

**INDEPENDENT INSURANCE AGENTS & BROKERS OF  
LOUISIANA  
9818 BLUEBONNET BOULEVARD  
BATON ROUGE, LA 70810  
PHONE: 225/819-8007  
FAX: 225/819-8027  
[www.iiabl.com](http://www.iiabl.com)**

## **Technical Advisory**

**TA 247**

**May 25, 2005**

**Subject: BAP: Does Symbol 1 Apply To Unreported Vehicles?**

**Background:** In the Business Auto Policy, symbol 1 applies to “any auto.” Seems simple enough – just two words – and considered to be pretty much all-encompassing. However, occasionally a situation arises which brings into question just how broad “any auto” really is.

**Main Points:** Reprinted below is an excellent article from the “Virtual University” of the IIABA (Independent Insurance Agents & Brokers of America). The “Virtual University” has hundreds of technical insurance articles, as well as articles on many other issues important to agencies today, including E&O, automation, perpetuation, and many others.

The VU website is [www.iiaba.net/vu](http://www.iiaba.net/vu).

**Necessary Action:** Circulate this Technical Advisory to all appropriate Commercial Lines staff.

### “Symbol 1 Coverage for Unreported Vehicles”

**Abstract**

In May, following a June renewal, one of the insured's vehicles was involved in a fatal auto accident. It was learned that the vehicle was purchased the previous May just before the renewal, but was inadvertently omitted when the schedule of vehicles was submitted with the renewal. Is there any liability coverage under Symbol 1?

**Question.** "For 8 years, our agency has been writing the Business Auto, GL, Inland Marine, and Work Comp for a land improvement/road contractor. The insured has covered auto symbol 1 on their Business Auto policy. The insured's renewal is in June for all lines.

"In June, our agency submitted a renewal quote with all of the scheduled vehicles. The insured's daughter, who is the office manager, made several changes to the business auto policy (deleted a vehicle, added a vehicle) as well as to the scheduled equipment on the Inland Marine policy. At the renewal, our agency provided ID cards, a copy of each card for the insured's files and a certificate of insurance for the Dept. of Motor Vehicles with each vehicle/VIN listed.

"Several weeks ago (early May, about 11 months after renewal), our insured's employee was in accident that involved a fatality. The police report indicates that the contractor's truck was at fault, although the insured and driver of the vehicle do not agree with the police report. The truck that the employee was driving was not listed on the Business Auto policy. After searching our files and records, our agency requested a copy of the registration from the insured. The faxed copy of the registration indicated that the truck was purchased in May, immediately before the June renewal. The truck is financed, but the bank who is financing the truck did not call/contact our agency for proof of insurance. The insured has \$1MM CSL.

"We submitted the claim to the insurance carrier and their legal department is reviewing the situation. As yet, we have not heard from the claim department nor has our underwriter. The insured's business insurance renewal is June, so we are working on it now. In the meantime, the insured has retained an expert on accident reconstruction to prove that his driver was not at fault. We also think that the insured has talked to his attorney (because of his demeanor) and realizes that he/his company is liable.

"Please let us know your opinion regarding coverage of auto symbol 1 when the vehicle was purchased prior to the insured's renewal. Our dilemma is we want coverage for our client; however, no premium was earned and our loss ratio would be greatly affected. Thank you."

**Answer.** This is an interesting question and one we posed to the VU faculty, several of which had varying opinions. Take a look at their responses below, then tell us what you think. We're particularly interested in opinions from company personnel.

**Faculty Response:** The purpose of Symbol 1 is for malfunctions like this one.

**Faculty Response:** We've fought this battle before. Symbol 1 is "any auto." The auto does not have to be declared and when it was purchased makes no difference. With symbol 1, the liability claim is covered.

**Faculty Response:** Symbol 1 covers "any auto" (owned, borrowed, rented, hired) for liability. Section I - Covered Autos, Item A. Owned Autos you Acquire

After the Policy begins states: "If symbol 1 is entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period. If they acquired the truck in May and the policy renewed in June, there would be automatic coverage for one month. The truck would have to be scheduled on the renewal policy for coverage to apply Unfortunately the insured's daughter did not advise you of the new vehicle, so there is no coverage.

**Faculty Response:** Symbol one provides automatic coverage for vehicles purchased within the policy year. The coverage is good "for the remainder of the policy period." If the vehicle is not scheduled, I think you do not have any coverage.

***Note:** Based on the above differences of opinion, we resubmitted the question and initial answers to the faculty again to see if we could reach consensus. Here are their follow-up responses....*

**Faculty Response:** The BAP is an auditable contract. The BAP policy premium is "provisional" to allow for an audit of vehicles as of the end of the policy period. Under the conditions, the audit information states: "The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures.... "

I agree that Symbol 1 provides coverage for any auto acquired during the policy period. At the end of the policy the insurer should be conducting an audit. The audit feature is necessary to avoid the nightmare for both the carrier and insured when the insured makes untold changes in their auto exposure during the year. I used to work on large fleets and our agency devised an automobile reporting form that was sent to insured's periodically, based on their size, to facilitate the final audit process.

