

September
2014



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IIABL Director of
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questions from IIABL
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a technical question,
contact Mike at
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call (678) 513-4390

Rig Marole

Unitended Burdens of the Marcel Exception to the LOIA

Does the spelling of "rigmarole" suggest an origin in the oilfield? Probably not, but if there was a connection, it would likely be found in the Marcel Exception to the Louisiana Oilfield Indemnity Act. What appeared to be a reasonable ruling to allow shared insurance coverage in oilfield service contracts, has evolved over a 20-year period into a varied complexity of responsibilities for oilfield contractors, operators, and insurers and an unbalanced allocation of risk for contractors. Uncertainty is pushing insurance underwriters toward caution, driving up insurance costs for contractors and operators, and increasing administration for all parties.

Is there a solution for this? We believe the Louisiana Oilfield Indemnity Act should be updated to address inequities that have evolved in the years since the original Act was passed. Specifically, the Marcel Exception should be prohibited.

Background:

Risk allocation has long been a common feature in oil and gas service contracts. The stated objective in many of these contracts has been to allocate the risks of operations in advance and thereby avoid disputes about fault and prolonged litigation when accidents occur. As part of this effort, oil and gas operators have required defense and indemnity from service contractors for claims by injured contractor employees, even if the operator's negligence caused the injury. And the operators have expected the contractors' insurers to support this defense and indemnity on behalf of the contractors. In many cases, operators have agreed to reciprocate and protect the contractors with defense, indemnity and insurance.

In 1981, the Louisiana Oilfield Indemnity Act (LOIA) made such a required indemnification of a negligent party null & void and also voided any insurance

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requirement for support of such negligent party indemnification. The legislature had found that “an inequity is foisted on certain contractors” by the defense and indemnity provisions in oilfield service contracts offered by operators. There was concern that operators, holding unequal bargaining power could unfairly force some of their own risks onto contractors.

In 1994, a decision in the case of Marcel v. Placid Oil Company established that extensions of a contractor’s insurance policy, to cover the operator’s negligence, can be valid if the operator pays all material costs for the extension. This is commonly called “The Marcel Exception.” It was recognized as a way to get around the LOIA without violating the intent of the Act. This seemed fair and reasonable at the time and provided a path to the desired allocation of risk.

Then, in 1999, Lexington Insurance Company successfully invoked the provisions of the LOIA in Amoco v

Lexington, even though Lexington had been paid a premium by Amoco to be covered. The court cited two problems with the transaction: Primarily, the amount of premium paid by Amoco, \$2,000 was deemed inadequate consideration for the amount of liability coverage provided, \$11,000,000. The court also pointed out the premium payment was arranged by the operator and contractor and was made to Lexington only after the injury event took place.

In 2002, Lexington again invoked the LOIA and challenged the Marcel Exception in, Rogers v. Samedan Oil. But the court found the two cases differed on two critical points: In Rogers, Lexington set the premium for the extension of coverage and the court accepted that Lexington’s valuation of the premium fairly reflected the value of the coverage it willingly extended to Samedan. The court also pointed out the premium transaction was made, and the coverage was extended to the operator by Lexington, before the injuries took place. The

Marcel Exception to the LOIA was deemed to have been satisfied in this case and Lexington was responsible to protect Samedan.

Many other proceedings have transpired along the way, but from our point of view, these appear to be the cases that form most of the guidance for operators and insurance companies in their evolving responses to the Act and the Exception.

Marcel Billing Requirement Variations and Evolving Inequities

In the last few years, it has become increasingly common for an operator to place a new burden on a contractor working in Louisiana; the contractor is to arrange a premium invoice and have it sent to the operator, so that the operator can pay for coverage under the contractor’s policy. The intent is to affect the Marcel Exception. In effect, the contractor is not indemnifying the operator for his negligence; the operator is simply buying insurance for himself on the contractor’s policy.

There are at least four forms of inequity that have emerged with this work-around:

First, any claims paid by the contractor's insurer for operator negligence become assigned to the contractor's record and damage his reputation with future underwriters, driving up his future insurance costs.

Second, if the contractor carries a deductible on his policy, he has to pay the deductible, a material part of the cost of the coverage afforded to the operator in some cases.

Third, the contractor is forced to share his policy limits, with the operator. If the contractor's policy is

exhausted by a claim for operator negligence, the contractor could be left without coverage.

