

FOCUS

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RESULTS



CURRENT FLEET ISSUES: RUNNING OUT OF GAS?

Texas PRIMA—19th Annual Conference
November 19-21, 2008

BENEFITS ADMINISTRATION AND RISK MANAGEMENT SOLUTIONS

Objectives

- To better address an organization's liability concerns when employees use their own personal vehicles for business purposes
- To identify issues and considerations when verifying employees driving records
- To be aware of recent legal cases surrounding use of personal vehicles for business purposes





Background/Overview



Background/Overview

- In order to watch costs a lot of employers are reducing their own auto fleets
- Shifting costs to the employees...what about the liability?
- Few controls in place to manage these fleets
- Less control over fleet quality/maintenance





Non-Owned Automobile Liability



What Is Non-Owned Auto Liability Coverage?

- Covers vehicles not owned or leased or hired (rented) – employees' vehicles
- Covers only damage to third parties
- Does not cover damage to employee's vehicle
- Employee must look to their personal auto policy to cover damage to their vehicle



Limitations of Non-Owned Coverage

- Many policies provide coverage in *excess* of other insurance (*i.e.*, the employee's personal auto policy)
- Subject to minimum financial responsibility limits
- Law only requires \$25,000/\$50,000/\$25,000 (bodily injury per person/bodily injury per accident/property damage)



Limitations of Non-Owned Coverage

(cont'd)

- Potential gap if no coverage in place
 - Employee fails to obtain coverage
 - Coverage lapses
 - Carrier denies coverage as vehicle being used for business versus personal use and not disclosed



Non-Owned Liability Considerations

- Periodically verify that employees who drive on company business have automobile liability insurance
- Have minimum limits of liability that you require employees to carry
- Require that employee vehicles be well maintained, in good mechanical condition
- Require current inspection stickers
- Assign specific internal resources to handle/enforce these requirements



Non-Owned Liability Considerations

(cont'd)

- Ensure that you have sufficient resources to manage these requirements
- Find out now if your coverage is excess or primary if the employee is in an accident in their personal auto while on business
- Will your coverage/policy “drop down” if your employee doesn’t have coverage?
- Check with your insurance provider to see if your policy can be endorsed to be/become primary



Non-Owned Liability Considerations

(cont'd)

- Do you require the employee's coverage to have a business use classification? (potentially Pandora's Box)
 - If not, the carrier may deny a claim
 - Some carriers will pay a claim and retro charge for the business use rating
 - Carriers may cancel their policy after a claim



Non-Owned Liability Considerations

(cont'd)

- Are you going to reimburse your employees for the cost for the increase in their cost of auto insurance for
 - Higher limits?
 - Business class use versus personal use?





Issues and Considerations When Verifying Employees' Driving Records



Motor Vehicle Records

- Driving record obtained from the Department of Public Safety (DPS)
- Lists moving violations, accidents, DWI/DUI, etc.
- Some companies use their internal claims experience in addition to that obtained from DPS



Employee Driving Record Verification

Do you check driving records? If so,...

- Who do you run them on?
 - All employees?
 - Only those with driving responsibilities?
- Who obtains the driving records?
 - Employee?
 - Employer?
 - Agent?
 - Carrier?



Employee Driving Record Verification (cont'd)

Do you check driving records? If so,...(cont'd)

- How often?
 - New hires?
 - Semi-annual?
 - Annually?



