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Your Fleet, Risk, Controls, and Insurance: It's All Connected

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Introduction

Automobile insurance provides financial security for businesses in event of a loss that is covered by the policy. The policy covers the physical damage to covered vehicles, and the liability for damages incurred by other persons and property as a result of the negligent actions of a driver of a covered vehicle.

In order for the policy to respond, which means that the insurance company will begin defending an insured or paying for losses, there first must be an event. The event is typically an accident that has caused property damage or bodily injury. The circumstances surrounding the event are then evaluated against the description of coverages and exclusions in the policy to determine if the policy should be put into action. There are many contributing factors that lead to the event and a clear definition of which losses are covered by the policy. Understanding these inter-related topics is critical to developing and implementing controls to reduce the effects of losses on an organization.

Risk Factors

A risk factor, for this discussion, is a variable associated with an increased risk for a negative event to occur. Risk factors are correlational and not necessarily causal, because correlation does not imply causation. For example, being young cannot be said to cause automobile accidents, but young people are more likely to have an automobile accident.

Some of the risk factors of a businesses automobile fleet are seen in the operators, the vehicles, and the use of the vehicles. It is important to understand the risk factors before controls for them can be developed.

Operators

Since most accidents are a result of human error rather than equipment failure, the operator behind the wheel of the vehicle is a very important risk factor to consider. There are many influences on the operators that may affect the way they drive. Some of them are learned behaviors from their own personal experience, and others include the work environment they are placed in while behind the wheel.

Learned behaviors can be difficult to change, especially if they have been practiced for a long time. A driver who exhibits aggressive driving may continue to exhibit that trait, regardless of how often he or she is instructed to the potential problems that the behavior may lead. Because of this, it is important the organization take prior behaviors into consideration when predicting future behaviors. An operator with a history of accidents, incidents, or failures to obey the law will be more likely to repeat the behaviors that lead to that history compared to a driver who has not had that history.

Some of the driving behaviors that may increase the probability of an accident include aggressive driving actions such as speeding, tailgating, starting and stopping quickly, and illegal U-turns. Other driving behaviors that may contribute to a higher probability of an accident include distracted driving such as texting, cellphone use, headphones for music, eating, and reaching around the vehicle for objects. Many distracting behaviors are seen on the roads every day by drivers all over the country. There are television commercials using them to sell the advantage of having a vehicle with a high safety rating in order to protect you. Still, fellow employees are not reporting these behaviors, either because they feel the behavior is not a problem, they don’t want to cause trouble, or they feel that management doesn’t care.

A study on distracted driving was conducted at the Liberty Mutual Research Institute for Behavior Sciences, and published in *Professional Safety* in January 2010. The results of this study showed that most drivers are not aware of how distracted they are when trying to perform non driving-related tasks. The drivers also did not realize how much the distractions deteriorated their driving skills.

Certain driver history records can be reviewed. Those include accidents and moving violations. A complete driver history includes much more, but much of it is not recorded and in many cases, never witnessed. Aggressive driving behaviors may never result in a moving violation, and fellow employees who witness it may not report it as a problem.

A person who is given permission to operate a vehicle is called a permissive driver. This operator type presents a risk because companies may not be aware of who are their permissive drivers. Permission can be given explicitly or implied; in each case, there is an expectation that the company knowingly allowed the person to drive and therefore accepts the responsibility of their action while behind the wheel.

Vehicles

The type of vehicle that is driven can have an impact on the extent of damage caused in an accident. Heavier vehicles are more likely to inflict more damage upon what they hit. These same heavier vehicles need more stopping distance and present other risks compared to lighter and smaller vehicles. The design of the vehicle affects the sight lines, turning radiuses, backing techniques, and operator comfort.

