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A Year of MA Auto Questions & Answers

11:15 AM - 12:15 PM

Irene Morrill

CEUs: 1

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Q4U – A year of MA auto questions and answers

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With special thanks to the Insurance Services Office, Inc. and the Automobile Insurers Bureau for advance information, continued support, and permission to use their forms and information.

I was searching for a back issue of Tech-Talk that discusses long term rental car use

The issue is we have a client in Florida who was renting a vehicle in Florida long term for over (30) days

I know the 2016 MAB version describes the exclusion under parts 7 and 9 but I remember specifically there was an issue describing the exclusion.

The MAP – 2016 follows you and household members (the 2008 is similar)

2. You or Your – refers to the person(s) named in Item 1 of the Coverage Selections Page. This includes your spouse while a **household member**.

9. Household Member – means anyone living in your household who is related to you by blood, marriage, or adoption. This includes wards, step-children or foster children.

Part 4. Damage To Someone Else's Property.

Under this Part, we will pay for damage or destruction of the tangible property of others caused by an accident and arising from the ownership, maintenance, or use of an auto, including loading and unloading. The amount we will pay is the amount the owner of the property is legally entitled to collect through a court judgment or settlement for the damaged property. We will pay only if you, a **household member**, or someone else using **your auto** with your consent is legally responsible for the accident. The amount we will pay includes, if any, applicable sales tax and the loss of use of the damaged property. The amount we will pay does not include compensation for physical damage to, or towing or recovery of, **your auto** or other auto used by you or a **household member** with the consent of the owner, or any decreased value or intangible loss claimed to result from the property damage unless otherwise required by law.

We will not pay for property damage which occurs:

Part 5. Optional Bodily Injury To Others.

Under this Part, we will pay damages to people injured or killed in an accident if you or a **household member** is legally responsible for the accident and such accident arises out of the ownership, maintenance, or use of an auto by you or the **household member**. We will also pay damages if someone else using **your auto** with your consent is legally responsible for the accident. The damages we will pay are the amounts the injured person is entitled to collect for bodily injury through a court judgment or settlement. We will not pay punitive or exemplary damages.

This Part is similar to Compulsory Bodily Injury To Others (Part 1). It pays for accidents involving **your auto** in Massachusetts and does not pay for the benefit of anyone using an auto without the consent of the owner. Unlike the Compulsory Part, this Part provides coverage for injuries to guest occupants and for accidents occurring outside Massachusetts.

We will not pay or defend:

Part 6. Under this Part, we will pay reasonable expenses for necessary medical and **Medical Payments.** funeral services incurred as a result of an accident.

We will pay for expenses resulting from bodily injuries to anyone **occupying your auto** at the time of the accident. We will also pay for expenses resulting from bodily injuries to you or any **household member** if struck by an auto or if **occupying** someone else's auto at the time of the accident.

We will not pay for expenses resulting from injuries to:

But ...under each of the Parts 4,5,6 ...there is an exclusion
The following is from Part 5 OBI

2. For injuries resulting from an accident while a **household member** is using an auto which you or any **household member** owns or uses regularly, unless a premium for this Part is shown for that auto on the Coverage Selections Page.
3. For injuries resulting from an accident while you are using an auto which you own or use regularly unless a premium for this Part is shown for that auto on the Coverage Selections Page.

It's exclusions 4 & 5 in Part 4 PD and 5 & 6 in Part 6 MP

Part 7. Collision.

Under this Part, we will pay for any direct and accidental damage to **your auto** caused by a **collision**. We will also pay for **collision** damage to other private passenger autos while being used by you or a **household member** with the consent of the owner. It does not matter who is at fault. We will pay the cost to repair the auto or any of its parts up to the actual cash value of the auto or any of its parts at the time of the **collision**. We will not pay for any decrease in value claimed to result from the loss. The most we will pay will be either the actual cash value of the auto or the cost to repair the auto, whichever is less. The cost to repair the auto is limited to the prevailing competitive price, which is the price we can secure from a licensed repair facility conveniently located to you. Unless you have purchased agreed amount coverage, actual cash value of the auto will be determined at the time of the loss. Actual cash value may include an adjustment for depreciation and betterment and for the physical condition of the auto. We will, at our option, repair the auto, repair or replace any of its parts, or declare the auto a total loss. If the repair of a damaged part will impair the operational safety of the auto we will replace the part.

We will not pay for damage to any auto which is owned or regularly used by you or a **household member** unless a premium for this Part is shown for that auto on the Coverage Selections Page.

Part 9. Under this Part, we will pay for direct and accidental damage to or loss of **your**
Comprehensive. **auto** other than damage caused by **collision**. We will also pay for such damage or loss to other private passenger autos while being used by you or a **household member** with the consent of the owner.

We will not pay for damage to any auto which is owned or regularly used by you or a **household member** unless a premium for this Part is shown for that auto on the Coverage Selections Page.

I would worry about these exclusions (though harder to find in the discussion of collision and comprehensive) for a rental over 30 days

M-0051S can remove the exclusion from parts 4-9

MASSACHUSETTS ENDORSEMENT – M-0051-S

Use of Other Autos – Vehicles Furnished or Available For Regular Use

With respect to the individual(s) and coverages indicated in the Schedule, the provisions of the policy apply unless modified by this endorsement.

1. Any coverage provided under Damage to Someone Else's Property, Optional Bodily Injury to Others, Medical Payments, Collision, Limited Collision, and Comprehensive (Parts 4, 5, 6, 7, 8, and 9) also applies to any vehicle which is furnished or available for the regular use of the named individual on the schedule.
2. We will not pay under this endorsement if:
 - a. The auto is:
 1. owned by you or any household member, or
 2. a temporary substitute for an auto owned by you or a household member.
 - b. The auto is being used by anyone in the course of his or her employment in the business of selling, servicing, repairing, or parking autos.
 - c. The auto is being used in the business or occupation of the named individual unless the auto is being operated or occupied by named individual, private chauffeur or domestic employee.
3. Under Damage to Someone Else's Property (Part 4) and Optional Bodily Injury to Others (Part 5), the following are not covered:
 - a. The Commonwealth of Massachusetts and any of its agencies and authorities.
 - b. The United States of America and any of its agencies.
 - c. Any person while using an auto in the course of his employment by the United States government if the Federal Tort Claim Act requires the Attorney General of the United States to defend that person in any civil action or proceeding for bodily injury or property damage, whether or not the accident has been reported to the United States or the Attorney General.
4. If someone covered under this endorsement is using an auto he or she does not own at the time of the accident, the owner's auto insurance pays up to its limits before we pay.

For the named insured

And if household members will be using that vehicle ...the exclusion can be removed for them too



Use of Other Automobiles – Vehicles Furnished or Available For Regular Use (cont.)

5. The coverage purchased for the named individual is shown in the schedule. If no premium charge is shown, the coverage does not apply.

Unless otherwise indicated below, Use of Other Autos coverage is applicable only to the individual named in the Schedule or in the Coverage Selections Page.

Name of Individual: _____

If indicated below, Use of Other Autos coverage applies to:

☐ Named Individual and Household Members.

Schedule

Coverages	Premium
Part 4	_____
Part 5	_____
Part 6	_____
Part 7	_____
Part 8	_____
Part 9	_____

Limits of Liability:

Comprehensive – Actual Cash Value less \$ _____ deductible

Collision – Actual Cash Value less \$ _____ deductible

Limited Collision – Actual Cash Value less \$ _____ deductible

The premium for you and HHMs for parts 4,5,6 is 12 or 13 % assuming you are renting a vehicle that has SOME coverage...even state minimum

1. Vehicles Furnished or Available For Regular Use Except Public or Livery Conveyances
- A. No Primary Insurance - 90% of the applicable Private Passenger rate for an individual and 100% for individual and household members.

B. Primary Insurance – 12% of the applicable Private Passenger rate for an individual and 13% for individual and household members.

Use of Other Automobiles – Vehicles Furnished or Available For Regular Use (cont.)

5. The coverage purchased for the named individual is shown in the schedule. If no premium charge is shown, the coverage does not apply.

Unless otherwise indicated below, Use of Other Autos coverage is applicable only to the individual named in the Schedule or in the Coverage Selections Page.

Name of Individual: _____

If indicated below, Use of Other Autos coverage applies to:

☐

Named Individual and Household Members.