**Faculty Response:** I was NOT one who said no coverage. It's clear....any auto. Cut the check.

**Faculty Response:** I disagree with my VU friends who say there is no coverage. The language in question "Newly Acquired Autos" is a liberalizing policy condition and is not intended to be a restriction of coverage. In this case, since the policy was renewed with Symbol 1, then the auto will be covered by virtue that it is "any auto."

**Faculty Response:** The provision about acquired vehicles being covered until the end of the policy period, in my opinion, applies just to such acquired autos to make it clear that coverage is automatic and remains, without reporting, throughout the policy period.

I've never read anything that implies that coverage terminates at policy expiration and doesn't reinstate without declaration under a new policy period. Under the renewal policy, you've got an entirely new contract that covers "any auto." Discovering an undeclared auto at claim or audit time is a premium issue, not a coverage issue. How can "any auto" be any clearer?

While they might likely self-insure, just imagine the nightmare this would cause for UPS or someone with a similar huge fleet of vehicles. One of the advantages of Symbol 1 is the lack of a need to declare/report autos. That's why coverage is available on an audited basis.

**Faculty Response:** "Any auto" means any auto. What's the problem here? Am I missing something? The policy is auditable, and this is a perfect example of why. Can you imagine what a judge would do to the company lawyer when he reads General Condition #6 where it says your "actual exposure"? It's a shame you can't legally wager on the outcome of some these claims. :)

**Faculty Response:** The term "any" is not defined in the policy, and is therefore not limited. Any auto means ANY AUTO. Funny thing about the BAP...it has an audit provision. If the carrier missed this at audit time or failed to audit, then they have the problem. There is nothing in the policy language that limits coverage for vehicles that are owned but not declared.

**Faculty Response:** The company can't turn a positive into a negative. The newly acquired provision clearly adds coverage for newly acquired autos, it does not remove coverage for autos that aren't scheduled. Companies will resist paying these kinds of claims, but once they consult their legal department, they often have a change of heart.

**Faculty Response:** I was one of the "naysayers."

This is the discussion we have in the PAP. The PAP covers autos newly acquired during the policy period by the named insured. For additional vehicles the named insured has coverage for a specified period of time (14 days with ISO) - if the vehicle is not reported in that time period, there is no coverage. For replacement vehicles the insured only has to report the vehicle for physical damage coverage - after 14 days there is no physical damage coverage if the vehicle is not reported. The policy doesn't say that the other (other than physical damage) coverage ceases at the end of the policy period. However some insurers maintain that the coverage ceases.

The BAP is a little different. Symbol 1 provides liability coverage for "any auto" - owned, borrowed, leased, rented, hired, etc. Page 2 of the policy deals with newly acquired autos. "If symbol 1 is entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described (by the symbol) for the remainder of the policy period". I think this is more restrictive than the PAP. I agree it is a "liberalizing" policy condition during the policy period. I don't see where the policy language supports your position.

I'll admit I was surprised to see responses saying there was coverage. I love this "ask the expert" service because it stimulates discussion. Reasonable people do disagree on these issues - I guess that's why we have attorneys.

**Faculty Response:** The real key is the audit...many companies do not audit (shame on them), thus they miss out on the premium. As I have said many times in seminars, there is COVERAGE and there is PREMIUM—they are two different things. All of this discussion and disagreement is a GOOD thing for the insured! If the "experts" can't agree, then there most definitely is ambiguity. Ambiguity benefits the insured...so after all is said and done, the insured wins either way!

**Faculty Response:** I agree that VU offers a great way for the "experts" to discuss things. In this case I have a powerful ally in the opinion of the International Risk Management Institute ([www.irmi.com](http://www.irmi.com)):

Note that the coverage afforded by this provision begins when the named insured acquires the subject autos and remains in force for the remainder of the policy period (in the case of symbols 1, 2, 3, 4, 5, or 6 but not 7). Keep in mind, however, **that this is a liberalizing policy condition and is not intended to be a restriction of coverage.** For example, assume a business auto policy effective January 1, 1997, to January 1, 1998, affords collision coverage for owned autos only (symbol 2). The named insured acquires an auto November 1, 1997. Under this provision, that auto would be insured for collision coverage from November 1 until the policy expiration date of January 1. Assume that when the policy is renewed, the insured inadvertently fails to notify the insurer and the renewal policy is issued without listing the newly acquired auto. Although there would be no coverage for that auto under this provision, if the renewal policy is issued with the same symbols, that auto would be covered by virtue of its status as an owned auto. Of course, the insured is advised to be careful not to take advantage of automatic coverage to the extent that failure to communicate with the insurer could damage an ongoing business relationship.

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**Note:** If you are not familiar with the reference manuals and materials from IRMI, visit their web site at [www.irmi.com](http://www.irmi.com). In our "expert" opinion, very few agencies should be without these resources.

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**What do you think?** Do you have an experience or comment to share? If so, email it to [Bill.Wilson@iiba.net](mailto:Bill.Wilson@iiba.net) and we'll post it here...include your name, agency/company and city/state if you'd like that posted; otherwise, we'll post your feedback anonymously.

