

SPECIAL REPORT

INSURANCE ISSUES RELATED TO THE SHORT-TERM RENTAL OF CARS

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This Special Report was written by Kenneth R. Hale, J.D., CPCU, AAI, LIC of Marsh & McLennan Agency LLC. Mr. Ken Hale can be contacted at 734-525-2412 or khale@mma-mi.com. More Special Reports are available at www.mma-mi.com.

Individuals or commercial enterprises that rent vehicles on a short-term basis face four types of possible liability claims arising out of an accident with those vehicles:

1. Bodily injury to other people.
2. Property damage to other vehicles or property.
3. Property damage to or theft of the rental vehicle itself.
4. Loss of the use of the rental car incurred by the rental company along with any administrative fees that they charge while the rental car is being repaired or replaced and cannot be rented.

Coverage for these claims may be available from the following sources:

1. The personal auto policy of the individual renter subject to the limits of liability for injury claims and subject to the physical damage deductibles on that policy. Coverage is usually provided under these policies for physical damage claims but only on an actual cash value basis, which may be less than the retail market value demanded by the rental company. In addition, there is no coverage for loss of use or administrative fees charged by the rental company. Finally, any claims submitted under the personal auto policy will result in an increase in that policy's future premiums due to accident surcharges.
2. If it is a business rental, the business auto policy of the commercial enterprise may provide coverage as long as hired car liability and

physical damage coverage is included on the business policy, but coverage is subject to the deductible on that policy. However, the commercial insurance coverage is also on an actual cash value basis and may not pay the retail market value that will be claimed by the rental company. Loss of profits to the rental company is sometimes provided by a few, but not all, insurance companies.

3. Certain “premium level” credit cards provide coverage for damage to rental cars in excess of other available insurance but do not provide coverage for loss of profits to the rental company, including any administrative charges associated with loss of use. Since other insurance is typically available to the renter, the credit card company will usually end up only covering the deductible, but even this will require a significant amount of correspondence in order to collect.
4. The rental car company will also provide a low liability limit for injury claims. Usually the limit is the lowest required by state law. Sometimes a higher limit may be purchased for an extra charge. Coverage provided by the rental company is excess of any liability insurance that you may have. Do not count on the rental company’s liability insurance to provide any significant protection.
5. The rental car company will provide coverage for damage to the vehicle and for loss of use if the loss damage waiver (LDW) is purchased and you have complied with every provision of the rental agreement, such as only using permitted drivers (no fellow employees or valet services, for example, are allowed).

COMMON QUESTIONS AND ANSWERS REGARDING RENTAL CARS

Question:

Does my personal automobile policy cover claims made by rental car companies for damages arising out of an accident that I may have with a rental car?

Answer: Yes and No

1. Yes, if you are in an accident and another person or company (other than the rental company) sues you for injuries, your personal automobile

policy will usually cover the driver up to the limit of liability that is on that policy.

2. No, if the rental company wants you to pay the retail market value of the damages to their car and your personal automobile policy only covers actual cash value. In this case, you are responsible for the difference, which could be substantial. Furthermore, your insurance company will insist on inspecting the damage before repairs are made. This may pose a problem if the rental company does not cooperate or the repairs were completed prior to your claim.
3. No, if the rental car company charges you for the loss of use and/or administrative fees of the rental car while it is being repaired (or even after repairs while the car is waiting to be re-rented.) Administrative damages can be substantial and are typically not covered by your personal automobile policy.

Question:

If I purchase the loss damage waiver (LDW), does this relieve me of any obligation to the rental company for damages to the automobile?

Answer: Yes and No

Yes, but only if you have complied with all terms and conditions of the rental agreement. In most cases, violating any of the conditions will void the loss damage waiver (LDW) and subject you to liability for any physical damage to the vehicle and related costs.

The following are a few examples of common conditions:

1. If you provide false or misleading information. (For example, your license was suspended for failure to pay a parking ticket, even if you were unaware of this.)
2. If you operate the vehicle using any alcohol (even if you are not impaired), legal or illegal drugs or while drowsy.
3. For any driver training activity.

4. To push or tow a vehicle.
5. Driving in an abusive or reckless manner.
6. Driving on other than regularly maintained roadways (parking lots? gravel roads?).
7. In Mexico, without written permission.

In most cases, only the authorized drivers, which have been listed on the rental agreement, are allowed to operate the vehicle. If, for example, you allow an unscheduled fellow employee, a parking lot valet driver, or even a family member who has not been listed to operate the car, you are in violation of the rental agreement. Whenever renting a car, be sure to disclose all possible drivers, even if that person is a spouse or a fellow employee. In addition, you should refrain from using any sort of valet service.

