

## **MANDATORY AUTO INSURANCE\***

**Joel S. DeVore**

**Joel S. DeVore**, B.A., Antioch College (1974); J.D., University of Oregon (1982); member of the Oregon State Bar since 1982; shareholder, Luvaas Cobb, Eugene.

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## I. THE FINANCIAL RESPONSIBILITY LAW

### A. (§17.1) Introduction

This chapter surveys Oregon’s requirements for motor vehicle liability insurance, uninsured and underinsured motorist coverage, and personal injury protection benefits. For a general treatment of interpretation of insurance policies as matters of contract, please see OSB CLE *Insurance*, Chapter 18 on liability coverage. This chapter emphasizes mandated insurance coverage that is involved in every accident and is guaranteed to Oregon drivers, owners, and accident victims.

### B. (§17.2) Purpose

Oregon law mandates that auto policies provide a minimum level of liability coverage. The general purpose of the Financial Responsibility Law is to “ensure that motor vehicle drivers can respond in damages for liability” or “to ensure that motor vehicle accident victims are compensated.” *State Farm Fire & Cas. Co. v. Jones*, 306 Or 415, 418, 759 P2d 271 (1988). The mandate is founded in statute and shaped by case law.

## **C. Required Coverage**

### **1. (§17.3) Required Limits**

The Financial Responsibility Law (FRL) requires that every motor vehicle liability insurance policy that is issued for delivery in Oregon must state, among other things, its limits of liability. ORS 742.450(2); ORS 806.080(1)(b). The statute requires that the policy provide at least coverage of \$25,000 for bodily injury to one person, \$50,000 for bodily injury to two or more persons, and \$10,000 for damage to the property of others. ORS 806.070(2).

The limits of bodily injury liability coverage are \$50,000 per person and \$100,000 per accident for an offender convicted of driving under the influence of intoxicants. The offender must maintain this amount of coverage for three years. ORS 806.075.

A spouse's claim for loss of consortium with an injured person with is not a second bodily injury for which the insurer must provide a second per person limit of \$25,000. The injured person's claim and the spouse's consortium claim are together subject to a single \$25,000 limit. *Tepley v. Ballard*, 142 Or App 574, 922 P2d 1236 (1996) (construing FRL); *see also Viking Ins. Co. v. Popken*, 102 Or App 660, 663, 795 P2d 1091 *review denied* 310 Or 547 (1990) (construing policy).

### **2. (§17.4) Additional Coverage and Limitations**

Needless to say, an insurance policy may provide higher liability limits or a broader scope of coverage than is mandated by the statute. ORS 742.464. The FRL merely imposes a basic minimum level of coverage. When, however, a policy affords higher limits of coverage, it may employ additional limitations or exclusions from coverage so as to deny such added coverage under particular circumstances. The FRL will not operate to control the policy's terms with regard to coverage above the minimum limits. For example, an exclusion for liability for injury to the insured person would be invalid for the first \$25,000 of mandated liability limits, but the exclusion would be enforceable to deny coverage for the balance of a policy's higher liability limits. *Collins v. Farmers Ins. Co.*, 312 Or 337, 822 P2d 1146 (1991).

### **3. (§17.5) Reimbursing the Insurer**

An insurer is permitted to provide in its policy that the insured must reimburse the insurer for any payment that the insurer makes under compulsion of the statute, if that payment is for coverage that would have been excluded under the policy otherwise. ORS 742.460. Although reimbursement may be unusual, its potential arises whenever an unexpected driver is required to be insured or a printed exclusion is deemed to be invalid.

#### **4. (§17.6) Permissive Users of Ordinary Vehicles**

At least to the extent of the minimum limits of the FRL, an auto liability insurance policy must include coverage for all persons who operate the vehicle with the consent of the named insured. ORS 806.080; ORS 806.270(1)(c)(A). An “omnibus clause” or coverage for permissive users is required. Some restrictions, employed in other states, are forbidden in Oregon. A policy may not restrict its coverage to the named driver only while purporting to deny coverage for all other persons. *Viking Ins. Co. v. Perotti*, 308 Or 623, 784 P2d 1081 (1989). A policy may not deny its coverage to a permissive driver under the age of 25. *Viking v. Petersen*, 308 Or 616, 784 P2d 437 (1989). And, a policy cannot make its coverage for permissive drivers depend upon the lack of other insurance on the driver. Every policy must provide the required coverage. *Safeco Ins. Co. v. American Hardware Mutual Ins. Co.*, 169 Or App 405, 9 P3d 749 (2000).

