

Brokers' Beat...

Alliant

One of the issues municipalities frequently encounter is the rental of vehicles by employees in the course and scope of their duties while traveling out of the area. This article will focus on the liability exposure for this issue.

Often, employees believe when they rent a vehicle in conjunction with their employment, they are renting on behalf of the City and believe the City will assume all of the risk. And, conversely, the City believes it is only responsible for reimbursement of the rental charges. In fact, the rental car transaction is a contractual relationship between the employee and the rental car company as evidenced by the rental contract in the name of and signed by the employee, with no reference to the City. However, if a serious accident occurs while the employee is operating the rental vehicle in the course and scope of his employment, the interests of the City and the employee will be intertwined.

For the liability exposure, the rental car company generally provides primary liability insurance that meets the minimum financial responsibility requirement in all 50 states and provides coverage for the renter/employee and the rental car company. This primary coverage may provide some coverage for the City's vicarious liability exposure in the operation of the rental car, but, again, the primary liability coverage is generally minimum limits and will exhaust quickly for the employee, City and rental car company in the event of a serious accident.

Because the rental contract is a personal contract in the name of the employee, the employee's Personal Automobile Policy (PAP) will automatically provide limits for the employee's interest excess of the primary liability coverage of the rental car company. Of interest here is that the PAP, with some exceptions, will follow household drivers, on an excess basis, no matter what vehicle they are driving,

be it a borrowed car or a rental car. But, in this case, the PAP will only provide coverage for the household driver and will provide no benefit for either the rental car company or the City.

MVRMA's Liability Coverage Document will pick up coverage for the City excess of the primary liability insurance. And, because the MVRMA Liability Coverage Document will also cover the employee as a Covered Person while in the course and scope of his employment, it will probably share coverage for the claim with the employee's PAP up to its limits. After the PAP limits are exhausted, MVRMA's \$10 million limits will provide coverage for the City and the employee, again assuming that the employee was in the course and scope of his employment.

The employee will probably be very upset to have his claim attach to his personal insurance, but the language of the standard PAP is very clear with regard to this exposure, and there is probably no option.

It is important that employees understand the issues discussed above. Most employees believe when they rent a vehicle under a reimbursement arrangement with the City, that the City assumes all responsibility for the rental transaction. In fact, the employee is renting the vehicle personally and it is his rental car, not the City's. Because it is a personal transaction, there is a strong possibility his PAP will be automatically triggered in the event of an accident, and that could result in higher premiums at the next renewal. And, because the employee also receives Covered Person status under the City's MVRMA liability coverage, there is a strong possibility the MVRMA coverage will become involved in the event of a serious accident. In other words, the liability interests of all three parties could become intertwined.

There are rare situations where a City might make advance arrangements with a single rental car company on a blanket basis to rent to individual employees in the course and scope of their employment. In these situations, the contract is probably executed with the City, and the employee's PAP may not be involved.