HR Policy Considerations

- Your company policy should require that employees that are required to drive on company business (whether in company or personal vehicle) must be insurable
- If they are uninsurable, it should be noted that the employee subject to termination
- Need to be consistent in the enforcement of this policy



HR Policy Considerations (cont'd)

- Require each employee to sign an authorization form allowing you to run their Motor Vehicle Report (MVR) if anyone other than the employee is processing the MVR
 - Drivers License Privacy Act of 1993





Recent Legal Cases Surrounding Use of Personal Vehicles for Business Purposes



Implications of 2003 Texas Tort Claims Act Changes on Public Entities

- Exclusive Remedy—sue employee or entity
- Typically elect to sue entity (deep pocket theory)
- If entity is sued, employee's personal auto policy should not come into play
- This makes the public entity's coverage primary (no other policy applies)



Implications of 2003 Texas Tort Claims Act Changes on Public Entities (cont'd)

- Texas Tort Claims Act, Section 101.106
- Cases
 - *Wilson v. Harris Cty. Water Control & Improv. Dist.*, 194 S.W. 3d 551,556 (Tex. App. – Houston 14th District 2006, petition denied)
 - *Phillips v. Dafonte*, 187 S.W. 3d 669,673 (Tex. App. – Houston 14th District 2006, petition denied)



Drivers License Privacy Act of 1993

- Plaintiff attorneys looking for new cash cow
 - Tobacco industry has been hit
 - Pharmaceutical industries have been hit
 - New target is information-gathering industries
- Originated in California
- Result of stalking murders
- Murderers found targets searching through photographs and addresses from the California Drivers License Bureau



Drivers License Privacy Act of 1993

(cont'd)

- Forbids disclosure of personal information from any motor vehicle record with some exceptions
 - Written authorization from the individual
 - Use by Federal or State agency
 - Use with motor vehicle and driver safety
 - Use in court proceedings
 - Certain research activities
 - Certain insurance matters
 - Etc.



Drivers License Privacy Act of 1993

(cont'd)

- Plaintiffs are seeking to classify lawsuits as class action suits (all licensed drivers in the State of Texas)
- *Sharon Taylor, et al v. Texas Farm Bureau, et al (U.S. District Court for the Eastern District of Texas, Marshall Division)*





Other Risk Management Considerations



General Risk Management Policy Considerations

- Do you provide reimbursement for an employee's deductible in the event they are on business and have a claim in which their coverage is primary?
- Does your hired auto/rental coverage provide physical damage coverage in addition to liability?



General Risk Management Policy Considerations (cont'd)

Do your employees have a company gas card?

- Some cards require both a PIN and the entry of the current mileage on the vehicle
 - Miles driven per vehicle report
 - Gas mileage per vehicle report



General Risk Management Policy Considerations (cont'd)

Do your employees have a company gas card?
(cont'd)

- Reports also help you with general risk management oversight of vehicles
 - Are gas cards being abused?
 - Time for vehicle maintenance/service?
 - High mileage vehicles need to be shifted to lower mileage units/regions?



General Risk Management Policy Considerations (cont'd)

- What is your policy on refueling vehicles?
 - Minimum level?
 - Maximum level?
 - Consider this: Some companies have/had policies not to maintain fully fueled cars because of budgetary constraints; after Hurricane Ike hit they weren't able to get fuel



General Risk Management Policy Considerations (cont'd)

- What is your policy on use of cell phones, texting, and laptops while driving?
- Are you seeing claims related to these?
- Do you investigate accidents?
 - Some companies only use police reports to serve as the investigation
 - Ideally there would be a formal investigation process in place that utilizes more than just a police report



General Risk Management Policy Considerations (cont'd)

- Is there a driver mentoring program for younger, less experienced drivers?
- Are employees required to take defensive driving periodically?
- Do you recognize those drivers with clean safety/driving records?



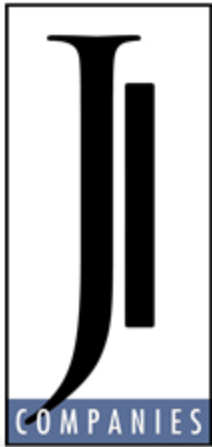
General Risk Management Policy Considerations (cont'd)

- Does your fleet safety policy emphasize a safe arrival over timely arrival?
- Are fleet safety benchmarks in place and monitored?
 - Total miles driven per period
 - Accidents per mile
 - Accidents in non-owned vehicles



Questions?





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