

SUPPLEMENTAL SPOUSAL LIABILITY INSURANCE – QUESTIONS & ANSWERS

QUESTION: Regarding a commercial auto policy, your handout said, “It is true that business auto insurance policies insure businesses, but they also insure individual people using the business’s vehicles with permission. Supplemental spousal liability insurance could apply, for example, if a business provides company cars to some employees and some of those employees have spouses.”

Is it your understanding that the business owners and any employees with company vehicles provided to them each need to sign the declination? If yes, is it also your understanding that then we need to be very specific with what vehicle is assigned and to who so premium can be charged for?

ANSWER: Nothing in the law or the emergency regulation implies that anyone other than a named insured must decline the coverage to have it removed. There is certainly nothing indicating that individual employees of an insured have the right to keep the coverage on a business’s policy.

The law, as amended, [Section 3420 of the New York Insurance Law](#) titled *Liability insurance; standard provisions; rights of injured person*, states:

(g) (1) Except as otherwise provided in paragraph two of this subsection, no policy or contract shall be deemed to insure against any liability of an insured because of death of or injuries to his or her spouse or because of injury to, or destruction of property of his or her spouse unless express provision relating specifically thereto is included in the policy. This exclusion shall apply only where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse.

(2) (A) Every insurer issuing or delivering any policy that satisfies the requirements of article six of the vehicle and traffic law shall provide coverage in such policy against liability of an insured because of death of or injuries to his or her spouse up to the liability insurance limits provided under such policy even where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse, unless the insured elects, in writing and in such form as the superintendent determines, to decline and refuse such coverage in his or her policy. Such insurance coverage shall be known as "supplemental spousal liability insurance".

(B) Upon issuance, renewal or amendment of a motor vehicle liability policy that satisfies the requirements of article six of the vehicle and traffic law, the insurer shall notify the insured, in writing, that such policy shall include supplemental spousal liability insurance unless the insured

declines and refuses such insurance, in writing and in such form as shall be determined by the superintendent. Such notification shall be contained on the front of the premium notice in boldface type and include a concise statement that supplementary spousal coverage is provided unless declined by the insured, an explanation of such coverage, and the insurer's premium for such coverage.

The [emergency regulation](#) states:

(a) Minimum requirements of SSL insurance.

(3) If a named insured elects, in writing, and in such form as the superintendent determines, to decline and refuse SSL insurance, the policy will not include SSL insurance. An insurer shall not be required to obtain a written declination at each renewal or amendment of the policy if a named insured previously submitted a written declination of SSL insurance. An insurer may obtain an electronic written declination if the insurer adheres to the requirements of Insurance Law section 3458 regarding electronic notices and documents.

It is the named insured who can reject the coverage, not other insureds. There is absolutely no need to have each individual driver sign off on the coverage declination.

QUESTION: On commercial auto policies that only have Hired and Non-Owned Auto Coverage, insureds are getting the opt-out form. However, one insurance company said there would not be any savings by opting out. True?

ANSWER: I agree with the insurance company. Hired and Non-Owned Auto Liability Coverage normally applies on an excess basis. The only exception to that in the ISO Business Auto Coverage Form is where the insured has assumed primary liability under an "insured contract," as the form defines that term.

The [emergency regulation](#) regarding Supplemental Spousal Liability Insurance states:

(a) Minimum requirements of SSL insurance.

(2) SSL insurance and the requirements of this section shall apply only to the bodily injury liability coverage under a primary motor vehicle liability insurance policy that satisfies the requirements of New York Vehicle and Traffic Law article 6 and shall not apply to other coverages under the policy or other types of policies, such as an umbrella liability or a for hire motor vehicle liability policy.

Therefore, SSL is for the primary coverage, not the excess, so the carrier is likely correct about the lack of premium savings. Probably the only reason your clients that carry only Hired/Non-Owned Coverage are getting the rejection form is because the carrier's computer system

doesn't differentiate between commercial auto policies that do and do not have scheduled vehicles.

QUESTION: I've asked three carriers if declining Supplemental Spousal Liability mid-term is possible for a return premium, and of course none of them can give me an answer. Can you shed any light on that? Do you think it will be possible, or will it be like TRIA and it's a take it or leave it when you bind and you're stuck either way.

ANSWER: Yes, the coverage can be declined for a return premium mid-term. This is what the [amendment to the law](#) that took effect on August 1 states:

(g) (1) Except as otherwise provided in paragraph two of this subsection, no policy or contract shall be deemed to insure against any liability of an insured because of death of or injuries to his or her spouse or because of injury to, or destruction of property of his or her spouse unless express provision relating specifically thereto is included in the policy. This exclusion shall apply only where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse.

(2) (A) Every insurer issuing or delivering any policy that satisfies the requirements of article six of the vehicle and traffic law shall provide coverage in such policy against liability of an insured because of death of or injuries to his or her spouse up to the liability insurance limits provided under such policy even where the injured spouse, to be entitled to recover, must prove the culpable conduct of the insured spouse, unless the insured elects, in writing and in such form as the superintendent determines, to decline and refuse such coverage in his or her policy. Such insurance coverage shall be known as "supplemental spousal liability insurance".

(B) Upon issuance, renewal or **amendment** of a motor vehicle liability policy that satisfies the requirements of article six of the vehicle and traffic law, the insurer shall notify the insured, in writing, that such policy shall include supplemental spousal liability insurance unless the insured declines and refuses such insurance, in writing and in such form as shall be determined by the superintendent. Such notification shall be contained on the front of the premium notice in boldface type and include a concise statement that supplementary spousal coverage is provided unless declined by the insured, an explanation of such coverage, and the insurer's premium for such coverage.

So, for example, if an insured trades in a car for a new one today and requests the appropriate change to the auto policy, the insurer has to add SSL coverage to the policy, notify the insured that it's on there, and give them the option to have it removed. It doesn't have to wait until renewal. Page 2 of the [emergency regulation](#) reiterates this.