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Technical Advisory

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“Take a Cruise on the Insurance Love Boat”

Background: Millions of Americans (our insureds) take cruises each year. This undoubtedly offers some unique travel experiences. It also presents some unique insurance issues.

Life on the high seas is often thought of as romantic and adventuresome. In the 19th century, travel by sea gradually began to change from simply a means of getting from Point A to Point B, to something more of an enjoyable experience while getting to a particular destination. One of the earliest shipping companies to offer scheduled passenger service between the United States and England was the Black Ball Line, which started regular trans-Atlantic service in 1818.

However, not all ocean travel was being done in cruise ships. Tramp steamers were in wide use in the early 20th century; in fact, the tramp steamer *Venture* brought Fay Wray to Skull Island for her rendezvous with King Kong in 1933. “Tramp” didn’t refer to the class of passenger, but denoted a ship that sailed no preset route, and instead went to various ports as required for cargo or passengers (derived from one definition of “tramp” meaning “to wander about”).

Ocean voyages which offered pleasant accommodations to passengers became more and more popular over the years, with such luxury liners as *Titanic* and her two sister ships *Britannic* and *Olympic* being synonymous with what today we would call “the lifestyles of the rich and famous.”

Cruise ships continued to grow in popularity until the development of large commercial airliners starting in the late 1960’s, most notably the Boeing 747. In 1974, the Cunard Line Limited launched what turned out to be a revolutionary and highly successful marketing program by booking international celebrities to perform Las Vegas-style entertainment extravaganzas aboard the *Queen Elizabeth II*.

Three years later, a TV show called “The Love Boat” (1977-1986) ignited even more interest in cruise ships. Today, industry studies show that over 10 million people worldwide took a cruise ship vacation in 2004, which was an increase of 40% since 2001. By 2010, analysts predict the cruise ship market to be 17 million worldwide. There are currently several hundred cruise ships in service worldwide, with at least nine new ships being added every year since 2001.

Given the skyrocketing passenger volume, intense competition within the cruise ship industry, and technological advancements in ship design, modern cruise ships today offer passengers an incredible variety of leisure, educational and culinary activities, both on board the ship, and ashore.

Main Points: Which brings us to insurance. After browsing various cruise ship web sites, an insurance practitioner is struck by two observations: (1) “These people are having a LOT of fun!” (2) “Some of these activities look awfully dangerous...I wonder how their insurance would cover these exposures?”

So let’s cruise into the insurance issues aboard the Insurance Love Boat. Basically, there are two main categories of exposures: shipboard activities, and what the industry calls shore excursions. In addition, there are some miscellaneous issues that will be covered at the end.

Shipboard Activities

Personal property. Coverage C applies to personal property “*owned or used by an insured while it is anywhere in the world.*” Since there is no territorial limit in the standard Homeowners Policy, a loss to personal property otherwise covered by the policy is not impaired by being onboard the ship, or ashore in any part of the world.

At the same time, the perils differ by form. In the HO-3, Coverage C is restricted to named perils only. In the HO-5 (or equivalent), personal property is subject to open perils (“all-risk”). The broader coverage provided by the HO-5 would cover property (jewelry, camera, etc.) dropped overboard, whereas the HO-3 would not.

On the other hand, both the HO-3 and HO-5 would cover damage to personal property resulting from the sinking of the ship, whether it is the cruise ship, or some smaller craft a passenger might be on as a part of the overall vacation (outboard boat, jet-ski, etc.).

While “sinking of a ship” is not a named peril in the HO-3, damage by “*vehicles*” is, and most authorities maintain that loss of personal property from the sinking or swamping of a watercraft is clearly covered. Since the term “vehicles” is not defined in the form, the definition in standard dictionaries would be germane (e.g., “*any means in or by which someone travels or something is carried or conveyed*”).

The HO-5 does not exclude damage to personal property that results from the sinking or a watercraft, unless the property damaged is actually a watercraft itself, or its equipment. The HO-5 Coverage C exclusion applies to “*collision, other than collision with a land vehicle, sinking, swamping or stranding of watercraft, including their trailers, furnishings equipment and out board engines or motors.*” Therefore, other types of personal property that is damaged when a watercraft sinks or is swamped, etc., is covered by the HO-5.