Schedule	Premium
_____	_____
_____	_____
_____	_____
_____	_____
Part 7	_____
Part 8	_____
Part 9	_____

Limits of Liability:

Comprehensive – Actual Cash Value less \$ _____ deductible

Collision – Actual Cash Value less \$ _____ deductible

Limited Collision – Actual Cash Value less \$ _____ deductible

[Ed. 04-08]

Coll/comp ... a “tad” more expensive

But remember ...the insured will ask for the endorsement to be removed when they get home so will only pay for time needed it

Physical Damage Coverages

A policy providing Collision (Part 7), Limited Collision (Part 8) or Comprehensive (Part 9) coverages may be extended to provide these coverages for non-owned private passenger autos furnished or available for regular use to the named individual other than for use as a public or livery conveyance.

The premium for these coverages shall be the applicable private passenger class, vehicle rating group 21 and the latest model year shown in the manual for the territory in which the named individual resides.

Use of Other Automobiles – Vehicles Furnished or Available For Regular Use (cont.)

5. The coverage purchased for the named individual is shown in the schedule. If no premium charge is shown, the coverage does not apply.

Unless otherwise indicated below, Use of Other Autos coverage is applicable only to the individual named in the Schedule or in the Coverage Selections Page.

Name of Individual: _____

If indicated below, Use of Other Autos coverage applies to:

☐ Named Individual and Household Members.

Schedule	
Coverages	Premium
Part 4	_____
Part 5	_____
Part 6	_____
Part 7	_____
Part 8	_____
Part 9	_____
Limits of Liability:	
Comprehensive – Actual Cash Value less \$ _____ deductible	
Collision – Actual Cash Value less \$ _____ deductible	
Limited Collision – Actual Cash Value less \$ _____ deductible	

FYIeven the National PAP which some companies use has the same “issue” with long term rental

BI/PD exclusion

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

2. Any vehicle, other than "your covered auto", which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
3. Any vehicle, other than "your covered auto", which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".

However, this exclusion **(B.3.)** does not apply to you while you are maintaining or "occupying" any vehicle which is:

- (1) Owned by a "family member"; or
- (2) Furnished or available for the regular use of a "family member".

FYIeven the National PAP which some companies use has the same “issue” with long term rental

MP exclusion

5. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by you; or
 - b. Furnished or available for your regular use.
 6. Sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is:
 - a. Owned by any "family member"; or
 - b. Furnished or available for the regular use of any "family member".
- However, this exclusion (6.) does not apply to you.

FYIeven the National PAP which some companies use has the same “issue” with long term rental

Coll/comp

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including its equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

Definition of non-owned auto holds exclusion

C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member"; or

An endorsement would be needed to remove exclusions

But whether the company uses ISO 2005 or 2018 – only Parts A and B regular use exclusion is removed by the endorsement – NOT Part D ...coll/comp

POLICY NUMBER:

PERSONAL AUTO
PP 03 06 09 18

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXTENDED NON-OWNED COVERAGE – VEHICLES
FURNISHED OR AVAILABLE FOR REGULAR USE**

SCHEDULE

Unless otherwise indicated below or in the Declarations, Extended Non-Owned Coverage is applicable only to the individual named in the Schedule or in the Declarations.

Name of Individual:

If indicated below or in the Declarations, Extended Non-Owned Coverage applies to:

☐ Named Individual and "Family Members" (including Named Individual's Spouse)

Coverage is provided where a premium is shown for the coverage.

Extended Non-Owned Coverage	Premium
Liability	\$
Medical Payments	\$
Total Premium	\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to the individual(s) and coverages indicated in the Schedule or in the Declarations, the provisions of the pPolicy apply unless modified by this endorsement.

I. Extended Non-Owned Coverage

The Extended Non-Owned Coverage provided by this endorsement does not afford coverage under Part A and Part B of the pPolicy for any accident involving:

- A. A vehicle owned by an individual named in the Schedule or in the Declarations;
- B. A vehicle owned by a "family member"; or
- C. A temporary substitute vehicle for such owned vehicle described in A. or B. above.

II. Part A – Liability Coverage

Part A is amended as follows with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:

- A. Exclusion B.2.b. does not apply to the coverages provided by this endorsement.

B. We will provide Liability Coverage for any vehicle, other than "your covered auto", which is furnished or available for the regular use of the named individual.

III. Part B – Medical Payments Coverage

Part B is amended as follows, if a premium is shown in the Schedule or in the Declarations for Medical Payments Coverage, with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:

- A. Exclusion 5.b. does not apply to the coverages provided by this endorsement.
- B. We will provide Medical Payments Coverage for "bodily injury" sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is furnished or available for the regular use of the named individual.

~~This endorsement must be attached to the Change Endorsement when issued after the policy is written.~~

PP 03 06 09 18

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D

We need clarification regarding a deferred operator. We just learned that our carriers are inconsistent in their approach to handling deferred drivers.

Here's a situation we came across yesterday:

We have a household with the following people:

Mom

Dad

Kid 1

Kid 2

Kid 3

Deferred operator issues

Mom and dad have 3 vehicles in their name.

All 5 household members are listed operators on the policy.

Kid 1 is purchasing his own car.

We are writing a separate policy with kid 1 as the named insured.

However, we intended to add the remaining 4 members of the household as deferred operators.

We have two carriers who advise us that this is perfectly fine.

However, a 3rd carrier tells us we can't do this because the policy for the 4 remaining household members has 3 cars and 4 drivers.

Since there is one driver on this policy who is not "rated", he or she can't be deferred from Kid 1's policy.

They want us to add him as an occasional operator.

I've never heard of this before.

If this underwriter provided us with accurate information, then we are in big trouble because we've been writing all of our policies incorrectly.

Further, I think it's a huge e & o exposure because rating statuses change frequently.

I can't a imagine a CSR endorsing all policies in a household every time a rating status changes on another policy in the household .

Can you weigh in?

**Don't you just LOVE
"competitive auto"!!!**

**Each carrier can file its own
rating procedures – welcome
to competitive auto.**

MAIP assignment states:

**Each carrier must defer an
operator on a MAIP policy
as they would a voluntary
policy
(this kind of tells us that
there are various ways of
rating ...and all are
"correct")**

1. Assignment of Operators to Automobiles

a. If an insurer defers operators listed on a policy who are rated on an automobile insured by another Massachusetts private passenger motor vehicle insurance policy for the purposes of rating the policy on which they are listed in the voluntary market, this practice must be extended to the rating of policies assigned to it through the MAIP. If the insurer does not defer any listed operator under the policy for the purposes of rating the policy, the insurer shall not adopt that practice for the purposes of rating a policy assigned to it through the MAIP.

b. Each operator listed on the policy shall be assigned to an automobile on the policy based on the operator's class and merit rating in a manner which produces the highest Combined Premium (the sum of the premium for Parts 1, 2, 4, 5, 7, 8, and 9 for the operator's class and the operator's merit rating adjustment) for each automobile. The operators shall be assigned in order of the highest Combined Premium applied to the automobile with highest Base Premium (the automobile's Class 10 premium for Parts 1, 2, 4, 5, 7, 8, and 9) until all operators are assigned to an automobile, except that:

- i. If an inexperienced operator is the principal operator of a specific automobile, the automobile shall be rated with the appropriate inexperienced principal operator class and merit rating adjustment of that operator.
- ii. If an operator age 65 or over is the principal operator of a specific automobile and all operators listed on the policy have been licensed at least six years, the automobile shall be rated as Class 15 and that operator's merit rating adjustment shall be applied. However, if more than one listed operator is age 65 or over, Class 15 and the merit rating adjustments of the Class 15 operators shall be applied in the manner which produces the highest Combined Premium.
- iii. If only one operator is listed on the policy, all automobiles on the policy will be assigned the same principal operator classification and merit rating adjustment.
- iv. If each listed operator has been used in rating an automobile on the policy, any remaining automobiles shall be assigned the operator class and merit rating adjustment which produces the lowest Combined Premium, unless the automobile is subject to rating as Class 30.
- v. If more than one operator is listed on the policy, an operator cannot be assigned as the principal operator of more than one automobile on the policy until the other operators are assigned to an automobile.

c. The assignment of operators to automobiles applies regardless of the number of policies or insurers involved.