And fourth, the burdens of administration placed on the contractor are sometimes very difficult, or impossible to satisfy, leaving the contractor vulnerable to an added risk for a breach of contract. The variations in the way these requirements are put forth continue to evolve, further complicating the contractors' administrative burdens. Here are a few examples:

1. Some contracts specify the contractor will have his insurance provider send an invoice to the operator to pay for the operator's

coverage as indemnitee under the contract. But some fail to specify a timeframe for completing the transaction and leave the underwriters open to set their own deadlines which may or may not jive with the operator's unstated expectations.

2. Others specify a timeframe that is unreasonable. For example, the contractor may be required to notify the operator of anticipated premium amounts 60 days before new policies become effective, long before the contractor is likely to know,

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Rig Marole (continued)

in most insurance markets, who will be underwriting his next policy. In another example, an operator may give himself 60 days after the policy inception to decide if he will pay the invoice to effect the Marcel Exception. Some underwriters will hold that the coverage will not be effective until, and only after payment is made. If an incident occurs during the first 60 days of the policy, the desired coverage may be unavailable.

3. Some specify the contractor will have his insurance providers send an invoice to the operator to pay for the operator's coverage as well as coverage for the operator's economic family and invitees, all of whom may be indemnitees under the contract. Altogether these are often referred to as "Operator Group," or "Company Group."
4. Other contracts specify an open timeframe, giving the operator an option to pay the invoice at any time during the policy and make the coverage retroactive to the policy inception. Conceivably, the operator could choose to buy the coverage

after the accident. The court frowned on such an arrangement in *Amoco v. Lexington*; "To allow a principal to secure coverage on its contractor's policy after the loss for which the coverage is sought is certainly beyond the intended scope of the LOAIA."

5. Some contracts require the invoice be arranged and sent to the operator in a timely fashion, but do not obligate the operator to pay the invoice, and they don't. In these cases, it appears there is simply an administrative burden placed on the contractor, and a risk for breach of contract if he ever fails to arrange a timely invoice at each annual policy renewal.
6. We are beginning to see attempts now to work around the work-around. In a recently proposed contract, the operator and contractor would agree to credit each other equal premium amounts to extend their respective policies for their reciprocal indemnifications. No additional premium billing would be needed. We do not believe underwriters will support such an agreement.

7. In another recent example, the contractor was simply required to agree to waive the provisions of the LOIA. We question if the courts will allow the operator to void the law by requiring the contractor to do so in the contract. It has been suggested this would violate the Rule of Public Policy.
8. Some contracts are silent on the LOIA. In these cases, we have observed and would expect underwriters use the LOIA to avoid extensions of coverage prohibited by the act.
9. A few contracts acknowledge the LOIA and recognize and agree to accept its limitations on the indemnification obligations. Combined with a good focus on safety, this might be the best all around solution, the best way to avoid the rigmarole we find ourselves in today, and to avoid the added costs of the coverage extensions.

Underwriting variations:

In response to the various Marcel Billing Requirements, insurance underwriters have created a few variations of their own.

1. Some insurance underwriters have established one set fee to extend coverage for any single operator on a contractor's insurance policy. But, some observers believe a flat fee cannot accurately reflect the material cost of coverage for all extensions of coverage and might therefore be left open to a challenge. The only successful challenge we find is in *Amoco v Lexington* described above.

2. Some underwriters, attempting to place a value on the extensions of coverage are asking for an estimate of revenues to be paid

under the contract, in Louisiana and offshore Louisiana. A fixed rate is applied to the revenue amount to calculate a premium. Contractors can either produce an estimate, or request an estimate from the operator. In some cases, the premium calculated by the underwriter is deemed too high by the operator who then revises the contract revenue estimate, and asks for a recalculation. Often, by the time this all takes place, the underwriters are reluctant, or refuse to backdate coverage to policy inception. Underwriters may then adjust the

premium at the end of the policy to reflect the actual amounts paid under the contract, but only for work in Louisiana, offshore Louisiana, and only during the policy period.

3. Some underwriters have decided to price each extension of coverage on the limit of liability required in each individual contract.

4. Some underwriters will not backdate coverage at all. Some will only backdate coverage 30 days. Some will backdate coverage 30 days, but only at policy inception. They will not backdate coverage

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for any new contracts undertaken during the policy year.

5. Some underwriters apply one rate to extend coverage for an operator and a higher rate if the operator wants to extend coverage to his "Company Group." This complexity might be added to any of the other variations discussed.