As cruise ships strive to provide more and more amenities, it is not uncommon for passengers to be allowed to use or rent a wide variety of items while on board. A number of cruise ship web sites promote a dizzying assortment of leisure activities available, such as Segways, PMVs (personal mobility vehicles), skeet shooting, golf, wall climbing, weight-lifting, aerobics, computer and gourmet cooking classes, ice skating, water parks (not just swimming pools), and the ubiquitous shuffle board.

For any of these activities, where a passenger rents or otherwise uses any equipment provided by the ship, the passenger’s Coverage C would apply, if the cause of loss was otherwise applicable. For personal property owned or used by a passenger, the sub-limits for specific types of property apply.

The sub-limit of \$1,500 on “*watercraft of all types, including their...furnishings, equipment...*” raises an interesting issue. If a passenger was using some piece of equipment provided by the ship (rented or otherwise), and the passenger caused damage of a type covered under his Coverage C, would the sub-limit apply? That is, would such equipment be considered the “*furnishings or equipment*” of a watercraft?

For example, if an insured with an HO-5 was skeet shooting (which some cruise ships offer) and dropped a \$3,700 Beretta 471 SilverHawk shotgun overboard (or, if on a luxury cruise, the shotgun might be a Perazzi SCO MX8 - \$49,995), would this \$1,500 apply?

Most experts believe that this limitation only applies to actual boat equipment, and not to other property that simply happens to be on a boat. This is a very common issue in Personal Lines, where an insured has property stolen from a boat, such as a camera, fishing gear, etc. However, in this case, an argument might be made that the shotgun is owned by the ship, is always onboard the ship, and is likely included on the ship’s official inventory list of “equipment.” At the same time, the language could easily be argued to be ambiguous in court, so the insured should have the entire amount paid by his HO carrier (subject to his Coverage C limit, and not the \$1,500 sub-limit).

While the ISO HO-2000 program also has a \$2,500 sub-limit related to firearms, it only applies to “*theft*” (HO-3) and “*theft, misplacing or losing*” in the HO-5. At the same time, dropping the shotgun overboard is not a named peril under the HO-3, but is not excluded in the HO-5.

One additional coverage should be considered for certain damages a passenger might cause to ship’s property. The Section II Additional Coverage – Damage to Property of Others provides \$1,000 for damage to property “*caused by an insured.*” Interestingly, DPO excludes damage “*arising out of the...occupancy or use... of a watercraft.*” However, it is arguable that dropping the shotgun overboard did not “arise” out of the use of a watercraft, but out of the carelessness of the insured. Given the small amount of coverage limit here, it would not seem practical or prudent for an insurer to reject such a claim based on a narrow interpretation of this language.

One other issue that often arises related to personal property off premises is the 10% Coverage C limit. However, it would not apply to the property a passenger takes aboard a ship. The 10% limit for Coverage C only applies to personal property “*usually located at an insured’s residence, other than the residence premises.*” The passenger’s cabin aboard ship is by no means “*an insured’s residence,*” nor does is the property “*usually located*” there, so the limitation would not apply. Rather, full Coverage C is available.

Liability/Medical Payments. As noted above, the standard Homeowners Policy has no territorial limitation, so a Section II claim that is otherwise covered by the policy is covered worldwide, whether on board a ship, or ashore in any country.

Given the wide assortment of activities available on board today’s modern cruise ships, accidents are bound to occur. Generally, passengers sign waivers in favor of the cruise ship for injuries, but this would not preclude lawsuits between passengers.

In one recent case, a woman was injured when she was struck in the head by a beverage container. While at first this doesn’t sound potentially serious, the “beverage container” turned out to be a green, unhusked coconut which weighed approximately 4 pounds. The specialty drink for “Island Night” was a “Coco Loco,” which was being served in hollowed-out green coconuts.

The coconut hit her in the head after falling from the deck above, causing serious injury. (In an interesting case of risk management gone awry, the ship had banned glass containers on the upper decks, to prevent injuries from broken glass. However, substituting a hollowed-out 4 pound coconut as a replacement beverage container doesn't seem much of a safety improvement.)

It was never determined if a passenger on the upper deck intended to drop the coconut beverage container, or if it simply fell due to the carelessness of a distracted passenger. Since the passenger was never identified, the only party sued was the cruise line. But it seems certain that the other passenger would have been included in the litigation, had they been identified. And given that some of the larger ships have 8 decks of balconies or more, the injury could well have been fatal.

