



RECOVERY NEWS



Recovery Specialist Insurance Group

“Remove the Liability Before Removing the Vehicle”

SEPTEMBER 2011

This Issue...

Should've Known Better..... 1

Understanding Endorsements 1

A “Safer” View of Your Company..... 2

Employee Appreciation..... 3

New Laws Raise Coverage Issues 3

How to Find Us..... 3



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IN THE NEWS...

SHOULD'VE KNOWN BETTER...

Negligent Entrustment - The act of leaving an object, such as an automobile or firearm, with another whom the lender knows or should know could use the object to harm others due to such factors as youth or inexperience. <http://legal-dictionary.thefreedictionary.com/Negligent+Entrustment>

So as not to be confused here, the term “lender” in this case isn't referring to a client lender, but a lender as in the person who gave access to another the use the auto, firearm etc. But what does this mean to you?

It means in short that you can be held accountable for the acts of your drivers if you knew or even should have known that there was a potential for trouble. Remembering one of our most important risk management lessons, that a driver's MVR is their resume, should you think twice now about

adding that driver that has a history of violations (even if it's only one DUI or only seems like several minor violations)? Should you reconsider hiring that 18 to 20something driver and putting him/her on the road unsupervised in your tow truck?

As a business owner in your chosen profession, should you knowingly send someone with an aggressive personality or a history of violence into a possible tense situation with a debtor where you never know what may happen next? You may be thinking that to do what you do, you need someone aggressive – but as society becomes increasingly more willing to sue for anything and everything and “ambulance chaser, wallet weasel type” lawyers egging these types of folks on with promises of cash – you may want to take a step back and rethink that philosophy. ■

UNDERSTANDING ENDORSEMENTS...IS YOUR POLICY A FORTIFIED CASTLE OR A HOUSE OF CARDS?



Insurance is one of the most highly regulated industries in business today. As such the regulatory bodies that govern insurance try to standardize policies as much as possible to make it easier to understand. Most every commercial insurance policy starts with a standard General Liability (GL) policy form and

is “tweaked” to the specific industry it is for by adding manuscripted endorsements to give specific types of coverages. In our industry that key specific endorsement is the one for “Wrongful Repossession”.

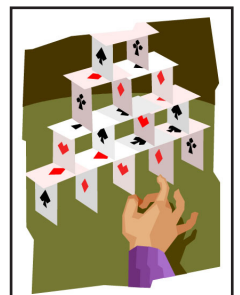
Wrongful Repossession is more than just two words that appear on a certificate of insurance, but if you're working with an inexperienced agent or carrier or a less than reputable agent it may end up being just that – two words with no real meaning.

The problem is that most insurance agents, insurance agents, lenders, forwarders and compliance companies do not understand repossession insurance or in some cases even the repossession industry enough to know how a proper Wrongful Repossession endorsement should read. And as long as the words appear on the certificate – they consider the subject closed. That is until...claim day. Then the real value in a properly written endorsement becomes suddenly crystal clear.

For example, would you want the wrongful repossession endorsement in your policy to provide coverage in cases when you or your employee intentionally repossessed the wrong car? Keeping in mind that intentional acts are excluded from all policies? What are you left with? Nothing. What you have is a certificate that can have the words Wrongful Repo typed in, but an endorsement and an exclusion that take the coverage away as fast as it was put in. Where does that leave you?

As we've said before, insurance is the one expense that everyone is required to have but hopes never to use. When the time comes that you must use it, you need to have a strong foundation that has been properly built upon to give you the coverage you need and expect that you have – so your business, assets and livelihood are protected by the walls of that fortified castle. This is where RSIG's experience and a history of advocacy for the repossession industry speaks volumes.

If not you're left with the house of cards that has no stability and can tumble at any moment; collapsing on all that you've built and worked hard to maintain. ■



A “SAFER” VIEW OF YOUR COMPANY

- from the desk of: Barbara Kraus-Applebee, Program Administrator, PRO Insurance Services & Dana Loan



If you travel across state lines, you likely have a USDOT or Motor Carrier (MC) Number; if so, you should “Search” the Safer website by your USDOT or MC Number to view publicly available motor carrier safety data on your company. <http://ai.fmcsa.dot.gov>

The FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION webpage has been revised to allow access to the Safety Measurement System (SMS). This new methodology to determine safety fitness of motor carriers replaced the SAFESTAT system in December 2010. The “Behavior Analysis and Safety Improvement Categories” (BASIC) categories were expanded to SEVEN score intervention thresholds (previously four). Overall Status is determined by the results of the motor carrier’s on-road performance over the previous 24 months. “ALERT” icon appears at <http://ai.fmcsa.dot.gov> – “Analysis & Information Online”, if either the on-road performance’s percentile is over the established threshold or the investigation results show the discovery of a serious violation.

Know this - BASIC focuses on behaviors that equate to “CRASH RISK. A rating above the percentages shown below is cause for ALERT status and potential for FMCSA Risk Intervention. The FMCSA BASIC acceptance percentages are listed below:

- Unsafe Driving - (Intervention percent – rate greater than 65%)
- Fatigued Driving (Hours of Service) – (Intervention percent – rate greater than 65%)
- Driver Fitness (Not a Valid License or Improper License for Type of Vehicle) - (Intervention percent – rate greater than 80%)
- Vehicle Maintenance - (Intervention percent – rate greater than 80%)
- Controlled Substances/Alcohol - (Intervention percent – rate greater than 80%)
- Cargo Related - (Intervention percent – rate greater than 80%)
- Crash Indicator - (Intervention percent – rate greater than 80%)

Progression of ALERT status is as follows:

1. A warning letter
2. Investigation
3. Identification for roadside inspection

All inspection violations that pertain to BASIC are assigned violation weights that reflect their association with crash occurrence and crash consequences. Violation weight is assigned on a 1-10 scale, where 1 represents the lowest crash risk and 10 represents the highest crash risk relative to the other violations in BASIC.