The liability coverage under the business auto policy (BAP) identifies three general categories of vehicles to which the coverage may apply: owned, hired. and borrowed. Vehicles hired or borrowed by the company are considered to be non-owned, although the policy can be endorsed to treat long-term leased or hired autos as owned autos in an effort to make clearer the intent of the coverage. Other types of non-owned autos include those owned, borrowed, or leased by an employee of the company and driven in the course of company business. These vehicles can be covered on the BAP and, if they are, it is important to know that the liability coverage under the BAP policy typically responds in excess of the primary insurance on the vehicle (typically a personal auto policy).

Use of Vehicles

Vehicle use is also a primary risk factor for consideration. Whether the auto is used every day compared to rarely, or whether it is used for multiple trips per day, or is taken to a location and stays there all day effects how much risk the vehicle is exposed. The routes that are taken can present hazards, such as narrow roads, tight turns, poor road conditions, blind curves and hills, pedestrians, and busy intersections. Each navigational event increases the risk for the driver. Weather has had a big effect on driver risk since driving began. Heavy rains, snow and ice, and high winds all present individual challenges for the drivers.

Other uses that affect the risk are how far the vehicle is driven, and what the vehicle is carrying. The longer the vehicle stays on the road, the more exposure it has to environmental events, other vehicles, mechanical failure, and driver error. The cargo being hauled can shift, be more susceptible to high winds, be oversized, or can be distracting in the case of a large number of people.

The jurisdiction within which the vehicle or vehicles are used is also an important consideration. In addition to the varying laws and regulations imposed by the Department of Motor Vehicle Safety, the 50 states vary with respect to the adoption of negligence rules, application of legal doctrines, such as joint and several liability, negligent entrustment, and respondent superior, mandatory provision for personal auto insurance, mandatory provision for underinsured and uninsured insurance and the minimum statutory limits that may be carried, to name a few. Two or more of these factors may act in concert with the risk factors identified to drive loss values, thus underscoring the importance for adopting stringent risk controls.

Understanding the Automobile Insurance Policy

The fleet of any business brings exposure to the automobile, workers' compensation, general liability, property, and umbrella insurance policies. Insurance coverage for the vehicles will typically be limited to the Business Automobile Coverage Form from the Insurance Service Office (ISO). This form is commonly referred to as the business auto policy (BAP). It is highly likely that an accident involving injuries to the workers in the vehicle at the time of the incident will be paid through workers' compensation coverage. It usually takes special circumstances to have a general liability or property policy involved in an automobile accident, and a very expensive loss to have an umbrella policy involved.

Whether or not the BAP responds to an accident and covers the damages that ensue depends on whether or not the vehicle involved is covered under the policy. The first test is to insure that the motor vehicle involved in the incident meets the definition of a covered “auto.” The policy defines a covered auto as:

1. A land motor vehicle, trailer, or semitrailer designed for travel on public roads, or
2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

Once it has been determined that the vehicle involved in the incident meets the definition of an auto, it is important to determine if that specific vehicle is covered on the policy. Each policy is written independent of any other policy; whether or not a specific vehicle is covered on the policy is determined by the symbols shown on the policy declarations page. Below is a list of commonly used symbols and their definitions.

- **Symbol 1.** Any auto that is driven by a permissive driver.
- **Symbol 2**. Only autos owned by the insured (and for liability coverage, any trailers not owned while attached to owned power units). This includes autos acquired after the policy begins.
- **Symbol 3**. Only the private passenger autos owned by the insured. This includes private passenger autos acquired after the policy begins.
- **Symbol 4.** Only autos owned by the insured that are not private passenger types (and for liability coverage any trailers not owned while attached to owned power units). This includes autos not of the private passenger type acquired after the policy begins.
- **Symbol 5.** Only autos owned by the insured that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes autos acquired after the policy begins, provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
- **Symbol 6.** Only those autos owned by the insured that, because of the law in the state where they are licensed or principally garaged, are required to have and cannot reject uninsured motorist’s coverage. This includes autos acquired after the policy begins, provided they are subject to the same state uninsured motorist’s requirement.
- **Symbol 7.** Only those autos described in item three of the declarations and for which a premium charge is shown (and for liability coverage, any trailers not owned while attached to any power unit described in item three).
- **Symbol 8.** Only the autos leased, hired, rented or borrowed by the insured. This does not include any auto leased, hired, rented, or borrowed from any employees, partners, members, or members of their households.
- **Symbol 9**. Only those autos not owned, leased, hired, rented, or borrowed that are used in connection with the business. This includes autos owned by employees, members, or members of their households but only while used in for business or for the owners personal affairs.