In addition to Liability applying worldwide, Section II Medical Payments also applies. Homeowners Med. Pay is often misunderstood to provide coverage only at the residence premises. The insuring agreement actually applies to injuries to people on an "*insured location*" (broader than just the "*residence premises*"), as well injuries "*caused by the activities of an insured.*" Therefore, someone injured due to the activities of an insured anywhere in the world could receive Medical Payments coverage. (This includes someone hit in the head by a "Coco Loco.")

There is one type of liability and/or medical payments loss that has been in the news recently involving cruise ships that is excluded under the Homeowners Policy. Outbreaks of the Norovirus have been increasingly frequent in recent years, and usually sicken hundreds of passengers and crew with each outbreak. Health officials say that the illness is highly contagious, and is spread primarily through human contact. In some of the cruise ship outbreaks, it is thought that the virus was brought aboard by sick passengers, and quickly spread throughout the ship.

Where it could be conclusively shown that a particular passenger was the cause of such a problem, it is not unexpected that a lawsuit would ensue. Similarly, many cruise ship web sites warn passengers about the risks of sexually transmitted diseases while aboard ship. (It seems that what happens on the ship doesn't always stay on the ship!)

In either of these two scenarios, the Homeowners Policy has an exclusion in Section II for "*transmission of a communicable disease by an insured.*"

According to one cruise-related web site, there have been 2,173 infections on board cruise ships during the first half of 2007, including not only Norovirus, but also Legionnaires' disease and TB. In 2006, there were over 4,200.

Fire on board a ship has always been one of a seafarer's worst fears. While a modern ship's crew training includes extensive fire fighting procedures, a cruise ship with 1,500 – 2,500 untrained civilians, in unfamiliar surroundings, more than a few of which are likely in various stages of intoxication, is a disaster waiting to happen.

In 2006, a fire thought to have been started by a passenger's cigarette caused a fire aboard a cruise ship in the Caribbean, resulting in one passenger being killed and 11 injured. The final report of the fire was not able to identify the passenger, since the fire originated on a balcony and not in a passenger cabin.

Fires caused by smoking are a significant hazard on land as well. A 2005 report by the National Fire Data Center shows that during 2002, smoking caused an estimated 14,450 residential fires, resulting in 520 deaths, 1,330 injuries, and \$371 million in residential property damage. Smokers aboard a

cruise ship could potentially risk causing significant injury and property damage, with subsequent litigation of equal dimensions.

From an insurance standpoint, if blame could be established, the errant passenger would find coverage under his or her Homeowners Policy for his negligence in the bodily injury or property damage. But, fire damage to the passenger's own cabin would seemingly be excluded in Section II by the "*care, custody or control*" exclusion. However, the exclusion provides an exception for damage to property in the insured's care, custody or control if the damage is due to "*fire, smoke or explosion*," (often referred to as "fire legal.")

Shore Excursions

As the popularity of cruise ships has skyrocketed in recent years, the array of onboard activities has taken quantum leaps from the stodgy relaxation of a generation ago, when people sitting in deck chairs much of the time might rustle up an inclination for an exciting game of shuffle board between tea time and lunch.

However, an equally popular element of cruise ship travel is the "shore excursion," in which an unbelievable assortment of exciting activities is offered. One cruise web site describes their shore excursions as "a heart pounding adventure." These include an ATV ride up a Jamaican mountain, and a 500-ft. "zipline" trip across a lush tropical Jamaican valley (which begins with a 15 ft. freefall).

A sampling of other shore excursions includes such diverse activities as a Harley Davidson motorcycle tour, helicopter rides, Jeep driving tours, rented jet skis, rented outboard boats (including a 27 ft. Boston Whaler with twin 225 hp Honda engines), dune buggies, scooter rentals, parasailing, horseback riding, jungle adventure excursions, Segway tours, off-road Hummer tours, sail boat rentals, bungee trampoline, rock climbing, and a multi-day rented RV tour in Alaska.

Here are some of the more notable insurance issues.

Recreational land vehicles. Section II of the standard Homeowners Policy provides worldwide liability for the use of non-owned (rented or borrowed) recreational land vehicles. This includes ATVs, scooters, dune buggies, Segways, golf carts, and so forth.

Similarly, Section II also applies to the use of "*vehicles designed to assist the handicapped*," (owned or non-owned).

