

TECHNICAL ADVISORY

INDEPENDENT INSURANCE AGENTS OF LOUISIANA

TA – 211

AUGUST 15, 2002

SUBJECT: Kids In College – Time For An Insurance Review.

BACKGROUND: Late summer brings a milestone for many families – sending a kid off to college. According to the 2000 U.S. Census, there are over 15,000,000 students enrolled in colleges and universities across the United States.

It is certainly a time of adjustment for parents and kids alike. It is also a time for reviewing the new insurance exposures that arise from having kids in college.

MAIN POINTS: Having a kid in college creates a number of insurance exposures, for both parents and kids, which impact several areas of the Homeowners and Personal Auto policies.

HOMEOWNERS

Personal property taken to college. Coverage C for Personal Property applies to “*personal property owned or used by an insured while it is anywhere in the world.*” As broad as this coverage is, it does refer to personal property of an “*insured.*” Fundamental to both Section I Property and Section II Liability is whether or not a kid in college is still an “*insured*” under Mom and Dad’s Homeowners Policy.

The HO-91 edition of the Homeowners Policy (HO-2000 will be discussed later) includes in the definition of “*insured*” those who are “*residents of your household who are your relatives.*” Thus, for a kid in college to be considered an “*insured,*” they must still be a “*resident.*”

The issue of residency has been widely litigated. Many courts distinguish between “*residence*” and “*domicile.*” A person can have several residences, but only one domicile (*Black’s Law Dictionary*). One interesting opinion was made in a case in which the court said that the word “*resident*” was “*flexible, elastic, slippery, somewhat ambiguous, obscure, and nebulous in meaning, has many definitions and is difficult of exact or satisfactory interpretation.*” (*Vinet v. Hano*, 281 So.2d 183 (La. App 4th Cir. 1973.))

The vast majority of jurisprudence suggests that in “*plain vanilla*” situations for kids in college, most courts hold them to be residents of Mom and Dad’s house.

However, while most kids in college are still insureds under Mom and Dad’s Homeowners Policy, there is a limitation on the amount of Coverage C available for the property they take with them. The Homeowners Policy provides that only 10% of Coverage C applies for “*personal property usually located at an insured’s residence, other than the residence premises.*” Supplemental coverage can be obtained by using endorsement HO 04 50 – Personal Property At Other Residences.

Special Coverage for laptop computers, etc. For kids headed to college, laptop computers seem to be as ubiquitous as body piercing and loud music. While computers and related equipment are covered property under Mom and Dad’s Homeowners Policy (subject to the limitations discussed

above), Coverage C only provides Named Perils coverage, unless an HO-5 is written (or HO 00 15 attached to an HO-3).

The four most likely causes of damage to a laptop (or desktop) computer are probably theft, breakage by dropping, liquids accidentally spilled onto them, and power surge. Of these, only theft is covered as a Named Peril. Coverage for the other three losses would only be provided by some sort of “all-risk” coverage. Such broader coverage can be found in the HO-5 (or HO 00 15 attached to an HO-3). Or, under a standard HO-3, endorsement HO 04 14 – Special Computer Coverage provides “all-risk” or special coverage on “computer equipment,” which includes computer hardware, software, operating systems or networks, and other electronic parts, equipment or systems solely designed for use with or connected to the computer equipment (i.e., scanners, printers, speakers, etc.).

Theft limitation. While theft is a Named Peril under Coverage C, and Coverage C applies worldwide, there is no theft coverage for property of a student away at school unless he or she has been at their school residence location within 45 days prior to the loss. (In HO-2000, this was expanded to 60 days.)

Liability Coverage for kids. The insuring agreement for Liability provides coverage for bodily injury and property damage claims brought against an “insured.” The above discussion on the definition of “insured” for Section I Property applies equally to Section II issues for kids in college. In most cases, kids are insureds under Mom and Dad’s Homeowners Policy, and thus are protected under Coverage E – Liability and Coverage F – Medical Payments, giving them personal liability coverage worldwide.

Premises liability for rented dorm, apartment, or rental house. While most college kids receive “insured” status for their personal liability, the Homeowners Policy has limitations on which premises are covered for liability that arises out of the premises. The policy contains an exclusion in Section II for claims “arising out of a premises owned by an insured, rented to an insured, or rented to others by an insured, that is not an insured location.” Thus, for claims that arise out of a premises, such as a rented dorm, apartment, or rental house, Section II will respond only if such owned or rented premises are among those automatically included in the definition of “insured location.”

