

## Rental Vehicles



If you are renting a car for a business trip, physical damage coverage for the rental vehicle may be provided under your General Liability policy, but there are conditions that apply and limitations to consider:

- Does your policy include the SEF 94, Damage to Hired Automobiles extension? Check to make sure your policy includes this coverage.
- Vehicle must be rented under the company name (the Named Insured on the policy) and be used for business purposes.

- Be sure the policy limit is sufficient for the value of the vehicle you are renting.
- Find out what type of vehicles are covered under the policy – most extensions cover private passenger units and may or may not cover units classified as light commercial.
- Review the rental agreement carefully
- Be aware that any losses paid out under this extension are general liability losses and are reflected on your corporate loss history for 5 years. There are also other ways you can obtain this coverage.

If you would like details about what your policy covers, please contact a member of your service team.

## Warranties

Don't ignore the warranties! Your Builders Risk Policies may contain warranties; these are conditions stipulating procedures that must be followed including minimum fire extinguishers, hot works procedures, fencing, removal of debris and site security. Failure to comply with a warranty may void coverage and result in claims not being paid.

It is critically important that warranties are properly communicated to the appropriate people involved in the project – your superintendents, employees, and subcontractors who can inadvertently affect your coverage.



Did you know that your Lloyd Sadd team will provide information sessions on your builders risk coverage, policy features and limitations?

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## Understanding Non-Owned Automobile Liability

**Do you have employees that drive their own vehicles to and from project sites?**

**Do you have administrative employees that use their personal vehicle to go to the post office, bank or to simply pick up lunch for a meeting?**

**Do you occasionally send an employee to pick up a visiting client at the airport?**

**Do you have a sales force to which you provide a car allowance for business use of their personal vehicles?**

Your business has potential non-owned automobile loss exposures that you may not be aware of. If you have a fleet, you have an obvious automobile exposure and have likely taken all of the necessary steps to ensure that your company owned vehicles are properly covered in the event of an accident. Have you considered the loss potential that arises from individual employees who operate their own personal vehicles for company business?

Virtually every business entity has a non-owned automobile exposure, regardless of how infrequently it may arise.

If an employee has an accident under any of these situations, your business can be held accountable under vicarious liability and sued for damages.

If employees must use their own vehicles for business, look for ways to lower your exposure to loss.

- ✓ Establish written guidelines regarding personal vehicles used for business

- ✓ Determine acceptability standards for drivers using personal vehicles for business use including driver history, fitness for driving.
- ✓ Maintain employee files including copy of valid drivers license, current abstract, certificate of insurance verifying insurance is in place and limits. Establish protocol on maintaining current records.
- ✓ Educate employees regarding vehicle maintenance and safety; ensure employees are aware of your company policies.

The operation of personal vehicles for business purposes creates a significant liability exposure. By understanding these exposures, you can implement consistent policies and procedures to manage, control and reduce the potential for loss



### Case Study

A 2007 judgment stems from a July 2002 automobile accident that resulted in the death of the third party driver, a 63-year old eye surgeon. The responsible party was an employee with type 1 diabetes. The Supreme Court of British Columbia determined that the employer was liable on the basis of vicarious liability. It was determined that the employer owed a duty of care to the public to take reasonable steps to ensure that the employee did not put members of the public at risk while carrying out his duties as an employee. The court awarded the widow \$6,400,000 for her husband's death.

The employer's portion is not known at this time.



## CCDC#2-2008 Stipulated Price Contract

The standard contract now requires \$5,000,000 minimum liability limits. Remember to check your policy limits **before** starting a project under this contract.



## Risk Management 101

Your approach to Risk Management will reflect your tolerance for risk, resources and information available to you and your organization. At the end of the day, the goal is simply to protect the organization. Some achieve this goal by purchasing insurance to finance losses; others initiate safety initiatives; and most do both to a lesser or greater degree. In this article we discuss risk management solutions with a focus on prevention – arguably the most important of all our tools.

A convenient way to see the portfolio of risk management solutions is refer to a visual representation - the Risk Management Solution Tree. In this simplified tree only the basic solutions are shown.

### Decision: Accept or Avoid?

Whatever the organization’s goals, there will be opportunities and threats to these goals. Opportunities are causes of speculative gains; threats are perils that may cause pure risk losses. For both opportunities and threats, the first decision is whether to accept or avoid the situation. Avoidance results in the organization not having the chance of any gains or losses. If a cost-benefit analysis shows the down side is just too large for the organization’s risk tolerance, then *avoidance* is the wise choice. If the situation falls within the organizations’ risk appetite or tolerance, however, then *acceptance* is the appropriate choice.

### Decision: Control or Don’t Control?

Once the subject is accepted the next decision is whether to spend scarce resources on controlling the risk or accepting the situation the way it is. If the risk’s probability, variance, impact and timing are all within the organization’s acceptable ranges, then “*do not control*” may be the correct decision. For example, if the probability of a loss is low, the standard deviation is small, the impact of a loss is small and the duration of the loss is short, then it may be prudent to accept the risk “as is” and not expend resources on controlling it.

Frequently one of the parameters is not within the desired range. Then it is probably wise to spend scarce resources to get the parameter into that range.

In a pure risk situation, if the probability of loss is too high, then it is prudent to spend resources on a loss prevention project. Alternatively, if the severity of loss is too great, then one should spend resources on a loss reduction project.

