



Current Articles 2006 – March

Motorized Vehicles – “Toys” and Scooters

Just over 4 years ago, one of my articles referred to the “Changing World” and the arrival of motorized toys. In particular, I cited a Ninja Kawasaki motorized toy that was powered by a rechargeable electric motor and owned by my grandson. This “toy” would develop a speed of 9 km. This motorized vehicle does not fall within the definition of any motorized vehicle in a habitation policy and should an accident occur involving bodily injury or property damage, there would be no coverage. Nothing has changed! The same applies today but the problem has increased.

As summer approaches, we can expect more of these motorized two wheel and four-wheel items. There is no liability coverage available for these items unless you can convince an underwriter to amend their wording. Good luck! The habitation policies exclude *“motorized vehicles except for lawn mowers, other gardening equipment, snow blowers, wheelchairs and motorized golf carts on the golf premises.”*

Near London, Ont., an 8 year old was given a go-kart from a friend. The father added a 5 hp. Motor to the go-kart and limited the speed to 11 km/h. Shortly the go-kart had been motorized; the son lost control of it and struck a lady who was visiting the parents. The guest was seriously injured and sued the parents. The claim was reported to their insurer, State Farm, who denied the claim. The parents sued State Farm and a “generous” judge ruled that the State Farm policy included coverage for *lawnmowers, snowblowers, garden-type tractors or implements*. Is a motorized dune buggy an implement? I always believed that an implement was something attached to a tractor.

In 2002, State Farm appealed this decision and a 3-judge panel overruled the lower court decision and decided that it was not an implement. The parents were stuck with the costs of the two court hearings and were left to face the injury claim without insurance coverage.

I am currently involved in an E & O situation in eastern Ontario where a motorized silver scooter knocked down an elderly lady on the sidewalk causing serious injuries. The case is still pending but the outcome expected may be the same.

These motorized scooters are available from supermarkets, catalogue stores, department stores and many other establishments. Ultra Mart offered one and the box had a warning that the scooter should not be driven on the public highways or roads. Unless you live in the country, that leaves you to use it on your driveway! Canadian Tire print a warning in fine print in their catalogue, which states “ Check all applicable local laws regarding age legalities, licence, safety course, and insurance requirements, and ride only when and where permitted”.

And what about “Human Transporters” – Segways. They only have two wheels and are motorized. Recently in a Toronto newspaper there was an article titled “Segways banned from roadways”. They also would lack coverage as a motorized vehicle.

So where do you legally operate these toys. For another article, I visited the City of Burlington Legal Department, which gave me a copy of a bylaw, which prohibits such motorized vehicles to be operated on sidewalks. Last year the City of Ottawa gave a warning that if anyone was caught riding "pocket" motorcycles they would be fined \$5,000.00 if they did not have insurance.

The MTO circulated a 5-page article to all Chiefs of Police. This brief describes eight different various motorized vehicles, 5 of which cannot be operated on roads in Ontario. The three permitted are Mopeds, Motorized Wheelchairs and Nopeds (Limited-Speed Motorcycles. But to drive a Moped or Noped you must have insurance and license plates and the driver must hold a M1, M2 or M license.

From the broker's perspective, these new "toys" are increasing in popularity and numbers. Do you know if any of your clients own such "toys?" Have you made your clients aware of the limitation for liability coverage applicable to motorized vehicles? One broker told me that he is now including an enclosure with all renewals identifying the lack of coverage for certain motorized vehicles. Hopefully, such an enclosure might be a good defense for a possible E & O.

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