Most authorities agree that for the usual college-type situation, a rented dorm, apartment, or rental house is an “insured location.” There are 8 sub-parts to the definition of “insured location” (“a.” – “h.”), and two (“d.” and “h.”) seem to be applicable to kids in college. “Insured location” sub-part “d.” includes, “Any part of a premises not owned by an insured and where an insured is temporarily residing.” In addition, “insured location” sub-part “h.” includes, “Any part of any premises occasionally rented to an insured for other than business use.”

Contractual liability. For rented apartments and rented houses, landlords who cater to college students often require not only that the student sign the lease or rental agreement, but also that one or both parents sign. Luckily, the Homeowners Policy provides very broad contractual coverage. The coverage has two parts which apply to written contracts: (a) that directly relate to the ownership, maintenance or use of an “insured location,” or (b) where the liability of others is assumed by the “insured” prior to an occurrence. However, the contractual coverage does not override other exclusions in the policy.

Parental liability. Separate and apart from the personal liability a student might encounter for his or her own activities, a frequent question parents ask is what their parental liability might be for the conduct and behavior of their kids in college. A parent only has to watch a few minutes of MTV’s “Spring Break” coverage on TV to spend many sleepless nights wondering exactly what weird activities their college kid might be engaged in.

The degree or extent of parental liability varies from state to state. Some states, such as Louisiana and others, hold that parents are statutorily liable under “strict liability” for their kids until they reach majority. (*Louisiana Civil Code*, Article 2318). Other states hold parents liable on the basis of ordinary negligence.

The insuring agreement in the Homeowners Policy for Section II Liability would provide coverage for parents should they become legally liable, a condition that is usually determined by state law.

Liability for damage to a rented dorm, apartment or rental house. Section I Property coverage cannot be extended to provide coverage for damage to a rented dorm, apartment, or rental house. As to Section II coverage for property damage liability, there is limited coverage. Section II contains an exclusion for “*property damage to property rented to, occupied or used by or in the care of the insured. This exclusion does not apply to property damage caused by fire, smoke or explosion.*” Often referred to as the “ccc” exclusion (“care, custody or control”), should the college kid damage a rented dorm, apartment or rental house, Mom and Dad’s Homeowners Policy will not respond to the claim, unless the damage is from fire, smoke or explosion. Note also that even if the kid and Mom and Dad have signed a contract agreeing to be responsible for damage, the contractual liability coverage as discussed above does not override any exclusions in the policy, such as this one for “ccc.”

HOMEOWNERS – HO-2000 ISSUES

ISO’s new HO-2000 Program substantially changes things for parents with kids in college. A new section is added to the definition of “*insured*,” which greatly reduces coverage. For a student to be considered an “*insured*” under Mom and Dad’s Homeowners Policy, he or she must be “*a student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of 24 and your relative; or under 21 and in your care.*”

This new definition creates several potential coverage problems. First, students must be full-time students to maintain “*insured*” status. According to the 2000 U. S. Census, as well as the U. S. Department of Education, approximately 6 million (40%) of the 15 million students in college are enrolled part-time. And as every parent of college kids knows, fluctuations in class offerings each semester, as well as work schedules, often cause many students to end up carrying less hours than required by the school to be classified as “full-time.” Which means, in essence, that a kid in college might be an “*insured*” one semester, and not an “*insured*” next semester.

Another coverage gap occurs for students who are age 24 or older. Only Mom and Dad’s kids “*under age 24*” (and who are enrolled full-time) are considered an “*insured*” under Mom and Dad’s Homeowners Policy.

Included in ISO’s new HO-2000 Program is an endorsement designed to address the issue of kids in college. Under endorsement HO 05 27 Additional Insured – Student Living Away From The Residence Premises, the age 24 issue is eliminated, as well as the full-time enrollment requirement. While the endorsement does provide “*insured*” status to the age 24-and-over group, as well as those who are enrolled part-time, the broader coverage only applies, “*while that person is enrolled at the school and is residing at the address shown in the schedule.*”

However, about the only thing many college kids change more often than their major is where they live. The endorsement HO 05 27 must be amended each time a student moves to another location,

even though enrolled in the same college. Of course, if a student changes colleges, a revised endorsement would also have to be issued.

