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Reducing Workers' Comp Exposures from Van Pools

Done properly, van pooling can help employees save money and stress and enhances your company's reputation as a responsible employer. But because the risk of injury exists, employers considering a van pool will want to structure their program to minimize liability exposures.

In 2007, 11 percent of U.S. employers operated or sponsored van pools for their employees, according to the TransitCenter, a New York nonprofit. Since then, rising fuel prices, longer commutes and interest in reducing greenhouse gases have spurred interest in van pooling.

Some van pool programs are employee-run, with employees taking turns driving, using their own cars. The employer might facilitate the van pool by helping employees living in the same area contact each other and help in planning routes. This type of arrangement might involve the least risk for the employer, as most states exempt commuting from workers' compensation coverage under the "coming and going" rule. However, you might want to remind participating employees that the employer's auto liability coverage does not apply and that participants who drive will need a valid driver's license, current registration and inspection on their car and personal auto insurance with appropriate limits for bodily injury and physical damage.

When the employer owns and operates the vans, it takes on auto liability exposures. It might also face additional workers' compensation expo-

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This Just In

A leading reinsurer blames climate change for prompting more extreme weather and making 2008 the third most expensive year on record for damage from natural catastrophes. An annual study by Munich Re reported overall property losses during 2008 totaled $200 billion, compared to $82 billion in 2007. Insured losses rose to $45 billion, about 50 percent higher than in the previous year. In terms of insured losses, Hurricane Ike was the most expensive individual event in 2008, costing $15 billion.

Torsten Jeworrek, member of Munich Re's board of management, said "Climate change…is very probably contributing to increasingly frequent weather extremes and ensuing natural catastrophes. These, in turn, generate greater and greater losses because the concentration of values in exposed areas, like regions on the coast, is also increasing further throughout the world."

"When temperatures increase, there is more evaporation and the atmosphere has a greater capacity to absorb water vapor, with the result that its energy content is higher," explained Prof. Peter Höppe, head of Munich Re's Geo Risks Research.

How to Make Your Claim Settlement Fair and Fast

You buy insurance to protect your business from loss. Following proper procedures when filing a claim will help ensure you get a fair and speedy settlement.

1 Inform your broker. It might be the first time you have had to claim against one of your policies. But your broker has been in the situation many times before. He or she knows the ropes and the people to contact, and can let you know what to expect as the claims process unfolds.

2 If the loss results from criminal activity or other circumstances that could be of interest to the authorities, you should contact the police and, if necessary, file a police report.

3 Document your loss. Whether the loss involves property damage or a business income loss, you should gather as much evidence as possible to back up your claim. If you have a detailed business inventory, mark down all the items that have been affected by the loss. Photographs, videos, affidavits and invoices can all corroborate your claim. Make a note of exactly when the damage occurred and a list of anyone who had any connection with the incident.

4 Minimize liability. If the loss could involve liability to your firm, include details of the accident, the names and address of any injured persons and witnesses, copies of any documents connected to the claim and complete an authorization for the insurance company to obtain records and other information.

5 Check your business insurance policy. With your broker, analyze exactly what the policy covers and what your deductibles are. In the case of smaller claims, your deductible and the impact the claim will have on your loss history may make it advantageous to handle the loss internally—in other words, your company will pay the loss without filing a claim.

6 Wait. Sometimes the best action is to do nothing. You can immediately respond to any situation that presents an ongoing hazard or take any actions needed to keep the business operational. But taking other non-essential actions, such as tidying up damage or repairing equipment, could make it harder for a claims adjuster to determine the exact extent of your loss. Keep any damaged items or parts to show the adjuster. Unless your loss resulted from a large-scale catastrophe, an adjuster should be on your premises within a day or two.

7 Protect undamaged property. Some policies reimburse insureds for the initial damage from a loss but place the responsibility on policyholders if they fail to take reasonable steps to prevent further damage. Make sure to fix blown-out windows, replace damaged locks, and move any intact equipment away from danger.

8 Start estimating the cost. After you have an idea of the extent of the damage, contact several contractors to get a variety of quotes to give to your insurer.

9 If you are claiming for business income losses, consider contacting a forensic accountant to document your claim. Keep detailed records of business activity and the extra expenses of keeping your business operating in a temporary location during the interruption period. If you are forced to close down, include expenses that continue during the time that the business is closed, such as salaries and wages, advertising and the cost of utilities.

10 Remain in close consultation with your broker. Ask for specific timelines on resolving your claim. If the insurer falls behind in settling your claim, your broker might be able to intervene on your behalf. If your insurer comes up with a settlement you consider inadequate, you might want to consider hiring an independent adjuster.

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sures, depending on state statute or case law. According to a November 2008 article in *Workforce Management* (Van Pools Cut Costs, But Increase Some Risks, by Nick Whitfield, www.workforcemanagement.com), many employers deal with this by contracting with an outside vendor to operate their van pools. This type of arrangement can help transfer auto liability from the employer to the van pool operator. Additionally, some states, such as California, specifically exempt employers from liability for van pools they create in response to government-mandated trip reduction or pollution-reduction programs.

If you're considering implementing a van pool program, please contact us. We can help you evaluate your workers' compensation and other exposures and help you develop an appropriate risk management strategy.

The "Coming and Going Rule"

Workers' compensation covers injuries that workers suffer as a result of their employment. In general, state laws except coverage for injuries employees receive while commuting to and from work, considering that the employee's personal time. However, exceptions exist to this "coming and going rule" where your workers' compensation would apply.