Regarding the parents policy with 3 cars and 3 kids that I “assume” are inexperienced operators – at this point ... mom and dad aren’t “ratable” unless their points are outrageous ... Each vehicle would be rated for an inexperienced operator

1. Assignment of Operators to Automobiles

a. If an insurer defers operators listed on a policy who are rated on an automobile insured by another Massachusetts private passenger motor vehicle insurance policy for the purposes of rating the policy on which they are listed in the voluntary market, this practice must be extended to the rating of policies assigned to it through the MAIP. If the insurer does not defer any listed operator under the policy for the purposes of rating the policy, the insurer shall not adopt that practice for the purposes of rating a policy assigned to it through the MAIP.

b. Each operator listed on the policy shall be assigned to an automobile on the policy based on the operator's class and merit rating in a manner which produces the highest Combined Premium (the sum of the premium for Parts 1, 2, 4, 5, 7, 8, and 9 for the operator's class and the operator's merit rating adjustment) for each automobile. The operators shall be assigned in order of the highest Combined Premium applied to the automobile with highest Base Premium (the automobile's Class 10 premium for Parts 1, 2, 4, 5, 7, 8, and 9) until all operators are assigned to an automobile, except that:

- i. If an inexperienced operator is the principal operator of a specific automobile, the automobile shall be rated with the appropriate inexperienced principal operator class and merit rating adjustment of that operator.
- ii. If an operator age 65 or over is the principal operator of a specific automobile and all operators listed on the policy have been licensed at least six years, the automobile shall be rated as Class 15 and that operator's merit rating adjustment shall be applied. However, if more than one listed operator is age 65 or over, Class 15 and the merit rating adjustments of the Class 15 operators shall be applied in the manner which produces the highest Combined Premium.
- iii. If only one operator is listed on the policy, all automobiles on the policy will be assigned the same principal operator classification and merit rating adjustment.
- iv. If each listed operator has been used in rating an automobile on the policy, any remaining automobiles shall be assigned the operator class and merit rating adjustment which produces the lowest Combined Premium, unless the automobile is subject to rating as Class 30.
- v. If more than one operator is listed on the policy, an operator cannot be assigned as the principal operator of more than one automobile on the policy until the other operators are assigned to an automobile.

c. The assignment of operators to automobiles applies regardless of the number of policies or insurers involved.

When Kid 1 gets OWN vehicle ... and it is rated for him/her ...then that child can be deferred from parents' policy

There are now 3 cars and 4 potential operator classifications ... 2 most expensive cars for 2 occasional kids ...and the third least expensive vehicle for worst driver of mom and dad

1. Assignment of Operators to Automobiles

a. If an insurer defers operators listed on a policy who are rated on an automobile insured by another Massachusetts private passenger motor vehicle insurance policy for the purposes of rating the policy on which they are listed in the voluntary market, this practice must be extended to the rating of policies assigned to it through the MAIP. If the insurer does not defer any listed operator under the policy for the purposes of rating the policy, the insurer shall not adopt that practice for the purposes of rating a policy assigned to it through the MAIP.

b. Each operator listed on the policy shall be assigned to an automobile on the policy based on the operator's class and merit rating in a manner which produces the highest Combined Premium (the sum of the premium for Parts 1, 2, 4, 5, 7, 8, and 9 for the operator's class and the operator's merit rating adjustment) for each automobile. The operators shall be assigned in order of the highest Combined Premium applied to the automobile with highest Base Premium (the automobile's Class 10 premium for Parts 1, 2, 4, 5, 7, 8, and 9) until all operators are assigned to an automobile, except that:

i. If an inexperienced operator is the principal operator of a specific automobile, the automobile shall be rated with the appropriate inexperienced principal operator class and merit rating adjustment of that operator.

ii. If an operator age 65 or over is the principal operator of a specific automobile and all operators listed on the policy have been licensed at least six years, the automobile shall be rated as Class 15 and that operator's merit rating adjustment shall be applied. However, if more than one listed operator is age 65 or over, Class 15 and the merit rating adjustments of the Class 15 operators shall be applied in the manner which produces the highest Combined Premium.

iii. If only one operator is listed on the policy, all automobiles on the policy will be assigned the same principal operator classification and merit rating adjustment.

iv. If each listed operator has been used in rating an automobile on the policy, any remaining automobiles shall be assigned the operator class and merit rating adjustment which produces the lowest Combined Premium, unless the automobile is subject to rating as Class 30.

v. If more than one operator is listed on the policy, an operator cannot be assigned as the principal operator of more than one automobile on the policy until the other operators are assigned to an automobile.

c. The assignment of operators to automobiles applies regardless of the number of policies or insurers involved.

But ...this also says that the occasional operators can be listed on siblings' policy ... as occasional operators ... but should still be rated for principal inexperienced operator Kid 1

When kid 1 “ceases” to be an inexperienced operator ... well ... then classification will change to occasional kid 2 or 3 ... if THIS vehicle creates a higher premium than when kid 2 or 3 on parents' policy

1. Assignment of Operators to Automobiles

a. If an insurer defers operators listed on a policy who are rated on an automobile insured by another Massachusetts private passenger motor vehicle insurance policy for the purposes of rating the policy on which they are listed in the voluntary market, this practice must be extended to the rating of policies assigned to it through the MAIP. If the insurer does not defer any listed operator under the policy for the purposes of rating the policy, the insurer shall not adopt that practice for the purposes of rating a policy assigned to it through the MAIP.

b. Each operator listed on the policy shall be assigned to an automobile on the policy based on the operator's class and merit rating in a manner which produces the highest Combined Premium (the sum of the premium for Parts 1, 2, 4, 5, 7, 8, and 9 for the operator's class and the operator's merit rating adjustment) for each automobile. The operators shall be assigned in order of the highest Combined Premium applied to the automobile with highest Base Premium (the automobile's Class 10 premium for Parts 1, 2, 4, 5, 7, 8, and 9) until all operators are assigned to an automobile, except that:

i. If an inexperienced operator is the principal operator of a specific automobile, the automobile shall be rated with the appropriate inexperienced principal operator class and merit rating adjustment of that operator.

ii. If an operator age 65 or over is the principal operator of a specific automobile and all operators listed on the policy have been licensed at least six years, the automobile shall be rated as Class 15 and that operator's merit rating adjustment shall be applied. However, if more than one listed operator is age 65 or over, Class 15 and the merit rating adjustments of the Class 15 operators shall be applied in the manner which produces the highest Combined Premium.

iii. If only one operator is listed on the policy, all automobiles on the policy will be assigned the same principal operator classification and merit rating adjustment.

iv. If each listed operator has been used in rating an automobile on the policy, any remaining automobiles shall be assigned the operator class and merit rating adjustment which produces the lowest Combined Premium, unless the automobile is subject to rating as Class 30.

v. If more than one operator is listed on the policy, an operator cannot be assigned as the principal operator of more than one automobile on the policy until the other operators are assigned to an automobile.

c. The assignment of operators to automobiles applies regardless of the number of policies or insurers involved.

But ...each company can have OWN rating rule ...

I guess I wouldn't put the policy(ies) with the company that has the stringent rating/classification rules ...

Again ...gotta love “competitive auto rating”

Is MAP primary or excess?

I am hoping you can assist me on a claim situation that we are having with Company X.

We have an auto repair shop that has loaner vehicles (like so many now) and they are very diligent about verifying insurance coverage and having the customer sign a rental/loaner agreement while their vehicle is in his shop being repaired.

Their customer got into an accident with the loaner vehicle, and we are expecting Company X, the insurance company for the person that signed the agreement (that was using the vehicle) to pay the collision coverage on a primary basis and not our insured's company for the repair shop, Utica.

We have had this occur many times and never once had an issue with the customer's insurance company paying collision on a primary basis due to the definition of your auto and reinforced with the rental/loaner agreement making it clear that their insurance is to be primary.

Is MAP primary or excess?

Company X is the first company in all my years that has kicked back on this.

They started with an excerpt from the property damage liability section of the policy which I pointed out several times was not the proper area for them to be viewing, that they should be looking under the collision section -your auto portion and definition.

It took them a long time to respond and agree/realize they were referring to the wrong section.

Now instead of referring to the upper part of the collision section they are citing this section at the very end which again I think is incorrect. At quick glance I am not exactly sure how to interpret that last paragraph but since it mentions a limit in the coverage selection page, I feel they are not referring to collision coverage.

Is MAP primary or excess?

I am a producer and I have to leave for a meeting and I have been arguing with them for over a week on this and need to resolve this for my client (the auto repair shop) who is upset about this.

Can you jump in on this and assist? I can provide anything needed but I am just rushing a bit at the present time.

I feel strongly that they are not handling and interpreting this correctly and certainly if they were it would create a huge shake-up in the rental and loaner insurance areas including auto body and auto repair shops and how underwriters typically underwrite that risk.

