

INSURANCE FOR EMPLOYEES DRIVING ON CENTER BUSINESS

A couple of years ago, a Center employee, Miss Barbara, was driving a client, Erin, to a doctor's appointment in her own vehicle. This was a common practice and she did the same thing for other clients, sometimes two or three times a week. On this day, she was taking the same route she always took, observing speed limit and stop signs. Unfortunately, as she drove through an intersection she failed to notice a boy, Jeff, driving a pick up truck who was already in the intersection. Miss Barbara smashed into Jeff's truck, injuring both her passenger and herself. Injuries were more severe for the client since she was riding on the passenger side of the front seat where the impact occurred. Both women were taken by ambulance to the local hospital. The Center employee, Miss Barbara was treated and released while the client, Erin was treated for her injuries and kept in the hospital overnight for observation. The boy, Jeff suffered only a few bruises. The Center driver was ticketed for **failure to yield right of way**.

Although this description is fictitious, it represents many of the claims handled by the Texas Council Risk Management Fund over the years. In many cases, there are no injuries and only minor property damage. In other cases there have been catastrophic injuries, including fatalities and totaled vehicles. One of the key questions after the accident is whose insurance responds to the claim? This bulletin will examine the questions raised by the scenario above and look at a number of issues that should be considered when employees drive on Center business in Center vehicles or their own.

TCRMF Automobile Liability Coverage

The automobile liability insurance provided by the Texas Council Risk Management Fund is issued in the name of the Center, but the policy describes who is a "covered party." The definition includes the "member" which is the Center itself and

Any officer, director, elected or appointed official, any member of a board or commission of the member, and any employee of the member, when such persons are acting within the scope of their duties or employment as such.

The coverage also extends to

Any officer, director, elected or appointed official, any member of a board or commission of the member, and any employee of the member, when such persons are acting within the scope of their duties or employment as such with respect to use of a non-owned automobile while such automobile is being used in the business of the member.

The key words are "while such automobile is being used in the business of the member." In the example of an accident described above, any liability resulting would be covered by the TCRMF because the employee was "acting within the scope" of her duties and the automobile was "being used in the business" of the Center. A "non-owned automobile" in the accident described above is Miss Barbara's car.

This seems simple doesn't it? Well, there is one complicating factor and that relates to the vehicle owner's personal automobile insurance. Since the owner of the vehicle is required by Texas law to carry liability insurance and that insurance covers the owner and occupants of her car, it is **primary**. "Primary" means that it is the first to respond with coverage in the event of a claim. The coverage provided by the TCRMF would apply in "excess" over the personal coverage. The language in the TCRMF policy states

As respects non-owned automobiles, the coverage provided by the agreement shall be excess over any valid and collectible insurance available to the member or other covered party.

The employee driving the car is a "covered party," and she has her own car insurance so the TCRMF coverage for the Center would be excess over her insurance. For example, if she has a policy with the minimum required limits of liability in Texas and she was at fault for the accident, a \$100,000 claim by the injured client would be covered

\$30,000 by the driver's insurance and
\$70,000 by the Center's insurance.

Minimum liability limits in Texas are currently \$30,000 each person, \$60,000 per accident for bodily injury and \$25,000 for property damage per accident. The Texas Tort Claims Act provides that a public entity's liability for automobile accidents is limited to \$100,000 per person.

This is why the TCRMF recommends that the Center seek current evidence of personal automobile insurance from every employee who drives their personal vehicle on Center business. The Center can also ask employees to sign an acknowledgement of their requirement to carry at least state minimum limits as a

condition of employment. Those employees receive mileage reimbursement for their use of a personal vehicle that is intended to cover gasoline, oil, maintenance, tires, repairs and insurance.

All of the preceding discussion involves liability to others as a result of the accident. The only coverage available for damage to Miss Barbara's car is her own policy if it provides collision coverage.

A Solution – Increased Non-Owned Auto Liability Endorsement

To alleviate Centers' exposure to situations when an employee has no coverage, the Texas Council Risk Management Fund offers an endorsement that eliminates the gap in coverage. The endorsement is called the "Increased Non-owned Auto Liability Endorsement." The Center pays an additional premium based on the total number of employees who work at the Center. The Center's insurance then becomes "primary" when the employee operating their own vehicle on Center business does not carry the required minimum Texas limits of liability and causes an at fault accident.

