TOLMAN & WIKER INSURANCE SERVICES, LLC
INNOVATIVE RISK ADVICE SINCE 1923™
VENTURA | LOS ANGELES | SALINAS | SANTA MARIA | BAKERSFIELD

Car Pools Effect on Automobile Insurance

January, 2014

FC&S

Public or Livery Exclusion

The exclusion of public or livery conveyances traditionally included in automobile policies has been a principal source of anxiety to insureds forming car pools. Although court decisions have consistently held that car pools do not constitute public or livery use of an automobile, misunderstanding of the public or livery exclusion persists within and without the insurance industry. For example, one suggestion sometimes heard is that car pool participants should share the actual driving rather than share driving costs; otherwise the car pool may amount to public or livery use. This simply is not the case. The courts are in agreement that charging a car pool passenger for his or her reasonable share of expenses does not constitute public or livery use. Also, the exclusion on the current personal auto policy states that it does not apply to a share-the-expense car pool. Whether the insured takes his or her turn at driving, say one day a week with four other drivers, or drives five days a week and collects a reasonable share of expenses from each passenger, the exclusion does not apply. It is only when the insured indiscriminately makes the car available to the general public or attempts to make a profit that he or she runs the risk of operating a public or livery conveyance.

This is in keeping with the legal definition of livery conveyance. That definition states that such a conveyance is a vehicle that is hired out and is used indiscriminately in conveying the public or objects without limitation or without being governed by special terms. In other words, a public or livery conveyance is open to the general public to deliver goods or persons for whoever pays the price; such a vehicle is also usually regulated by public laws governing the safety and sometimes the price. A car pool vehicle, on the other hand, is not open to the general public and is not subject to the same stringent regulations that apply to a bus or long haul truck, for example.

Sometimes, though, what constitutes a "reasonable share of expenses" is open to question.

Injury to Named Insured

In some car pools, one automobile is used all or most of the time, with the participants taking turns driving. The question frequently arises whether liability for injury to the owner of the automobile is covered, should he or she be injured while someone else is driving, and whether it is advisable to show each participant as an additional named insured.

Under the provisions of most automobile policies, any person using the automobile with a reasonable belief of permission is, by definition, an insured. Hence, it is unnecessary to name each participant as an additional insured. As respects liability for injury to the owner of the automobile when someone else is driving, the situation varies according to the policy covering the automobile. Some independently filed personal auto policies, for example, may exclude liability coverage for any person for bodily injury to the named insured or any family member. Others provide liability coverage for the named insured only. In this instance, any other carpooler driving the vehicle would have to rely on his or her own auto policy. The current unendorsed ISO personal auto policy has no pertinent exclusion and holds that damages for which any insured (this term includes any person using the covered auto) becomes legally responsible will be paid.

However, some states' mandatory special provisions alter the coverage. For example, California's endorsement PP 01 69 04 95 amends Part A – Liability to state "We do not provide Liability coverage for any 'insured' for 'bodily injury' to you or any 'family member' whenever the ultimate benefits of that indemnification accrue directly or indirectly to you or any 'family member'." So, if a fellow carpooler is driving the insured's vehicle, causes an accident, and is sued by the insured for his or her injury, the insured's PAP will not respond. Colorado's endorsement PP 01 61 01 05 adds an exclusion that the insurer will not "provide Liability Coverage for you or any 'family member' for 'bodily injury' to any

family member." In this situation, if the carpooler was the husband named insured and his wife a passenger, and the husband is sued by the wife for injuries sustained in an at-fault accident, the policy will not respond. (The exclusion applies to any such situation, not just a carpool.) Finally, the District of Columbia endorsement PP 01 64 01 05 modifies Part A – Liability Coverage to state that the insurer will "not provide Liability Coverage for any 'insured' for 'bodily injury' to you or any 'family member' to the extent that the limits of liability for this coverage exceed the minimum limits of liability required by the District of Columbia's Compulsory No-Fault Motor Vehicle Insurance Act." Under this provision, a family member injured by an insured can collect, at most, the minimum limits legally required in the District of Columbia, or $25,000 per person.

These amendatory endorsements are by way of example and should not be taken as an all-encompassing list. In these states, then, the result could be that the car owner's insurer would not respond, with either defense or damages, should the owner file suit against a guest driver who injured the named insured while driving the named insured's car. The insured should therefore be warned of the existence of any such exclusion in his policy so that driving by guests can be avoided unless the guest driver has adequate insurance of his own. If the driver carries his own insurance, that may be a source of recovery for the injured car owner. The driver's PAP, however, would consider the insured's vehicle a nonowned vehicle and so the driver's PAP is excess.

If a guest drives another car pool member's car regularly or frequently, the guest driver's insurance might be inapplicable due to the exclusion (in the guest driver's policy) of use of vehicles furnished or available for the regular use of the insured. Thus, if the guest driver's own insurance is to be depended on—by either the owner of the car or the guest driver—the guest driver's policy should be amended to include extended nonowned liability coverage, which deletes the furnished or regular use exclusion found on the personal auto policy. However, this is an unlikely event. Generally, courts hold that simply driving another's vehicle with permission does not constitute regular use; a driver would have to have a set of keys, or be able to access the vehicle without having to ask permission.

If the named insured is injured as a passenger and the guest driver is not liable, the named insured still has regular access to the policy's medical payments coverage and, if applicable, uninsured motorists coverage. In states having automobile no-fault laws, personal injury protection customarily covers the named insured while occupying any auto as driver or passenger. The policy in question, however, should always be checked.

Injury to Passengers

Apart from a liability claim or, in no-fault states, a claim under personal injury protection, an injured passenger's most practical (or at least the quickest) means of compensation through automobile insurance is under the medical payments coverage of either the car owner or the passenger.

Under the personal auto policy and most others, the passenger's medical payments coverage is excess over the owner's medical payments coverage specifically applicable to the owned automobile. Thus, if all members of a car pool carry medical payments coverage, each passenger will have full access to the auto owner's insurance and, if needed, his or her own coverage beyond that.

Liability of Employer

Since some employers sponsor or encourage the use of car pools, there has arisen the question of their possible liability for accidents involving these automobiles. It seems reasonably possible that a court might hold that this sponsorship of group riding somehow creates a master-servant relationship, making the employer liable either to members of the public or (apart from workers compensation recovery) to employees who have accepted rides at the employer's suggestion.

Some states have forestalled potential problems by making laws addressing these issues. Most have developed because of a push to seek workers compensation because of an accident while driving to or driving from work—in other words, to bring that activity within the scope of employment.

In any event, there is at least a strong probability that employers will be sued under these circumstances, particularly if the owner or driver of the automobile is insolvent, uninsured, or if the employer is perceived to have the proverbial deep pockets. Even if a court of last resort should eventually absolve the employer from liability, defending the suit may be expensive, and there is always the possibility of an adverse judgment. For this reason, an employer could well need nonowned autos liability coverage.

FC


Address To
Recipient Name
Subject
Message
Send
Reset