

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 107

JULY 14, 1997

SUBJECT: RENTAL CARS AND COLLISION DAMAGE WAIVERS

BACKGROUND: Summertime brings vacationers flying to destinations from coast to coast (and beyond!), and renting cars upon arrival. One of the decisions they must make at the car rental counter is whether or not to purchase the "Collision Damage Waiver" (CDW) or "Loss Damage Waiver" (LDW) coverage offered by the car rental company. Many insureds will inquire, hopefully before their trip, how their Personal Auto Policy responds.

MAIN POINTS: Here's the short answer: "Yes, the Personal Auto Policy most likely covers damage to the rental car, but you should probably purchase CDW/LDW coverage anyway."

In the standard ISO-type Personal Auto Policy, Part D - Physical Damage includes coverage for "non-owned autos," which are defined as:

"1. Any private passenger auto, pickup, van or trailer not owned by or furnished or available for the regular use of you or any family member while in the custody of or being operated by you or any family member; or

2. Any auto or trailer you do not own while used as a temporary substitute for your covered auto which is out of normal use because of its:

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| <i>a. Breakdown;</i> | <i>d. Loss; or</i> |
| <i>b. Repair;</i> | <i>e. Destruction."</i> |
| <i>c. Servicing;</i> | |

In addition, the Insuring Agreement for Physical Damage states that *"If there is a loss to a non-owned auto, we will provide the broadest coverage applicable to any your covered auto shown in the Declarations."* Thus, the broadest Physical Damage coverage under the policy will apply to "non-owned autos."

So, since the PAP covers physical damage to rental cars, why purchase CDW/LDW coverage?

Reasons For Purchasing CDW/LDW

1. **Claims:** Insureds who make claims on their own PAP for damage to rental cars face the prospect of a rate surcharge for “accidents” at renewal, or even non-renewal, if there have been other recent claims. In addition, the insured would suffer their own deductible, which for more and more insureds is no small amount.
2. **Hassles:** Rental car companies often demand payment for damage when the car is returned. Explanations of “My insurance (or my Gold Card) covers it,” or “The other guy ran a stop sign,” or “It was stolen from the hotel parking lot,” usually meet with little success at the rental counter. Rental companies have been known to put a “hold” on a substantial amount against the renter’s credit card, until the matter is resolved. This could ruin a vacation.
3. **Gaps:** The PAP and the rental agreement are often not in harmony about specific terms and conditions. Some examples:
 - Valuation - The PAP pays *“the lesser of actual cash value...or the amount necessary to repair or replace the property with other property of like kind and quality... If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.”* A typical rental agreement says, *“Your responsibility will not exceed the greater of the Retail Fair Market Value of the car or its Manufacturer Buyback Program Value at the time it is lost or damaged, less its salvage value, plus actual towing, storage and impound fees, an administrative charge and a reasonable charge for loss of use.”*
 - Inspection and repair - The PAP provides in Part E - Duties After Accident or Loss, that the insured must *“Permit us to inspect and appraise the damaged property before its repair or disposal.”* However, the rental company might simply have repairs done and send the insured the bill, or even charge the amount against his/her credit card.
 - Loss of use - The Transportation Expense coverage under the 6/94 edition of the ISO PAP includes loss of use for a non-owned auto. The limit is \$15/\$450 (can be increased to \$30/\$900), but contains a 48-hour waiting period for total theft, which has the same effect as a deductible. In addition, such payment *“will be limited to that period of time reasonably required to repair or replace the... non-owned auto.”* Rental companies routinely make a charge for lost rental income while a car is being repaired, and there is the potential not only for the limits in the PAP to be insufficient, but for disagreement over “reasonable” time to repair.