The Problems with Timing

An inherent complexity exists in the incongruent timeframes of contracts and policies. Most insurance policies last 12 months and most service

contracts have an indefinite life. In most cases, a policy is already in force when a new contract is signed. And typically, many contracts already exist when a new policy is underwritten. So the new contract has to be compared to the existing policy, and every new policy has to be extended to cover the contracts that require it. Or, at least, a new calculation has to be made so that the required invoice, to be paid or not, can be arranged. The underwriting information for each Marcel Billing requirement has to be collected and analyzed when a new policy is underwritten, and again at each renewal or

replacement.

The Burden for Operators:

While the intent of the Act may have been to protect contractors from unfair allocations of risk, neither the Act nor the Exception specifies which party to an oilfield service contract might be the indemnitor and which the indemnitee. In *Silverman v. Mike Rogers Drilling*, for example, the operator successfully invoked the LOIA to avoid indemnifying one contractor for allegedly causing injury to the employee of another contractor; even though the operator was obligated to provide such protection under the contract. If the Act cuts both ways, it would

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follow that the Exception cuts both ways as well. In fact, in some contracts, there are reciprocal indemnifications for contractors and operators, and corresponding invoicing requirements for both parties to extend their respective insurance policies for each other.

So, for a fair allocation of risk using the Marcel Exception, the burden of administration, the risk for breach of contract, and the requirement to extend one's policies to cover the negligence of another would fall upon the operator as well as the contractor. But, where oilfield worksites are controlled by operators, and populated mostly, or exclusively by contractor personnel, the potential burden on an operator's

insurance policy, to cover contractor negligence for injury to an operator employee, is nil.

Conclusion:

If you skipped down here to the conclusion because the rigmarole became too much along the way, know that you are in good company. We believe operators, contractors, and insurers would like to simplify this issue. Here are our thoughts:

In keeping with the intent of the Louisiana Oilfield Indemnity Act, we believe legislators should recognize the unintended burdens and inequities borne of the Marcel Exception, and update the Act to prohibit any required extensions of one party's insurance policies to cover another party's negligence.

One alternative might be considered; update the Act to allow for required extensions of coverage, but only where the indemnifications and insurance requirements are reciprocal and mutual. If this is done, the update should include a specific format and timing for the insurance transaction. But this only reduces uncertainty. It does not eliminate the administrative burdens (it may increase them) and does not address the inequities on contractor-populated worksites.

The only other option might be to repeal the LOIA completely and allow any allocation of risk. But we believe the intent of the original Act still has merit.

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- Should agents continue to send copies to carriers?
- Should a Cert show a reduced aggregate limit?

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Welcoming Innovation while Reducing Insurance Ambiguity in Ridesharing Technology

On July 24 I issued an advisory to consumers to review their policies and talk with their agents before signing on to drive or ride with a TNC.

This month I'd like to address the topic of ridesharing that has piqued considerable interest not only in Louisiana but across the country. Consumers in need of a ride in a number of cities now have the option of hailing a driver from their smartphone. What sets this new service apart is that ridesharing drivers for hire are using an online platform as well as their personal vehicles to transport passengers for a fee.

Virtually all personal auto insurance policies exclude coverage when personal vehicles are used to give rides for fees.

The online application (app) is provided by businesses known as transportation network companies (TNCs). The companies regard the hired drivers as third party transportation providers or vehicle operators. Rather than hailing a cab, consumers request a ride through the downloaded smart phone app. The app also allows users to get price quotes for their

trips, track the driver's location, and to pay their fare using a credit card on file.

Ridesharing services are now available in more than half of our states and dozens of countries. One company recently launched its services in Baton Rouge and the New Orleans City Council has been debating the issue for several months. There are no upfront costs to the driver but the TNC does check the driver's

background and driving record.

This new transportation system has generated significant debate from various parties including civic leaders who see the TNCs as providing a boost towards economic development and tourism as well as from taxi and limousine services troubled with the lower barriers of entry to their market for TNCs. From the

insurance industry's standpoint, there are concerns about the lack of information on what is and what is not covered in the event of an accident.

On July 24 I issued an advisory to consumers to review their policies and talk with their agents before signing on to drive or ride with a TNC. This message has also been issued by the National Association of Insurance Commissioners and by many other state insurance commissioners due to the growing popularity of the services. The main issue of concern is a possible gap in insurance coverage between the driver's personal automobile insurance policy and the TNC's commercial policy in case of an accident. Virtually all personal auto insurance policies exclude coverage when personal vehicles are used to give rides for fees.