The logistical requirements of the endorsement, which could rise to the level of a Commercial Property Reporting Form in some cases, as well as the potential E&O exposures, will in all likelihood mean more work and care by Mom and Dad's agent.

A number of agencies report that they have adopted the practice of recommending an HO-4 for kids in college, in part due to the changes in the HO-2000 Program.

One additional change in HO-2000 regarding college kids is that for the peril of theft which occurs off the residence premises, the 45-day occupancy requirement was increased to 60 days.

PERSONAL AUTO

Kid does not have a car at college. It goes without saying that just because a kid does not take a car with them to college does not mean they won't be driving or occupying a car. Under Mom and Dad's PAP, Liability coverage is provided for "you or a family member for the ownership, maintenance or use of any auto or trailer." Thus, under Mom and Dad's PAP, their kid in college who is driving someone else's car is an "insured" if he or she meets the "family member" definition by being a "resident" of Mom and Dad's household. (Neither the 1994 or 1998 editions of the PAP includes the restrictive definition of "insured" for college kids found in the HO-2000 Program.)

Likewise, Mom and Dad's Medical Payments and Uninsured Motorists coverages also apply to the kid who is still a "family member."

Non-owned Physical Damage coverage under Mom and Dad's PAP is very limited, should their kid damage a friend's car while driving it. Coverage does apply for a non-owned private passenger, pick-up, van or trailer, but the coverage is excess.

In addition to the coverages available under Mom and Dad's PAP, their kid is likely covered by the insurance on the car they are driving or occupying. For Liability coverage, the kid is an "insured" under the PAP of the car's owner if he or she is driving with permission.

For Medical Payments and UM coverage, the kid is covered as an "occupant" under the PAP of the car's owner.

Kid does have a car at college. There is no appreciable coverage difference if the kid takes a car to college, compared to the above analysis.

If the auto is added to Mom and Dad's PAP, the only issues are rating (principal youthful operator, possible Good Student Discount and Driver Training Discount, multi-car discount, kid's car is rated where principally garaged, etc.)

If the kid gets his or her own PAP to cover the auto, some additional issues arise. This choice is usually made because of the premium costs of adding the kid's car to Mom and Dad's PAP, especially if higher limits are carried. However, this is penny-wise and pound-foolish.

A kid with his own PAP at minimum limits has saved some premium dollars on insurance, but possibly has jeopardized his or her financial future. In most states, judgments awarded in court last

many years, and the kid might be paying for an at-fault accident for quite some time after graduation, should the judgment exceed his or her Liability limits.

Also, the claim might end up on Mom and Dad's PAP (in addition to the kid's PAP). As discussed above, the kid is usually considered a "*family member*" of Mom and Dad's household, which gives the kid "*insured*" status under their PAP for Liability (as well as other coverages). If the kid is sued, he or she is generally still an "*insured*" under Mom and Dad's PAP, even if the kid also has his or her own PAP.

However, Mom and Dad's PAP would respond for a Liability claim caused by their kid only if the kid was operating someone else's auto. Mom and Dad's PAP will not respond to a claim where the kid's auto is titled to the kid, and covered under the kid's own PAP. This is because Mom and Dad's PAP excludes Liability coverage for "*any vehicle other than 'your covered auto' which is owned by a family member*" (exclusion B.3.a.). Thus, if the kid has an at-fault accident driving his or her own auto, Mom and Dad's PAP would not cover the claim (on the kid's behalf, or their behalf). However, if their kid is driving someone else's auto, and becomes legally liable, the claim could go against the kid's PAP, as well as Mom and Dad's PAP, since the kid is probably still an "*insured*" due to "*family member*" status under Mom and Dad's PAP.

In cases of joint titling, where parents co-sign with their kid on a car loan, and the car is thus titled jointly to Mom/Dad and the kid, other complications arise. If the kid has an at-fault accident with that car, plaintiffs usually sue all owners, meaning everyone named on the car's title.

For Liability coverage under the kid's PAP, the kid is of course an "*insured*" in his or her own PAP. Likewise, his or her parents are "*insureds*," as either the kid's "*family members*" (B.1.), or as any person made liable by the kid (B.3.). However, since in nearly all cases the kid is carrying low limits of Liability coverage, the protection afforded Mom and Dad through their kid's PAP is negligible. Note also that all insureds would share one "occurrence" limit.

