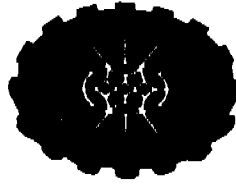


Please Route:

- _____
- _____
- _____
- _____

SOLUTIONS

THE
MCLAUGHLIN
COMPANY



CREATIVE RISK
MANAGEMENT INC.

Volume 3 Issue 1

February 1996

The McLaughlin Company

Creative Risk Management

Rental Cars

There is probably no single topic that generates as many questions as the Rental Car Contract. Maybe you have asked these questions yourself.

Why is the insurance coverage so complicated when renting an automobile?

The problem exists because the auto rental company is attempting to contractually obligate you to a legal requirement that is rightfully their own. In our legal system, the liability follows the owner of the automobile as well as the driver. The rental company is attempting to pass off their liability and make sure your liability does not become their obligation.

In order to limit their liability, they only provide you with the absolute minimum the state will allow. You agree to reimburse them any amount they pay above that limit. (In Texas, a law has been passed that absolves the rental company of any liability and places the full liability on the renter -- not the driver, the renter.)

Does it make a difference whether the auto rental is a business or personal rental?

Yes! In fact, some rental locations ask you that question. Why? If you create a liability (a loss) for the rental company, they want to know whom to come after -- the individual or the employer.

What about personal use on a business trip?

What does your employer say about personal use in its corporate policy? Do not confuse the corporate policy with the insurance policy. The employer should have a written policy on the use of automobiles.

How do I know if my rental is business or personal?

Generally, the employer will have a program with the auto rental company that specifies it is a business rental. If there is no corporate rental program, it will be a personal rental.

What happens if the rental agreement includes a negotiated corporate rate?

The agreement upon which the negotiated rate is based will determine the nature of the rental. If the agreement creates a business rental, allowing employees to rent using the corporate rate may subject the business to a liability created during a personal rental. All agreements must be reviewed in order to determine who ultimately is renting the automobile.

If my employer does not have any restrictions on the use of automobiles, will my employer's automobile policy respond to protect me?

The answer is an unqualified "maybe!" If your employer gives you permission...if the liability is within the scope of employment....and your employer has the financial wherewithal to fulfill its promise -- you have nothing to worry about.

What about my employer's insurance?

Insurance is a contract between the employer and the

In This Issue

No issue is more complicated or fraught with misconceptions than Rental Autos. It is impossible to reduce this problem to easily digestible and unambiguous elements. We have reviewed more than 1,000 pages in compiling this article. Every rental car company has its own set of guidelines as does each state, territory and province. The courts constantly contradict each other. In this issue we attempt to raise some red flags for you to stop and ponder whenever you rent an automobile.

insurance company. This is why the rental contract is difficult. It attempts to mold one contract around another contract. *Usually* this is not a problem. *Most* insurance policies do this very well.

Why the equivocation?

Each policy has its own terms and conditions. You must rely on what your employer has instructed you.

As an employer, what insurance provisions should I be on the lookout for?

1. Is non-owned/hired car liability provided?
2. Does it provide the liability to third parties?
3. Will it pay for damage to the rental vehicle?
4. Will it pay for the lost rental income to the rental company if the vehicle is damaged?
5. Will it provide uninsured/underinsured no fault benefits?

As an employer, do I want to provide all of these coverages to my employees?

That is why you need a corporate policy. First you need to authorize the use. If you do so and put no restrictions



on vehicle use, you may have unlimited liability. Do you want to be liable for the injury done by a drunk teenager running a school bus loaded with children into a ravine? (That may be extreme, but you need to look at a worst case scenario when establishing your automobile use policy.)

I do not want to provide that coverage? What do I do?

That is why you need to establish and communicate the liabilities for which you are willing to assume responsibility.

What do personal insurance policies provide?

As a rule, they will protect the individual to the same degree as they would for an individual's own automobiles. If the policy provides comprehensive and

What we can do for you.

Creative Risk Management, Inc. can help you design a formal corporate policy and review all pertinent documents, including rental agreements, insurance policies and disseminated information to make sure your corporate policy performs as intended.

SOLUTIONS

collision coverage, it will do the same for the rental. In most states this coverage will be subject to whatever deductibles apply to your owned autos for collision or comprehensive or specified cause of loss. If there is no physical damage provided on the insured's own vehicles, there is none for rentals. Also, if you have any coverage available for charges the rental company makes for loss of use of the damaged rental car, the amount of coverage available will be specifically stated in the "physical damage" section of your policy.

Does the personal auto policy cover *all* situations?

No!

