

## OTHER INSURANCE CLAUSES

by Daniel W. Raab, Esq.



An area of law which comes up from time to time is that of the other insurance clause. This clause can be found in an insurance policy and comes into play where there are two or more policies covering the same risk. These "Other Insurance Clauses" often state that the policy becomes excess to any other coverage, while others state that they are prorated with other policies. Another type of clause is an escape clause which states that if there is any other insurance, the insurer will escape any responsibility for coverage. Lastly, some policies carry no such clauses.

In Florida, if two policies have excess insurance clauses, they will cancel each other out. See the case of *Travelers Ins. Co. v. Lexington Ins. Co.*, 478 So.2d 363 (Fla. 5th DCA 1985).

The way that this would work with two policies cancelling each other out is as follows: Policy "A" provides coverage for losses up to \$50,000.00 and policy "B" provides coverage up to \$25,000.00, and the claim is for \$7,500.00. The larger policy will cover \$5,000.00 of the claim and the other one will cover \$2,500.00. The excess clause contributions are computed based on the amount of coverage.

A pro rata clause is one that states that the policy will be prorated with any other policy with the same coverage. It works similar to the example given in the preceding paragraph when there is another pro rata clause.

If one policy has an excess insurance clause and the other has a pro rata clause, then the pro rata clause under Florida Law becomes primary and the other policy becomes secondary. See *Damshar v. AAACon Auto Transport*, 337 So.2d 963 (Fla. 1976).

A more unusual clause is an escape clause which states that there is no responsibility for the insurer if there is other primary insurance. *Cont'l Cas. Co. v. Old Republic Ins. Co.*, 2007 U.S. Dist. LEXIS 90979 (S.D. Fla. Dec. 11, 2007) and *American Bankers Ins. Co. v. Leatherby Ins. Co.*, 350 So.2d 353 (Fla. 2nd DCA 1977) have held that an escape clause makes an excess clause the primary insurance as it will be upheld by the Courts under Florida law.

Another situation which you can come into contact with is where one insurance policy has an "Other Insurance Clause" and the other one does not have any such language. In that instance, the policy without the other insurance clause becomes primary.

In a cargo setting, if one policy attaches prior to the time of the other, the policy that attaches first may become primary. See *St. Paul Fire & Marine Ins. Co. v. Marine Transp. Services Sea-Barge Group, Inc.*, 727 F. Supp. 1438 (D. Fla. 1989). The carrier's first party insurance attached after the shipper's other insurance, which became primary.

It is a good idea for your clients to review their insurance policies and see to what extent they have overlapping insurance coverage. At least under Florida law, some primary insurance may provide an extra layer of insurance. This is also an important issue for insurers and their defense counsel.

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