

Manager/Supervisor Risk Management

#8– 11/29/2011

A twice weekly e-mail training for YCPARMIA members

TOPIC: AUTO LIABILITY – Entity/Employee owned vehicles (a bit of a dry subject – but important)

As previously discussed, the employing entity has legal liability for the injuries and damages caused by their employees and volunteers while operating vehicles during the course of employment. If the employee/volunteer is operating an entity owned vehicle they are covered by their employer's participation in YCPARMIA up to our \$40M limit per occurrence. An accident outside the scope of employment or permission could limit YCPARMIA coverage to the state minimum limits (15/30/5).

Things are a bit different when the employee/volunteer is operating their own vehicle on entity business. The entity remains responsible to defend and indemnify under the California Government and Vehicle Codes, but the California Insurance Code steps in, and determines the order of payment. Insurance Code section 11580.9(d) states that where there are two or more policies providing coverage on the same motor vehicle involved in an accident, it is "conclusively presumed" that the private insurance on the vehicle pays first, and the employer's coverage sits in excess. This means that the employee's personal insurance has to pay out their policy limits before their employer's liability coverage through YCPARMIA is triggered – there is no right to reimbursement.

That leads to the question of whether a private auto policy covers the employee's vehicles used on entity business. The answer is that unless the policy has an unusual exclusion, there is coverage. The standard personal auto policy's definition of "insured" includes any person using the "covered auto," and any person or organization (read employer) that might have legal responsibility for the operation of the vehicle by the insured (read the employee). The only exclusion in the standard auto policy for business use involves persons employed or engaged in the "business" of selling, repairing, servicing, storing, or parking vehicles..."

In light of all of this, a supervisor/manager should probably be aware of their entity's Auto Use Policy to determine what it says about an employee using their own vehicle on entity business. It should also be recognized that the State requires that the employee insure their vehicle for liability; the State's (inadequate) minimum financial responsibility limits are 15/30/5, which means that there is \$30K to pay for all bodily injury, but no one individual can get more than \$15K – there is also a \$5K limit for property damage (our Board policy requires YCPARMIA's employees to carry minimum limits of 100/100/50). The insured's financial liability is not capped at their coverage limit, but can continue above that; the coverage limit merely determines where the insurance carrier's obligation to defend and indemnify their insured ends. The insurance on the employee's vehicle serves to insulate the employer from a potential financial exposure, so therefore the coverage limits need to be sufficient to protect the entity's financial assets from loss.

Next topic: Physical damage to vehicles