While personal auto insurers have made it

clear that drivers should obtain a commercial policy if they are offering ridesharing services for a fee, there is concern that this bifurcated coverage will lead to confusion as claim investigators determine which policy (commercial or personal) is responsible for coverage at the time of an accident. At the National Association of Insurance Commissioners (NAIC) Summer Meeting in August, a panel on ridesharing was standing room only. One issue raised by consumer representatives was the potential for increased costs for all policyholders as insurance carriers investigate more claims to determine if a driver was actually providing rideshare services during an accident. As it stands

now, many carriers are only finding out after a claim is filed that a policyholder was providing rideshare services.

The major TNCs offer policies for their drivers that include commercial liability coverage; some TNCs also offer uninsured/underinsured motorist coverage. However, some of these policies may offer lower coverage limits or even exclude the period when a driver is looking for a passenger but does not yet have a passenger on board. The latter scenario was raised in a high-profile case in California when a TNC driver was involved in a fatal accident on his way to pick up a passenger on New Year's Eve and since no passenger was in the car, the TNC denied

responsibility. California is now considering legislation requiring \$750,000 in commercial liability insurance from the moment drivers turn on the app, but that has led to debate about coverage during the time between the driver turning on the app and being matched to a passenger.

Before signing up to drive for a TNC, drivers will want to ask the TNC questions about commercial insurance coverage. Some questions include:

- How much liability insurance does the TNC provide while I'm transporting a passenger?
- Will I be charged a deductible? If so, how

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Commissioner's Corner (continued)

much?

- Is the commercial liability insurance coverage my main source of coverage, or is it supplemental to my personal auto policy?

Depending on which TNC a driver is working for, they may consider buying a commercial policy that provides liability insurance as well as comprehensive, collision, medical payments, and uninsured/underinsured motorist coverage. This will ensure that they are properly protected if they get into an accident while driving for hire.

Riders should also be aware of the fact that ridesharing

is not the same thing as taking a traditional taxi or limousine. Limos and taxis are licensed to transport passengers for a fee. The vehicles are inspected, and drivers must be properly licensed. Taxi operators are required to have insurance that protects a passenger and third parties, such as pedestrians or other drivers, should the taxi be involved in an accident that causes bodily injury or damage.

Insurance regulators oversee insurance companies and agents, not TNCs. But a primary mission of state insurance regulators is consumer protection and with this in mind, insurance regulators across the country will

continue to closely monitor the challenges presented by ridesharing services. I also encourage you to become involved and engaged in the discussion. The NAIC has issued two Consumer Alerts on ridesharing on their website, one targeting passengers [Sharing a Ride, But Not Insurance: Protect yourself as a ridesharing passenger](#) and the second addressing drivers [Sharing a Ride, But Not Insurance: Ridesharing drivers may face insurance coverage gap](#). This is an issue sure to touch the lives of many sooner or later based on the widespread popularity of the service we have seen across the country.



IIABL Cyber Insurance Program with Chubb

by Tyrone Bennett

Regional Chubb Specialty Underwriting Manager

We are very pleased to announce a new partnership that IIABL and Chubb Group of Insurance Companies have created.

As a member of IIABL, you have access to Chubb's state of the art Cyber policy at pre-negotiated rates and terms. The special rates for the "agency program" were filed in July and approved by the Louisiana Department of Insurance. You can access this program through the IIABL just as you currently access E&O products through your association.

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the risk associated with ebusiness has increased dramatically. Federal and state laws have also evolved to protect citizens against the risk that is out there. As a result, the liabilities associated with conducting business have become significant enough that transferring that risk to an insurance carrier is not only a viable, but a preferred solution.

The risks associated with being an Insurance intermediary are even more heightened. The amount of data that the typical independent insurance agent

receives, transmits, and retains far exceeds that of similarly sized businesses.

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Over the next few months, we will provide alerts, articles, webcasts, and in- person meetings to educate agents and brokers in Louisiana about their cyber risks and the substantial benefits of the Chubb Cyber Program.

Please be on the lookout for more information. I am excited to partner with IIABL and look forward to seeing you in person, or virtually...very soon.