This endorsement does not eliminate the need to check for valid insurance for your drivers, but it does make sure the Center is protected from sudden cash flow shocks and the negative consequences of trying to recover money from employees who may not work for the Center anymore.

Another Scenario

Let's assume, instead that Jeff in the pick up truck ran the stop sign as Miss Barbara, the Center employee drove through the intersection. Jeff smashed his truck into her car, injuring both her passenger, Erin and herself. Injuries were more severe for the client since she was

riding on the passenger side of the front seat where the impact occurred. Both women were taken by ambulance to the local hospital. The Center employee was treated and released while the client was treated for her injuries and kept in the hospital overnight for observation. Jeff suffered only a few bruises and was ticketed for failure to yield right of way and **not carrying liability insurance.**

In this case, the boy's insurance, if he had any, would respond to the injuries to the Center employee and her passenger and property damage done to her vehicle. However, with no "valid and collectible" insurance on the pick up driver, whose insurance will respond? The primary coverage would be the Center driver's uninsured motorists coverage. Uninsured/Underinsured motorists coverage provides bodily injury and property damage limits of liability that are available when someone else is at fault who either has no insurance or does not have enough to cover a claim fully. If Miss Barbara did not carry uninsured motorists coverage (a bad idea not to have it) there would be no coverage for the claim.

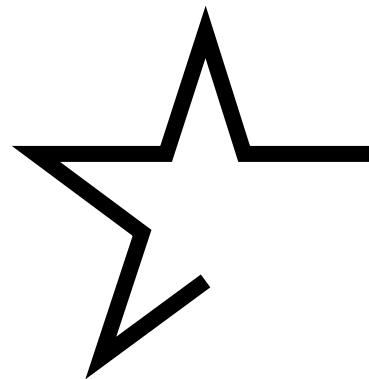
An Added Complication

In the case cited above, let's add the client's family to the situation. They decide to file suit against the employee to try to recover other damages for pain and suffering that were not considered in the payment of medical bills. The family sues the employee for \$250,000 then discovers that she only has personal insurance coverage up to the state required minimum limits of liability, not near enough to pay all they ask. They decide to add the Center to the suit, or "implead" them in their search for deeper pockets. A provision of the Texas Tort Claims Act then takes effect that allows the employee to be excluded from the suit, leaving the only avenue open to the family a suit against the Center. The applicable section of the law

(section 101.106) requires that a plaintiff (the client's family) choose between suing the employee or the Center, but not both.

If the plaintiff sues the center and the employee, the employee is dismissed irrevocably and forever from the suit upon a motion by the Center's defense attorney. If the suit is first against the employee and the Center is added later, the plaintiff must dismiss the employee from the action, leaving their only recourse against the public entity. This provision of the law benefits the employee by removing them from the suit. This brief explanation is an oversimplification, but it does show that both the public entity, the Center, and the employee have protection. It is crucial to get competent legal representation in the event of a suit. The Texas Council Risk Management Fund provides members legal counsel who can provide them defense or directs them to local attorneys who know the protection of the Texas Tort Claims Act.

The table on page 4 illustrates who is responsible for payment of automobile liability claims under several scenarios.



Who Pays?			
	Miss B at fault	Jeff at fault	Jeff at fault, no insurance
Injury or Damage to			
Jeff's Truck	Miss B's insurance	Jeff's insurance	None
Jeff	Miss B's insurance	unknown	None
Miss B's Car	Miss B's insurance	Jeff's insurance	Miss B's insurance
Miss B	Center WC	Jeff's insurance	Center WC
Center Client	Miss B's insurance plus Center's *	Jeff's insurance	Miss B's uninsured motorists insurance

** if the client's medical costs exceed the limits of liability in Miss Barbara's insurance policy.*

If Miss Barbara does not have insurance, the Center's coverage would respond only if she was at fault and pay for the injuries to the client. The Center would have no liability to Barbara for damage to her vehicle. Barbara's injuries would be covered by Workers' Compensation because she was injured while performing her regular duties for the Center. Jeff is out of luck because he did not have insurance and he caused the accident.