**Subscriber Response:** Considering that "Any Auto" is an unqualified phrase (it does not say "any auto acquired during the policy period), I think that, by far, the most compelling position in this scenario is that the unreported auto is covered. As ambiguities are resolved against the insurer, I think there is no serious coverage question about this scenario as described – comparisons to the personal auto policy notwithstanding. However, "any auto" is not completely without some restrictions. Depending upon the state, an insurer may contend that failure to report (even if accidentally) the new auto upon renewal is material misrepresentation and may attempt to rescind the policy (attempting to declare the policy is void from the beginning). The audit condition in the BAP does not affect the insured's duty to disclose changes to the risk upon policy renewal as seems to be implied by some faculty.

There is a difference between coverage (whether or not the auto falls within the definition of "covered auto") and genuine assent (material misrepresentation) in forming a contract. Without genuine assent, the policy is usually voidable at the option of the insurer.

**Subscriber Response:** Two is the magic number to focus on in answering this question.

### Two Way Contract

The BAP is, like most insurance policies, a two way street. The policyholder agrees to pay a premium in return for protection and the insurer agrees to offer protection in return for the premium payment.

When Symbol 1 is used the good news for the policyholder is that "Any Auto" is covered. The bad news is that the policyholder is contractually obligated to pay a premium (at audit as stated by your Faculty Members) for "Any Auto" based on the carrier's rates which are rarely, if ever, fully detailed in the policy. So the "Extra Heavy Truck" owned by the policyholder throughout the policy term but never scheduled is covered but for a much higher premium than the "light" pickups scheduled on the policy.

The good news for the carrier is more premium. The bad news, insuring a vehicle it knew nothing about. Again, the two way street affects both parties to the insurance contract in that both receive an unpleasant surprise at audit time (Although when does a carrier complain about receiving additional premium at audit?).

“But what if the policyholder never tells us about the vehicle(s)?” complains an irate carrier. “We’ll be covering the vehicle forever without a dime’s worth of premium!” General Condition, Concealment, Misrepresentation or Fraud in the BAP safeguards the carrier by rendering the policy void if the policyholder intentionally conceals or misrepresents a material fact concerning a covered auto (such as concealing a vehicle from the carrier at audit time). In other words, cheat us and lose protection, the two way street rolls on.

If the carrier is dissatisfied with this deal it can stop using Symbol 1. With Symbol 7 the carrier would have no obligation pay a liability claim involving a vehicle purchased 11 months ago and never added to the policy. Of course agents, brokers and their clients may abandon carriers who adopt such a stance.

#### Two Distinct Contracts

Last year’s policy and this year’s policy are two distinct contracts. When Symbol 1 is used, forgetting to tell a carrier about a vehicle last year has no affect on this year’s policy. (An error in the opening game of a doubleheader doesn’t affect the score of the second game.) Last year’s policy said that you had coverage for autos that you acquired for the remainder of the policy period. This year’s policy states that “Any Auto” is covered (as repeatedly pointed out by several of your faculty members). Language in last year’s policy about a vehicle acquired last year has no bearing on this year’s separate and distinct BAP. This policy year is a new contract with new commitments by the policyholder and the carrier to pay the premium and provide the protection respectively (again, the two way street).

You have published three “Faculty Responses” which offer the opinion that there is no coverage for the accident involving this unscheduled vehicle. Not once in these responses is language cited from the current policy that negates coverage for the claim being discussed. Instead, the “acquired vehicle” language from the expired policy is cited to deny coverage. Clearly this year’s policy language about “Owned Autos You Acquire After the Policy Begins” does not affect an auto acquired before the policy began. This year’s policy stands on its own and thus the Faculty Responses denying coverage don’t have a leg (in the form of any policy language supporting their position) to stand on.

**Subscriber Response:** I had been taught as a young producer a many/few years ago that this was a producers ideal claim to find a "pain" of a new business auto prospect. Use symbol 1 and "any auto" broadens coverage 100 fold - I think

that was the speakers words - I agree that the liability claim would be covered BUT I think the submitting agent's real question is will our agency be exposed to an E&O defense claim or will our client be denied coverage based on possible fraud questions. The agent want's coverage for his client of 8 years, the insured wants coverage as well.

The agency completing the application (I assume Acord) usually fills out an app based on expiring inventory, submits it to the client for checks and balances and FINALLY the agency needs to review with the client prior to binding the schedule of current vehicles declared (E&O). The insured needed to disclose fully the current schedule, make changes (apparently done) and sign stating all info is current as of the date submitted. Bottom line I think the carrier is on the hook - whether or not the insurer pursues subrogation process with the agent's E&O carrier would be my reason for asking the experts. Contingency last..

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**Independent Insurance Agents & Brokers of America, Inc.**

127 South Peyton Street

Alexandria, VA 22314

800-221-7917

703-683-4422

703-683-7556 (fax)

[info@IIABA.net](mailto:info@IIABA.net)

[www.independentagent.com](http://www.independentagent.com)

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