



Current Articles 2002 – April

A New Precedent

Many of our seminars and in previous articles, emphasis have been on the need for the broker to analyse the risks that may be applicable to a client – personal or commercial. This is accomplished by discussions with the client and inspections of the premises. For a commercial client, the broker must understand the operations and procedures of his client. For a personal client, the interests, hobbies and activities of ALL members of the household are important to the broker to make the proper recommendations.

For a broker the standard of care is high as a result of the decisions and judge's comments in the Fine's Flowers case. One such comment was " An insurance broker (agent) may be held liable for negligence or for breach of duty in equity for failing to warn his clients of a lack of coverage." In other words the broker may be held liable, not only for inappropriate coverage but also for the lack of coverage, even if such coverage was not available unless the "gap" is brought to the attention of the insured.

One such example involves younger children acquiring battery operated riding vehicles. These sell for approximately \$400.00 and the major department stores have indicated that many were sold out weeks before Christmas. These battery powered " motorized vehicles" can travel up to 10 km. per hour. Our seminar uses an example of such a vehicle striking an elderly person and causing serious injuries. Some in attendance have said that we use examples which could be considered "paranoid".

Now for the precedent! In 1992, two sons acquired a go-kart from a friend. The father added a lawnmower engine to the go-kart. Shortly after, friends of the family were visiting and the son lost control of the go-kart, striking the guest and causing serious injuries. The visitor sued the homeowner, who in turn sued their insurer, State Farm.

State Farm denied the claim as the policy excluded the use or operation of owned "motorized vehicles" with the exception of lawnmowers, snowblowers, garden type tractors or implements" This exclusion is fairly standard in the personal liability section of most habitational forms. At Pre-trial the judge ruled that the accident was covered. According to his decision, he acknowledged that the go-kart did appear to fall within the meaning of a motorized land vehicle but found it was more a child's toy and therefore fit the definition of "implement"

State Farm appealed and last October it was ruled that State Farm did NOT have to pay. The Court of Appeal agreed that the go-kart was, in fact, a motorized vehicle but decided it was not an implement and therefore not covered. The client was stuck with the costs of the two court hearings and must face the claim of their friends without insurance coverage.

Several underwriters have also used the logic that these types of motorized vehicles are toys and, as being deemed such ,would be covered. Where in the policy does it say that "toy motorized vehicles" are covered? Will the underwriter give you an endorsement for these "toys"? And if not,

where do you get liability coverage for the operation of owned motorized "toys"? If the broker does not make the client aware of such an exclusion (or others) do you think the broker could be held responsible for not informing the client of a "gap" in coverage?

Several who have attended seminars have made the comment that it is not practical or they do not have sufficient time to read the entire policy and exclusions to a client. This may be true but such an excuse will not satisfy the courts. Your best defense is knowing as much as you can about your clients and their interests and advising them accordingly.

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