

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA 161

July 18, 2000

SUBJECT: Rental Cars

BACKGROUND: *The following information is reprinted with permission from William C. Wilson, Jr., CPCU, ARM, AIM, AAM, Director of IIAA's Virtual University project.*

MAIN POINTS: Although most CDW/LDW fees are considered outrageous, if not unconscionable, **the insured is best advised to purchase the CDW/LDW** for short-term rentals. This is not only in the best interest of the insured, but also the agent since an inadequately covered loss may result in the loss of an account or worse, an E&O claim.

- 1. Loss Valuation.** The Personal Auto Policy (PAP) covers the **lesser** of the "actual cash value" of the vehicle or the amount "necessary to repair or replace the damaged property. The rental agreement may very well contractually obligate the insured to reimburse the lessor for the **"full value"** of the vehicle. Under the current PAP, the "betterment" clause may result in the insured being significantly underinsured relative to his/her obligations under the rental agreement.
- 2. Loss Settlement.** As implied above, there may very well be disagreement over the value of the vehicle or the amount charged for labor and materials to repair the property -- depending on the PAP edition, the Appraisal clause may be invoked with its accompanying costs. More importantly, the PAP insurer has the right to **"....inspect and appraise the damaged property before its repair or disposal"** -- the rental company may choose to effect the repairs immediately, potentially resulting in a lack of PAP coverage because of failure to comply with the condition cited above.
- 3. Loss Payment.** The rental agreement may require **immediate** reimbursement for damages and it is not uncommon for the lessor to charge the insured's credit card. This can create a significant debt, "max" out the card's credit limit (perhaps shortening a vacation or business trip), result in litigation, etc.
- 4. Loss Damage Waivers (LDW).** The rental agreement may require reimbursement for more than collision -- some include theft under certain circumstances and others may make the insured responsible for **any** "loss" in value beyond normal wear and tear. Obviously, the PAP must include collision coverage on at least one insured owned vehicle for coverage to transfer to the nonowned auto -- if the rental agreement

includes a Loss (not just collision) Damage Waiver (LDW), the policy must also include comprehensive coverage to adequately protect the insured.

5. **Indirect Losses.** The insured most likely will be responsible for the **lessor's loss of rental income** on the damaged unit. The PAP has, at best, daily and maximum caps for this indirect loss and, depending on the edition date, an unendorsed policy may pay only for loss of income resulting from theft.
6. **Administrative Expenses.** The rental contract may make the insured liable for various "**administrative**" or loss-related expenses such as towing (e.g., one insured was charged for a 230-mile tow), appraisal, claims adjustment, etc. None of these expenses are normally covered by the PAP.
7. **Other Insurance.** The PAP says it is **excess** over: (1) any coverage provided by the owner of the auto (does "coverage include self-insured funds?"); (2) any other applicable physical damage insurance, and (3) any other sources of recovery applicable to the loss -- travel policies, credit card coverages, etc. The potential controversy over who pays what is obvious and can result in litigation. In addition, keep in mind that many states (e.g., Maryland, Minnesota, New York, Tennessee, etc.) have **statutes**, proprietary forms, and/or case law precedents that may govern this and other rental car exposures.
8. **Excluded Vehicles and Territories.** The PAP normally does not provide physical damage coverage for motorcycles or other **non-auto/pickup/van vehicles** (e.g., motorhomes) and use of covered vehicles is limited to the U.S., its territories and possessions, Puerto Rico and Canada (the rental agreement may also exclude operation outside a specific geographical area). In addition, if the insured is renting a trailer (U-Haul, camper trailer, etc.), coverage is limited to **\$500**. The insured usually has no choice but to rely on the CDW or LDW for coverage.
9. **Excluded Uses and Drivers.** The PAP may have limitations on **use** of vehicles that are not otherwise excluded by the rental agreement CDW or LDW -- for example, the ISO form provides no physical damage coverage for the **business use** of nonowned pickup trucks or vans. Also, the PAP may include an exclusionary endorsement for certain individuals or may apply only to **designated** individuals -- the CDW will probably also only apply to designated individuals, but operators for which no PAP coverage is available may be afforded protection under the rental agreement by designating them as such.
10. **Additional and/or Future Costs.** The PAP will most certainly include a **deductible** in the range of \$100 - \$500 or more. In addition, payment for damage to a rental car may result in a significant **premium increase** (if not nonrenewal) via surcharges or loss of credits.

**NECESSARY
ACTION:**

Circulate this Technical Advisory to all appropriate agency and company personnel.