- **Symbol 19**. Only those autos that are land vehicles and that would qualify under the definition of mobile equipment under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

Each company will choose to cover their vehicles based on their needs. A company that does not own any vehicles may choose to use symbols 8 and 9; while a company that has a mixture of owned and non-owned vehicles may choose to use symbol 1, or instead use a combination of symbols 2, 8, and 9. There are a number of combinations of symbols that may meet each company's needs. It is important to discuss the specific needs of your company with your insurance agent or broker.

The BAP provides coverage to the company, as well as any person operating a covered auto with the permission of the named insured for bodily injury or property damage caused by an accident. Coverage includes indemnification for damages, as well as the duty to defend any party named in litigation and who is insured under the policy. The limits of insurance are listed on the declarations page of the policy. A typical limit of liability for an automobile insurance policy is $1,000,000. Uninsured and underinsured motorist coverage is also available, based on selected coverage symbols. Some jurisdictions make this coverage mandatory, subject to minimum financial responsibility laws, while others allow for the coverage to be rejected in total as long as the coverage was offered to the policyholder subject to certain criteria. Because workers' compensation (WC) benefits are usually provided, this coverage could be considered as a disincentive to managing WC exposures and therefore, it is possible to reject the coverage or select minimum limits where statutorily required.

Liability coverage under the BAP is extended to items other than the covered autos, such as mobile equipment, while being carried or towed by a covered auto. Coverage is automatically extended to temporary substitute vehicles while a covered auto is out of service because of breakdown, repair, servicing, loss, or destruction.

The cost of an auto insurance program can be affected by the vehicles being covered, the types of coverage selected, the limits of insurance, the geographic location of the autos, the type and use of the autos, the risk factors, and the loss history of the policyholder.

Understanding and Controlling the Risk

The controls for the risk factors are based on the age-old principles of risk management: avoidance, control, risk transfer, and retention. Some risk factors cannot be avoided or controlled. They include, but are not limited to, risk factors such as the location of operations, whether the vehicle drives in wintery conditions, whether it travels to multiple locations each day, and whether it drives in urban or suburban areas.

Since there are some risk factors that are very difficult to control, it is important for companies to be diligent controlling those they can. Some of those are:

Operators

One of the biggest challenges that a company has is identifying who their operators are. A covered operator is anyone who has permission to use a covered vehicle. Permission can be specifically given or implied. Companies typically have a good understanding of who has explicit permission to use the vehicle. These persons are generally employees who have been handed a set of keys and will use a company vehicle in the course of their employment. Other permissive operators can include other employees who don't normally drive but are asked to drive on occasion, subcontractors, temporary laborers, and family members of employees.

Implied permission can be perceived because an individual has *not been told* they are not allowed to drive the vehicle. For example, an employee who is permitted to take the company vehicle home but is not given any written restriction to its use may allow a spouse or child to operate the vehicle. At some point it may become common knowledge to supervisors and managers that family members use the company vehicle for personal use. If the behavior is known, and the employee is not told to discontinue it, it becomes permissive use. Specific written use agreements should be developed for all vehicles and be delivered to all employees. The employees should acknowledge in writing that they have reviewed and will abide by the agreement. When you create your agreement, keep in mind that anything that you don't prohibit may be considered permitted.

