



## Current Articles 2006 – December

### Removing Depreciation Deduction

Over the past several years, many of my articles have involved situations to which I have been introduced by a lawyer acting for a plaintiff in a possible action against a broker or for a lawyer acting either for the broker or the E & O carrier of the broker in an Errors and Omissions situation. Many of these have been absolutely fascinating, some eye opening and this situation is no different.

Both in my articles of May 1998 and January 2001, I commented on the auto endorsement OPCF 43 – Removing Depreciation Deduction This endorsement applies to an **owned auto** and is attached to the owner's policy.

There is another endorsement – OPCF 43A - Removing Depreciation Deduction **for Specified Lessee(s)**. This endorsement would be added to the OAP 1 obtained by the lessee for a long-term leased vehicle (in excess of 30 days). It too, would be added to the OAP 1 obtained by your client – the lessee. It is very similar to the OPCF 43 for an owner and agrees to pay the lesser of:

- The value of the automobile and its equipment as stated in the leasing agreement of the specified lessee
- The manufacturer's suggested list price of the automobile & its equipment at the original date of the leasing agreement, or
- The cost of replacing the automobile with a new automobile of the same make and model, similarly equipped

Conditions require that the insured be the first lessee, the auto must be a new vehicle and that an OPCF 5, Permission to Rent or Lease Automobiles must be attached.

When a vehicle is leased from many major leasing companies the leasing company includes or adds to the monthly lease payments "GAP" coverage. This is not a Statutory form and this coverage **is obtained by the lessor**. If a vehicle is written off in the early stages of the lease the GAP will pay **to the lessor** the difference between the residual value (buy-out) determined by the lessor and the ACV of the vehicle which would be paid by the lessee's insurer.

Let us suppose a vehicle worth \$40,000 is leased and 10 months later is totaled. The ACV may be \$32,000 and the residual value (original price less lease payments to the date of loss) may be \$35,000. The lessee's insurer will pay \$32,000 and the **lessor's GAP will pay \$3,000. to the lessor.**

If the policy included and OPCF 43A the lessee's insurer would be responsible to pay \$40,000!. How it is paid is the problem. Most insurers will pay the \$40,000. jointly to the lessee and lessor

and let them fight it out! Neither the OPCF 43A nor the OPCF 5 requires that payments be made jointly. But if the lessee is not aware of the provisions of the OPCF43A he may not get the additional benefit of this endorsement. A better way would be for the insurer of the lessee, pay to the lessor \$32,000. and the lessor receives an additional \$3,000 from the **lessor's GAP coverage**. And then a separate cheque issued to the lessee for the \$8,000. In reality this may not happen.

This came to my attention when a lessee's vehicle was totaled and the lessee's policy did not include the OPCF43A. Many brokers automatically add the OPCF 43 to a newly acquired **owned** vehicle, but do you do the same for a newly acquired **leased** vehicle? Sometimes lessee's believe and is told by the lessor that the GAP coverage is sufficient. In my example, certainly there would be an additional benefit to the lessee, had the policy include an OPCF43A.

It would be a good practice to offer the OPCF 43A to a leased vehicle just the same way that you offer or add it to an owned vehicle. If your client refuses the endorsement a well-documented file may become your defense.

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