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# ADDITIONAL INSUREDS – MAKING SENSE OF A COMPLICATED ISSUE

## Additional Insureds – Making Sense of a Complicated Issue

15 June 2013



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Many commercial auto

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It seems at times as if nearly every party that our trucking customers interact with desire additional insured status on the trucker's commercial auto policy. In reality, most of these parties are already insureds under the policy language. It is the intention of the commercial auto policy to cover the insured's liability for operation of a motor vehicle, and nearly every other party who may be deemed liable for the insured's actions. Generally, the only exceptions are certain vehicle owners, and those in the business of selling or servicing vehicles — in other words parties who should have their own insurance coverages to look to.

Despite this, insurance professionals must navigate a tangled web of Additional Insured requests from customers of our policyholders. Understanding who is, and who is not, covered already under the policy, and what endorsements should be used for those parties seeking AI status is of great benefit as we deal with our commercial auto customers.

Many years ago, the Business Auto Coverage Form was the primary method to insure trucking risks. A large number of the Additional Insured Endorsements in use today are no longer necessary, but were developed in response to shortcomings in the BA form which had been designed for private carriers and did not react well to the needs of trucking customers.

The Business Auto Form is problematic in terms of how it addresses leasing agreements and trailer exchanges – common activities in the trucking industry. Under the BA Form, vehicle owners such as leased owner / operators are not afforded insured status, and trailer owners are given such only when the trailer is physically attached to an insured power unit. In addition, the BA Form provides primary coverage for vehicles owned by the insured, but excess coverage for autos not owned by the insured. When viewed in context of what the form was designed to do – cover private carriers who owned their own fleet of vehicles – this makes perfect sense. For trucking customers though, who often use vehicles that they do not own in their business, the form has serious shortcomings.

The Truckers Coverage Form was designed to overcome these obstacles, but presented its own set of problems when deregulation of the trucking industry began with the Motor Carrier Act of 1980. Prior to deregulation, all truckers needed a Certificate of Public Convenience and Necessity from the ICC, and consequently the Truckers Coverage Form included language governing who was an insured under the policy, and whether the policy would respond on a primary or excess basis, based on the use of operating rights. Post deregulation though, not all truckers were required to maintain operating authority, and many business auto policyholders continued to enter into arrangements for non-owned vehicles similar to those of the trucking industry.

The end result was the introduction of the Motor Carrier Coverage Form in 1993. Shortly thereafter, ISO withdrew the Truckers Coverage Form. The BA Coverage Form continues in existence, being used primarily by carriers catering to not-for-

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hire risks. Today most businesses – trucking and private carriage – are covered under the MC Coverage Form which does a much better job of responding to the needs of today's trucking and business auto customers than did the prior coverage forms.

For the context of this article, we will examine the "Who Is an Insured" section of the Motor Carrier Coverage Form. Although this differs somewhat from the corresponding section of the Business Auto Coverage Form in a few important ways, much is similar between the two forms and the differences are probably best addressed in another article.

Please refer to the relevant section of the coverage form found at the following link and cross-reference with the information below:

[www.interstate-insurance.com/flyers/MotorCarrierCoverage.pdf](http://www.interstate-insurance.com/flyers/MotorCarrierCoverage.pdf)

*The following are "insureds":*

1a. You for any covered auto. The named insured is of course afforded insured status.

1b. Permissive users, such as the insured's employees, are afforded insured status.

1b exception (1) . The owner of an auto which the insured hires or borrows is excluded from coverage. Although the named insured and permissive users are afforded insured status when they hire or borrow a vehicle from others, the vehicle owner is not. It's logical to assume that the vehicle owner would have his / her own policy covering liability for his / her own actions.

1b exception (2). Once again the insured and permissive users are covered for use of an auto owned by someone else – the insured's employee in this case – however the vehicle owner should have his / her own policy to look to for their liability coverage.

1b exception (3). Parking services, garages, sales lots and similar entities should have their own coverage in force to look to.

1b exception (4). Anyone other than the insured, the insured's employees, and the insured's permissive users are excluded from coverage when moving property into or from a covered auto. Once again, other insurance coverages are designed for this exposure, such as the shipper's workers comp coverage for instance if a shipper employee is injured while loading an insured's auto.

1b exception (5). This is substantially the same as exception (2), however deals with autos owned not by employees of the insured, but rather by partners or members. The named insured and permissive users are afforded coverage when hiring or borrowing a vehicle owned by a partner

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or LLC member, but the vehicle owner should look to his / her own liability policy for coverage.

1c. While certain vehicle owners are not afforded coverage under the above exceptions, trailer owners are excepted by this provision. The owner of a trailer that the insured has hired or borrowed is protected under the insured's policy as long as the trailer is connected to an insured power unit or is otherwise being used in the insured's business (this is a major difference from the BA Form wherein the trailer owner is protected only when the trailer is attached to an insured power unit).

1d. The lessor of a covered auto while leased to the insured if the agreement does not require the lessor to hold the insured harmless. This is where owner / operators find insured status under the policy as long as the intention of the insured is to cover them on a primary basis (otherwise the owner / operator would hold the insured harmless under the lease agreement, in which event the owner / operator's policy would respond on a primary basis).