Other Risk Management Considerations

The Texas Council Risk Management Fund is a self-insurance pool whose members share risk with the Fund. Therefore, the Center has a direct interest in the financial impact of claims. The Board of Trustees of the Fund has adopted certain policies designed to help reduce risk and preserve the capital of the Fund. One of these risk management measures is the qualification of employees who drive on Center business either in their own cars or Center vehicles. The policy requires members to check driving records or Motor Vehicle Reports (MVR's) of employees for their driving history. A record

that includes too many violations will make an employee ineligible for coverage under the Center's insurance policy. If the driving record warrants, the driver will be excluded from coverage as a driver of Center vehicles and as someone who would be covered under the "non-owned" coverage protection described above. The purpose of this is to reduce the potential for automobile accidents that injure the Center's clients, its staff or the public caused by drivers who do not have a safe driving history.

In general, a driver exclusion issued by the Fund means that an employee is no longer covered under the Center's automobile liability insurance and should not be allowed to drive on Center business. If the employee's duties involve driving, the Center should consider if there are non-driving duties to which the employee can be assigned. To help prevent the hiring of people who will have to be excluded, the Fund provides an online driving record check capability that will return driving records within just a couple of hours.

The Center and the Fund also want to make sure that an employee who drives for the Center complies with the financial responsibility law in Texas and carries personal insurance for their vehicle. Although the “non-owned” coverage discussed in the early sections of this bulletin still applies to accidents when an employee is at fault, compliance with the law is still important. If the Center has not purchased the additional non-owned coverage, there would be a significant gap if the employee did not carry their own insurance. The Center should request evidence of insurance such as a copy of the individual’s proof of insurance card on a regular basis. Some centers request this evidence every time an individual submits a mileage voucher. Others request evidence on an annual or semi-annual basis. Another alternative is a signed acknowledgment by the employee of their obligation to have liability insurance on the vehicle they use on Center business.

Vehicle Safety

One of the Center’s most important missions is to provide for the safety of its clients and employees. An employee who drives for a Center should have a vehicle that has a current state inspection sticker and is in good mechanical condition. The vehicle should be clean, undamaged and uncluttered. Loose items inside the vehicle can become deadly missiles in the event of collisions. All safety equipment should be in good working order and tires, brakes, turn signals, headlights, wipers, mirrors, seatbelts and airbags should work effectively. This applies to Center owned vehicles as well.

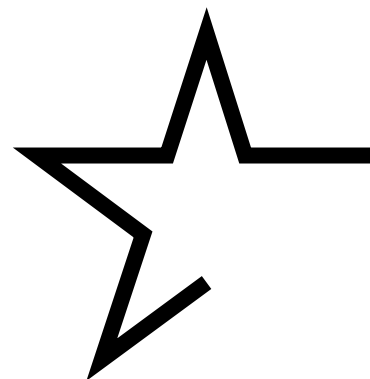
Clients should be safely belted in the vehicle and comfortable. If an employee can not safely or comfortably transport a client, they should find another means of transportation such as a Center van or public transit. Another important consideration is the safety of the employee while they are transporting a client. The Fund

has experienced several claims for injury to employees who are assaulted by clients during transport. The employee should know the history of a client and be aware of any tendency for violence.

Employees should carefully plan their schedule during the day so there is not time pressure during their travel from one client to another. Good defensive driving techniques will help control a tendency to hurry from one location to the next. Routes should be planned to avoid areas of congestion, construction or particularly dangerous intersections or stretches of road.

Safe driving will help employees and clients avoid injury and help the Center avoid additional costs due to claims. Although the Center has automobile liability coverage in place, the best result is no accident, no claim, no injury, no property damage and no bad publicity for the Center.

If a center employee does become involved in an accident, however, the checklist on page 6 provides guidance on what to do in this situation.



ACCIDENT CHECKLIST

If you are involved in an Accident...

1. Assure your safety and the safety of others in your vehicle.
2. Assure the safety of others at the scene.
3. Summon police, fire, ambulance.
4. Move to a safe place, off the roadway and away from approaching traffic.
5. Do not admit fault.
6. If the police respond to the scene, tell them exactly what happened and about any witnesses.
7. If the police do not respond, exchange insurance information with the other party, but do not admit fault.
8. Give out only the information that is on the insurance ID card in your vehicle.
9. Get the same information from the other party and contact information from witnesses.
10. If your vehicle is drivable, leave the scene safely and return to the Center to report the accident and make yourself available to provide details needed to report the claim to the TCRMF.
11. If the vehicle is not drivable, arrange to have it towed back to the Center or a repair shop.
12. If you are injured in any way, seek medical attention before you do anything else.