These limitations create a number of gray areas that would allow the rental company to exclude coverage even if the loss damage waiver is purchased. You would then be responsible for the full retail market value of the auto, the loss of use and any other administrative fees. Your personal auto policy would likely provide some coverage but then again only up to the actual cash value and assuming your insurance company could inspect the damages before any repairs were made. If the rental company claims the retail value as opposed to actual cash value, you are left paying the difference out-of-pocket. In addition, any loss of use charges or administrative fees would not be covered by your personal auto policy.

In most case, the rental company will immediately charge the full amount of the damages to your credit card. This could amount to the retail value of the car plus loss of use and administrative fees. The rental company now has your money, and you have the burden of trying to get the money returned through insurance or otherwise. On the other hand, if you had purchased the loss damage waiver and complied with all terms and conditions, the rental company would have waived all claims they may have had against you.

Question:

What if I use a credit card that guarantees to provide a loss damage waiver (LDW)? Will this provide sufficient protection?

Answer: Yes and No

Some credit cards provide exactly the same physical damage coverage as the loss damage waiver (LDW). This means that the same limitations would apply as if you had paid for the loss damage waiver. In fact, for your credit card coverage to apply, you must decline the loss damage waiver on the rental agreement. The credit card coverage only pays if you have no other collectable coverage and have complied with all of the provisions of the rental contract (i.e. permitted driver only, no alcohol, drugs or drowsiness). Credit card insurance does not cover loss of profits or administrative fees claimed by the rental company.

Question:

Aside from collision, am I also responsible for fire, vandalism, theft or other damage to the vehicle?

Answer: Yes and No

You are generally not responsible for these perils if you have complied fully with all conditions within the rental agreement and have purchased the loss damage waiver (LDW). Moreover, you cannot allow an unauthorized driver to operate the vehicle and usually must report vehicle theft or damage to the renting location and local police authority within 24 hours.

Question:

Should I rent cars in the business name in order to resolve these problems?

Answer: Yes and No

In most cases, unless your company has made prior arrangement, you will not be able to rent a car in a business name. However, if you do have a choice, it is generally better to rent a car in the business name in order to

allow the business automobile policy to provide broad coverages and the higher limits that are typically provided under business policies. Your business automobile policy may not, but should, provide damage to rented vehicles when hired car physical damage coverage is provided, and you still have the same problems of the rental company charging your credit card with the full amount of damages at retail while your insurance company would only pay, at best, the actual cash value of the vehicle or the damaged parts. Also, your commercial insurance may, if properly endorsed, pay loss of profits and/or use of the vehicle up to the limit indicated on the policy.

If you are the person buying your commercial automobile insurance, you should be certain that you have “Hired Car Liability” and “Hired Car Physical Damage” coverage as well as loss of use coverage and that it has been endorsed to indicate that a rental in the employee’s name will be considered a business rental while being used for business purposes on behalf of the business being insured.

Question:

Does my homeowners policy provide any protection?

Answer: No

The homeowners policy will provide no protection whatsoever for claims by rental companies since automobile coverage is excluded.

Question:

Will the business automobile insurance carrier protect an employee who has rented a car or truck in his or her personal name?

Answer: Yes and No

No, unless an endorsement titled “Employees Hired Autos” has been added to the business auto policy. Without this endorsement, the employee will be unprotected because the auto lease agreement is usually written in the employee’s personal name, not in the business name, and charged to the employee’s personal credit card.

Question:

What is your overall recommendation as to how I should handle the rental car issue?

Answer: Our recommendation is that you:

1. Buy the rental company loss damage waiver coverage, especially for a rental of only several days. This will provide retail market value coverage for the damaged or stolen auto as well as coverage for the rental company's loss of profits, in most situations. Declining the loss damage waiver (LDW) and depending on your credit card for coverage will leave you open for loss of use claims and the burden of settling these claims and getting reimbursed for what your credit card company has paid to the rental car company. In addition, you will avoid a claim surcharge on your insurance. It is worth the \$20-\$25 per day charge for the loss damage waiver (LDW) to avoid the nightmare of submitting a claim to your personal or business insurance carrier in hopes of getting back enough money to pay your credit card bill on time and to avoid a claim surcharge on your insurance.
2. Verify that your personal automobile carrier will provide coverage for high limits for liability claims (at least \$1,000,000) and will cover physical damage claims to rental vehicles. (You may not be able to secure coverage for loss of profits or administrative charges that may be imposed upon you by the car rental company.)
3. If the use of the rental car is business related, be sure that the business policy includes hired car liability and physical damage coverage and loss of use, and the policy has been endorsed to provide coverage for employees for rental vehicles rented in their names for business use.
4. Read the rental agreement and comply with its provisions. It is important that you understand all of the limitations and prohibited uses under the rental agreement and that you consciously avoid violating them.

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