### Decision: Risk Financing – Retention or Transfer?

Finally, because of or even despite our best efforts at creating the desired probability, outcome, and timing, the managing of risk must somehow be financed. There are three basic costs of risks to be financed: *risk management administration*, *risk control* and *loss financing*. Administrative costs include the overhead for running risk management programs including salaries, fees and supplies. Risk control costs include promotions, advertising, prevention, and reduction initiatives. Loss financing includes retention and transfer programs, including insurance.



## Loss Prevention

In this article we focus on loss prevention initiatives. Some argue this is the most valuable use of the risk management budget. By decreasing the likelihood losses will occur, the cost of administration and loss financing are reduced, desired outcomes are more stable, and the organization is more assured of reaching the desired goals. This should help increase value, whether value is defined as economic performance, social justice or environmental stewardship. Prevention is a powerful risk management tool.

But how does a risk manager modify a probability distribution? There are five general methods:

- *Government mandates*
- *Education*
- *Information management*
- *Contractual transfer*
- *Operations management*

**Government mandates** such as regulations, statutes and court orders are intended to create more fair and safe social and economic systems. For example, workers compensation statutes will sue employers.

**Education** and training are vital to teach managers and employees how to act safely. Safety is not a matter of common sense – it is a learned skill. For example, the likelihood of injuries is greatly decreased by learning how to safely handle hazardous materials.

**Information management** includes packaging, promotions, warning labels, instructions, signs and other materials to help people understand hazardous situations. For example fencing a construction site and ensuring proper signage.

**Contractual transfers** such as hold harmless and exculpatory agreements decrease the likelihood that a third party will sue. Having clear contractual language outlining rights and responsibilities will decrease “grey areas” where you can be drawn into a suit.

**Operations management** is one of the risk manager’s most powerful prevention tools. For example, proper maintenance is highly correlated with fewer losses. Keeping assets in optimal operating condition not only improves productivity, it lowers the chance of loss.

It can be said that an ounce of prevention is worth a pound of insurance. When prevention leads to fewer losses, then the cost of insurance goes down. Loss prevention not only preserves assets and saves lives, it also saves risk financing costs. Controlling the likelihood of losses is an important step in creating the desired value and achieving goals.



## Workplace Bullying

Employment-related lawsuits are a growing concern for employers of all sizes. Courts in Canada have taken a more active role in policing workplace behavior and judges are scrutinizing employer conduct in deciding the appropriate remedy and awarding damages to the employee where the employer’s conduct towards the employee is objectively unfair, unreasonable or offensive. The power imbalance in the employment relationship has been relied upon

in the Supreme Court of Canada’s decisions.



Is workplace bullying as pervasive and widespread as many experts claim? As costs for litigation and damage awards

climb, experts predict that employment liability will only become more complex.

As a result, it is critical for employers to understand their exposures and options to manage the risk.

### Strategies to reduce your company’s exposure:

Two effective risk management strategies include solid human resources practices and **Employment Practices Liability** (EPL) insurance coverage, a policy used to cover your risk due to the ever-changing legal and employment environment.

The four most common employment-related lawsuits today are:

1. **Wrongful termination** - the discharge of an employee for invalid reasons

2. **Discrimination** - the denial of equal treatment of workers who are members of a protected class
3. **Sexual Harassment** - when a worker is subject to unwelcome sexual advances, obscene or offensive remarks, or the failure to stop such behavior
4. **Psychological Harassment** - repeated and hostile or unwanted conduct, verbal comments, actions or gestures that affect an employee's dignity or psychological integrity resulting in a harmful work environment for the employee.

Employment Practices Liability insurance works hand-in-hand with your internal employment practices to provide the necessary resources to defend your company against a suit or to pay a claim. To best understand how to cover your EPL risk, it's important to know the potential sources:

- Recruitment practices;
- Employment applications;
- Employment offers;
- Employee orientation;
- Annual conduct reviews;
- Enforcing performance policies;
- Dealing with employee complaints;
- Termination; and
- Improper documentation of the above items.

To limit your exposure, engaging in solid human resources practices is an important strategy in reducing your company's liability.

To verify your HR policies and best practices, conduct a thorough HR audit:

- Verify the Employee Handbook outlines all policies and terms of employment in clear and concise language;
- require employees to sign an acknowledgement form for receipt of Handbook; and
- Develop training for supervisors including interview skills, performance reviews, 'zero-tolerance' policy, etc.

Employment law is often complex and varies depending on the jurisdiction. Well-organized and credible documents can demonstrate fair treatment, deter

litigation, ensure employee honesty, and, should litigation occur, demonstrate the employer's actions.

In addition to having the appropriate employment policies and HR best practices in place, EPL insurance coverage is another useful risk management tool used to defend against a suit or pay a claim. In fact, evidence of desirable practices and policies will be required to obtain EPL coverage. Typically, the insurance underwriter will require a copy of your employee handbook and human resource manual / guidelines which should cover the following policies:

- Hiring and interviewing
- Performance appraisals and Reviews
- Discrimination
- Accommodating Disabled employees
- Sexual harassment
- Medical Leave
- Maternity / Paternity Leaves
- Employee discipline
- Discharge / Termination
- Reporting, investigating and resolving employee complaints

The evolving judicial attitude heralds the importance of prevention and the absolute necessity of a proactive and vigilant management approach when dealing with workplace complaints and conflicts. Aside from the practical costs associated with condoning, through inaction, a "bullying" workplace environment, the legal risks and financial costs associated with not dealing with the "bully" can be very significant.

EPL insurance works hand-in-hand with your internal employment practices to provide the necessary resources to defend your company against a suit or to pay a claim. As with all of your risk-management needs, your Lloyd Saddle service team is committed to assisting you in assessing your employment-related policies and helping you to develop best-practice solutions.