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Louisiana Citizens Enhances Phone Access for Agents

Louisiana Citizens Property Insurance Corporation (LA Citizens) recently announced that they have revised their automated phone system to give agents better access to the appropriate LA Citizens staff. They have also provided an organizational chart and contact information for underwriting supervisors, so that agents can discuss unusual or difficult account issues with the appropriate underwriting managers.

The enhanced LA Citizens Contact Information can be viewed by clicking [HERE](#).

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Louisiana Citizens Property Insurance Corp.

Agents Advisory Council Meeting - Minutes

August 19, 2014

Attendees:

Council

Members: Jeff Albright, Craig Thomson, Bob Duhe, Don Stiel and Will Waldrop

Members not in attendance:

Jody Boudreaux, Parke Ellis, David Clements, and Kert LeBlanc

LCPIC: Dave Thomas, Paige Harper, Vijay Ramachandran, Quin Netzel, Ricky Lindsey, Steve Cottrell

The initial discussion focused on actionable items recommended by the Council at the April meeting:

1. Various options to educate the property owners of the state and improve the public perception of Citizens based on all the positive changes being implemented were discussed.

a. The council strongly supported the redesign of the Citizens website to make it more user friendly and easier to navigate.

b. The council was not in favor of Citizens spending monies or other types of activities toward this end.

c. It would be good to improve agents' perception of LCPIC – Citizens is doing better and have made great strides in our internal operations.

d. It would be useful to create a one-pager on the top reasons why Citizens (as a market of last resort) will not write a risk – vacancy, etc. In addition to the agency portal, the independent agents' associations, as well as Farm Bureau and

Allstate are willing to circulate it among their agents.

e. Public outreach through radio stations using pre-recorded spots would be a good way to reach insureds when a storm is approaching Louisiana.

2. Agent Communication

a. Recently started agency visits are valuable in helping producers understand Citizens' procedures better.

b. Council suggested that an underwriter also accompany management on agency visits.

c. Council suggested that in addition to agency visits, group meetings with agent groups would be beneficial in spreading the message and communicating with a number of agents quickly. Independent agency associations, as well as Allstate and Farm Bureau offered to set up or invite Citizens to speak at their group events.

d. Council asked Citizens to consider an annual one page publication

to communicate with policyholders, especially at the beginning of storm season.

e. Recent changes to the Citizens' phone tree changes published on the agents' portal are well received. The publication also lists supervisory personnel to resolve any issues encountered on the front line. The one pager also provides a link to an organization chart showing senior management personnel. IIABL and Farm Bureau also volunteered to disseminate this information through their newsletters.

3. The use of e-signatures was discussed. E-signatures are legal in Louisiana and it is technologically feasible. Citizens is considering how it fits into its business model. Citizens will continue to consider adopting the use of e-signatures.

4. Council was updated on the strategies and planning to handle

losses if a CAT hits our state.

a. Worley Catastrophe services has been retained to handle CAT claims. They have over 1,200 adjusters who are certified by Citizens. In addition, 3 other vendors are on retainer to provide up to an additional 200 adjusters if necessary.

b. If a storm as severe as Katrina were to hit today, we could expect a maximum of about 67, 000 claims. It would take about 600-700 adjusters to handle this volume of claims. Worley has provided a list of 400 adjusters who are dedicated to Citizens and will be ready and

available if Louisiana is in the cone. Council is satisfied with Citizens' preparation and planning to handle a catastrophic event.

c. Council suggested collecting the insured's cell phone number and e-mail address as part of the application process – to communicate with insureds in the case of a storm.

d. Citizens does ask for the email address and cell phone numbers as part of the First Notice of Loss process. This enables us to communicate with every claimant even if they have to evacuate their property immediately af-

ter a storm.

e. The Property Pro-Net program has been working well. It is a voluntary program and a claimant can opt-in or opt-out at any time during the claim handling process. Cost of claim handling seem to be lower with the few claims in this program. Citizens will continue to monitor cost savings as more claims are processed.

f. Citizens has a claim re-inspection program where about 10% of claims handled are re-inspected to ensure quality of claim handling. Claimant satis-

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* - Liability coverage associated with these features excluded.



LCIP Corporation Agents' Advisory Council Meeting (continued)

faction is also an aspect of the re-inspection process.

g. Council asked Citizens to consider a claimant survey to measure satisfaction with claim handling.

