



Rental Car Insurance – Your Liability



So you drive rental cars. Have you thought about your liability? Gerard Kilpatrick, a partner in the Auckland and Warkworth Lawlink firm of Webster Malcolm & Kilpatrick, looks at some of the issues.

Worldwide, there is an expectancy that if you hire a rental vehicle you are fully covered for all your insurance needs, and need worry only about the excess. If the excess is affordable, most hirers consider they can safely hire the vehicle and are protected by the law of the country against most contingencies that will cause them trouble. Unfortunately, this is not necessarily the case. Here is the situation in New Zealand, and the United States, with some reference to Australia.

NEW ZEALAND

In New Zealand cover for personal injury is through the Accident Compensation scheme, so exposure to liability for personal injury is not a concern. The exact terms of your rental contract are regulated by law – a remnant of regulation that survived the deregulation frenzy of the 1980s. Even more unexpectedly, the exact terms of the contract are prescribed not by regulation, but by an act of parliament, the Transport Services Licensing Act 1989. The effects of this contract and the related rules are:

- The rental vehicle company must offer the hirer insurance, both for the vehicle and for damage to third party property. Rather oddly, as a result of an ill-conceived amendment to the Act in 1992, the rental vehicle

company can make the excess as high as it likes, and the third party insurance as low as it likes – which rather defeats the requirements in the Act that the rental vehicle company must offer insurance to the hirer. Most rental companies play the game - typical excesses are about \$750, and typical third party cover is \$250,000 or more.

- The Act allows you to decline this insurance but, if you do, the rental car company does not have to hire the vehicle to you. It is important to understand that although referred to as insurance, it isn't really insurance at all – rather, the so called insurance arrangements are terms of your contract with the rental car company. The rental car company itself may be backed by its own insurers but this insurance cover, if it exists, does not extend directly to you. The protection you obtain from the rental contract is only as good as the ability of the rental car company to meet any claim. If the rental car company has few assets, in some circumstances that may leave you as the driver of the vehicle open to liability to third parties. It is a good idea to hire vehicles only from rental car companies that are obviously financially sound, and are more likely to be able to honour the insurance provisions of their contracts.
- The excess, whatever that might be, is your absolute liability. If the vehicle is damaged, whether it is your fault or not, you must still pay for the damage up to the excess stipulated in your contract.
- It is an offence for the rental car company to fail to offer you insurance, or (with some exceptions) for the rental car company to vary the mandatory form of contract. The company can, for example, add a list of prohibited roads – usually including 90 Mile Beach (for obvious reasons), Skippers Canyon and the Ball Hutt Road.

This does not mean you are not allowed to drive on these prohibited roads, but it does mean that if you do, you have no insurance.

In summary, there is reasonable statutory consumer protection when you hire a rental car in New Zealand. The ill-conceived 1992 amendment to the Act does give unscrupulous operators an opportunity to abuse these protections, but reputable operators will not do so.

UNITED STATES

Well you might tremble! In the United States, rental car companies offer cars for a hire fee, and for an additional price, they offer what is called collision damage waiver.

Unless you buy collision damage waiver you are responsible for any damage you cause to the car itself. Usually, this is regardless of fault on your part. However, purchasing collision damage waiver gives you no protection against damages claims for personal injury and property damage by third parties, that is the driver of the other vehicle involved in a collision with you and any other persons who suffer loss as a result of your act. If you want protection against third parties, you must buy what in the United States is called liability insurance supplement, or LIS, although the name may vary from company to company. The United States is no country to be driving around without third party cover, as it is a litigious society where there is a tendency to sue everybody in sight and lodge extremely high dollar claims. There is some compulsory third party insurance provided by State law, but it is always quite low, in the order of US\$20,000 up to US\$50,000 according to the State. In Hawaii, for example, it is US\$50,000. That is quite insufficient.