Section I provides Coverage C only for motorized vehicles that either service the residence, or are designed to assist the handicapped.

A few motorized vehicles are available onboard as well, such as motorized wheelchairs, medical scooters, PMVs (Personal Mobility Vehicles), and Segways. The coverage issues discussed above for shore excursions involving motorized vehicles also would apply to shipboard use.

Watercraft. For Section II coverage, the Homeowners Policy separates the various watercraft exposures into different categories, depending on rented vs. borrowed, and by length of the watercraft and/or type of propulsion.

The watercraft exclusions only apply to owned or rented watercraft. There is no exclusion for borrowed watercraft.

Rented inboard, inboard-outdrive, and water jet pump watercraft. Exclusion applies to rented watercraft with more than 50 hp engine.

The most frequently-rented type of watercraft in this category is the ubiquitous jet-ski, which uses a water jet pump for propulsion. While most are rated at “cc” vs. “hp,” research shows that most have equivalent engine power over 50 hp.

Rented outboard watercraft. No exclusion for rented outboards, regardless of hp.

Rented sailboats. Exclusion applies to rented sailboats 26 ft. or more in length, with or without auxiliary power.

Section I provides Coverage C for watercraft of all types (owned, rented or borrowed), subject to covered perils, and also subject to a sub-limit of \$1,500.

Rented autos, RVs etc. Many shore excursions include opportunities for passengers to rent autos. In some cases, there are Jeep or Hummer tours, in which each passenger (or small group traveling together) rents an auto, and they all caravan through the countryside, up and down mountain trails, etc. In other cases, passengers ashore simply rent a standard private passenger car for an individual day of sightseeing.

Territory. The standard Personal Auto Policy provides no coverage of any type outside the coverage territory, which is defined as “*the United States of America, its territories or possessions, Puerto Rico, or Canada.*” Since the PAP does not specifically include a list of all U.S territories or possessions, insurance agents should avoid advising insureds on this.

Research shows that “territories” may be incorporated as a part of the U.S., or may be unincorporated, and are variously referred to as “possessions,” “commonwealths,” “overseas territories,” “miscellaneous insular or outlying areas,” and “freely associated states.” USA.gov lists U.S. Territories to include American Samoa, Guam, Marianas, Puerto Rico, and U.S. Virgin Islands. The USGS lists Puerto Rico as a “commonwealth.”

Given the extensive destinations available today, travelers should be well-informed about the locations they are visiting.

As to insurance while driving outside the coverage territory, there are few options, short of purchasing insurance from the rental car company. A limited number of U.S. markets offer overseas auto coverage.

While the most obvious insurance coverage needed is liability insurance, statistics show that medical payments coverage for travelers in autos or other motor vehicles overseas is a growing need, due to the rising accident rate. Three years ago, the U.S. State Department began tracking vehicle fatalities by Americans traveling abroad. During that time, reports show that 719 Americans have been killed in motor vehicle accidents. In addition, separate studies have shown that vehicle accidents accounted for 31% of deaths among healthy Americans abroad. This report does not include injuries in auto accidents, nor does it include deaths from medical conditions such as heart attacks.

In many cases, the victims were merely passengers, often in buses. For Americans who drive overseas, studies show that differing local traffic laws and customs, poor signage, sub-standard roads, and lack of familiarity with the area all contribute to accidents.

As to the availability of liability insurance, one other possible source is a Personal Umbrella. Most provide worldwide coverage. Some cover auto exposures not covered by the underlying PAP in excess of the SIR (often \$1,000). Even in those situations, it is highly advisable to purchase some amount of liability insurance in the country of rental, partly to assist with the defense issues by using local counsel, although most umbrellas do provide a defense as well. In fact, most rental firms overseas require that some limit of insurance be purchased.

Others Personal Umbrellas require that the stipulated limits on the underlying auto coverage (often \$500,000) be purchased on rented autos outside the PAP territory, for the PUP to apply.

Rented RV vs. private passenger/pickup/van. For travel inside the PAP covered territory (such as the Alaska cruise/RV tour), there is liability coverage for “any auto.” Most authorities agree that this includes liability for the operation of a rented RV, unless the PAP has non-ISO language to the contrary.