5. Citizens is planning another round of Depopulation (Round 8). The assumption date is December 1, 2014. Six companies are participating this year. They are:

- a. Access Home Insurance Company
- b. Centauri Specialty Insurance Company
- c. Lighthouse Property Insurance Company
- d. Maison Insurance Company
- e. United Property & Casu-

alty Insurance Company – New

f. Coastal Select Insurance Company - New

Agents have issues/questions about take-out companies

- a. Solvency
- b. Coverage offered
- c. Price Advantage

D. AM Best vs. Demotech rating

These issues will have to be dealt with for a larger percentage of agents to participate. The take-out companies need to do a better job of marketing their credentials and educate all agents.

6. The Council members

had the following comments about Citizens:

a. Continue to react to input from the Council

b. The in-house processing is working. Council members are not being apprised of many issues, and complaints are at an all-time low.

c. Commercial policies with more than ten locations per policy will need specialized handling if the policy is limited to 10 locations as is currently planned when the Commercial EPIC system is implemented.

d. Consistency in the application of guidelines and in risk evaluation is working. Continue to mention it at every agency visit.



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Cross-Sell Strategy #9
KEY-PERSON INSURANCE



Q. I'm in a "caboose" situation, where my insured has been given insurance advice by a third party (a CPA in this case), and I am now expected to simply follow along. I feel like calling this CPA and telling him I'll quit giving tax advice if he will stop giving insurance advice!

Here is the situation. A commercial client of mine retired about a year ago, and his son and daughter have taken over the business by forming an LLC in which they are the only two members. The daughter's fiancé is a CPA, and told her he recommends that she lease her personal auto to the LLC. In addition to writing the commercial insurance for the LLC, I also write the personal insurance for the daughter. The CPA offered 3 options for her to choose from. Option 1 would be to lease her car directly to the LLC, which would allow her to cancel her Personal Auto Policy. Option 2 would be some sort of title transfer of the car to the business. Her CPA told her that I could tell her how much a title transfer would cost. (Yeah, right!) Option 3 would involve re-titling the auto jointly in her name and the LLC. Lastly, her CPA suggested that I could



Ask Mike

IIABL Director of Education, Mike Edwards is available to answer technical questions from IIABL members. To submit a technical question, contact Mike Edwards, CPCU, AAI, at medwards65@aol.com or call (678) 513-4390.

Subject: Leasing your auto to your company

probably provide a generic lease form, and he would look it over before she signed it.

A. "Good grief, Charlie Brown!" It never ceases to amaze me at some of the wacky ideas people come up with. Call me Old School, but as to the three options your insured is considering for her car, I would vote for "None of the above."

For this discussion, assume that the son and daughter are Jack and Jill, and the company is J&J Enterprises, LLC. Also assume all coverage forms discussed are ISO. Proprietary forms may be different. Here are my thoughts on each option, and the situation in general.

Option 1: Jill leases her car to the LLC.

I know that some people do lease their personally-owned autos to their businesses. In fact, ISO created an endorsement for just such an arrangement: CA 99 47 Employee As Lessor. Here are the two key provisions:

CA 99 47 10 13 Employee As Lessor

(A) Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.

(B) While any covered "auto" described in the Schedule is leased to you by one of your "employees", the Who Is An Insured provision under Covered Autos Liability Coverage is changed to include that "employee" as an "insured".

Comments:

(1) Provision **(A)** above essentially makes the BAP of J&J Enterprises, LLC, function on a primary basis.

(2) In provision **(B)** above, Jill becomes an "insured" in

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Ask Mike

continued

J&J's BAP.

(3) While lease arrangements like this have merits where taxes and other issues are concerned, one big problem I see is that Jill would have no auto insurance in her personal name. While the Employee As Lessor endorsement makes Jill an insured in the BAP, she is not covered for every personal exposure.

For starters, the CA 99 47 only makes the employee/lessor an insured for Section II - Liability. So Jill would be covered under the BAP while she was driving her leased auto, as well as in her capacity as lessor, should that exposure arise if someone else was driving her auto. However, the BAP of J&J would afford her no coverage for other liability exposures, such as driving a friend's car on personal errands, or a rental car on vacation, etc.

In addition, since the CA 99 47 only applies to liability coverage, Jill would have no medical payments, uninsured motorists, or physical damage coverages, except as provided by the unendorsed BAP.

(4) For Jill's personal exposures which are beyond the scope of the BAP, coverage can be

provided with the CA 99 10 Driver Other Car endorsement. Coverages include liability, medical payments, UM, and physical damage.