1e. This provision gives insured status to anyone not otherwise excepted by the policy who may become liable for the insured's conduct. This type of liability is known as "vicarious liability" or "imputed liability", and occurs when a person was not directly negligent, but has become responsible for the insured's actions. Nearly everyone that a trucker hauls for or to (shippers and receivers) are given insured status by this provision of the insuring agreement.

So now that we understand who is, and who is not, an insured under the policy, how do we handle the myriad demands of those wishing additional insured status under the insured's policy? Here's a look at the common endorsements for the Motor Carrier Coverage Form. All of these endorsements modify (or in one case reinforce) the "Who Is An Insured" section of the policy, and some also modify coverage for certain described vehicles.

Employees as Insureds – CA9933. An employee of the named insured is not an insured if the covered auto is owned by that employee or another member of the employee's household. Most typically, the employer will find their protection under Non-Owned Auto Coverage when an employee uses their own auto in the insured's business. If the employer wishes to extend policy protection to the employee, the standard ISO endorsement for this purpose is "Employees as Insureds". This endorsement modifies the "Who is an Insured" provision to include as an insured an employee while using his or her own automobile in their employer's business or personal affairs. Coverage under this endorsement applies as excess to the employee's personal auto limits. It is highly recommended that the employees are required to obtain relatively high limits on their personal auto policies when this endorsement is used, as the employer's policy is triggered upon exhaustion of the employee's personal auto limits.

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Employee as Lessor – CA9947. While the Employees as Insureds Endorsement extends coverage to the employee on an excess basis, the Employee as Lessor Endorsement is used when the employer wishes to extend coverage on a primary basis. Often employees of a trucking firm will own autos and lease them to the trucking company. Many times this occurs with corporate officers, or even the owner who may own the autos individually and lease them back to the corporation. If a proper lease is in place, the vehicle owner would be afforded insured status under provision “1d” of the “Who is an Insured” section of the policy. However coverage for the vehicle is limited to only those times when used in the business of the motor carrier, which would necessitate that the vehicle owner purchase non-trucking coverage to fill in the gap. The Employee as Lessor Endorsement fills that gap for the vehicle owner. The specific auto(s) is / are described in the endorsement which modifies them to be considered a covered auto you own (i.e. all the time protection as opposed to only when being used in the insured’s business). And the “Who is an Insured” provision of the policy is changed to include the employee as an insured. Keep in mind that this endorsement is used for employees only; leased owner / operators who are not employees must be handled differently.

Hired Autos Specified as Covered Autos You Own – CA9916. It is quite common for truckers to lease autos from non-employees, such as owner / operators. If the insured’s intention is to provide primary coverage for leased owner / operators, Endorsement CA9916 is necessary to extend insured status to the owner of the leased vehicle under the Business Auto Coverage Form. This endorsement is not necessary for that purpose under the Motor Carrier Coverage Form however, as provision “1d” of the “Who Is An Insured” part of the policy makes the lessor an insured as long as the lessor does not hold the insured harmless (which is done by contract when the lessor intends to provide the primary insurance coverage). With either coverage form, Endorsement CA9916 may be used to modify coverage for the vehicle. In the absence of this endorsement, the lessor is an insured only when the leased auto is being used in the insured’s business. This leaves a coverage gap for the lessor which must be filled with non-trucking coverage for those under exclusive lease to the insured (or primary coverage for those not under exclusive lease). Endorsement CA9916 changes the description of the auto listed in the endorsement to consider it a covered auto you own (i.e. all of the time protection), and not a covered auto hired, borrowed or leased (protected only when being used in the insured’s business). When this endorsement is attached to the policy, there is no need for the vehicle owner to purchase separate non-trucking coverage.

Additional Insured – Lessor – CA2001. This endorsement is used for financial institutions which hold a lien on the insured’s vehicle. Since they are a vehicle “owner” during the duration of the lien, this endorsement is necessary to extend insured status to them. The endorsement changes coverage to make the auto a covered auto you own (thereby extending all of the time coverage), adds the lessor as an insured, contains a loss payable clause guaranteeing payment of the lessor’s insurable interest in the event of a covered physical damage loss, and includes a promise to notify the lessor if the policy is cancelled.

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Designated Insured – CA2048. All of the situations above deal with vehicle owners, who are often excluded from coverage under the policy without the inclusion of an Additional Insured Endorsement. As we all know however, shippers, receivers, and other trucking companies often demand additional insured status. The vicarious liability section of the “Who Is an Insured” section of the policy extends coverage to “anyone liable for the conduct of an insured. . .”. Therefore there is no need to identify these parties as additional insureds – the policy already extends coverage to them. Despite this, it is common for these entities to still require additional insured status. Responding to this industry trend, ISO developed the Designated Insured Endorsement. This endorsement affirms that the named party is an insured for liability coverage, but only to the extent that they qualified already under the “Who Is an Insured” provision of the policy. In short this endorsement modifies nothing under the policy, serving only to placate the demands of the entity requiring proof that they are insured under the policy. Our good friend Tommy Ruke has referred to this as an endorsement for those with low self esteem – if you don’t think you’re an “anyone” (as per the vicarious liability wording), here is an endorsement to prove that you are.

Two important questions to ask every commercial auto customer are:

1. Who owns the auto(s) that you are seeking coverage for?
2. What relationship does the entity seeking additional insured status have with your operation?

Knowing the answers to these two questions will enable you to structure the policy coverages properly. Still have questions? Give your Interstate underwriter a call – we’re here to help.

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