Companies should ensure that all operators are known to the company, have the proper license, and have a good driving record. Licenses can be verified through independent services or directly with the state agencies. Verification of the validity of the operator's license is just as important as the driver's record. Prior to learning the drivers' history, each company should establish a set of guidelines that defines acceptable driver history and unacceptable history. Many companies rely on the guidelines set up by insurance companies rather than establishing their own. The value in establishing their own criteria is when they move from insurance company to insurance company, they are less likely to have to terminate drivers because the new insurance company's guidelines are stricter than the prior carrier's guidelines. Driver records should be checked annually at a minimum and more frequently for employees whose primary role is driving.

In addition to verifying a good driver history, each driver should have to demonstrate their ability to operate the vehicle, and each employer should take measures to provide specific training on the equipment of each vehicle. Operators who are trying to turn the windshield wipers on are just as distracted as operators who are eating or using a cellphone while driving. Training and evaluation should not stop at the orientation level of an employee's tenure with the company. Annual driver refresher courses should be made available for all employees, and drivers whose history is deteriorating should be required to attend such training sessions.

These controls are critical to guarding against claims of negligent entrustment. Negligent entrustment is a cause of action in tort law that arises where one party (the entrustor) is held liable because they negligently provided another party (the entrustee) with a dangerous instrumentality (the motor vehicle), and the entrusted party caused injury to a third party with that instrumentality. Liability for entrustment is determined by applying the general principles of negligence, which are duty owed, duty breached, causation, and damages.

Negligent entrustment is generally found where the entrustee had a reputation or record that showed his propensity to be dangerous through possession of such an instrumentality. Where the claim is against an employer, the employer will be held liable if the entrustee's record was known to the employer or would have been easily discoverable by that employer had a diligent search been conducted.

The basic premise of negligence entrustment is that the use of a vehicle involved in an accident was in the control of the employer. Whereas an employer has no ownership or control over an employee’s vehicle, the employer cannot grant permissive use of that vehicle, and therefore should theoretically be immune from any negligent entrustment cause of action. Hence, MVR checks on employees who may have occasion to use their personal autos in the course of their employer's business could be awkward.

The doctrine of respondent superior is separate and distinct from the doctrine of negligent entrustment and implies the responsibility of the superiors on the actions done by their employees, agents, and subordinates when they are performing such actions during their assigned duties. The Latin word (rehs-pond-dee-at superior) means 'let the master answer.' In essence, this is the doctrine of vicarious liability. One can easily understand how the doctrine would apply in circumstances involving the use of a company-owned, hired or borrowed auto, wherein permissive use was granted to an employee. An employee's use of their personal auto substantially complicates the applicability of this doctrine, especially if the employee is co-mingling personal and business travel at the time an accident occurs.

Distracted driving is a key contributor to motor vehicle accidents. In the past, distractions may have been limited to reviewing written material, eating, talking to passengers, and adjusting the radio. In the past ten years, many technological distractions have brought themselves into the driver’s realm. Today, drivers are distracted by talking on a mobile phone, texting, listening to music or books using earphones, and operating a computer. Cities and states are talking action to prohibit these activities, but employees continue to feel pressure (whether real or imagined) to be productive every moment they can, including while they are driving. Having a specific written policy prohibiting these actions is a start, but not where the effort should end. Like wearing seatbelts, other learned driving behaviors take time to become the norm. Constant reminders and good role models are needed to in this area just like every other area of safety.

Vehicles

Whether the autos are used for long-distance travel, short local runs, or sit in a locked yard 90 percent of the time, if they aren’t taken care of, they are more likely to have mechanical problems that may lead to accidents. The maintenance of the vehicles should be a priority rather than an afterthought. Business owners have been manually tracking and scheduling the maintenance needs of their vehicles for many years. There are other options than manual tracking.

If a company leases the vehicles, many of the leasing companies will track the regularly schedule maintenance of the vehicles and push reminders to the drivers or managers. There are a number of software programs that can be purchased on the open market that will perform the same function. These programs require someone to enter the vehicle information into the system and maintain the vehicle list.