Option 2: Title transfer to the LLC. Transferring the title of the auto out of Jill's name and to J&J Enterprises would resolve any exposures she may have as owner or lessor. However, similar to Option 1, that still leaves her with no personal auto insurance in her own name. The DOC would be one way to handle this, as discussed above. Another solution would be the Named Non-Owner coverage (PP 03 22), written in Jill's name. This provides Jill with liability, medical payments, and UM coverages.

Option 3: Jointly title the auto to Jill and J&J. In my view, this makes no sense. Jill retains all the exposures of auto ownership, without the benefit of lessor coverage under the BAP. Also, this arrangement would diminish or possibly eliminate any tax benefit. (She should discuss that with her CPA.)

In addition, the BAP of J&J would not cover her while she was driving that car. One of the liability exclusions for permissive users in the BAP is an

employee's use of his or her own auto. While the endorsement CA 99 33 Employees As Insureds would provide coverage for Jill using her own auto, it seems more prudent to me for her not to jointly title the auto. For example, if another employee drove the auto on company business, she could still be liable as owner. That seems contrary to one of the goals of forming an LLC or other corporate-type legal entities, which is to shield the owners as individuals.

Another concern I have is the general E&O guideline that agencies should avoid acting on information or instructions from third parties. All changes should be made only with the authorization of the insured.

Lastly, E&O experts strongly recommend that agency staff avoid giving legal advice, which includes reading and interpreting contracts. (Ditto for CPAs!) However, with some commercial accounts, this isn't always possible. In those situations, experts advise the agency to provide the insured with a written disclaimer, stating that the agency is only providing insurance information contained in the contract, and not legal

continued on page 24



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Ask Mike

continued

advice.

General comments.

1. As I mentioned in the beginning, being Old School, I am not enamored by any of these options. However, if Jill is determined to follow her CPA's advice, my choice would be Option 2, with the agency also adding the DOC to J&J's BAP, or writing Jill a Named Non-Owner policy.

2. If Jill either leases her auto to J&J, or jointly titles it to herself and J&J, I can foresee underwriting problems if she wants to purchase a personal umbrella. In addition,

some commercial umbrella markets might not be comfortable with the auto if it is jointly titled to the LLC and an individual.

3. With a new generation assuming ownership of their parents' business, I would imagine that Jack and Jill will be making changes as time goes along, with the formation of the LLC being first among them. So my observation is that it would be a good idea to maintain some occasional contact with Jack and Jill, so you can pick up on changes they make which have insurance implications. This could

be things such as new technology, social media and e-commerce activities, remodeling the facilities, or expanding the business, and so forth.

A close friend of mine in another state wrote a BOP for a small fish market years ago. They soon outgrew the BOP, but she kept the renewals for all the years she was at the agency, and was diligent about doing annual reviews with the insured. She later moved to another state, but recently ran into some of her old colleagues at a meeting. In the course of the conversation, they

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Ask Mike

continued

told her that the little fish market had expanded and grown substantially, including importing and exporting of seafood. It is now one of the agency's 10 largest accounts. With luck, maybe the same will happen to J&J Enterprises. It certainly pays to maintain regular contact with all insureds.

For your reference.

Here are some articles which provide additional commentary on the issues discussed in this article.

[Reading Contracts for Insureds - Guidelines and](#)

[Sample Disclaimer](#)

[Insuring Personally-Owned Autos On A Corporation's BAP](#)

[DOC Coverage For A Personally-Owned Auto Leased To A Corporation](#)

[Business Auto Coverage Games](#)