You cannot rely on what the attendant at the rental counter tells you about your possible liability. After you have overcome the language difficulty, the attendant is likely to tell you that as you have

paid by credit card, you don't have to worry. In the United States, third party cover for rental vehicles is often provided as an automatic benefit by the credit card companies. Alternatively, this cover may be included in the hirer's United States private motor vehicle policy. Holders of cards issued in New Zealand do not have this cover, so you must buy it separately from the rental car company. Many New Zealanders drive blithely in the United States without taking this cover, blissfully unaware of the fearsome risk they are taking.

The attendants do not market the cover, presumably because so few buy it. But it is a must for those not resident in the United States. The situation may have changed, but on the writer's last visit, it could be purchased for US\$17 a day for \$1 million and \$US25 a day for \$2 million.

You need also to be conscious of any territorial limits on the various insurances – the contract may say they are void if the vehicle is taken out of State – so check carefully.

TRAVEL INSURANCE?

What about travel insurance? Doesn't this include public liability cover?

Well, yes it usually does. You are protected for several million dollars for public liability, eg accidentally knocking someone down on an elevator, but nearly every travel insurance policy excludes liability arising from possession of a mechanically propelled device, which a motor car certainly will be. If our local travel insurance companies were really alert to the services they can offer, they would be pointing to this risk and offering cover as an optional extra.

Some travel insurance companies are also offering to meet your rental car excess up to a limit. This may save you buying out the excess, but you need to review your policy carefully. Some policies require you to buy out all voluntary excesses before the cover cuts in for the balance. This cover is useful, as it may save you \$20 or so a day when overseas.

DRIVERS

Watch what the contract says about permitted drivers carefully. In New Zealand, no person may drive a rental vehicle unless they have

produced their licence to the rental car company, and have had the details noted on the rental contract. (The situation is a little different when the hirer is a company.) Overseas jurisdictions will be different. The contract might say, for example, that your spouse can drive without being noted on the contract. As a result, in the United States attendants see a man hiring a car, and when asked to note the lady companion as an approved driver, say it is not necessary. They have presumed the woman is the man's wife. Obviously, she might be his mother. If she then drives, she is not protected by the contract, and will have no protection from the insurance. It is a good idea to be ultra cautious and check the contract carefully. Always have the name and licence of all intended drivers noted on the contract.

TRAFFIC LAW

One peculiarity of rental contracts in other countries is that they generally say that your cover is not available if you have broken a traffic law. The trouble is that most common accidents that give rise to liability involve breaches of traffic law, eg failure to give way, or driving at a speed slightly in excess of the speed limit. Your private motor vehicle insurance policy, by contrast, will contain no such limitation.

In other words, the rental contract takes your cover away at the very time you are most in need of it. Lawyers will see this gaping hole in the cover provided straight away, but persons other than lawyers hire cars and for the ordinary consumer this subtle point will not be obvious. This is so common that it seems that all you can do on this one is swallow hard and drive, and trust that the rental company will not apply the terms of the contract in a harsh way. This is not a concern in New Zealand, although such matters as driving with excess blood alcohol, and driving dangerously and recklessly will disqualify you from the benefit of your insurance.

AUSTRALIA

It has proved rather difficult to find information on Australia, and this can be the subject of a future article. The terms of the rental contract itself are not regulated. Most contracts make the hirer absolutely liable for the vehicle unless waived by the insurance

package in the rental contract, sometimes called Driver Protection and sold with a package of other insurances. The usual excess is about A\$2,500, but whether this is statutory or not is unclear. Likewise, the extent to which third party cover is provided by law is unclear. Some contracts include a warranty that the hirer has never been convicted of an alcohol offence – so take care.

OTHER INSURANCES

Some companies offer in addition Personal Accident Insurance (PAI) and Personal Effects Cover (PEC), but you never have to buy these, although sometimes they are wrapped up in the Excess Damage Waiver. These may or may not be good value, so consider them carefully before purchasing.

GENERAL

Take your time at the rental counter, and ask questions if you don't understand. This can be difficult as the process is designed to get you into the vehicle as quickly as possible (sign here, here and here). Always resist this if you are not sure.

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