- Other costs/charges - As noted above, rental agreements often require the lessee to pay “towing, storage and impound fees, and administrative charges.” The PAP contains no reference to such expenses, thus the insured would probably have to pay them.
 - Primary/Excess - The PAP is “*excess over any other collectible source of recovery.*” Most credit cards which provide rental car coverage are also excess, so a potential settlement hassle exists.
 - Coverage - First, as noted previously, damage to rental cars is covered only if the insured has Physical Damage coverage on at least one vehicle. Second, depending on the extent of that coverage, the rental agreement may impose responsibility broader than the insured’s coverage. A typical rental agreement says, “*You are responsible for any and all loss of or damage to the car resulting from any cause (for example: collision, rollover, theft, or vandalism) regardless of fault other than accidental fire or acts of nature beyond your control.*” This language is typical of a “Loss Damage” requirement, which is usually broader than the “Collision Damage” requirement. (Hence the buy-backs are known as “Loss Damage Waiver” or “Collision Damage Waiver.”) Note that even if damage was caused by an at-fault driver, the lessee/renter is still responsible to the rental company for the damage.
 - Territory: The PAP territory is only the USA & territories/possessions, Puerto Rico, and Canada. Many people visit outside these areas, so none of their PAP coverages apply there. In addition, rental agreements often have geographical limitations.
4. **Types of vehicles:** The PAP provides non-owned physical damage coverage only for a “*private passenger auto, pickup, van or trailer.*” In addition, an exclusion limits coverage for business use to only “*private passenger autos and trailers.*” In the Limit of Liability provision, the maximum coverage for non-owned trailers is \$500.
5. **Drivers:** The PAP covers non-owned autos “*while in the custody of or being operated by you or any family member.*” The possibility exists that if the insured/lessee temporarily loaned a rental car to a friend, coverage might be jeopardized. In addition, most rental agreements are invalidated if the auto is operated by an unauthorized driver.

6. **Credit card coverage:** Many credit cards include some form of rental car coverage. However, the terms and conditions are quite restrictive. Some examples from a well-known Gold Card:

- Vehicles not covered:
 - Over \$50,000 cost new
 - “Exotic” cars, such as Corvette, Toyota Supra, Mazda RX-7, Acura NSX, BMW M3, Cadillac Allante, Porsche, etc.
 - Trucks, pickups, cargo vans, custom vans, full-size vans, full-size sport/utility vehicles, off-road type vehicles, recreational vehicles, campers, trailers, etc.
- Uses not covered:
 - Any vehicle while off-road
 - DUI
 - Confiscation by authority
 - Wear & tear
- Payment:
 - Excess over any other insurance, CDW or any other source of recovery.
 - Reimburses cardmember, not direct payment to rental company.

Reasons Against Purchasing CDW/LDW

1. **Price:** It is outrageously expensive. Charges of \$16.95 per day are not unusual.
2. **Duplication:** It duplicates coverage most insureds already have in their PAP.

Louisiana Laws

There are two statutes that are related to the rental car issue:

R.S. 22:1406.F. “Every insurance company, reciprocal or exchange, authorized to write automobile liability, physical damage, or collision insurance, shall extend to temporary substitute motor vehicles as defined in the applicable insurance policy and rental private passenger automobiles any and all such insurance coverage in effect in the original policy or policies. Where an insured has coverage on multiple vehicles, at least one of which has comprehensive and collision insurance coverage, that comprehensive and collision substitute coverage shall apply to the temporary substitute motor vehicle or rental motor vehicle.”

Comment: This applies to policies issued in Louisiana, regardless of where the auto is rented.

R.S. 22:2091 - Collision Damage Waiver Law - excerpts:

R.S. 22:2091.5.B.: "No collision damage waiver shall be approved unless:

(5) The contractual provision containing the collision damage waiver shall display the following notice on its face, in boldface type and in no smaller print than ten point type. The notice shall be explained to the consumer by the lessor and signed and dated by the lessee prior to the consummation of the contract. If the provision is not contained in the contract, then the provision shall be attached to the contract and shall be considered a part thereof.

Notice: If you have collision coverage under your own automobile insurance policy written in Louisiana, your collision coverage automatically extends to rental motor vehicles pursuant to R.S. 22:1406.F

Even if you are not a Louisiana insured, the purchase of collision damage waiver is not mandatory and may be waived. This contract offers, for an additional charge, a collision damage waiver to cover your responsibility for damage to the vehicle. Before deciding whether to purchase the collision damage waiver, you may wish to determine whether your own automobile insurance affords you coverage for damage to the rental vehicle and the amount of the deductible under such coverage."

Comment: This would only apply to vehicles rented in Louisiana.

**NECESSARY
ACTION:**

Distribute this Advisory to all staff who handle Personal Auto. In addition, the agency might consider providing copies to insureds.