A dealer’s lease of a car to a customer is consent within the meaning of the FRL, and, as a result, the dealer’s garage policy of liability insurance on the dealer’s fleet of vehicles must afford coverage to the customer. An exclusion for leased vehicles is ineffective. *Matthews v. Federated Service Ins. Co.*, 122 Or App 124, 857 P2d 852 (1993).

Although the statute mandates coverage for permissive users, it does not mandate coverage for users without permission. Even when the user is a family member and household resident with the named insured, there is no required coverage if the user did not have the owner’s permission to drive. *Harlan v. Valley Ins. Co.*, 128 Or App 128, 875 P2d 471 (1994) (daughter took car contrary to parents’ rule); see *Neal v. Johnson*, 154 Or App 500, 962 P2d 706 (1998) (no permission for rental car).

As to the general question about what may constitute “use” of a vehicle within the meaning of a contract of insurance, please see 1 *Insurance* § 18.20 (OSB CLE 2003) (“Use”). For purposes of the Financial Responsibility Law, a seller of goods who helps load those goods on a truck, which is later involved in an accident involving a shifting load, is not a permissive user of the vehicle. The FRL does not mandate that a seller who gratuitously helps load must be covered under the truck’s liability policy. *Trus Joist v. John Deer Ins. Co.*, 171 Or App 476, 15 P3d 995 (2000).

#### **D. Coverage Not Required**

##### **1. (§17.7) Permissive Users of “Self-Insured” Cars (Rental or Government Cars)**

Unlike ordinary cars, most rental cars do not provide mandated coverage for permissive drivers. Because they are usually “self-insured,” rental car companies usually

avoid mandated coverage for their customers. Many cities, counties, school districts, or special districts are also “self-insured.” The explanation begins with everyone’s choice to comply with the FRL by buying insurance, making a deposit of cash, posting a bond, or becoming “self-insured.” ORS 806.060. Those corporate or government entities who have more than 25 vehicles may choose to become “self-insured” by arranging a certificate from the state and showing that they could pay a judgment for minimum limits. ORS 806.130. Although self-insurers must be able to pay the same minimum amounts as would insurance, the self-insurance statute has been construed to require nothing more than dollar limits. There is no requirement that a self-insured car afford coverage for its permissive user as would any auto insurance policy. *Farmers Ins. Co. v. Snappy Car Rental, Inc.*, 128 Or App 516, 876 P2d 833 (1994) (rental car); *cf. Neal v. Johnson*, 154 Or App 500, 962 P2d 706 (1998) (no permission).

The potential that the driver of a “self-insured” rental car might have an expired or canceled personal policy would mean that the driver of a rental car would be totally uninsured. This has an unexpected impact on the accident victim. Any “self-insured” car is excepted from the definition of an uninsured vehicle in the victim’s uninsured motorist coverage. ORS 742.504(2)(e)(B). Therefore, the lack of mandated coverage for a permissive driver of a “self-insured” vehicle will leave some accident victims with no coverage from the driver, the offending vehicle’s “self-insured” owner, or the victims’s insurer.

## **2. (§17.8) Named Driver Exclusions**

An insurer can exclude a particular person by name from coverage under the mandated policy if each of the named insured persons has signed a written statement that approves the exclusion of the particular person. ORS 742.450(6). The reason for the exclusion must be the person’s driving record. ORS 742.450(7). A typical example might be a teenage child with a conviction for driving under the influence of an intoxicant. Additional reasons could be permitted if the Department of Consumer and Business Services issued a rule to permit other reasons, but no such rule has been promulgated.

## **3. (§17.9) Operator Policies**

Although less apparent today, Oregon’s statute continues to recognize a distinction between the usual policy issued to the owner of a vehicle and the unusual policy issued to someone solely as the driver of other persons’ vehicles. *See* ORS 742.270(3)(a) & (b). A so-called operator’s policy will only insure a driver while driving another person’s car. It will not insure the driver who buys and operates the person’s own car. An operator’s policy is permitted to deny liability coverage for someone who is driving their own car. *Dixie Ins. Co. v. Quesenberry*, 103 Or App 60, 795 P2d 1107 (1990).