Will either my personal policy or my employer's auto policy respond if I travel outside the United States?

For coverage to apply, the accident must occur within the policy's coverage territory which is anywhere in the United States, its territories or possessions, Puerto Rico or Canada. (Insurance policies have not caught up to NAFTA.) Some umbrella policies provide world wide coverage on a reimbursement basis.

Our recommendation is always buy supplemental liability insurance and loss damage waiver when traveling outside the United States and Canada. You may be able to purchase this coverage for less premium here in the United States before the trip.

Do not wait until the last minute to make these decisions.

Who is an insured under my personal auto policy with regard to a rental auto?

An insured is defined to include the named insured and resident family members. Therefore, if your 19 year old son moves out and gets "his own place" but does not own a car or a personal auto policy, he would have no coverage. It does not matter that you might still assist with his support or let him use one of your cars. Your personal auto policy would not respond to protect him if he were involved in an auto accident with a car he rented.

What is not covered under the personal auto policy?

If you rent a van or a truck for business use, it is not an insured vehicle. Note that some insurers exclude business use of even private passenger type autos, but they may offer a buyback option. "Business Use" includes use of an auto on a business trip.

Why not? I use a pickup truck for business and it is insured.

Because the policy says so. The policy covers an owned van or truck but not a rented one.

How about a commercial business auto?

No restriction.

Is uninsured/underinsured, no fault and medical payments provided by the rental company?

No!

If I have uninsured/underinsured, no fault and/or medical payments under my personal auto policy, will it provide me benefits when I rent an auto?

Yes!

How about my employer's policy?

No, but if you are injured in the course of employment, you probably have coverage under your employer's workers compensation policy.

What if I do not have a personal auto policy?

If you do not own an automobile, you should consider getting a non-ownership automobile policy or take the insurance options when you rent.

Can I get this coverage from my employer?

Yes, but most employers are reluctant to risk their insurance program for their employees personal actions and those of their resident family members

Occasionally, I rent an auto for a month or two. Do I have any particular problems?

Yes. Hired auto coverage extensions are for rentals of 30 days or less. If the rental agreement is for a month (31 days) no coverage was ever available. Returning the auto on the 30th day and executing a new agreement and exchanging automobiles may not be sufficient to keep coverage. You may have to return the auto and get a new auto from a different rental company.

The correct way to handle rentals of more than 30 days is to add the rental auto to your personal or business auto policy. The insurance company will charge a premium for the time the auto coverage is needed. Not all insurance companies will do this. It may be necessary to purchase the insurance from the rental company.

Rental car companies offer many insurance options. I am confused. What do these options cover?

LDW - Loss Damage Waiver - gives you the opportunity to protect yourself against financial loss if damage occurs to the rented vehicle. Your employer's auto policy, your personal auto policy or the credit card you use to rent the auto may provide coverage for this.

PAI - Personal Accident Insurance - provides for loss of life due to an accident in a rental automobile. Your

SOLUTIONS

personal insurance program should be adequate to take care of your needs in the event of death, disability or medical costs. If not, it is time to review your program and supplement those benefits.

PEC - Personal Effects Coverage - provides limited coverage for personal belongings while renting a vehicle. Most Homeowners and Renters insurance policies provide broader coverage than is available from rental car companies.

SLI - Supplemental Liability Insurance - provide automobile liability coverage up to \$1,000,000 per accident. This covers the renter and any authorized driver. This may duplicate what is available under your personal auto policy and personal umbrella. If you do not carry these limits, you should consider increasing your personal limits and adding an umbrella.

I am still confused about the Loss Damage Waiver (LDW) offered by the Auto Rental Companies? Should I take it?

LDW is not insurance. It is not subject to insurance regulations. By buying LDW, you purchase a "waiver" that releases you from financial responsibility for the amount of damage for which you would otherwise be liable under the contract. It includes the loss of income to the rental company for "down time" while the vehicle is being repaired. The cost of LDW can double the cost of the rental and may duplicate coverage already available in a business auto policy or personal auto policy. Even so, if you travel outside the United States or Canada, you may want to purchase the LDW.

If you do purchase LDW, you still may not have a waiver. Rental companies place all sorts of conditions on your rental. For example, you may be prohibited from driving the vehicle "off road" or on certain difficult to travel roads. Violation of any condition may subject you to 100% liability.

What about the car rental loss and damage insurance provided by credit card companies such as American Express, Gold Master and Visa and Air Travel Card?

These may provide coverage on an excess basis only. You have to exhaust all possible sources of coverage before they will respond.