The easier it is for the operators to have the work completed, the better the probability that the maintenance will get done in a timely fashion. Pushing information to the drivers about when their vehicle needs to have service is not always enough. Having fleet accounts set up at convenient garages, so the driver can have the work done and the invoice is sent to the company, removes any concerns about the employee's personal cash flow.

It is equally important for drivers to conduct and document regular inspections of their vehicles. These steps create a record of commitment by the company to keep their vehicles in good working order and allow the driver to have minor repairs done before they become serious. The record-keeping process is very important. There could be an incident where an injured third party claims that equipment failure was a contributing factor and that the driver's employer knew or should have known that the vehicles were poorly maintained. In this scenario, if increased negligence on the part of the employer may be proven, then the financial payment to the claimant may be increased through punitive damages. By producing regular inspection sheets, the company may be able to prove that they were not negligent.

The non-owned vehicle, owned by the employee and driven for the company's business, needs to be managed to a lesser degree than the owned vehicles. Since these vehicles are typically covered on the BAP as supplemental coverage after the primary insurance on the vehicle (typically a personal policy) has been exhausted, it is important to insure that the primary insurance exists and that the driver is qualified to drive the vehicle. Although the concept of negligent entrustment does not apply to these drivers, they should be included in all driver history checks and all driver training programs. In addition to those items, the employee/driver should provide proof of insurance to the employer every six months. Minimum insurance limits and coverages should be required by the employer and, in most cases, state minimum liability requirements are inadequate for the employer's needs. Keep in mind that the BAP steps in as soon as the limits are spent and that the employer has very little control of how the vehicle is maintained.

Use of Vehicles

Managing the use of the vehicles is a key method of managing the risk. It is important for a company to know whether the vehicle is used strictly for business purposes or for personal purposes as well. A company has an expectation that a vehicle is being driven from one location to another while carrying passengers, material, equipment, or towing a trailer. What is not typically known is what permissive use is being done while away from the job.

Every vehicle should be designed for the job it is asked to do. A few examples of questions to ask are: Is there a seatbelt for every passenger? Is the vehicle and tow package rated for the trailer it is pulling? Was the extra weight of the equipment rack, tools, and ladders taken into consideration when the towing capacity was calculated? In some parts of the country, it is common to see a painter driving a van with four feet of ladders stacked on top of the van. A half-ton pick up is designed to handle a payload of about 1000 lbs; some can handle more. Before the materials are loaded onto the truck, it is important to understand how much of that payload capacity is taken up with some common items that may already be present, such as an equipment rack, tool box, and tools. In some cases, this could already consume 25 percent of the available payload.

Knowing *where* a vehicle is used is just as important as knowing *how* it is used. When a new driving route is started, it should be driven by management. An experienced supervisor can examine the route, whether it is for sales, deliveries, a new construction site, or a new office location, and identify any challenging parts of the trip. Once identified, it may be possible to adjust the route to make the trip safer and in time, quicker. Areas to try to avoid include school zones, high-traffic and shopping centers. intersections, blind curves, hidden driveways, steep grades, construction zones, and roads with maintenance problems.

There are electronic tools available and used by many companies to monitor where the vehicles go. Company cellphones can have their GPS program enabled or elaborate GPS programs can be installed. Tracking system software can record speeds, travel directions, and stopping points. The system can be programmed to send information emails to specified people when a vehicle is exceeding a posted speed limit, is used during certain hours, or enters an area designated within the system. These records can be used to manage productivity, hold employees accountable for their time, and even defend against a claim if it can be proven that a vehicle was not in an area where it is accused of causing an accident.

Conclusion

Most businesses have a reasonable understanding of their business auto policy (BAP), and they understand what coverage they want to have. There are many situations that the BAP does not provide the coverage expected or may cover exposures that are unexpected. For that reason it is important for each business owner to evaluate their policy with the assistance of their insurance broker and discuss at length the known exposures. The business owner also needs to search out the less obvious exposures and decide how best to manage them as well.

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