#### **4. (§17.10) Distinguishing General Liability and Excess Policies**

While the Financial Responsibility Law mandates its coverage in any motor vehicle policy issued for delivery in Oregon, other kinds of policies cannot be read to provide mandated motor vehicle liability coverage. Policies that are exempt from mandated coverage are comprehensive general liability policies, excess policies, and umbrella policies. ORS 742.468.

#### **E. Exclusions**

##### **1. (§17.11) Injuries to Persons Insured Under Same Policy (Named Insureds or Household Members)**

A common scenario is the subject of several rulings on mandatory coverage. It arises when the injured person is a passenger who brings a negligence claim against the driver of the same vehicle. The driver and passenger may be insured against liability under the same policy, either because they are members of the same household or because the driver is a permissive user of the vehicle owned and insured in the passenger's name. The policy may purport to include an exclusion of liability coverage for any driver when the injury claim is asserted by someone insured under the same policy. The traditional rationale for such an exclusion was either a latent fear of collusion between driver and passenger or the hope that an insured might need less insurance to resist a claim brought by a friend or family member.

Whatever the exclusion's rationale, it violates the Financial Responsibility Law. A policy cannot deny liability coverage to a driver on the grounds that the injured person happens to be an insured person under the same auto policy. *State Farm Fire & Cas. Co. v. Jones*, 307 Or 415, 759 P2d 271 (1988).

When the exclusion is attempted, the size of the policy's effective limits becomes an issue. If the declaration page merely provides the minimum statutory limits of \$25,000 per person or \$50,000 per accident, then, of course, the invalidation of the exclusion can produce no more than the minimum coverage in the same figures. Often, however, a declaration page will recite that the policy affords larger limits, such as \$100,000 per person and \$300,000 per accident. An insurer, after all, is free to provide greater insurance than is required by statute. ORS 742.464. Whether the insurer is free to exclude coverage for this sort of greater insurance turns on the policy's language.

If a liability policy provides larger limits but simply and flatly denies all coverage for injuries to a person who happens to be insured under the same policy, then the Financial Responsibility Law will deem that exclusion to be invalid, but it is invalid only to the extent of the required minimum limits of \$25,000 per person and \$50,000 per accident. The exclusion will operate to eliminate the additional coverage that would be extended above the

mandated minimum limits. *Collins v. Farmers Ins. Co.*, 312 Or 337, 822 P2d 1146 (1991). The exclusion is deemed partially effective because the insurer is free to provide or deny coverage above the minimum limits. 312 Or at 342.

If a liability policy provides larger limits but purports to exclude coverage “to the extent that the limits of liability for this coverage exceed the limits of liability required by the Oregon financial responsibility law,” then the policy is ambiguous and unintelligible. Such language does not adequately describe an actual policy limit. Consequently, the larger liability limit that is shown on the declaration page will be deemed effective and the exclusion will be wholly invalid. *North Pacific Ins. Co. v. Hamilton*, 332 Or 20, 22 P3d 739 (2001) (enforcing coverage for a \$60,000 per accident limit); *Wright v. State Farm Mutual Auto. Ins. Co.*, 332 Or 1, 22 P3d 744 (2001) (enforcing \$100,000 per person limits); *see also Medyanikov v. Continental Ins. Co.*, 176 Or App 297, 31 P3d 495 (2001) (enforcing coverage for \$100,000 per person).

Ironically, the “simple, absolute” exclusion of all coverage will still serve to limit coverage to the minimum limits. *North Pacific Ins. Co. v. Hamilton*, 332 Or at 27. A safer practice, however, would be to write a policy that expressly provides an exclusion for such coverage insured above a dollar figure of \$25,000 per person and \$50,000 per accident. *North Pacific Ins. Co. v. Hamilton*, 332 Or at 29.