Is MAP primary or excess?

Without looking at the attachment ...

I “knew” where they were going. What they sent you has been in the policy for DECADES ... why no other company mentioned it.

However, what they DIDN'T say ... was what was added to the AIB MAP in 2016 to Parts 5, 7, 8 and 9 as an exclusion:

We will not pay for any liability assumed under any other contract or agreement.

And the following “general provision” added to the 2016 MAP

22. Assignment. Under Collision (Part 7), Limited Collision (Part 8), and Comprehensive (Part 9), an assignment of interest under this policy will not bind us without our knowledge or consent. Any improper assignment shall be void and invalid. The assignee shall acquire no rights under this contract and we shall not recognize any such assignment. This limitation on assignment shall not affect our right to subrogation under this policy.

Even though this rental vehicle is a “your auto” by definition

5. Your Auto – means:

A. The vehicle(s) described on the Coverage Selections Page.

B. Any auto while used as a temporary substitute for the described auto with the consent of the owner while the described auto is out of normal use because of a breakdown, repair, servicing, loss, or destruction. This does not include a motorcycle. However, if a motorcycle is the vehicle described on the Coverage Selections Page, then a motorcycle used as a temporary substitute is included in the term **your auto**. However “**your auto**” does not include a substitute vehicle owned by you.

Parts 7, 8, 9 all say

If an auto covered under this Part is not owned by you at the time of the accident, the owner’s auto insurance must pay its limit before we pay. Then, we will pay, up to the limit shown on your Coverage Selections Page, for any damage or loss not covered by that insurance less the deductible amount you selected.

Is MAP primary or excess?

**Even though a car rented when ours is out of commission is a “your auto” by definition ... what that really means is
the “regular use” exclusions don’t apply
anyone can use it with YOUR (named insured’s permission ...and owner)**

BUT ..it is STILL an auto you do not own ... and coverage is meant to be excess - on ALL the coverage parts ...

Part 4 and 5 states:

If someone covered under this Part is using an auto he or she does not own at the time of the accident, the owner’s auto insurance must pay its limit before we pay. Then, we will pay for any damages not paid by that insurance, up to the policy limit shown on the Coverage Selections Page. However, if the claim is covered by us and another auto policy, we will pay only our proportionate share of those damages not paid by the owner’s auto insurance.

Part 6 states:

If someone covered under this Part is also entitled to Medical Payments coverage under another auto policy issued to you or any **household member**, we will pay only our proportionate share. If someone covered under this Part is using an auto he or she does not own at the time of the accident, the owner's Medical Payments insurance must pay its limit before we pay. Then, we will pay up to the limit shown on your Coverage Selections Page for any expenses not covered by that insurance.

And Parts 7,8,9 state:

If an auto covered under this Part is not owned by you at the time of the accident, the owner's auto insurance must pay its limit before we pay. Then, we will pay, up to the limit shown on your Coverage Selections Page, for any damage or loss not covered by that insurance less the deductible amount you selected.

FYI ... the MAP is patterned AFTER the ISO PAP ...where the issue is the same
Part A liability

OTHER INSURANCE

If there is other applicable liability insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this Policy.

Part B MP

OTHER INSURANCE

If there is other applicable auto medical payments insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible auto insurance providing payments for medical or funeral expenses.

Part D – coll/comp

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO

INSURING AGREEMENT

A. We will pay for direct and accidental loss to "your covered auto" or any "non-owned auto", including its equipment, minus any applicable deductible shown in the Declarations. If loss to more than one "your covered auto" or "non-owned auto" results from the same "collision", only the highest applicable deductible will apply. We will pay for loss to "your covered auto" caused by:

and definition of “non-owned auto” includes “I want to” and “I have to”


C. "Non-owned auto" means:

1. Any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member"; or
2. Any auto or "trailer" you do not own while used as a temporary substitute for "your covered auto" which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

**FYI ... the MAP is patterned AFTER the ISO PAP ...where the issue is the same
Part D – coll/comp**

OTHER SOURCES OF RECOVERY

If other sources of recovery also cover the loss, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to:

- 
1. Any coverage provided by the owner of the "non-owned auto".
 2. Any other applicable physical damage insurance.
 3. Any other source of recovery applicable to the loss.

**Some large auto rental agencies “self insure” – so MAP/PAP would have to drop down ...
if there was a major difference in deductible the MAP/PAP would pay the difference ...**

but it has said for a very long time ...”owner’s insurance must pay before we pay”

Is MAP primary or excess?

Agent's response

Thank you for the response and detail on this, that makes a lot more sense to me as to why traditionally claims were paid from my experience and now this is coming up.

What is very strange though is that for this very same shop, Company Y just paid a claim in December of 21 on a primary basis as they insured the customer who was provided the loaner.

I know this insured and many other auto body/auto repair shops have had the same occur and the customer's insurance company paid on a primary basis.

Is MAP primary or excess?

Agent's response

Perhaps some of the claims adjusters were just adjusting how they had always done and were not aware of this.

Maybe on some of them that date back a little longer the companies were still using the 08 form, not sure.

One comment which I know has nothing to do with you. I don't understand why companies pick up on a primary basis for large rental companies who self insure physical damage completely or have a very large deductible.

If the garage make the decision to insure that risk it should be handled the same way for them, unfortunate and seems very unfair for the small repair/body and rental shops that can't take on the risk of self insuring.

Also ...agent questioned

One other question and comment, when it is referred to in the collision section that the owner's insurance co. must pay up to its limit on the coverage, then we will pay up to the limit shown on your coverage selections page.

What limit(s) are they referring to as almost every MAP issued has no limit per say under collision on the coverage selection page.

Are they talking about the rare agreed or stated value limit and then are they saying they would pay above what you chose for a limit which doesn't make any sense either.

I am just not understanding that language related to collision.

I'm surprised Company Y paid and Company did not ...but

But regarding the “limit” paid questions

The last MAP Coverage selections page that I was ‘privy’ to ...

7. Collision	Actual Cash Value	\$	\$
8. Limited Collision	Actual Cash Value	\$	\$
9. Comprehensive	Actual Cash Value	\$	\$

So the limit for parts 7,8,9 is ACV

If the rental place has a 5000 deductible and the MAP insured had a \$500 deductible, then the rental company coll/ comp is primary and the MAP could pay \$4500 – the difference in deductibles.

If an auto covered under this Part is not owned by you at the time of the accident, the owner's auto insurance must pay its limit before we pay. Then, we will pay, up to the limit shown on your Coverage Selections Page, for any damage not covered by that insurance less the deductible amount you selected.

If the owner of the vehicle does NOT have coll/comp ...then the MAP will drop down and pay ... ACV

**Part 7.
Collision.**

Under this Part, we will pay for any direct and accidental damage to **your auto** caused by a **collision**. We will also pay for **collision** damage to other private passenger autos while being used by you or a **household member** with the consent of the owner. It does not matter who is at fault. We will pay the cost to repair the auto or any of its parts up to the actual cash value of the auto or any of its parts at the time of the **collision**. We will not pay for any decrease in value claimed to result from the loss. The most we will pay will be either the actual cash value of the auto or the cost to repair the auto, whichever is less. The cost to

International Risk Management Institute says the following re: the PAP language

The clause also specifies that any insurance provided under this policy for vehicles not owned by the named insured is excess over any collectible insurance. For example, John has a PAP with a \$250 collision deductible on both of his cars. John drives Frank's car and negligently causes an accident. Frank has a PAP with a \$1,000 collision deductible on his car and, in this case, Frank's policy is primary. Since John's policy is excess, it will pay the difference between Frank's deductible and his own deductible, which equals \$750. Note that the provision refers to "any coverage provided." If Frank's policy expired 1 day before the accident, John's policy would become primary since Frank's policy is not considered collectible. The key point in this clause is that the "insurance follows the car."

The clause also refers to other applicable physical damage coverage or any other source of recovery. For instance, if John rents a van and purchases the rental company's collision damage waiver coverage, this specialized coverage would be primary and John's physical damage coverage under his PAP would be excess.

I have a client that operates a Photography School which includes taking the students out on field trips in her mini van.

Would this exposure be excluded under the Private Passenger policy?

Would it be covered under a class 30 or would I need to quote it as livery on a commercial policy?

The majority of the time it is used as her personal vehicle but there are anywhere from 9 to 12 field trips over the term of the classes.

Let me know, thanks,

Business use?

If the client runs the photography school and part of the fee to go to it includes “field trips in the mini van” .. I think that should be class 30 – with wicked high BI limits.