An additional weight of 2 is applied to violations that result in out of service (OOS) orders. Crashes are assigned severity weights according to their impact. Greater weight is attributed to crashes involving injuries, fatalities, and/or the release of hazardous materials than to crashes only resulting in a vehicle tow-away.

BASIC also considers other UNSAFE driving characteristics in their review:

- Reckless Driving
- Following to Close
- Failure to Obey Traffic Control Device
- Speeding
- Failure to Yield the Right of Way
- Improper Lane Change
- Using or Equipping a Vehicle with Radar Detector

Examples of Violations that can impact an individual drivers’ profile within BASIC are as follows:

- Flat Tire or exposed fabric
- Operating an out of service (OOS) vehicle
- Inoperative Headlamps
- Inoperative Turn Signal
- Inoperative Tail Lamps
- No, or defective parking brake
- Defective fifth wheel locking mechanism
- No, unsecured or discharged fire extinguisher

Since this information is available to the public, it means that not only your insurance carrier and agent have access to it for possible debits or credits to your account that affect the premium; but your clients, an internet savvy debtor and those “ambulance chasing wallet-weasel” type attorneys that make promises of big \$\$\$ - also can find these records.

What will yours say about you? And how will you defend it in a court of law?

Even if you don’t travel across state lines or have a USDOT or MC number, this should still serve as a wake-up call to all about those things that can show up in public records. ■

MOST VALUABLE EMPLOYEE....EMPLOYEE APPRECIATION.... SEPTEMBER 2011



This month, Ray Johnson and Mary Carr of Triangle Recovery in Raleigh, North Carolina, responded to our Most Valuable Employee Contest. They responded with this email, "We would like to recommend Shane Johnson as our most valuable employee. Shane always goes above and beyond his duties as lead repossession agent. Not only does he do an impeccable job as a recovery agent in the field, he is always willing to go above and beyond his regular duties, helping

in the office or where ever the need is. He is a dependable, dedicated hard working employee. Shane has stuck with the industry through thick and thin. He has been with our company for 20 years and we hope he is here for 25 more! We are very thankful and blessed to have him!"

Congratulations Shane and keep up the good work!

If you have an employee that you would like to have recognized in this way, submit their story and a photo if available to us for consideration and review. The feedback we receive from you will determine how long this column will continue. One submission per company is allowed per month and each will be reviewed on its own merits. All submissions must be received by the 15th of the month to be eligible for consideration, so get your October MVE submissions in! In your submission be sure to include how long this person has been with your company and why they are such an asset to you!

It's a no cost way for you to recognize your employees that help you succeed. It's a way to possibly increase employee morale as the recognition will hopefully inspire others to work towards them being nominated next. As an incentive...each person who gets recognized in the RSIG News will be entered into a drawing to be held December 1, for a \$200.00 Gift card, just in time for the holidays. ■

NEW LAWS RAISE COVERAGE ISSUES

By Michael Howk Director of Education RSIG



Recently Illinois passed a law to regulate the repossession industry, the law has not yet been signed by the Governor of Illinois but in all likelihood the law will go into effect on July first of 2012. Now a law regulating the repossession industry is being proposed by some repossessioners in Tennessee. The Tennessee law is very

similar to the law in Illinois and will require those currently involved in the repossession business in Tennessee to invest substantial time and money to comply if it should be passed into law.

One of the definitions found in both laws is worthy of some thought. The definition is not only interesting but potentially problematic.

"Repossession agency employee" means any person or self-employed independent contractor who is hired by a repossession agency.

Appeals and Federal Courts have been very consistent in ruling that independent contractors in Illinois are in fact not employees (See

Brown v. Shipman 411 N.E.2d 569, Dallis v. Don Cunningham & Assoc 796 F. Supp. 1127, and Johnson v. Figgie International, Inc., Rawlings Sporting Goods Div., 502 N.E.2d 797).

In Tennessee a 1940's case is often quoted when the question of employees and independent contractors are raised. (See Tennessee Valley Appliances v Rowden 146 S.W. 2nd 845).

Most cases examining this issue quote Black's Law Dictionary which starts the definition of employee as follows:

"Employee" must be distinguished "for independent contractor".-.-. .

One might wish to ask themselves why the individuals behind the legislation in Illinois and Tennessee would wish to redefine the meaning of commonly accepted legal definitions.

Or more importantly, who is going to assure that these newly created independent contractor "employees" are covered with adequate insurance to protect the public health, safety, and welfare not to mention the consumers of repossession services? ■

HOW TO FIND US!

If you haven't already, be sure to find us and like us on Facebook at www.facebook.com/RSIGInsurance! We also have a group on LinkedIn (www.linkedin.com), Search - Recovery Specialist Insurance Group. Find us and follow us there as well. We'll have lots of discussion about things new and interesting to the membership as well as the opportunity to post questions and get answers. ■