When they do respond it is to reimburse you for your out of pocket expenses. While this is done by putting a hold on your credit line, it can create an inconvenience.

The cardholder must also be the primary renter taking control of the automobile.

You must also be aware of all the conditions. Many automobiles are not covered and the value of any covered automobile may not exceed \$15,000 on most plans and \$40,000 on others (Optima).

However, this may be a viable solution for international travel. Gold Mastercard accepts primary liability for damage to rented autos outside the United States.

What happens if I have an accident or damage the rented auto?

The rental company will hold you responsible for all damage to their auto and the loss of income while the auto is in for repair, unless you purchase the Loss Damage Waiver - LDW (see above).

We know of one incident in Hawaii where the rental company prevented a renter from leaving the Islands until the damage was acknowledged by the renter's insurance company.

Whom should I notify in the event of an accident or damage to the rented auto?

Do not wait until you return the auto. Notify the rental company as soon as possible. Also notify your personal insurance company or your employer's insurance company if it is a business rental.

Delay in reporting may prejudice your ability to recover from your insurer, or may exacerbate the claim.

In one incidence, a claim was not reported and thirty days later the rental company sent a bill for the damage to the rented vehicle and a bill for thirty days of lost rental income computed at the highest daily rate. The lost rental income was three times the value of the damage because the employee did not notify the employer and the employer's insurance company. The employer's insurance company denied the claim because the delay in reporting the claim caused the loss to be substantially more than it should have been.

Are there any particular restrictions in the rental contract of which I should be aware?

This is difficult to answer because each rental company contract is different and needs to be individually examined. In the following exhibit, we have highlighted some of the restrictions contained in the Emerald Club Program offered by National Car Rental System, Inc. If you multiply these variations by the more than 100 auto rental companies and the thousands of auto dealers who

SOLUTIONS

rent vehicles you can see that generalizations can be made except this one: If you rent an automobile, you better read the contract.

Let's take a look at the Emerald Club Program:

Under this program you will be subject to National's standard qualifications.

1. You agree that the vehicle is delivered to you in good working condition
2. You agree that there is no expressed or implied warranties whatsoever...National is not liable for any indirect, special or consequential damages arising out of the rental
3. You must be a capable and validly licensed driver over the age of 25
4. You must agree to let National verify your license and driving record
5. You must promise the vehicle will not be operated by anyone except you and the following authorized drivers:

⇒ capable and validly licensed drivers 25 year of age and older that have your permission to drive the car who are members of your immediate family who permanently reside with you, or

⇒ a business partner, employer, or regular employee who drive the vehicle for business purposes.

Other than the above drivers, any other authorized driver must be listed on the rental contract and must be present at the time of the rental.

In addition, there are thirteen prohibited uses of the vehicle ranging from driving while impaired to failing to lock the vehicle.

This is a brief look at one rental contract. National has several variations of the one examined here. There are also modifications by their franchises.

Should I be aware of any other concerns?

You cannot be certain the rental company will release one of their automobiles to you. In approximately fifteen states, the rental companies will check your motor vehicle

report (MVR) before they release the automobile. If you have multiple violations, DUI, fatality, or a suspended license, they will not rent a car to you.

What conclusions can we draw from all of this?

For personal rentals, it is important to have a properly written personal auto policy with limits and deductibles you feel are sufficient. Some companies require that you buy additional policy options to cover short term rentals. If you are concerned about the adequacy of limits, increase them or purchase an umbrella. You should be able to discuss your particular policy and requirements with your agent and have him or her make any necessary changes. Do not forget about your personal property and health and accident coverages. You never know about the other driver in an accident. Purchase as much uninsured/underinsured coverage as you can.

For business rentals, make sure you have a corporate policy that explains how you handle business rentals. For example, you should either initiate a corporate program with one or several car rental companies or make it clear that you expect employees traveling on business to arrange personal rentals. Your corporate policy should make it clear how you will reimburse employees for these rentals. The corporate policy should also make clear to what extent the vehicle may be utilized for personal use on a business trip and the extent to which you will protect the employee for his or her negligence or the negligent entrustment of the rental car. The corporate policy can be as simple or complex as you want it to be, but you need to have one. It may be as simple as selecting one car rental company and allowing each employee full latitude. Whatever it is, you must communicate the policy to your employees.

We hope that you have found the information we have provided helpful.

Unfortunately, there is no standard rental contract. Contract provisions vary greatly from one rental company to another, from one rental location to another, and over time they

change. You must also bear in mind that auto rental statutes enacted in almost half of the states regulate contract provisions. You can always call us and pose your own questions about the coverages provided, or not provided under your policy..... or, you can take a taxi.