Business Use. The operator has been licensed at least six years and the automobile is used in the occupation, profession, or business of the insured. Going to or from the principal place of the occupation, profession or business of the insured is not considered business use.

It is a photography training course held during the summer (9 weeks) Monday to Friday for ages 11 to 17. Once in awhile they will travel to various locations around Boston/Salem/Waterfront areas to take photographs and learn different techniques based on the location and objects being photographed. Deb

If the field trips are “part of the photography school fee” then class 30 works

If there is a fee ...to defray gas costs ...then the MAIP manual ...transportation of students or others for a consideration – going to place of school activity endorsement – which has no premium charge ... verifies coverage ...and it still excludes public or livery

Business use?

If the client runs the photography school and part of the fee to go to it includes “field trips in the mini van”... I think that should be class 30 – with wicked high BI limits.

Business Use. The operator has been licensed at least six years and the automobile is used in the occupation, profession, or business of the insured. Going to or from the principal place of the occupation, profession or business of the insured is not considered business use.

Agent responded

It is a photography training course held during the summer (9 weeks) Monday to Friday for ages 11 to 17.

Once in awhile they will travel to various locations around Boston/Salem/Waterfront areas to take photographs and learn different techniques based on the location and objects being photographed.

The MAIP manual states

RULE 31. TRANSPORTATION OF FELLOW EMPLOYEES

If a private passenger motor vehicle has a seating capacity of not more than eight passengers other than the driver and is used to carry fellow employees, students or others for a consideration, expressed or implied, to or from, or near their place of employment or education, the premium to be charged shall be the otherwise applicable private passenger automobile premium. For vehicles in excess of eight passengers, refer to the rule for van pools in the commercial automobile manual.

All policies subject to this rule must contain the endorsement titled Transportation of Fellow Employees, Students or Others, M-0004-S.

It really isn't "livery" since it's the SAME bodies all the time ...going to the same place together

I've been receiving calls by people who are working for Uber and want high liability (smartly so).

However, it appears that standard carriers do not want to write the policy if it is more than 28 hours/ (needs to be part time).

I'm not sure if a commercial policy would even fit as he is technically not a "business" but rather an employee.

I am not sure what to do with this one. Obviously, I would like the business, but I am not sure where to place it!

UBER most certainly is excluded under the MAP the second they “sign into” the app to be available

The is the exclusion in Part 1 ...

4. For accidents while **your auto** is being used as, or is available for use as, a public or livery conveyance, including a vehicle for hire through a ride-sharing program, car-sharing program, and transportation network service which operate under an agreement and for compensation. This does not apply to the use of **your auto** in a share-the-expense car pool, or in an expense reimbursement program either as a volunteer or at work. This does not apply to the use of **your auto** in providing volunteer transportation services at the direction of a charitable group.

but there is a similar exclusion in Parts 2,3,4 and a general exclusion for Parts 5-12

1. If the accident happens while **your auto** is being used as, or is available for use as, a public or livery conveyance, including a vehicle for hire through a ride-sharing program, car-sharing program, and transportation network service which operate under an agreement and for compensation. This does not apply to the use of **your auto** in a share-the-expense car pool or an expense reimbursement program either as a volunteer or at work. This does not apply to the use of your auto in providing volunteer transportation service at the direction of a charitable group.

There is no “AIB” endorsement to provide coverage for this exposure. Some companies allow ...some don’t ... and each has filed their own language.

Most only want to provide coverage for the phase 1 – signed into app but not on way to pick up customer nor has customer in the vehicle.

I agree ...they should be with a carrier that will let them insure at LEAST that exposure!!!

We contacted our “in” at CAR ... asking

what or how a CAR servicing carrier would address someone who drives 40 hours per week or more for UBER since it technically does not qualify for a MAIP carrier since “public or livery” is not eligible for a MAP

and he said:

Car service class. Send it to the agency’s commercial SC, they handle these risks.

If a customer is found to be 50% at fault, is the other company responsible for 50% of a rental?

On the MA gov't website ...

<https://www.mass.gov/info-details/surchargeable-incidents#at-fault-accidents->

At-fault accidents

An accident is defined as a surchargeable at-fault accident if:

- The operator is more than 50 percent at fault refer to the Standards of Fault section below.
- The vehicle is a private passenger car
- The accident involves a claim payment of more than \$1000, in excess of any deductible.
- The claim payment is for damage to someone else's property, collision, or limited collision coverages for a vehicle - refer to the Safe Driver Insurance Plan. Bodily injury to others liability claims may be subject to surcharge.

Yes.

If someone is 50% or less at fault they can sue the other party and receive that part of damages that they are not at fault if a Massachusetts claim. Having said that some companies are more “user friendly” on a third-party claim than others.

On a legal website:

Massachusetts uses the **51 percent** comparative negligence rule, which is similar to several other states. Under the rule, plaintiffs can only recover if their share of the blame was less than 51 percent. If plaintiffs are 51 percent or more at fault, then they cannot recover at all, with only a few exceptions.

My insured's policy renewed on 12/21/2021 and went into cancellation 12/27/2021 for 1/19/2022.

She was involved in an accident on 1/7/2022.

She never made a payment on the cancellation and the insurance company cancelled back to the renewal date 12/21/2021. Would this be a covered loss? (personal auto policy)

The MAP requires a 45-day notice of non-renewal

Renewal.

If we decide not to renew this policy or any of its Parts, we must mail our notice to your agent or to you at your last address shown on the Coverage Selections Page at least 45 days before your policy runs out. A notice sent by regular mail for which a certificate of mailing receipt has been obtained from the United States Postal Service will be considered sufficient notice. If we require a renewal application, and you fail to complete and return it to us within the specified time, we then have the right to cancel the renewal policy.

If certificate of mailing has not been sent 45 days prior to policy renewal date then the policy MUST be renewed

Obviously, this was not done ...so policy was renewed

Once renewed ...then the policy must be legally cancelled ...

Certainly ...non-payment is a valid reason

The AIB policy states:

We can cancel all or any part of this policy including your Compulsory Insurance if:

1. You have not paid your premiums.

AIB policy also states:

Legal Notice Requirement.

Any notice of cancellation will be sent to you at your last address shown on the Coverage Selections Page at least 20 days prior to the effective date. A notice sent by regular mail for which a certificate of mailing receipt has been obtained from the United States Postal Service will be considered sufficient notice.

In order for us to cancel the rights of any secured lender shown on the Coverage Selections Page, a notice of cancellation must also be sent to the secured lender in a similar manner.

**20 days
notice
required
sent
certificate
of mailing**

Legal cancellation

**So ... the policy renewal date was 12/21/2021 –
Cancellation notice sent 12/27/2021**

**To be effective 1/19/2022....which is a few more than 20 days ...which most
companies do for mailing notice days**

**If the accident was on 1/7/22 ...the policy WAS IN FORCE and the company
MUST respond ...**

**If the company “chooses” to make a journal entry back to the policy effective
date to clear their books ...they can do that ...but they MUST PAY THIS CLAIM**

Legal cancellation

SO ...yes the company is paying that loss ...

if they say no ...

then your insured WILL make a complaint to BOTH the attorney general's office as well as the MA DOI ...and see what happens to THAT company

<https://www.mass.gov/how-to/file-a-consumer-complaint>

<https://www.mass.gov/how-to/filing-an-insurance-complaint>

The first website online complaint is the attorney general's office

The second is the MA Division of insurance

We have found from our underwriter at Company X that place of garaging does not need to be changed on a policy unless it is a permanent change.

Example snowbirds or kids that take cars with them to college, because this is not permanent we do not have to change place of garaging anymore??

I have checked with a few of our other companies and they say YES you do?

Would you know which is correct?

Or is this something each carrier can choose to do or not?

I was always under the impression the vehicle must be rated by the principal place of garaging?

Just confused.

Any info you could share would be helpful.

It is both a possibility that a company can write its own rules ...and then ...there is the possibility that companies can interpret the same rule ...differently

The MAIP rule is:

RULE 5. RESIDENCE AND LOCATION

The proper rate schedules and rules are those effective in the city or town where the automobile is principally garaged. Motor vehicles used by salesmen or solicitors, or those with similar duties, requiring the operation of the motor vehicle in more than one rating territory in Massachusetts, shall be assigned to the territory determined by the place of principal garaging, or, if there is no specific city or town of principal garaging, then, by the residential address of the operator, or, if the residential address of the operator cannot be determined, then, by the Massachusetts business address of the operator. No adjustment of the premium shall be made by reason of a change in the place of principal garaging during the policy period unless such change is permanent.