Unfortunately for Mom and Dad, their own PAP will not respond to a claim involving a car they jointly own with their kid, when the car is covered by the kid's PAP (and thus not declared on Mom and Dad's PAP as a "*your covered auto*" under their PAP). This is because Mom and Dad's PAP excludes Liability coverage for "*any vehicle other than 'your covered auto' which is owned by you.*" (Exclusion B.2.a.).

One additional gap exists if there are other driving age kids in the household, and the college kid has a separate PAP covering his or her auto. If the college kid's younger sister is driving the car and has an at-fault accident, the sister is covered only by the college kid's PAP. Mom and Dad's PAP will not respond to Liability claims made against the daughter who was driving, or to claims made against Mom and Dad, arising out of parental liability or similar torts. This lack of coverage under Mom and Dad's PAP is again due to exclusion B.3.a., as discussed above (no coverage for an auto owned by a family member which is not a covered auto under Mom and Dad's PAP). The only coverage available for all of them would only be through the college kid's PAP. Therefore, if the kid has a separate PAP, it is advisable for the limits to be the same as those carried on Mom and Dad's PAP, which mostly eliminates the intended premium savings benefit of having the kid insure his or her auto on a separate PAP.

By far, the safest approach for kids' cars is to add them to the family's PAP. Thus, Mom and Dad's limits still apply to them and the kid, and all the coverage gaps discussed above are eliminated. A decision by Mom and Dad to purchase a separate PAP for their kid, at limits lower than their own, should be well documented by the agency.

Furnished or available. Whether or not a kid takes a car with them to college, and whether or not the kid has his or her own PAP, their use of a roommate's car could create a coverage gap. Mom and Dad's PAP, and the kid's PAP, both contain an exclusion for "any vehicle other than 'your covered auto' which is furnished or available for your regular use" (B.2.b.), or "furnished or available for the regular use of any 'family member'" (B.3.b.).

What distinguishes *occasional* use from *regular* use is the subject of considerable litigation. A dominant trend in the jurisprudence on the issue seems to hinge on one or more of five factors to determine if an auto is "furnished or available for regular use." The five factors are: (1) blanket permission for use; (2) availability of a set of keys; (3) continuous, steady or methodical use; (4) nature of the use – all purposes vs. limited use; (5) that the insured would reasonably have expected to pay an extra premium for use of the auto.

Interestingly, in one Louisiana case, a roommate's auto was found to be "furnished or available" to the insured simply because of the auto's presence in the insured's garage, and the auto owner's constant presence in the insured's house, even though the insured did not have a set of keys to the roommate's auto. [*Chon v. Allstate Ins. Co.*, 522 So.2d 690 (La. App. 5th Cir. 1988)].

In situations where the kid might have regular use of a roommate's auto, the Extended Non-Owned Endorsement PP 03 06 should be added to Mom and Dad's PAP (and/or the kid's PAP). One potential gap exists with the endorsement, in that it excludes an auto which is "owned by a member of the same household." Whether or not college roommates are members of the same household is debatable, but adding the endorsement is still recommended.

TERRITORY

Homeowners. There is no territorial limitation in the Homeowners Policy.

Personal Auto. Personal Auto coverages are limited to the United States, its territories and possessions, Puerto Rico, and Canada. Given the ease of global mobility today, especially among college students, many of whom travel or study abroad, the territorial limitations could present a huge coverage gap. In addition, the brief Spring Break trips to some of the top locations, such as Cancun, the Bahamas, etc., are outside the territory. There is no standard ISO endorsement to broaden the territory. Most Personal Umbrellas offer broader territorial coverage. Also, when renting an auto out of the territory, maximum coverage options should be purchased.

"RIPPLE EFFECT"

A stone tossed into a pond causes ripples that spread far and wide across the pond. A similar effect is present in insurance. In the case of college kids, the most likely contact by the parents with the agency will be to add coverage for a recently purchased auto for the kid to take to college. This is the "stone." The "ripples" are what other coverage gaps this change causes, both to the PAP, and to the Homeowners policy, if the agency writes both.

Agency staff should always be alert to such "ripple effect" contacts with insureds. The duty of a fiduciary requires not only properly handling any changes requested by the insured, but also making the insured aware of other exposures that are created by the change, and making appropriate coverage recommendations. Only careful assessment of these situations will prevent a "ripple effect" from becoming an E&O "tsunami."