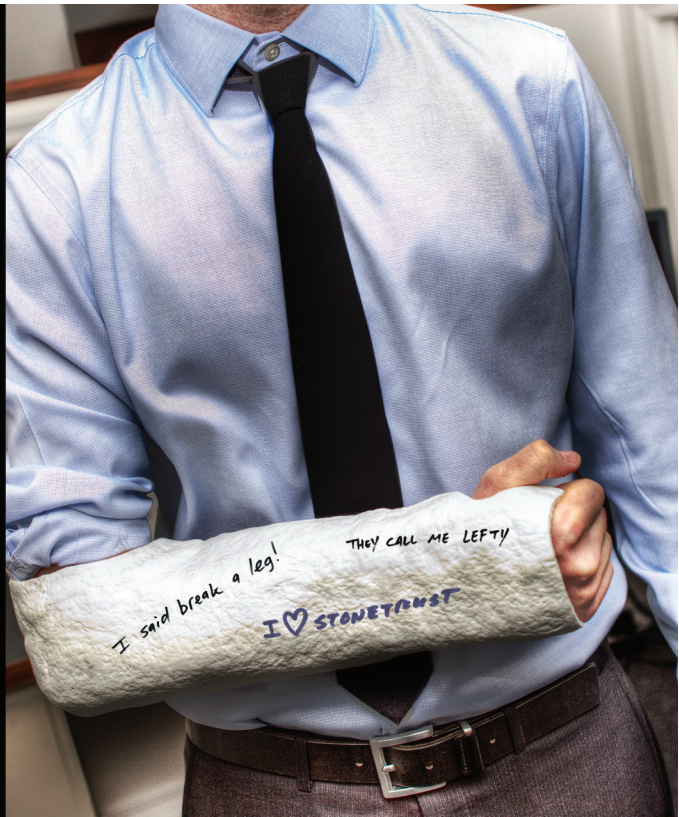
[E&O Tip: Dangers of Making Policy Changes Based On Information From Third Parties](#)

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Chubb - IIABL Cyber Webcast - October 7

Tuesday, October 7, 2014

9:00am(Central Time)

Please use the following link to register and join the webcast:

<https://www1.gotomeeting.com/register/438265288>

Dial-In Number: +1 (646) 307-1717

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If you have any questions, please feel free to contact Jamie Newchurch at jnewchurch@iiabl.com or Rhonda Martinez at rmartinez@iiabl.com.

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Sept 30, 2014	Executive Risk Seminars 9am-12pm Chris Amrhein	Monroe
Oct 1, 2014	Executive Risk Seminars 9am-12pm Chris Amrhein	Lafayette
Oct 2, 2014	Executive Risk Seminars 9am-12pm Chris Amrhein	Baton Rouge
Oct 3, 2014	Executive Risk Seminars 9am-12pm Chris Amrhein	Kenner
Sept 30, 2014	BOPs, BIPs & Booze 1pm-4pm Chris Amrhein	Monroe
Oct 1, 2014	BOPs, BIPs & Booze 1pm-4pm Chris Amrhein	Lafayette
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Rate & Rule Filings

Company	Coverage Type	% of Impact \$ of Impact	# of Policy- holders	Requested Effective Date
EMC Property & Casualty Company EMCASCO Insurance Company Employers Mutual Casualty Company	9 - Inland Marine	-19.6 \$-245214	709	New: 12/01/2014 Renewal: 12/01/2014
Foremost Property & Casualty Insurance Foremost Signature Insurance Company Foremost Insurance Company	5 - Commercial Multi- ple Peril	6.98 \$106762	106	New: 11/15/2014 Renewal: 02/15/2015
Progressive Paloverde Insurance Company	19 - Commercial Auto- mobile	-0.100 \$-36426	7596	New: 10/09/2014 Renewal: 11/15/2014
Peerless Indemnity Insurance Company Peerless Insurance Company Netherlands Insurance Company The America First Insurance Company	19 - Commercial Auto- mobile	18.000 \$2227210	1315	New: 03/01/2015 Renewal: 03/01/2015
United Fire & Casualty Company United Fire & Indemnity Company	1 - Property	-4.6 \$210513	965	New: 10/01/2014 Renewal: 10/01/2014
Foremost Property & Casualty Insurance Foremost Signature Insurance Company Foremost Insurance Company	19 - Commercial Auto- mobile	9.0 \$50299	139	New: 11/15/2014 Renewal: 02/15/2015
SAFECO Insurance Co. of Oregon	4 - Homeowners	4.0 \$2110145	26599	New: 01/10/2015 Renewal: 04/29/2015
Lighthouse Property Insurance Corporation	4 - Homeowners	1.17 \$183419	5432	New: 12/01/2014 Renewal: 12/01/2014
LA Farm Bureau Casualty Insurance Co. LA Farm Bureau Mutual Insurance Co. Southern Farm Bureau Casualty Insurance Co.	1 - Property	-1.86 \$-61003	15365	New: 04/01/2015 Renewal: 04/01/2015

Additional rate filling information can be found on the Louisiana Department of Insurance website by clicking [here](#). If you have questions, you may contact the Office of Property and Casualty Insurance Rating and Policy Forms Division at: (800) 259-5300 Toll free or (225) 342-5203 Louisiana.

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