Massachusetts registration is required of non-residents in accordance with reciprocal agreements with the various states as determined by the Registrar of Motor Vehicles.

Any motor vehicle owned by a non-resident of Massachusetts for which Massachusetts registration is required, regularly garaged inside the Commonwealth, shall be charged the rate for the territory in which the motor vehicle is principally garaged by such non-resident during the period of Massachusetts registration.

If kid goes to college in August ... and brings car ...and comes home in the Spring ... this rule can be interpreted ...GOOD OR BAD ...that the garaging should be college ...until the kid is graduated ...

RULE 5. RESIDENCE AND LOCATION

The proper rate schedules and rules are those effective in the city or town where the automobile is principally garaged. Motor vehicles used by salesmen or solicitors, or those with similar duties, requiring the operation of the motor vehicle in more than one rating territory in Massachusetts, shall be assigned to the territory determined by the place of principal garaging, or, if there is no specific city or town of principal garaging, then, by the residential address of the operator, or, if the residential address of the operator cannot be determined, then, by the Massachusetts business address of the operator. No adjustment of the premium shall be made by reason of a change in the place of principal garaging during the policy period unless such change is permanent.

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If college is “cheaper territory” ...then we love that interpretation ...if college is a more expensive territory, then we do NOT like that interpretation.

RULE 5. RESIDENCE AND LOCATION

The proper rate schedules and rules are those effective in the city or town where the automobile is principally garaged. Motor vehicles used by salesmen or solicitors, or those with similar duties, requiring the operation of the motor vehicle in more than one rating territory in Massachusetts, shall be assigned to the territory determined by the place of principal garaging, or, if there is no specific city or town of principal garaging, then, by the residential address of the operator, or, if the residential address of the operator cannot be determined, then, by the Massachusetts business address of the operator. No adjustment of the premium shall be made by reason of a change in the place of principal garaging during the policy period unless such change is permanent.

Massachusetts registration is required of non-residents in accordance with reciprocal agreements with the various states as determined by the Registrar of Motor Vehicles.

Any motor vehicle owned by a non-resident of Massachusetts for which Massachusetts registration is required, regularly garaged inside the Commonwealth, shall be charged the rate for the territory in which the motor vehicle is principally garaged by such non-resident during the period of Massachusetts registration.

Snowbirds ...should they be out-of-state territory ...if live THERE ...more than live in MA ...and will continue to do this?

RULE 5. RESIDENCE AND LOCATION

The proper rate schedules and rules are those effective in the city or town where the automobile is principally garaged. Motor vehicles used by salesmen or solicitors, or those with similar duties, requiring the operation of the motor vehicle in more than one rating territory in Massachusetts, shall be assigned to the territory determined by the place of principal garaging, or, if there is no specific city or town of principal garaging, then, by the residential address of the operator, or, if the residential address of the operator cannot be determined, then, by the Massachusetts business address of the operator. No adjustment of the premium shall be made by reason of a change in the place of principal garaging during the policy period unless such change is permanent.

Massachusetts registration is required of non-residents in accordance with reciprocal agreements with the various states as determined by the Registrar of Motor Vehicles.

Any motor vehicle owned by a non-resident of Massachusetts for which Massachusetts registration is required, regularly garaged inside the Commonwealth, shall be charged the rate for the territory in which the motor vehicle is principally garaged by such non-resident during the period of Massachusetts registration.

You need to know how each company interprets “correct garaging” ...or claims could be denied under False Information

18. False Information.

If you or someone on your behalf gives us false, deceptive, misleading or incomplete information in any application or policy change request and if such false, deceptive, misleading or incomplete information increases our risk of loss, we may refuse to pay claims under any or all of the Optional Insurance Parts of this policy. Such information includes the description and the place of garaging of the vehicles to be insured, the names of all **household members** and customary operators required to be listed and the answers given for all listed operators. We may also limit our payments to those amounts that we are required to sell under the compulsory coverages of this policy.

Hi I have an insured, who is renting an RV , would their auto insurance cover that?



The MAP follows you and HHMs when using an auto for various coverages

4. **Auto** – means a land motor vehicle or **trailer** but does not include:

A. Any vehicle operated on rails or crawler treads.

B. Any vehicle or **trailer** while it is located for use as a residence or premises. We consider such a vehicle to be an auto while it is being used on public roads or for recreational use.

C. A farm tractor or other equipment designed for use principally off public roads. We will consider a tractor or other equipment to be an auto while it is being used on public roads.

D. Any vehicle not subject to motor vehicle registration such as a moped, dirt bike, mini-bike, snowmobile or an all-terrain vehicle.

An RV ...is an “auto” because it is a land motor vehicle and would be subject to motor vehicle registration

Parts 4,5,6 talk about “auto”

Part 4. Damage To Someone Else's Property.

Under this Part, we will pay for damage or destruction of the tangible property of others caused by an accident and arising from the ownership, maintenance, or use of an auto, including loading and unloading. The amount we will pay is the amount the owner of the property is legally entitled to collect through a court judgment or settlement for the damaged property. We will pay only if you, a **household member**, or someone else using **your auto** with your consent is legally responsible for the accident. The amount we will pay includes, if any, applicable sales tax and the loss of use of the damaged property. The amount we will pay does not include compensation for physical damage to, or towing or recovery of, **your auto** or other auto used by you or a **household member** with the consent of the owner, or any decreased value or intangible loss claimed to result from the property damage unless otherwise required by law.

Parts 4,5,6 talk about “auto”

Part 5. Under this Part, we will pay damages to people injured or killed in an accident
Optional Bodily if you or a **household member** is legally responsible for the accident and such
Injury To Others. accident arises out of the ownership, maintenance, or use of an auto by you or
the **household member**. We will also pay damages if someone else using **your**
auto with your consent is legally responsible for the accident. The damages we
will pay are the amounts the injured person is entitled to collect for bodily injury
through a court judgment or settlement. We will not pay punitive or exemplary
damages.

**AIB says it MUCH better under Part 5 than Part 4 in the 2016 MAP ...
but the issue is that the MAP follows you and HHM when using an
“auto” – an RV is an auto**

Parts 4,5,6 talk about “auto”

Part 6. Under this Part, we will pay reasonable expenses for necessary medical and **Medical Payments.** funeral services incurred as a result of an accident.

We will pay for expenses resulting from bodily injuries to anyone **occupying your auto** at the time of the accident. We will also pay for expenses resulting ~~from bodily injuries to you or any~~ **household member** if struck by an auto or if **occupying** someone else's auto at the time of the accident.

Part 6 says ...occupying any auto ...which an RV is

Parts 4,5,6 talk about “auto”

Part 6. Under this Part, we will pay reasonable expenses for necessary medical and **Medical Payments.** funeral services incurred as a result of an accident.

We will pay for expenses resulting from bodily injuries to anyone **occupying your auto** at the time of the accident. We will also pay for expenses resulting from bodily injuries to you or any **household member** if struck by an auto or if **occupying** someone else's auto at the time of the accident.

Part 6 says ...occupying any auto ...which an RV is

Parts 7,9 only discuss “other private passenger autos”

Part 7. Collision.

Under this Part, we will pay for any direct and accidental damage to **your auto** caused by a **collision**. We will also pay for **collision** damage to other private passenger autos while being used by you or a **household member** with the consent of the owner. It does not matter who is at fault. We will pay the cost to repair the auto or any of its parts up to the actual cash value of the auto or any of its parts at the time of the **collision**. We will not pay for any decrease in value claimed to result from the loss. The most we will pay will be either the actual cash value of the auto or the cost to repair the auto, whichever is less. The cost to repair the auto is limited to the prevailing competitive price, which is the price we can secure from a licensed repair facility conveniently located to you. Unless you have purchased agreed amount coverage, actual cash value of the auto will be determined at the time of the loss. Actual cash value may include an adjustment for depreciation and betterment and for the physical condition of the auto. We will, at our option, repair the auto, repair or replace any of its parts, or declare the auto a total loss. If the repair of a damaged part will impair the operational safety of the auto we will replace the part.

Part 9. Comprehensive.

Under this Part, we will pay for direct and accidental damage to or loss of **your auto** other than damage caused by **collision**. We will also pay for such damage or loss to other private passenger autos while being used by you or a **household member** with the consent of the owner.

