damage, but only paid \$7,000, the estimated repair cost for the damage to the vehicle. The balance was the renter's responsibility; he was left with a \$7,800 uninsured loss. Personal or business auto policies will not cover this type of charge; there is a specific exclusion for this type of loss in the standard commercial auto policy.

The only sure way to avoid these various charges is to purchase the Collision Damage Waiver from the renter, which might typically cost \$15 to \$30 per day. Larger businesses who rent frequently might also try to negotiate a master corporate contract with a car rental company which would include removal of these charges should a rented vehicle be damaged.

Unfortunately, at this time the insurance industry offers no insurance solution that provides coverage for the Diminution in Value or Before-and-After charges discussed above, and only limited coverage for loss of use of the damaged rental vehicle. If you take a close look at some of the rental car coverage provided by some premium credit cards, you'll find they come up short, too. If you rely on insurance coverage available under your business

or personal auto policy or from your credit card company, it will be incomplete and could result in an uninsured loss as described above. On the other hand, buying the Collision Damage Waiver from the renter can be a very expensive solution to the problem. This is a risk where some educated and informed risk assumption might be in order.

Note that this discussion applies to domestic (U.S.) rentals. Rent a car outside of the U.S. and you are subject to the rules of that other country; all bets are off.

## **Bid and Surety Bonds**

We regularly get calls from clients asking for a contract bond, usually either bid or performance bonds, or sometime supply bonds.

The correct term used to describe these instruments is surety bonds. Surety bonds are not really insurance; they are better thought of as financial guarantees. A job or project owner will typically require a surety bond to assure that if the contractor or supplier is for any reason not able to complete the work for which they contracted, there will be funds available from the bonding company for the owner to go out and hire someone else to finish the job. Performance bonds will typically be required for the full amount of a contract; a bid bond, which may be required when you submit your bid for a job, will be for some lesser amount, perhaps ten percent of the total bid amount. The performance bond is the true guarantee; a bid bond is nothing more than a guarantee by the bonding company that they will issue a performance bond if the bidder is awarded the job. Since the bonding company that issues a bid bond will be obligated to follow up with a performance bond if the bid is successful, they underwrite both the same way.

Bonding companies underwrite bonds much like a bank would underwrite a loan; they want to be sure the company they bond has the experience, resources and the financial strength to complete the work they undertake. Contractors and others that have a regular need for bonds will undergo a very rigorous prequalification process to establish a surety line of credit with a bonding company. Once that line is established, obtaining a bond is a fairly simple matter. The bonding company will want specifics about the job in question, but as long as it falls within predetermined parameters, a bid or performance bond will be forthcoming fairly quickly.

If you have not established a bonding line, it is a difficult and time consuming process to get one, if you can get one at all. Quite a bit of information is needed, not the least of which is detailed financial information on your company. The bond market is a very difficult market, especially in times of economic slowdown like we are currently experiencing, and many underwriters are requiring minimum annual bond premiums of \$25,000 to \$50,000.

If you think the nature of your business is such that you may require bonding for future work, we'll need to get to work for you well in advance of when you'll need it.

## **An Overlooked Workers Compensation Exposure**

You know that if your employees sustain an illness or injury on the job, your state of jurisdiction defines the workers compensation benefits they are entitled to receive. Each state has its own workers compensation statutes; they are all different.

One important consideration relates to if, or how, workers compensation benefits are paid to employees who may be injured while outside the U.S. This is an obvious concern if you have employees permanently stationed overseas, but even short trips, for business, trade shows, customer service, etc. can lead to uninsured exposures.

The solution is a foreign voluntary workers compensation policy. These are written to specifically address these types of exposures, and can extend workers compensation coverage worldwide. These are all non standard policies, but most will contain these features:

*Foreign Voluntary Workers Compensation coverage.* With this you voluntarily extend the benefits of your state's workers compensation system to an employee who might not otherwise be eligible for them.

*Endemic Disease coverage.* Workers compensation statutes provide coverage for illnesses sustained on the job, but there are usually pretty strict limits on this; an employee who gets the flu from a coworker who came to work ill is probably not going to qualify for workers compensation.

Employees who travel overseas run the risk of contracting diseases not usually found in the U.S.; cholera or malaria are common examples. This coverage voluntarily extends workers compensation benefits to employees who suffer this type of misfortune.