## **2. (§17.12) Intentional Injury or Damage**

Because it is concerned with accidents, the Financial Responsibility Law does not mandate coverage for intentional injury or damage. *Snyder v. Nelson*, 278 Or 409, 414, 564 P2d 681 (1977). It is against public policy to insure against liability for intentionally inflicted injury or damage. *Id. citing Isenhardt v. General Casualty Co.*, 233 Or 49, 377 P2d 26 (1962). Injury or damage is intentional when the actor desired the result or when the result was so certain to follow from an intentional act that the injury or damage can be said to be intended. *Snyder v. Nelson*, 278 Or at 413; *Fox v. Country Mutual Ins. Co.*, 327 Or 500, 514, 964 P2d 997 (1998).

## **3. (§17.13) Vehicles Available for Regular Use (Uninsured Cars)**

Insurers typically avoid liability coverage for uninsured vehicles by excluding injury or damage relating to a vehicle which is furnished or available for regular use by the insured or a family member and which is not otherwise described or listed in the policy. This avoids coverage of a vehicle for which no premium was paid. The “regular use” exclusion is justified by the mandate that, to comply with the FRL, a policy must designate “by explicit description or appropriate reference, all motor vehicles for which coverage is provided by the policy.” ORS 806.080(1)(a). Those described are covered; those that are not described are not covered. *See United Services Auto. Ass’n v. Reilly*, 122 Or App 459, 858 P2d 457

(1993) (business use [parking] exclusion upheld as not a “designated” vehicle under policy). The Financial Responsibility Law does not necessarily require that a policy insure a person with regard to every car that the person might drive. *Farmers Ins. Co. v. Stout*, 82 Or App 589, 594, 928 P2d 937 (1986) *review denied* 302 Or 657 (1987) (rejecting argument); *cf. Dixie Ins. Co. v. Quesenberry*, 103 Or App 60, 795 P2d 1107 (1990) (denying coverage on insured’s car).

The Financial Responsibility Law does require coverage for a vehicle when provided to the named insured by a repair shop and when the vehicle is a temporary replacement for an insured vehicle being repaired. ORS 742.450(5). Of course, most policies will voluntarily provide coverage for newly acquired vehicles and replacement vehicles.

#### **4. (§17.14) Statutorily Described Exclusions**

A handful of exclusions are expressly permitted by statute. Among them is the exclusion for damage to property owned by, rented to, in charge of, or transported by the insured. ORS 742.454; *see, e.g., Gage v. All Nations Ins. Co.*, 314 Or 700, 842 784 (1992) (when driving another’s vehicle, insured had “charge of” it).

Also permitted is an exclusion for injury or damage covered by workers’ compensation or on account of injury to an insured’s employee while engaged in the insured’s employment, other than domestic employment. Likewise, an exclusion is permitted for injury of an insured’s employee while engaged in the operation, maintenance or repair of a vehicle. ORS 742.454.

#### **5. (§17.15) Statutorily Omitted Exclusions**

A handful of exclusions are commonplace among policies but are not found among those permitted by the Financial Responsibility Law. These are (a) the exclusion for injury or damage from a vehicle used to carry persons or property for a charge (e.g., taxi or delivery service); (b) the exclusion for injury or damage while racing or participating in a demolition contest; (c) the exclusion for injury or damage from nuclear energy; and (d) the exclusion for punitive damages.

The omission of such exclusions from ORS 742.454 may be significant. Oregon cases have referred to the statutorily described exclusions as if they are an exclusive list of exclusions. *See State Farm Fire & Cas. Co. v. Jones*, 306 Or 415, 759 P2d 271 (1988); *Dowdy v. Allstate Ins. Co.*, 68 Or App 709, 685 P2d 444 *review denied* 298 Or 172 (1984). The “statutorily omitted” exclusions have yet to be tested under the FRL, and, at least to the extent of minimum coverage, they may prove problematic. *Cf. Collins v. Farmers Ins. Co.*, 312 Or 337 (enforcing coverage to minimum limits).

Also untested are exclusions or variations propounded by individual insurers. More than one Oregon insurer has expanded the “for hire” exclusion to exclude coverage for use of a vehicle in employment when the primary duty is delivery of services or products. The expanded exclusion seems to be directed at the teenager working pizza delivery. One insurer has even added to its auto policy an exclusion for damages resulting from an insured person transmitting a sexually transmitted disease. Although this novel exclusion is likewise not found in ORS 742.454, perhaps it is premised on the lack of an *auto* accident. *Cf. Snyder v. Nelson*, 278 Or 409, 414.