So ...parts 4,5,6 can follow

For Parts 7,8,9 – you need to know how YOUR company defines “private passenger auto”

RULE 27. PRIVATE PASSENGER DEFINITION

- A. A motor vehicle of the private passenger or station wagon type that is owned or leased under contract for a continuous period of at least twelve months by one or more individuals, excluding (1) partnerships, (2) corporations, (3) unincorporated business associations, and (4) other legal business entities with a federal employer identification number, and is not used as a public or livery conveyance nor rented to others. A vehicle which meets the conditions of Rule 31, regarding the transportation of fellow employees, students or others for consideration, is included in this definition, provided such vehicle is not registered for carrying passengers for hire.
- B. A motor vehicle that is a pick-up or van, that is owned or leased under contract for a continuous period of at least 12 months by one or more individuals, excluding (1) partnerships, (2) corporations, (3) unincorporated business associations, and (4) other legal business entities with a federal employer identification number, and
 - 1. has a gross vehicle weight rating of less than 10,000 pounds or has a vehicle rating group assigned to it by the Automobile Insurers Bureau of MA (AIB), and
 - 2. is not used for the delivery or transportation of goods or materials unless such use is incidental to the insured's business of installing, maintaining or repairing furnishings or equipment.

If they define it as cars, pickups and vans ...you have a problem

If they only define it as cars ...you have a problem

“private passenger auto” is not in dictionary.com

Excluding household member

One of my clients lets his daughter drive a company vehicle for her regular use and insured under a commercial auto policy in the Business name.

He wants to exclude her as a driver on his brand new LandRover (only vehicle on policy) that is insured on a personal auto policy.

Would you suggest adding the use of other Autos M-0051-S to the personal policy to cover the daughter in the event she gets sued personally for a vehicle accident?

I guess I'm confused when to add this M-0051-S endorsement. Seems to be coming up a lot lately

Excluding household member

I asked

Is the daughter a listed operator on the family MA personal auto policy ...for ANY vehicle?

And the answer ...

...

There is only 1 vehicle on the personal policy with Company X. It is a brand-new Land Rover that the clients want to exclude her from driving.

Not sure if you can even add the “driver other car” for her if she’s excluded on the only vehicle listed on the policy.

Excluding household member

The “use of other auto” endorsement would be for someone who is a listed operator on a MAP ...and they regularly use a “non-owned auto” -which is what is done here ...

but I “assume” the commercial policy listing her driving a commercially insured vehicle is in the “control” of Dad ...so policy premiums get paid. The BAP covers her when she is in THAT vehicle. The BAP does not “follow” her as a MAP would

If she isn’t a listed operator on family personal auto vehicle, then the General Provision 18 – Failure to furnish provision would apply

18. False Information.

If you or someone on your behalf gives us false, deceptive, misleading or incomplete information in any application or policy change request and if such false, deceptive, misleading or incomplete information increases our risk of loss, we may refuse to pay claims under any or all of the Optional Insurance Parts of this policy. Such information includes the description and the place of garaging of the vehicles to be insured, the names of all **household members** and customary operators required to be listed and the answers given for all listed operators. We may also limit our payments to those amounts that we are required to sell under the compulsory coverages of this policy.

Excluding household member

A MAP normally “follows” a household member but since she isn’t mentioned then this could be a problem with the family MAP giving her any coverage – per the Failure to Furnish Information Provision

If she is “excluded” ... then perhaps on an “if any basis” when she is driving a vehicle, she does not own ...and NOT driving it regularly

the Operator Exclusion endorsement M-0106-s could provide coverage for THAT situation

There are two AIB versions ...2017 and 2008

Operator Exclusion Endorsement - 2017

2017 edition

Company/named insured/ excluded operator all “AGREE” that excluded Operator not drive vehicles excluded from replacements of these autos

Replacement – vehicle change temporary substitute

MASSACHUSETTS ENDORSEMENT - M-0106-S

Operator Exclusion Form

It is agreed by the insurance company, the policyholder, and the person named below (the Excluded Operator) that the Excluded Operator will not operate the vehicle(s) described below, or any replacement thereof, under any circumstances whatsoever.

Excluded Operator_____

Vehicle Description_____

Vehicle Description_____

The policyholder and the Excluded Operator understand and agree that the insurance company will not pay under the optional insurance parts of the policy for any injury or damage arising out of the operation or use of the described vehicle(s) by the Excluded Operator.

The policyholder and Excluded Operator understand and agree that this Operator Exclusion Form will continue in full and effect in any subsequent renewal or replacement of the policy until the policyholder and the insurance company withdraw this form in writing.

_____ Date	_____ Policyholder's Signature
_____ Date	_____ Excluded Operator's Signature

(Ed. 02-17)

Policyholder and excluded operator
“understand” and agree that company
WILL NOT PAY optional insurance parts
If excluded operator uses described
vehicle

MASSACHUSETTS ENDORSEMENT - M-0106-S

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Excluded
Operator_____

Vehicle
Description_____

Vehicle
Description_____

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Date

Policyholder's Signature

Date

Excluded Operator's Signature

Operator Exclusion Endorsement - 2017

Policy holder and excluded operator agree that it endorsement stays on policy UNTIL ...policyholder or excluded operator request it off

NOT carrier's fault if excluded operator is now a class 10 code 99 and SOMEBODY forget to remove the endorsement

MASSACHUSETTS ENDORSEMENT - M-0106-S

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DatePolicyholder's Signature

DateExcluded Operator's Signature

(Ed. 02-17)

What if policyholder “you” purchased \$250,000 Part 4 – will all that limit Apply??

What if excluded operator rents a car for a week while on vacation – he IS a household member still???

MASSACHUSETTS ENDORSEMENT - M-0106-S

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Operator_____

Vehicle
Description_____

Vehicle
Description_____

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The policyholder and Excluded Operator understand and agree that this Operator Exclusion Form will continue in full and effect in any subsequent renewal or replacement of the policy until the policyholder and the insurance company withdraw this form in writing.

Date

Policyholder's Signature

Date

Excluded Operator's Signature

2008 version
Beginning essentially the same as 2017
version just no discussion of “agreement”
by policyholder, excluded operator and
company

Not drive excluded vehicle or
Any replacement of it

MASSACHUSETTS ENDORSEMENT - M-0106-S

Operator Exclusion Form

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Excluded
Operator_____

Vehicle
Description_____

Vehicle
Description_____

I am aware that under the terms of my Massachusetts Automobile Insurance Policy, if I, or someone on my behalf, provide false, deceptive, misleading or incomplete information in any application or policy change request, and if such false, deceptive, misleading or incomplete information increases the company's risk of loss, the company may refuse to pay claims under any or all of the Optional Insurance Parts of this policy. Such information includes the description and the place of garaging of the vehicles to be insured, the names of all household members and customary operators required to be listed and the answers given for all listed operators. Payments under Parts 3 and 4 may also be limited to those amounts that the company is required to sell.

In addition, I am aware Massachusetts law requires that the company withhold payment of a Collision or Limited Collision loss if the insured auto is being operated by a household member who is not listed as an operator on my policy. Payment is withheld when the household member, if listed, would require the payment of additional premium on my policy because the household member would be classified as an inexperienced operator or would require payment of additional premium on my policy under the Merit Rating Plan.

Date_____

Policyholder's Signature_____

Date_____

Excluded Operator's Signature_____

[Ed. 04-08]

AIB Manual Rule 29]

Next paragraph is essentially General
Provision 18
MAY deny all optional coverage

Restrict Parts 3 and 4 to what required
to sell (mandatory limits)

MASSACHUSETTS ENDORSEMENT - M-0106-S

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Excluded
Operator

Vehicle
Description

Vehicle
Description

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Date

Policyholder's Signature

Date

Excluded Operator's Signature

[Ed. 04-08]

AIB Manual Rule 29]

Operator Exclusion Endorsement - 2008

This paragraph is found in Parts 7 Collision and 8 Limited Collision – language from MGL 90 regarding compulsory limits

MASSACHUSETTS ENDORSEMENT - M-0106-S

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Operator_____

Vehicle
Description_____

Vehicle
Description_____

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In addition, I am aware Massachusetts law requires that the company withhold payment of a Collision or Limited Collision loss if the insured auto is being operated by a household member who is not listed as an operator on my policy. Payment is withheld when the household member, if listed, would require the payment of additional premium on my policy because the household member would be classified as an inexperienced operator or would require payment of additional premium on my policy under the Merit Rating Plan.