Generally, these exceptions are for:

1. Employees who have no office or other fixed place of work, such as a traveling salesperson or traveling nurse who report from home to their clients' place of business;
2. Employees whose employment contract includes transportation to and from work;
3. Employees who are traveling away from home for an extended time; workers' compensation may cover even injuries they receive while off duty;
4. Employees who are doing an errand on behalf of the employer during their commute.

Even outside the confines of the coming and going exception, some gray areas of coverage exist. For example, some employees have been awarded workers' compensation benefits after punching out if they are injured while still on the employer's premises.

If you're uncertain whether an employee's injury falls under your workers' compensation policy, please contact us for advice.

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and other legal problems they know are in the pipeline. Insurers are also focusing on inserting "prior acts" exclusions into their policies to limit their liability for claims not yet made. They are also more inclined to share coverage among two or more insurers to avoid overly large exposure to a single risk, making the job of finding coverage even more complex, particularly for large organizations in the financial industry.

Now the good news…

In its Fourth Quarter Benchmark Survey of commercial insurance premiums, RIMS (the Risk and Insurance Management Society) reported that D&O rates overall fell an average of 1.2 percent in the fourth quarter of 2008, down from 2.1 percent in the third quarter. However, when financial institutions were separated out, the survey revealed two trends: premiums for D&O policies outside the financial services sector dropped an average of 4.5 percent, while increasing for financial institutions.

Still, insurance buyers shouldn't expect the "soft market" in D&O to continue. "… we may not see continued price reductions for long," says Daniel H. Kugler, ARM, CEBS, CPCU, AIC, ACI, member of RIMS board of directors and assistant treasurer, risk management at Snap-on, Inc. "The most recent data show that the soft market isn't over yet, but it may be losing steam."

"Overcapacity has driven a long soft market and the events of this past quarter may portend a market shift for commercial insurance," says Dave Bradford, executive vice president at Advisen, an information provider to the insurance industry. "In addition to much higher than average catastrophe losses in 2008, insurance companies are facing claims from the subprime meltdown, global credit crisis and now even from the Madoff scandal. Reserves for these claims and material losses in investment income have led to negative earnings and new capital is scarce," continues Bradford. "We expect the next few quarters of data from the RIMS Benchmark Survey™ to show the end of the soft market."

For companies seeking to obtain or renew their D&O coverage, consultant Andrew Barile also expects higher prices. "The industry is trying to raise prices all around because they want the premiums from the good risks to help cover their losses," says Barile. He recommends consulting with your broker and asking him or her to get more competitive bids. This is especially important for companies with clean claims records and without obvious ties to the financial crises. Companies with good historical loss data and strict corporate governance controls should make sure their applications accurately reflect this.

For more information on D&O coverage, please contact us.

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Will the Financial Crisis Affect Your D&O Rates?

Insurance rating organization A.M. Best has stated that the credit crisis, combined with the weakened global economy and widespread declines in the stock market, would likely spark a steep rise in the frequency and severity of claims under directors and officers (D&O) liability policies. Although firms in the financial services industry can expect to pay more for their D&O coverage, so far the news is pretty good for those in other industries.

First, the bad news…

The financial crisis has already triggered a jump in securities class-action lawsuits. Stanford Law School's Securities Class Action Clearinghouse counted 220 of these suits in 2008, up from 173 in 2007 and 115 in 2006. The last time filings were this numerous was in 2002, during the depths of the dot-com bust and accounting scandals involving Enron and WorldCom.

Insurers are only starting to understand the depth of the losses they might face. A report from Advisen predicted aggregate D&O liability and E&O (errors and omissions liability) losses arising from the credit crisis of $9.6 billion. But that could be on the low side. The Advisen report came out prior to the discovery of Bernie Madoff's $50 billion Ponzi scheme, for example.

Insurers are taking cover by toughening D&O policy terms and increasing prices for financial services businesses, reversing the "soft market" that prevailed from 2004 to 2007, says industry consultant Andrew Barile.

"If you are a financial institution, you are going to pay a lot more money," he says.

Stiffer policy terms will create added difficulty for insureds, with insurers pressing for exclusions for subprime lending

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Claims-Made. vs. Occurrence Policies

When applying for D&O coverage, you will need to select between a "claims-made" or an "occurrence" policy. The terms refer to when a policy responds to a claim.

A **claims-made policy** covers claims reported during the policy term that stem from incidents that occur after the policy's retroactive date.

When you first buy a claims-made policy, your retroactive date will likely be the same as the policy's inception date. Ideally, when you renew or replace that policy, the insurer will use the same retroactive date. This gives you continuous coverage back to the retroactive date of your original policy. However, an insurer might "advance" your retroactive date to limit its liability—and your coverage. If this happens, ask your underwriter to endorse your policy to cover "prior acts," or claims from incidents that occurred before the retroactive date.

Most insurers prefer claims-made policies, since they are not exposing themselves to lawsuits based on actions that occurred prior to the policy term, and offer significantly lower premiums on these policies.

Occurrence policies are becoming harder to find. They cover liability from incidents that occurred during the coverage period, regardless of when reported. In other words, if you had an occurrence policy in 1991-1992, that policy would cover you for a claim arising from an accident that occurred in 1991, even if the claim were reported during 2009. This "tail coverage" makes occurrence policies much more expensive than claims-made policies.

To make a claim under an old occurrence policy, you will need documentation of your coverage. For this reason, we strongly recommend keeping all insurance policies, even expired ones, in a safe place, and maintaining a list of policy information (including insurer name, address, type of policy, policy number and inception/expiration dates) in a separate location.