**In the next issue of
Solutions.....**

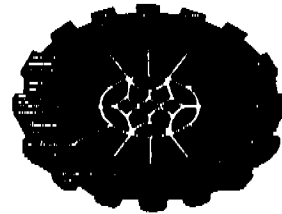
With 1995 over and 1996 well under way, we asked our staff to reflect on the past year and we posed this question:

If you were to advise our clients, what is the single most important thing you would recommend they consider regarding their insurance needs?

You can read their responses in the next issue of **Solutions**.

SOLUTIONS is a service of The McLaughlin Company and Creative Risk Management, Inc. -- offering you timely and creative solutions to all your **INSURANCE** and **RISK MANAGEMENT** needs.

**THE McLAUGHLIN COMPANY
CREATIVE RISK MANAGEMENT, INC.**



1725 DeSales Street, NW -- Washington DC 20036
Fax 202-857-8355 - 800-233-2258 - 202-293-5566

Customer Satisfaction Survey

We have tabulated the results of the Customer Satisfaction survey and we want to take this opportunity to share them with you.

The boss is fond of quoting Mark Twain. In his autobiography, Mark Twain (quoting Benjamin Disraeli) declares "There are three kinds of lies: lies, damned lies and statistics."

This quote always comes to mind when I am tempted to place much importance on statistics. Regardless, the results, flawed though they may be, indicate that we can do better.

SURVEY RESULTS

Communications. You scored us an average 8.86 out of a possible 10 on communications. This was rating our telephone and fax service. In response to these results, we purchased a new telephone system. Our new system allows our customers to reach us when the switch board is closed and to leave messages in our voice mail boxes if we are unavailable. Our next survey will tell us how you feel about this improvement, but the initial response has been good. This new system worked well during the recent blizzard allowing those of us who were snowbound to retrieve and return our messages.



Accounting. We scored 8.82 out of 10. Many of you had problems with our invoices and month end statements. In order to assure that payments are posted correctly, you should always enclose a copy of the invoice or statement with your check. You should also be aware that once an invoice is paid, neither that invoice nor the payment will appear on your next statement. If problems do arise regarding invoices or monthly statements, our accounting department is always available to answer any questions.

Total Services. This includes **Responsiveness, Knowledge, Listening to You, Professionalism, and Delivering on our Promises.** We scored the highest on Professionalism -- 9.22. The lowest score was Knowledge -- 8.76. Our overall score was 8.98. As a result of these responses we are taking a hard look at our educational standards and asking our staff to step up their participating in industry education programs such as CPCU, ARM and CIC.

Claims. We did not fair well in this category. You rated our responsiveness as 8.82 and the responsiveness of company adjusters at 8.57. We believe part of the problem is that our claims handling has been "fragmented" with some claims being handled in our Cincinnati Office and some in our Washington Office. We have added a new position in our Washington Office. This person will be responsible solely for claims. We will continue to adjust automobile, workers compensation and property claims out of our Cincinnati office, but all other claims will be handled by our Washington office.



Quality. Our quality rating was 9.02. Taken another way, this means that one out of ten of you would not be willing to recommend us. This is not acceptable to us. Our goal is to do what we do so well that you will come back to see us do it again...and bring someone with you.

Overall. Our overall rating was 8.93. Looking at this overall result led us to examine how well we were meeting our commitments to our clients. What concerned us more than anything was the fact that we only heard from 12% of you. While this is a good response rate, we are afraid we are not meeting your expectations. We would like to hear from everyone who would like us to do better. We want to thank those of you who responded and hope you will feel a part of the current and future changes. If we are not doing it right, let us know!



Thank you!

P. S. On the back of this issue is a mini survey. Your response is appreciated. Thanks again.

This We Believe.....

A Statement of Purpose

The mission of The McLaughlin Company is to operate a service oriented organization dedicated to providing high quality insurance - and, thus, security - to our clients.

To achieve our goal, we shall endeavor always to provide our clients with timely and creative solutions to their insurance needs. Our relationships with our insurers are predicated on long term relationships and only with companies of the highest quality.

The relationships we build, with clients and insurers alike, must of course be based on the highest standards of ethical conduct.

Nothing less can be acceptable.

Your word is who you are.

- Admiral James Greer

Even if you are on the right track, you'll get run over if you just sit there.

-Will Rogers

Never try to fool the men you represent. Tell them what is possible and what is impossible to do. And look upon a single contract as something sacred - a pact to be observed; an agreement which is your bond of good faith.

- Philip Murray

Good enough seldom is.

*-Debbie Fields,
Mrs. Fields Cookies*