Date_____Policyholder's Signature_____

Date_____Excluded Operator's Signature_____

[Ed. 04-08]

AIB Manual Rule 29]

No discussion of whose responsibility it is to remove endorsement from policy

But is there a better argument that family member is now class 10 code 99 and is not really an “increased risk of loss”

What if policyholder “you” purchased \$250,000 Part 4 – will all that limit Apply??

What if excluded operator rents a car for a week while on vacation – he IS a household member still???

MASSACHUSETTS ENDORSEMENT - M-0106-S

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Vehicle Description

Vehicle Description

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Date

Policyholder's Signature

Date

Excluded Operator's Signature

[Ed. 04-08]

AIB Manual Rule 29]

Operator Exclusion Endorsement -

Even if the operator exclusion endorsement follows the excluded operator when he/she drives a non-owned vehicle ...

it would NOT follow in THIS situation of excluded daughter regularly driving a company car – because as previously discussed ...

the MAP excludes “regular use of non-owned auto” by you or household member

If one wants a “guarantee” that the excluded household member will have His/her own coverage when drive a non-owned vehicle ...

Then a Named Non-owner policy is best

It is the national PAP with the Named non-owner endorsement PP 03 22 endorsement on it

the 2005 version only allows BI/PD/MP/UM/UIM

the 2018 version also allows coll/comp

Auto Rental issues

My husband's vehicle was hit in a parking lot and he brought it in to be repaired. He went through the other party's insurance (Company X).

The Company's collision center set up his rental and told Enterprise to give him a comparable vehicle. When he went to Enterprise they gave him 2 options fairly comparable to his vehicle and didn't mention the price.

He just picked up his car today (2 weeks later) and Enterprise told him Company X would only cover \$29/day for the rental and they were not going to cover anything else.

My husband was never told they wouldn't pay higher than \$29/day.

Auto Rental issues

He spoke to the claims rep at Company X and they told him they are only required by law to cover \$19/day but were doing him a favor and covering \$29/day.

If he was hit by the other party and he is going through their insurance directly, shouldn't he have a rental comparable to his current vehicle and they cover the appropriate cost?

What should he do?

Auto Rental issues

**So ...when you say “parking lot” ...
was your insured parked and hit ...
or moving and hit.**

If your insured was “moving”...even though the other vehicle might be MORE at fault your insured would still have SOME fault ...and then Company X would only be responsible for the % of daily rate that their insured was at fault.

If your insured was parked, then they are 100% responsible for entire cost.

Either way see attached letter written by a former Lawyer for MA DOI citing a MA COURT CASE that said “comparable vehicle” was due and a federal law also says same.

Agent responded

He was parked, inside a store and the vehicle next to him scrapped the side of his car when they were pulling out of the spot.

When your insured is the victim in an accident and needs to approach the “at fault” party for car rental expenses ...what can your insured expect?

**Part 4.
Damage To
Someone Else's
Property.**

Under this Part, we will pay for damage or destruction of the tangible property of others caused by an accident and arising from the ownership, maintenance, or use of an auto, including loading and unloading. The amount we will pay is the amount the owner of the property is legally entitled to collect through a court judgment or settlement for the damaged property. We will pay only if you, a **household member**, or someone else using **your auto** with your consent is legally responsible for the accident. The amount we will pay includes, if any, applicable sales tax and the loss of use of the damaged property. The amount we will pay does not include compensation for physical damage to, or towing or recovery of, **your auto** or other auto used by you or a **household member** with the consent of the owner, or any decreased value or intangible loss claimed to result from the property damage unless otherwise required by law.

Part 4 pays

Damage to, loss of use of and sales tax

When legally responsible

The legal theory is “comparable” vehicle

MA court case ANTOKOL v. Barber 248 Mass 393 148 N.E. 350
USA general rule 8 AM Jur 2d Automobiles & Highway Traffic s.1315

MA is a comparative fault state *so one can only collect that amount they are NOT at fault*

MA surcharges are based on 211 CMR 74 Standards of fault

Fault assignment for purposes of SDIP assignment is 51% or more

Court assignment for damages is based on rules of the road MGL 231 s. 95

Section 85: Comparative negligence; limited effect of contributory negligence as defense

Section 85. Contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not greater than the total amount of negligence attributable to the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made. In determining by what amount the plaintiff's damages shall be diminished in such a case, the negligence of each plaintiff shall be compared to the total negligence of all persons against whom recovery is sought. The combined total of the plaintiff's negligence taken together with all of the negligence of all defendants shall equal one hundred per cent.

The violation of a criminal statute, ordinance or regulation by a plaintiff which contributed to said injury, death or damage, shall be considered as evidence of negligence of that plaintiff, but the violation of said statute, ordinance or regulation shall not as a matter of law and for that reason alone, serve to bar a plaintiff from recovery.

The defense of assumption of risk is hereby abolished in all actions hereunder.

The burden of alleging and proving negligence which serves to diminish a plaintiff's damages or bar recovery under this section shall be upon the person who seeks to establish such negligence, and the plaintiff shall be presumed to have been in the exercise of due care.

Legal theory for comparable vehicle



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

One South Station • Boston, MA 02110-2208
617-521-7794 • FAX (617) 521-7475
Springfield Office (413) 785-5526
TTY/TDD (617) 521-7490
<http://www.state.ma.us/doi>

MAR 03 2003

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

BETH LINDSTROM
DIRECTOR, CONSUMER AFFAIRS
AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

February 25, 2003

Donna M. McKenna
Director of Communications
Massachusetts Association of Insurance Agents
137 Pennsylvania Avenue
Framingham, MA 01701

Re: Property Damage Claim – Rental of a Substitute Auto

Dear Mrs. McKenna:

This is in response to your recent fax in regard to the above captioned matter.

Part 4 (Damage to Someone Else's Property) of the Massachusetts Automobile Insurance Policy provides that the insurance company "will pay damages to someone else whose auto or other property is damaged in an accident. The damages we will pay are the amounts that person is legally entitled to collect for property damage through a court judgment or settlement. Damages include any applicable sales tax and the costs resulting from the loss of use of damaged property." The leading Massachusetts case appears to be *ANTOKOL v. Barber* 248 Mass 393, 148 N.E. 350 which held that "the fair value of the loss of use of the plaintiffs automobile while being repaired was the hire paid for the one to take its place." In this particular case, the amount actually paid to hire another vehicle was accepted by the court as evidence of the fair value of the loss of use of the vehicle that was damaged. It appears that the general rule in the United States, as set out in 8 Am Jur 2d Automobiles & Highway Traffic §1315, is "Damages for loss of a motor vehicle may be measured by the cost of hiring or renting a similar motor vehicle while repairs are being made (emphasis added).

I would like to add that in my many years with the Division it has been the custom and practice of insurance companies paying damages for loss of use of a motor vehicle under Part 4 to value "the fair value of the loss of use of the damaged auto as being equal to the cost of renting a comparable auto of like kind and quality. Thus, an insurance company expected that a person who owned a Chevrolet would rent a Chevrolet and a person who owned a Cadillac or

Carrier should not restrict to \$ value they think is appropriate

Claimant should research multiple rental places for comparable values

Lincoln would rent a Cadillac or Lincoln. Obviously, the insurance company would not pay the added cost if a Chevrolet owner rented a Cadillac nor would they try to force a Cadillac owner to rent a Chevrolet. Car owners purchase their particular auto for many different reasons. Certainly factors such as interior size, safety and prestige are often the determining reason for the purchase and a car owner needing to rent an auto can use those same factors in determining which auto he or she will rent as a substitute during the repair process.

It is important to note that there is no minimum or maximum per day dollar limit applicable to the damages that an insurance company must pay under Part 4 of the Massachusetts Automobile Insurance Policy. The insurance company must pay whatever the reasonable rental cost is of a comparable vehicle plus the cost of repairing the auto up to the limit shown on the Coverage Selections Page for the Part 4 coverage.

If you have any further questions in regard to this matter please give me a call at (617) 521-7314.

Sincerely,



Victor A. Fanikos
Assistant General Counsel

Since Company X sent your client ... then they should be stuck with the entire charge.

Company X should have been more specific with Enterprise

Tell the client to make a consumer complaint ...it's free and I wonder if when Company X gets the notice from MA DOI they will just pay the difference.

<https://www.mass.gov/how-to/file-a-consumer-complaint>

Might mention that lying about a law that states \$19.00 a day when there is NONE ...might be something the press might like to hear about ...as well as the MA DOI

Thank you for attending...



Q4U – A year of MA auto Questions and answers

If you have any questions, please email
imorrill@massagent.com