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## **Technical Advisory**

**TA 236**

**Date: April 28, 2004**

**SUBJECT: Personal Auto – Adding Employers As Additional Insureds**

**BACKGROUND:** The rooster does not make the sun rise, although the rooster would be surprised to hear that. In insurance, some coverages are automatically included, although many underwriters say they would not provide the coverage.

A classic example of this is the frequent request by employers to be added as Additional Insureds to the Personal Auto Policy of their employees.

**MAIN POINTS:** A Personal Auto insured that drives his or her personal vehicle while on company business for their employer often is required to add the employer as an Additional Insured under the Personal Auto Policy.

The employee's insurance agent that writes the Personal Auto Policy then submits the request to the underwriter. In most cases it seems, the underwriter refuses to add the employer, indicating that they "don't want the exposure." On occasion, some also point out that the employer "has no insurable interest in the vehicle."

The underwriter might be as surprised as the rooster to learn that the coverage is automatically built into the Personal Auto Policy. There is no need to "add" the employer as an Additional Insured – they already are, by virtue of the definition of "Insured" in the Personal Auto Policy, as follows:

*Part A – Liability Coverage*  
*Insuring Agreement*

*B. "Insured" as used in this Part means:*

*3. For "your covered auto," any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.*

*4. For any auto or trailer, other than "your covered auto," any person or organization but only with respect to legal responsibility for acts of omissions of you or a family member for whom coverage is afforded under this Part. This*

*provision (B.4.) applies only if the person or organization does not own or hire the auto or trailer.*

Essentially, the Personal Auto Policy provides vicarious third party liability through definition B.3. and B.4. of who is an “Insured.” Thus, the employer who becomes vicariously liable through the use of a vehicle owned or operated by an employee is automatically an Insured under the PAP of the employee. (The only exception would be in B.4., if the employer owned or hired the auto.)

In defense of underwriters, there actually is no ISO endorsement to add an employer as an Additional Insured in the PAP. (The only Additional Insured endorsement is for Lessors.) So their reluctance is somewhat understandable, since the company manual would have no endorsement to accomplish what the agent requests.

However, to opine that “we don’t want the exposure” is somewhat shortsighted, since the coverage is already provided in the PAP. And the observation that “the employer has no insurable interest in the employee’s vehicle” is a little puzzling, since insurable interest is an issue only in physical damage. The employer’s “interest” in the matter is that through law, the employer is legally liable for the acts of their employees (usually referred to as *respondeat superior*).

A dilemma remains. While coverage for the employer is automatically provided by the employee’s Personal Auto Policy, there is nothing in writing that the agent can give the employer to verify this, since there is no ISO endorsement for Additional Insureds (other than Lessors). While there are approximately 30 endorsements in the Personal Auto Program, there is none to solve this problem for the agent and his insured.

Interestingly, the Business Auto Policy has just such an endorsement – CA 20 48 Designated Insured. It basically provides a space to put the “Designated Insured,” but the endorsement states that *“Each person or organization shown in the Schedule is an “insured” for Liability Coverage, but only to the extent that person or organization qualifies as an “insured” under the Who Is An Insured Provision contained in Section II of the Coverage Form.”* (In other words, “we’ll show your name on the Schedule, but the endorsement doesn’t provide any coverage not automatically contained in the policy.”)

The Personal Auto Program could probably use such a “peace of mind” endorsement that employees could provide to their employers.

One possible solution might satisfy some employers who want to “see something with my name on it.” The agent of the employee could issue a Certificate of Liability Insurance (ACORD 25), mark the “Other” box and show “Personal Auto Policy,” and name the employer as a Certificate Holder.

Because this problem arises frequently, some individual insurers have developed a Personal Auto Additional Insured endorsement, patterned after the Business Auto

endorsement CA 20 48. The agency should inquire with the insurer, to see if they have such an endorsement.

**NECESSARY ACTION:** Circulate this Technical Advisory to all appropriate Personal Lines staff.