For physical damage, the PAP provides Part D only for non-owned *private passenger, pickups, and vans*. There is no automatic physical damage coverage for a rented RV. Nonetheless, the best advice is to purchase the Collision Damage Waiver (CDW) from the rental agency for *all* rented vehicles, since some of the contractual obligations of the rental agreement are not covered, or not covered sufficiently, by the PAP.

Miscellaneous Issues

Additional Living Expense. One risk vacationers face is that the location they have reserved will be damaged prior to their arrival (by fire, wind, etc.), forcing them to seek accommodations elsewhere on short notice. Coverage D in the Homeowners Policy will not help with this added expense. The coverage only applies for damage to the *residence premises*.

In the event the ship is damaged and passengers must be transported ashore for temporary quarters, in all likelihood, the cruise ship company will cover the expense. However, if cruise ship passengers planned a short vacation onshore and the rental location they had arranged had just suffered damaged, there probably is not much hope of financial recovery, with the possible exception of trip cancellation/interruption insurance.

Medical expenses. Group or individual health insurance plans vary in providing coverage outside the United States. Medicare coverage outside the U.S. is limited. Some Medicare Supplement policies do provide Foreign Travel Emergency coverage. Anyone on Medicare traveling abroad should read the brochure from Medicare, “*Medicare Coverage Outside the U.S.*”

In addition, some travel insurance policies provide coverage outside the U.S., including medically necessary evacuation back to the U.S.

Business travel. While almost no business person travels to overseas appointments by cruise ship, there are some instances where employees might be aboard a cruise ship.

According to some cruise ship web sites, one of the fastest growing areas of cruising is the “theme” cruise. It is not unusual for a business to conduct seminars, or get-away conferences or planning sessions, on a cruise ship. Also, some businesses have various employee incentive programs that include trips of all sorts, including cruises.

Here is a brief discussion of some of the more important insurance issues arising out of business travel aboard a cruise ship.

Workers Compensation. Most state workers compensation laws provide for extraterritorial coverage for employees temporarily outside the state. Likewise, group health insurance often has provisions for out of state, or out of country, coverage.

However, certain exposures such as endemic disease, medical evacuation or repatriation are best handled by specialized coverage, often available as a package endorsement for insureds with incidental overseas/international exposures.

General Liability. The “coverage territory” in the CGL includes the USA (including territories and possessions), Puerto Rico, Canada, and international waters and airspace between any of these. In addition, coverage also applies anywhere in the world for the activities of a person whose home is in the coverage territory but is away for a short time on business. Thus, for example, if an employee of SmithCo who is on a company-sponsored cruise injures a passenger while skeet shooting aboard ship, the CGL of SmithCo would respond.

Auto. As in the Personal Auto Policy, the covered territory of the Business Auto Policy includes the U.S, its territories and possessions, Puerto Rico, and Canada. In the 2001 edition, the BAP added coverage for a covered auto of the private passenger type if leased, rented or borrowed without a driver, for a period up to 30 days. However, the suit must be brought within the covered territory, or in a settlement agreed to by the insurer if elsewhere.

For insureds seeking broader coverage, some insurers offer auto coverage outside the coverage territory for risks with an incidental exposure.

Watercraft. Probably the most likely watercraft exposure for SmithCo is for rented watercraft it makes available to employees, such as jet-skis. The CGL provides coverage for non-owned watercraft under 26 ft. However, where SmithCo might rent a “barefoot cruise” sail boat (often 40 ft. or more) for their exclusive use, this automatic coverage in the CGL would not apply. Some CGL markets do have optional coverage endorsements for this exposure.

Kidnap and ransom. Many cruise ship web sites promote very exotic travel to remote destinations. Piracy, terrorism and criminal acts present very real dangers for employees traveling to some of these locations. The International Maritime Bureau (IMB) reports that in the first half of 2007, there were 126 piracy attacks worldwide, in which 13 vessels were hijacked, 152 people taken hostage, 41 kidnapped, and 3 killed.

Kidnap and ransom (K&R) coverage is advisable for those traveling in certain areas of the world. As noted above, some insurers offer a number of specialty coverages for risks with incidental foreign travel exposures.

Conclusion. Millions of people enjoy cruise ship vacations. At the same time, there are a number of insurance issues which need to be examined prior to the trip. Agents need to be in a position to discuss these diverse exposures with their insureds, so that the risk of damage or loss is minimized.

Necessary Action: Circulate this Technical Advisory to all appropriate agency staff.