*Repatriation Expenses.* Your employee is at a trade show in Shanghai when the taxi he's riding in is in an accident and he's seriously injured. He'll get local medical attention, but as soon as he's stabilized he wants to come home.

Transportation expenses for seriously injured employees can be quite costly because most airlines do not allow a sick or injured person on regularly scheduled flights. That means you'll need to charter a flight. This coverage will pay the cost, which would otherwise not be insured.

Foreign Workers Compensation coverage is generally not expensive. It's often written in combination with a foreign liability and auto policy to fill in gaps in those areas, too.

## **Insurance Coverage for Students**

By the time you read this chances are your high school senior has received responses from all the colleges where they applied, has made a decision and knows where they will be going in the September. Current college students might be anticipating packing up for a semester abroad.

Either way, it's time for you to investigate proper insurance coverage for your offspring, either away at school or out of the country. Your existing homeowners and auto policies have provisions that extend coverage to your college student, at home, at school or elsewhere.

There are significant limitations built into these policies, though. The first to consider is policy territory limitations that may apply; your homeowners policy will provide some coverage outside the U.S., but your auto policy will not.

There will also be limitations or caps on specific types of property insured, or specific types of claims. Loss of money, passports, tickets or other documents, laptops, photo equipment or musical instruments are just some areas where your policy may have limitations.

If you have a current or soon-to-be college student in your household, give us a call to discuss proper insurance coverage for them.

## **Excess Carriers Not Bound by Primary's Claim Settlement**

Most businesses buy excess or umbrella liability policies to provide higher insurance limits in the event of a large claim where underlying policy limits may not be adequate to cover the damages in a claim. This is common in business insurance, and important for individuals in their personal insurance programs, too.

The Massachusetts Supreme Court recently ruled that an excess insurer was not bound by the decision of the primary underlying insurance company to settle a claim. The primary insurer had concluded that the claim was covered, and was worth more than their policy limits. They accepted liability, tendered their policy limits and tossed it off to the excess insurer to cover the balance of the claim. The excess insurer declined coverage, arguing that they were not bound by the coverage decision made by the underlying primary insurance company. Briefly, the court ruled that an excess insurance company is entitled to make its own decision as to whether a claim is covered, even in a following form policy, unless there is explicit wording in the excess policy providing otherwise.

There have been similar rulings in other jurisdictions. As another court noted in a similar case, "...each (carrier) has a separate relationship with the insured, but they have none with each other."

Practical effect: there are three ways to deal with this concern. 1) Place the excess liability with the same insurance company as the underlying. We'll try to do this wherever we can. 2) Seek wording in the excess policy binding the carrier to coverage decisions made by the primary carrier. Underwriters resist this; it won't be easy to do. 3) Expect to negotiate separately with each insurance company with limits exposed in a large claim to obtain coverage.

## **Excess vs. Umbrella Liability Policies**

Following on to the preceding topic, it's worth noting the difference between excess liability insurance policies and umbrella liability policies.

The terms excess or umbrella policy are often used interchangeably, but they are different. An excess liability policy is perhaps better described as a “follow form” policy. It’s a relatively simple document which basically lists the underlying policies over which it sits, has wording that incorporates the terms and conditions in the underlying policies, and just adds higher limits to them.

An umbrella liability policy, on the other hand, is a full blown insurance policy in its own right, with its own insuring agreements, exclusions, terms and conditions. It too sits on top of underlying policies and adds higher limits, but those limits are subject to the unique policy language in each umbrella policy.

An excess or follow form policy can include additional exclusions or restrictions not found

in underlying policies, but it usually won’t offer coverage broader than found in underlying policies. Coverage in umbrella policies can be broader than, or more restrictive than, that found in underlying policies.

Some policies are both excess and umbrella. It’s not uncommon to find a Coverage “A, B” format. In this type of policy, Coverage A is Excess Liability insurance, while Coverage B would be true Umbrella coverage.

Excess and umbrella liability policies are all non standard policies, and are usually modified by a string of endorsements. Give us a call if you’d like us to review yours.

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## ***THE ATLAS TRAVEL SERIES***

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If you are traveling outside your home country and are at least 14 days old, you are eligible for coverage. Coverage is available for periods of 5 days to 12 months!

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If you have any questions, please call one of our agents for assistance. Jason Lester, Janice Davidson, Brandon Adamson, Leah Fouts or Jacque Pentell can be reached at (812)232-0441.